

**THE  
INTERSTATE LAND SALES FULL DISCLOSURE ACT**

**I. Introduction.**

- A. **General Applicability.** The Act generally applies to the sale or lease of lots in a subdivision by making use of interstate commerce or the mails, and unless the sale or lease is exempt under the Act, the developer must register the subdivision with the Department of Housing and Urban Development (“**HUD**”). Except in the case of an exempt transaction, a developer may not sell or lease lots in a subdivision, unless a Statement of Record is in effect and unless each purchaser is given a printed Property Report prior to signing any contract or agreement for sale or lease, all in accordance with the provisions of the Act and the regulations. *See* 24 C.F.R. § 1710.3 (2003).

**II. Definitions.**

- A. “**Developer**” means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision. 15 U.S.C. § 1701(5). HUD has ruled that other third parties, such as banks which offer lots obtained through foreclosure, and individuals who buy lots at a tax sale for resale to others, may be deemed a “developer” for purposes of the Act.
- B. “**Lot**” means any portion, piece, divisions, unit, or undivided interest in land located in any State or foreign country, if the interest includes the right to the exclusive use of a specific portion of the land. 24 C.F.R. § 1710.1. The term “lot” includes condominiums, cooperative units and campsites according to the HUD Guidelines for Exemptions (“**Guidelines**”).

**III. Reservations Excluded.**

- A. **Reservations.** A “**Reservation**” is defined as a “non-binding agreement used to gauge market feasibility for a developer through which a potential purchaser expresses an interest to buy or lease a lot or unit at some time in the future.” **Guidelines**, Part III(a).

**IV. Statutory Exemptions from both Anti-Fraud Provisions and Registration Requirements**

- A. **General.** Prior approval of HUD not required.
1. **Twenty-Five Lots.** The sale or lease of fewer than 25 lots.
  2. **Improved Lots.** The sale or lease of any improved land on which there is located a residential, commercial, condominium or industrial building, or the sale or lease of land under contract obligating the seller or lessor to

erect such a building thereon within a period of two (2) years. 15 U.S.C. § 1702(a)(2).

- a. **Building Complete at Time of Sale.** A building must be “physically habitable and useable for the purpose for which it was purchased” in order to be deemed complete.
  - b. **Building Not Complete at Time of Sale.** If the building is not complete, the contract of sale must contain a provision obligating the Seller to complete the building within two (2) years, beginning with the date on which the prospective purchaser signs the contract.
    - i. In a phased project, the obligation applies only to the phase in which the unit sold is to be located.
    - ii. Pre-sales clauses which condition completion of construction on a certain percentage of sales are permissible so long as the pre-sale clause is legally binding and the presale period does not exceed 180 days from the date the first purchaser signs a contract within the project.
    - iii. The contract may allow for Force Majeure delays if the provisions are legally recognized as defenses to actions in the jurisdiction where the building is to be constructed.
    - iv. Limitation of remedies, including specific performance is prohibited.
3. **Government Sales and Leases.** The sale or lease of real estate by any government or governmental agency is exempt. This exemption extends to sales and leases by a city, state, or foreign government as well as the United States government, but does not exempt sales or leases by federal or state chartered and regulated institutions (such as banks, and savings and loan institutions).
  4. **Sales to Builders.** The sale or lease of lots to any person who acquires such lots for the purpose of “engaging in the business of constructing residential, commercial, or industrial buildings, or for the purpose of resale or lease of such lots to persons engaged in such business.” Sales to individuals who intend to build their own homes are not exempt. See Guidelines, Part IV(g). In addition, a sale to a non-broker who is buying a lot for investment with indefinite plans for resale is not exempt.
  5. **Industrial or Commercial Developments.** The sale or lease of real estate for industrial or commercial development is exempt where the real estate is zoned by the appropriate governmental authority for industrial or

commercial development; or the real estate is restricted to such use by a recorded declaration of CCR's , provided certain conditions are satisfied.

**V. Common Statutory Exemptions - Exempt from Registration Requirements Only [Subject to Anti-Fraud Provisions]**

**A. One-Hundred Lot Exemption.**

Subdivision lot sales are exempt from registration requirements if, since April 28, 1969, the subdivision has contained less than 100 lots, and will continue to contain less than 100 lots. When counting 99 Lots:

- i. Wholly exempt lots are not counted. This permits “piggybacking” of this exemption with certain other exemptions.
- ii. Resales of lots not counted.
- iii. Includes all lots in a common promotional plan.

**B. Twenty-Acre Lots.** This section exempts the sale of lots in a subdivision from the registration requirements of the Act if, since April 28, 1969, each lot in the subdivision has contained at least 20 acres.

**C. Single-Family Residence Exemption.**

This exempts the sale of lots in a subdivision that are limited to single-family residential use, provided other conditions are met.

**VI. Regulatory Exemptions - No Prior HUD Determination Required**

**A. Sales to Developers.** The sale or lease of lots “to a person who is engaged in a bona fide land sales business” is exempt. 24 C.F.R. § 1710.14(a)(3); Guidelines, Part VI (b)(3). The purchaser must be a person who plans to subsequently sell or lease the lot or lots “in the normal course of business.” Guidelines, Part VI(b)(3).

**B. Lot Sales to a Government.** The sale or lease of real estate to a government or governmental agency is exempt. 24 C.F.R. § 1710.14(a)(5); Guidelines, Part VI(b)(5).

**VII. Regulatory Exemptions - Prior HUD Determination Required.**

**A. General.** The Secretary of HUD may exempt from registration requirements any subdivision or lots by issuing an Exemption Order upon a determination that

registration is not necessary in the public interest and for the protection of purchasers based on the small amount or limited character of the offering. The anti-fraud provisions apply to these exempt transactions.

- B. Multiple Site Subdivisions.** The definition of “Subdivision” includes contiguous and non-contiguous lots which are offered for sale or marketed under a common promotional plan. Accordingly the sale of such lots pursuant to a common promotional plan must be included in determining the 100 lot statutory exemption found at 15 U.S.C. § 1702(b)(1). However, upon issuance of an Exemption Order the sale of lots contained in multiple “sites” of less than 100 lots each, offered pursuant to a common promotional plan, is exempt from the registration requirements of the Act, even if the aggregate member of such lots in multiple sites exceeds 100. 24 C.F.R. § 1710.15(a).

**VIII. Advisory Opinion.**

When it is not clear that an offering is exempt, Advisory Opinions are an alternative to seeking an Exemption Order from HUD to clarify the situation.

- IX. No-Action Letters** If one or more sales or leases do not qualify for an exemption, a No-Action letter may be requested from the Secretary of HUD. A No-Action Letter simply signifies that HUD will not take any affirmative action to require registration. The issuance of a No-Action letter does not preclude any future agency action which may become necessary because of new information or a change in the circumstances. A no action letter will not be issued if a sale or lease has not already occurred.

**X. Registration of Subdivisions - Statement of Record .**

A Subdivision may be registered by filing with the Secretary a Statement of Record. The Statement of record consists of two parts. The first is the Property Report and the second is the Additional Information and Documentation section.

- A. Property Report** This is a narrative disclosure to be provided to each purchaser before the contract is signed.
- B. Additional Information and Documentation Section** Includes details regarding the planning and physical characteristics of the subdivision and the experience and financial backing of the developer. Includes exhibits such as plats, maps, titles documents and sales and financing contracts. This is not provided to purchasers but is on file with HUD.

**XI. Civil Remedies/Penalties.**

**A. Civil Remedies**

**1. Remedies.**

In general, a purchaser or lessee may bring an action at law or in equity against a developer or agent for any sale or lease transaction in violation of 15 U.S.C. § 1703(a). The court may take into account amount paid for Lot, cost of improvements and fair market value of lot at time of purchase and at time relief is sought. May also bring an action at law or in equity against the seller or lessor to enforce the purchaser's revocation rights under 15 U.S.C. § 1703(b), (c), (d) or (e) *See* 15 U.S.C. § 1709(a) - (b).

**2. Limitation of Actions.**

In general, there is a three (3) year statute of limitations for action under the Act. *See* 15 U.S.C. § 1711.

**B. Criminal Penalties.** Willful violations of the Act, including willfully making untrue statements of material fact in a Statement of Record or Property Report (or omitting to state any material fact) may, upon conviction, be fined up to \$10,000.00 or imprisoned for not more than five (5) years, or both. 15 U.S.C. § 1717. No limitations period stated in statute.

**C. Civil Money Penalties.** The Secretary of HUD may also impose a "civil money penalty" on any person who knowingly and materially violates the Act or any rule, regulation or order issued pursuant to the Act. The amount of the penalty may not exceed \$1,000.00 for each violation and the maximum penalty for all violations by a particular person during a one-year period shall not exceed \$1,000,000.00. 15 U.S.C. § 1717a. No limitations period stated in statute.