

Completed Condominium Units to be Exempted from ILSA Registration Requirements

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A bill exempting completed residential condominium units from the burdensome registration provisions of the Interstate Land Sales Act ("ILSA") was passed by the U.S. Senate on September 18, 2014, after earlier passage by the U.S. House of Representatives, and was signed by President Obama on September 26, 2014. The bill will become effective on March 25, 2015.

ILSA was originally enacted in 1968 to protect out-of-state purchasers from fraudulent sales of undeveloped home sites. To that end, ILSA established an extensive registration and disclosure scheme, and created rights of action in federal court for purchasers seeking to rescind sale contracts. Through a series of judicial decisions, ILSA was interpreted to apply not just to undeveloped land parcels but also to residential units in condominium buildings proposed for construction.

Prior to passage of the current amendment, all proposed residential condominium developments which did not qualify for exemption, primarily through either having fewer than 100 units or agreeing to complete construction within a two year period with a remedy of specific performance, have been subject to burdensome and extensive registration requirements, administered initially by the U.S. Department of Housing and Urban Development ("HUD") and more recently by the Consumer Financial Protection Bureau ("CFPB"). These requirements essentially have precluded developers of greater than 100 units not wanting to be burdened by the registration process from entering into contracts for sale more than two years prior to construction completion or from entering into contracts without a remedy of specific enforcement. The ILSA statutory scheme has also been invoked by purchasers seeking rescission of contracts for sale in the economic downturn.

Although the exemption afforded by the current bill is welcome news to residential developers, three limitations should continue to be kept in mind: First, only condominium units that will have been completed at the time of conveyance fall within the exemption. Second, condominium developments which are not subject to a requirement for completion within two years with a remedy for specific performance remain subject to the anti-fraud provisions of ILSA. Third, various states have their own anti-fraud and registration requirements for out-of-state units being marketed to residents of their state, which should be analyzed by residential developers.

Goulston and Storrs will continue to monitor developments under ILSA, including new guidelines expected to be issued by the CFPB in the near-term, replacing the HUD guidelines which went dormant at the time ILSA administration was transferred to the CFPB in 2011.

For questions, please contact your usual Goulston & Storrs attorney or either of the attorneys listed below:

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