

Avoiding a Pitfall

The Interstate Land Sales Disclosure Act

By: Brian N. Krulick, Esq.

The turmoil and volatility of the residential real estate market has wreaked havoc in the marketplace, particularly the condominium market. Developers are struggling to obtain financing and make sales, buyers are reluctant to enter into contracts and those that have are looking for ways out, and contractors are left to worry when and if they'll ever get paid. The result – unfinished projects, bank foreclosures and hundreds of unsold properties.

Implicated in all of this is the Interstate Land Sales Disclosure Act or ILSA, a little known federal statute that, until recently, has not gotten much notoriety. Essentially ILSA requires developers to prepare a detailed disclosure statement about their project and file it with the Department of Housing and Urban Development. Developers are also required to provide these disclosures to purchasers at the time of contract in the form of a property report. The failure to file the disclosure statement with HUD or to provide the property report to the purchaser are violations of ILSA entitling purchasers to rescind the contract and to a return of their deposits. The requirements for the disclosure statement are set forth by ILSA and quite detailed, and preparing a disclosure statement is fairly costly.

To avoid these costs developers try to tailor their projects to fall within one of the many exemptions contained within ILSA. If the projects are exempt, then they do not have to comply with the disclosure requirements.


One common exemption that developers rely on is the "two year" exemption. This exemption applies when the developer is obligated by the contract to construct and deliver a finished home or condominium within two years of the date the parties sign the contract. This is a stringent time requirement under ILSA and if not met, provides buyers with the right to rescind the contract and a return of their deposit, as well as at-

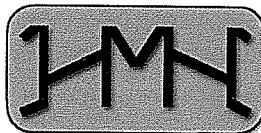
torneys' fees and costs. This is noteworthy because in a circumstance where a developer uses part or all of the deposit for the costs of construction or to obtain additional financing, having to pay back a deposit can mean having to come out of pocket, or worse, impeding the ability to obtain additional financing to complete the project.

Buyers wanting to get out of contracts with a return of their deposits often rely on the two year exemption as well, hoping that a developer will go over the time limit. Thus, it is critical that projects remain on schedule when relying on the two year exemption.

As stated above, ILSA provides many

exemptions from compliance, some of which can even be combined. However, these exemptions are highly technical and, if misapplied, could lead to great exposure. Thus, it is important that developers work with attorneys to ensure that their projects either comply with, or are exempt from ILSA. Otherwise, developers will bear the brunt of the real estate bust.

Brian Krulick is an attorney with The Brennan, Manna & Diamond law firm, a full service business law firm with expertise in construction law. He can be reached at (904) 366-1502 or bnkrulick@bmdpl.com. 



**HOFFMANN
PLUMBING, INC.**

"Where Quality Never Goes Out of Style"

State Certified CFC 043065, CFC 1425632, CFC 1427126

Serving Northeast Florida

New Home Builders

With Over 30 Years

Experience



904-278-1920 • 278-1925 Fax
1635 Farm Way, Middleburg

We are proud to be associated with David Ward Inc. as their plumbing contractor.