

## U.S. Land Sales Laws: Complying With The Federal Interstate Land Sales Full Disclosure Act – Part II

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**2. Partial Statutory Exemptions.** A partial statutory exemption provides an exemption from the registration and disclosure requirements of the Federal Act, the prohibition against unlawful or misleading sales practices and contract disclosure requirements, as discussed below, still apply. The following are some of the transactions that qualify for a partial statutory exemption.

a. *Single-Family Residence.* To qualify for this exemption lots must be subject to and comply with local minimum standards, including lot dimensions, plat approval and recordation, roads and access, drainage, flooding, water supply and sewage disposal. Each lot must be zoned for, or otherwise limited to (e.g., enforceable covenants), single-family residences. By the time of closing, each lot must be situated on a paved street that meets the local standards or a bond must be posted to assure completion of roads to such standards. Prior to closing, the local government or homeowners association must have accepted or be obligated for main-

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tenance of the road upon which the lot is situated. Also prior to closing, potable water, sanitary sewer disposal and electricity must be extended to the lot or the local government must be obligated to install such utilities to the lot within 180 days from closing. At closing, purchaser must receive a current title insurance binder or title opinion indicating that, subject only to exceptions approved by the purchaser in writing, marketable title to the lot is vested in the developer. The sales contract must provide for delivery of a warranty deed conveying title free from monetary liens and encumbrances to purchaser within 180 days from the date the purchaser signs the sales contract. Prior to signing the sales contract, the purchaser or purchaser's spouse must personally inspect the lot. No offers of gifts, trips, dinners or similar promotional techniques to induce a visit to the subdivision or the sale of the lot may be used.

b. *The 100 Lots Exemption.* This exemption applies to the sale of lots in a subdivision containing less than 100 lots, excluding lots otherwise fully exempt from the Federal Act. If more than ninety-nine lots are sold, and if the 100th lot and any subsequent lots are not in compliance with another exemption, future and prior sales will lose their exemption status and purchasers have the option to void their lot purchases. This underscores the importance of keeping track of the number of lots sold. The resale of a lot will not count toward the ninety-nine lot limit.

The 100 lot count excludes lots exempt under a full exemption outlined in Section 1. Some exemptions can be combined. For example, if a subdivision contains 120 lots, ninety-nine lots may be sold under the 100 Lots Exemption, ten lots sold under the Sales to Builders exemption, and eleven lots sold under the Improved Lots exemption.

A developer who acquires fewer than 100 lots in a larger subdivision may jeopardize qualifying for the exemption if the acquiring developer acts in concert with the previous developer, so that more than 100 lots are offered pursuant to a common promotional plan.

c. *Twelve Lot Exemption.* Up to twelve lots may be sold in a twelve month period without registering the subdivision with HUD. The twelve month period is measured from the date of the first lot sale. A new twelve month period begins on each anniversary of the first sale and the developer may sell twelve lots in each twelve month period. If more than twelve lots are sold in any twelve month period, the exemption will terminate upon the sale of the thirteenth lot. Once terminated, the exemption cannot be revived. To determine eligibility for this exemption, all lots sold or leased are counted, including otherwise exempt sales. Resales of lots are not counted.

d. *Twenty-acre Lots.* If each lot contains at least twenty acres, the sales are exempt from registration with HUD. Easements for ingress and egress or public utilities are considered part of the lot acreage if the purchaser retains ownership of the property affected by the easement. If any one lot is smaller than twenty acres, no lot in the subdivision qualifies for the exemption. A developer cannot qualify for this exemption by treating as separate a site with lots that are each larger than twenty acres if those lots are offered under a common promotional plan with other sites with lots less than twenty acres.

e. *Intrastate Exemption.* The sale of lots pursuant to an intrastate marketing plan (conducted only within the situs state of the subdivision) are exempt from registration if the lots comply with a list of specific conditions which include without limitation: (1)

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the lot is free and clear of all liens, encumbrances and adverse claims; (2) a personal on-site inspection is conducted by the purchaser or purchaser's spouse; (3) the purchase contract includes specific disclosures (see 15 U.S.C. § 1702(b)(7)(A)(iii)); and (4) the purchaser acknowledges in writing receipt of a good faith estimate of the cost of providing electric, sewer, water, gas and telephone services to the lot.

**3. Regulatory Exemptions.** Regulatory exemptions from registration (not the anti-fraud provisions) are available on a lot-by-lot basis, the entire subdivision does not have to qualify. HUD may terminate a regulatory exemption for public interest reasons upon notice and hearing. Some transactions to which a regulatory exemption may apply are:

a. *Leases For Limited Duration.* The lease of a lot for five years or less, if the provisions of the lease do not obligate the lessee to renew.

b. *Lots Sold To Developers.* The sale of a lot to a person engaged in a bona fide land sales business. The sale of lots to an individual buying the property for investment and resale at some unforeseeable time do not qualify.

c. *Adjoining Lot.* The sale of a lot to a person who owns a contiguous lot improved with a residential, commercial, or industrial building.

d. *Lots Sold To A Government.* The sale of real estate to a government or government agency.

e. *Sales Of Leased Lots.* The sale of a lot to a person who has leased and resided primarily on the lot for at least one year immediately preceding the sale.

No notice to or approval from HUD is required to market and dispose of regulatory exemption. The developer is, however, responsible for maintaining complete records to demonstrate that requirements of a particular exemption have been met.

### C. Anti-fraud Provisions

Use of the 100 Lots or Single-Family Residence Exemptions from registration does not relieve a developer from compliance with the anti-fraud provisions of the Federal Act. By way of example and not limitation, the anti-fraud provisions provide that it is unlawful for a developer or its agent to employ any device, scheme or artifice to (1) defraud; (2) obtain money or property by means of an untrue statement of material fact; (3) omit to state material facts necessary to make statements not misleading; or (4) engage in any transaction, practice, or course of business which operates as a fraud or deceit upon a purchaser. The anti-fraud

provisions also require that a developer that represents that roads, sewers, water, gas, or electric service or recreational amenities will be provided or completed by the developer, to contractually obligate itself to complete such services or amenities. (C.F.R. § 1710.4).

### D. Reservation Agreements

Many developers take reservations in advance of taking binding contracts for the purchase of lots. Part III(a) of the HUD Guidelines for Exemptions available under the Interstate Land Sales Full Disclosure Act (the "Guidelines") establishes rules for use of a reservation agreement prior to registration with HUD. A reservation agreement must: (a) be non-binding; (b) require deposits be placed in escrow with an independent institution having trust powers and be refundable in full at any time at the option of the potential purchaser; and (c) not become a binding obligation to purchase a lot without a subsequent affirmative action by the purchaser (e.g., signing a sales contract). An option agreement, where a potential purchaser could forfeit money in return for the chance to buy a lot, is not permitted. Evidence of purported compliance with the Federal Act cannot be delivered to an interested party in advance of entering a reservation agreement for a lot that is neither registered nor exempt from the Federal Act.

### E. Liability For Violations Of The Federal Laws

Liability for violations of the Federal Laws can be far reaching. The developer, its officers, directors, partners, employees, agents and successors all may be held liable for such violations. Violators risk both civil and criminal liability, and under certain circumstances violations may render sales contracts voidable at the option of the purchaser.

**1. Civil Liability.** Civil liability may include one or combination of the following: (a) monetary damages, specific performance or any other relief that the court deems equitable; (b) payment of damages equal to the difference between the purchase price paid and the fair market value at the time relief is determined, plus interest, court costs, attorneys' fees, appraisers' fees and travel expenses to and from the property; (c) a court order enjoining the developer from further violation; and (d) monetary penalties of \$1,100.00 per violation up to a maximum of \$1,100,000.00 per person, per year.

**2. Criminal Liability.** Criminal liability may include fines of up to \$10,000.00 and/or imprisonment for up to five years.

**3. Contract Recission.** In a non-exempt transaction, if the developer fails to deliver a

Property Report to the purchaser prior to purchaser's execution of a contract, the purchaser is granted a two-year right of revocation.

### II. State And Jurisdictional Land Sales Regulations

Many states also regulate the marketing and sale of out-of-state land. In such states ("Closed States"), out-of-state subdivisions may not be marketed or sold until the developer has complied with the state's land sales laws. Many states require one or more of the following: (a) registration of the subdivision with a state agency; (b) distribution of a public offering statement prior to execution of a binding sales contract or a reservation agreement; and (c) offering and selling through a broker licensed in the Closed State.

Most states have taken the position that advertising, emailing or placing a telephone call into a state, even in response to an unsolicited request for information, or mailing marketing materials into the state will subject the person or entity conducting such activities to the laws of the state. State land sales laws are not uniform, the compliance process varies among the states from a simple application to a comprehensive registration similar to the federal registration requirements. Many states also have contract and advertising disclosure requirements and specific escrow instructions for deposits made under sales contracts.

Exemption from the Federal Act does not mean a subdivision will be exempt from registration under state laws. A few states provide an exemption equivalent to the federal 100 Lot Exemption, however most states with an exemption based on number of lots, the number of lots is less than ninety-nine (e.g., twenty-five lots). Some states provide an exemption from some or all of the state land sales laws for subdivisions that qualify for the Improved Lot Exemption from the Federal Act.

Registration under the Federal Act will not exempt a subdivision from any state registrations, it can, however, help to simplify the state registration process because some states provide a shorter registration process for HUD registered subdivisions. The land sales laws of each target market state for a subdivision should be considered when developing a marketing plan.

The penalties that may be imposed by a Closed State for violations of the state's land sales laws range from voiding sales contracts and imposing cease and desist orders to fines and criminal charges, including misdemeanor and felony charges, against the developer, its directors, officers, agents, employees, and sales agents. A broker's or sales agent's license may also be suspended.