

Real Estate Alert - Summer 2011

July 21, 2011

Interstate Land Sales Full Disclosure Act

Today, July 21, 2011, registration and enforcement jurisdiction over the Interstate Land Sales Full Disclosure Act ("ILSA") moves from the Office of Interstate Land Sales under the Department of Housing and Urban Development ("HUD") to the Bureau of Consumer Financial Protection ("CFPB") under the Department of Treasury, established by the Consumer Financial Protection Act of 2010, a/k/a Dodd-Frank, and organized by Elizabeth Warren at the direction of the President.

The CFPB has published in the Federal Register a list of the regulations, rules and orders promulgated over the years by agencies and departments whose jurisdiction has been transferred to CFPB that it will enforce.

Conspicuously absent from the list applicable to HUD and that will not be followed by the CFPB is a document called, "Guidelines for Exemption Available Under the Interstate Land Sales Full Disclosure Act" (the "Guidelines"), published in 1996 as supplemental guidance to the ILSA Regulations. CFPB staff advise that as of today, July 21, 2011, the Guidelines will "cease to exist" entirely.

ILSA's reach can be far and wide, and can apply to residential, commercial or industrial developments, improved and unimproved, but most often is found applied to residential developments. With 16 statutory exemptions, 8 regulatory exemptions and even, by definition of terms defining the law's application, exclusion from the law entirely, careful consideration must be given to ILSA's applicability to an array of development scenarios. During these economically trying times, we have seen many developments changing hands, both voluntarily and involuntarily. Successor owner/developers intending to sell at retail need to pay particular attention to the requirements of ILSA. A successor owner cannot use its predecessor's filing, and may need to file even if its predecessor did not; and foreclosure will not absolve a lender from the law's application.

For further information concerning ILSA, contact: Brian Kernaghan at 843.213.5404 or bkernaghan@nexsenpruet.com or Jeff Locker at 843.689.6277 or jlocker@nexsenpruet.com, both of whom practice extensively in this area.