



LEGAL ALERT

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For Real Estate Developers: Major Development in Enforcement of the Interstate Land Sales Full Disclosure Act

by Brian C. Cheney

As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau (“CFPB”) has now been charged with the enforcement of the Interstate Land Sales Full Disclosure Act (“ILSA”) as of July 21, 2011. Prior to that time, the Office of Interstate Land Sales Registration (“OILSR”), a sub-agency of the Department of Housing and Urban Development (“HUD”), was tasked with enforcement of ILSA. The CFPB, created to enhance consumer protection and to allow for more effective regulation of the financial and housing markets, is comprised of former HUD officials as well as officials from the Federal Trade Commission, the Treasury Department and the Federal Deposit Insurance Corporation. As such, although ILSA itself has not changed, the CFPB is expected to provide greater protection to consumers and will likely result in significant changes to ILSA in the future.

The CFPB published a notice in the Federal Register on May 31, 2011 (the “Notice”) identifying a list of the rules and orders it will enforce relative to ILSA. Of significant note, the notice made clear that the “Guidelines for Exemptions Available Under the Interstate Land Sales Full Disclosure Act” (the

“Exemption Guidelines”), previously promulgated by HUD and followed by numerous developers across the country in determining whether their projects are exempt from ILSA, will no longer be recognized or followed by the CFPB. A number of court cases have relied on the Exemption Guidelines in arriving at their decisions; others have given the guidelines no weight. Court decisions around the country have been inconsistent in their interpretation and application of ILSA generally and the exemptions under ILSA specifically. Although there is currently a project underway to discuss legislative revisions to ILSA, it is not likely that any such changes will be considered by Congress before 2013. To date, the CFPB has not issued any new regulations or guidelines concerning the enforcement of ILSA or the exemptions under ILSA. Therefore, until the CFPB exercises its rule-making authority, there will be a period of great uncertainty where developers and legal practitioners will be even more confused about the exemption issues under ILSA than they have been in recent years.

All residential developers may want to take a close look at their compliance with ILSA before engaging in any sales activities for residential lots or condominiums to ensure that the project has either been properly registered under ILSA or that the project is exempt from registration. As noted above, due to the change in the enforcement body of ILSA from the OILSR to the CFPB, there may be an increased protection given to consumers. As a result of this increased amount of protection, all residential developers may want to ensure that their sales are compliant with ILSA in order to avoid claims for rescission or enforcement actions by the CFPB.

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