

REAL ESTATE

Interstate Land Sales Full Disclosure Act to be Inapplicable to Condominiums

By Andrew Lieb

On September 26, 2014, H.R. 2600, Public Law No: 113-167 (hereinafter “The Act”), was enacted, which amends the Interstate Land Sales Full Disclosure Act (hereinafter “ILSFDA” a/k/a “ILSA”) to exempt from certain registration and disclosure requirements the sale or lease of a condominium unit.

The Act takes effect on March 25, 2015 and thereafter, its amendments, addressing 15 USC §1702(a), the exemption section of ILSFDA, will both: (i) add the category of “the sale or lease of a condominium unit that is not exempt under subsection (a)” to subsection (b), which is the subsection of ILSFDA that expressly renders “registration and disclosure”, pursuant to ILSFDA, inapplicable to named categories of lots of property; and (ii) define the term “condominium unit” under the Act. Specifically, The Act defines “condominium unit,” under ILSFDA, as follows:

[A] unit of residential or commercial property to be designated for separate ownership pursuant to a condominium plan or declaration provided that upon conveyance— (1) the owner of such unit will have sole ownership of the unit and an undivided interest in the common elements appurtenant to the unit; and

(2) the unit will be an improved lot.

Following the Great Recession, many condominium unit purchasers brought action against real estate developers, pursuant to ISFDLA, in order to rescind their purchase agreement and to recover their down payment by arguing that the developer failed to make certain requisite disclosures to them that were mandated pursuant to ISFDLA. In fact, ISFDLA had become a tool by wary purchasers who had signed contracts to purchase condominiums pre-construction, but then, could not afford to go forward as a result of the financial crisis. This law resulted in instability for developers and stemmed their investments.

Within this litigation matrix, the issue of ISFDLA’s applicability to condominium units has been before the courts wherein ISFDLA has been expressly held to be applicable thereto. See *Cruz v. Leviev Fulton Club, LLC*, 711 F.Supp.2d 329 (S.D.N.Y., 2010); See *Tencza v. Tag Court Square, LLC*, 803 F. Supp.2d 279 (S.D.N.Y., 2011).

Consequently, a condominium developer was required to comply with ISFDLA’s registration and disclosure provisions prior to any sale or risk the



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arbitrary recession of the agreement by their purchaser should prices fall.

ISFDLA’s registration and disclosure provisions are codified at 15 USC §1703(a)(1) (A)-(B) as follows:

It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce, or of the mails— (1) with respect to the sale or lease of any lot ... (A) to sell or lease any lot unless a statement of record with respect to such lot is in effect... (B) to sell or lease any lot unless a printed property report ... has been furnished to the purchaser or lessee in advance of the signing of any contract or agreement by such purchaser or lessee.

A Property Report is a disclosure document, required to be distributed to prospective buyers, that includes, among other things, a description of the property and information about the title to the land. The Statement of Record is a registration of lots with the United States Department of Housing and Urban Development, which includes, amongst other things, details about the planning and physical characteristics of the property along with information about the

developer, such as their background and financials. The Statement of Record must be substantiated with exhibits, including plats, maps, title documents and lot sales / financing contracts.

Pursuant to ISFDLA, if the developer fails to deliver the required Property Report before the purchaser signs the purchase agreement, the sale “may be revoked at the option of the purchaser ... within two years from the date of such signing,” and the purchaser is entitled to a refund of all monies paid by the purchaser under the contract. See 15 USC §§1703(c), (e).

So, Public Law No: 113-167 expressly overrides the court decisions that applied ISFDLA to condominium units. On and after March 25, 2015, The Act provides condominium developers with a much needed reprieve from buyer’s remorse into the future. Now, with respect to New York condominium development, the Martin Act will be the central statute offering consumer protection. Is it enough?

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