

Developers Beware: Certain Sales Require Disclosures

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The Fifth Circuit has put developers selling lots and condominium units across state lines on notice. In a recently released opinion, the Fifth Circuit held that developers of certain projects marketed across state lines must provide purchasers with comprehensive property disclosures pursuant to the Interstate Land Sales Full Disclosure Act (ILSA). *Nickell, et al. vs. Beau View of Biloxi LLC* (5th Cir. 3/28/11). The statute requires developers of projects marketed in interstate commerce to: (i) submit an extensive property statement to the U.S. Department of Housing and Urban Development, and (ii) provide potential purchasers with printed property reports prior to execution of the purchase agreement. Failure to provide these disclosures gives the purchaser an exclusive option to revoke the purchase agreement.

In *Beau View*, the Defendant-Appellee developed and nationally marketed a condominium project consisting of four towers and 456 units. The developer accepted reservations for each of the units in the form of non-binding agreements that allowed prospective purchasers to cancel their reservation and obtain a full refund of their deposit at any time prior to entering into a purchase agreement. After Hurricane Katrina hit the Gulf Coast in August 2005, the condominium market crashed and many prospective purchasers cancelled their reservations. Presently only 62 of the 112 units in Tower 1 have sold. Plaintiffs, a group of four purchasers, entered into binding purchase agreements shortly before the hurricane and sought to rescind their contracts on the grounds that the developer failed to provide the required disclosures under ILSA. The defendant developer argued that since only 62 units in the project had sold, the sales of these units were exempt from ILSA's requirements because ILSA's registration and disclosure requirements do not apply to sales of lots in a subdivision containing fewer than 100 lots.

In considering the issue of whether the 100-lot exemption applies until 99 lots are sold of a larger development, or whether it applies only to developments being promoted as having fewer than 100 lots when completed, the court sided with the latter. Using the plain language of the statute as its basis, the court concluded that the exemption occurs where, at the *time of sale*, the sold lots (or units) are part of a development described to the purchaser as containing fewer than 100 lots (or units).

For complete details of the decision [click here](#).

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