Interstate Land Sales Full Disclosure Act Update

Description:
Learn about recent issues and trends with the Interstate Land Sales Full Disclosure Act.

The Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§1701 et seq. (ILSA) has for many years been perhaps the ultimate buyer's remorse weapon. Enacted more than 40 years ago to protect consumers from land fraud schemes and unrealistic development visions, ILSA liberally employs rescission as a remedy for many developer missteps, whether or not they have any bearing or harm done to the buyer or why the buyer wishes to escape its decision to purchase. The real estate depression that started in 2006 saw more ILSA cases brought than in the statute's previous 38 year history. Most cases dealt with technical compliance rather than issues of fraud or misrepresentation. In some properties, the lack of enforceability of one contract lead to the loss of all many more contracts, possibly fueling the rescission fires. There was an expectation that once new issues were resolved by litigation and the 3 year statute of limitations had run on contracts entered into in 2006 to 2007, ILSA litigation would quiet down. Instead, the last several years have continued to see a large number of ILSA cases, some advancing new theories for rescission even in projects that were registered. At the same time, HUD was taking a beating by the courts, as many cases expressed little respect for the regulatory agency's interpretations of the law. The Dodd-Frank Wall Street Reform and Consumer Protection Act moved jurisdiction over ILSA from HUD to the new Consumer Financial Protection Bureau, but the Act also established the Bureau's priorities and ILSA may not be high on the list. In a major development, ILSA was amended to provide an exemption from registration for most, but not all, condominium sales.

This topic aims to provide an update of ILSA legislation, regulatory matters and litigation occurring in the last 6 years, a period that has been more active than one might have expected. Now that residential real estate development has increased but there are warnings about the next recession, it is important for practitioners to advise clients and draft contracts with the latest cases and trends involving ILSA in mind.

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