The Interstate Land Sales Full Disclosure Act: Often Overlooked

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Developers of residential subdivisions are usually aware of state and local requirements for the registration of their projects with applicable state and local government agencies. They are also aware that state and local laws require certain disclosures in their consumer sales contracts, but they often overlook the registration and disclosure requirements of the federal Interstate Land Sales Full Disclosure Act (ILSA), 15 U.S.C. §§ 1701-1720, and that could be a costly mistake.

There are many exemptions from the requirements of ILSA, so developers may just assume that they are exempt. But not all exemptions are created equal. As discussed in more detail below, some of the exemptions are only partial, and ILSA's anti-fraud provisions and contract disclosures may still apply. Developers and the attorneys who represent them should consider ILSA early on in the development of a residential project to make sure that it does not run afoul of its registration or disclosure requirements. Developers should also have their counsel review any advertising, promotional materials and form contracts to make sure they are in compliance.

ILSA compliance is not waivable, and noncompliance could lead to hefty civil and criminal remedies, including civil penalties of up to $1,000 per violation with a limit of up to $1 million annually and criminal sanctions with a fine up to $10,000 and up to five years imprisonment. 15 U.S.C. §§ 1717a, 1717. Noncompliance could also result in a permanent or temporary injunction prohibiting sales, and a purchaser exercising the option to rescind the contract for up to two years from the date the purchaser signed it, even if a settlement has already occurred (the purchaser's rights survive settlement). *Id.* § 1703(c). The purchaser can also bring a private cause of action within three years from the date of the contract. *Id.* § 1711. Given the consequences for noncompliance, developers should always consider ILSA before engaging in any marketing of or sales in a project.

What Is ILSA?

ILSA was enacted by Congress in 1968 and was modeled after the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa. It was enacted to protect consumers from unscrupulous salesmen who were selling undevelopable land in swamps, rocky hillsides, and deserts. *See* 88th Cong., 2d Sess. 3434 (1964). Upon its enactment, the U.S. Department of Housing and Urban Development (HUD) was given the authority to implement and enforce ILSA, which was later transferred to the Consumer Financial Protection Bureau (CFPB) under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 § 1011, 124 Stat. 1376 (July 21, 2010).

On December 21, 2011, the CFPB republished the former HUD regulations that were found at 24 C.F.R. §§ 1710, 1715, and 1720 as CFPB Regulations, now respectively found at 12 C.F.R. §§ 1010, 1011, and

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1012. The primary changes were to the name of the agency referenced in the regulations and the forms for use. The ILSA Guidelines that had been provided by HUD and that so many relied upon were not adopted by the CFPB. *Guidelines for Exemptions Available Under the Interstate Land Sales Full Disclosure Act*, 61 Fed. Reg. 13,596 et seq. (Mar. 27, 1996) (HUD Guidelines).

ILSA prohibits the sale of "lots" in a "subdivision" under a "common promotional plan" using any means of interstate commerce (internet, mailed print advertising, television, etc.), by a "developer" or "agent" unless the lots are exempt or the seller files a statement of record with the CFPB and provides each purchaser of a lot with a property report before signing a contract or lease. 15 U.S.C. § 1703. It also prohibits fraud and misrepresentation in the sale of land and requires certain consumer protection provisions in land sales contracts. *Id.* §§ 1703(a)(1), (2).

Definitions

There are several definitions applicable to ILSA that must be understood to determine if ILSA applies. The applicable regulations define a lot as "any portion, piece, division, unit, or undivided interest in land located in any state or foreign country, if the interest includes the right to exclusive use of a specific portion of the land." 12 C.F.R. § 1010. Much of the case law examining whether a piece of realty is considered a lot focuses on condominium units and portions of condominiums, such as parking units, and limited common element parking spaces and storage spaces.

It is well established that condominium units are lots. *See Winter v. Hollingsworth Props. Inc.*, 777 F.2d 1444, 1447 (11th Cir. 1985). Parking units are also considered lots, but limited common element parking and storage spaces are not. *See Trotta v. Lighthouse Point Land Co., LLC,* 551 F. Supp. 2d 1359, 1363 (S.D. Fla. 2008) (storage and parking spaces are not lots when sold along with residential units); *Giralt v. Vail Village Inn Assocs.*, 759 P.2d 801, 808 (Colo. Ct. App. 1988) (parking units were considered lots when project was divided into 141 condominiums, including 107 "parking condiminiums," each consisting of a separate fee simple estate). Limited common elements by their nature are appurtenant to condominium units, and although the unit owners have exclusive use rights, they are part of the common elements of the condominium, of which every unit owner owns a percentage interest. By contrast, a parking unit or storage unit has the same characteristics for separate fee simple ownership as a residential condominium unit.

A subdivision is defined as "any land which is . . . divided or is proposed to be divided into lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan." 15 U.S.C. § 1701(3). A common promotional plan is defined as "a plan undertaken by a single developer or group of developers acting in concert, to offer lots for sale or lease . . . ." *Id.* § 1701(4).

When determining if a common promotional plan exists, consideration is given to, among other things, whether there is a thread of common ownership, same or similar name or identity, common advertising, common sales agents or sales office, common inventory, and common model homes. *See* HUD Guidelines, *supra*. Thus, two subdivisions that are miles apart could be considered a single "subdivision" under ILSA if they have a common promotional plan. Many developers do not realize this and apply for the exemptions on a project-by-project basis. If several different projects are advertised or marketed in a way that fits the definition of a common promotional plan, however, then all of those projects could fall outside of the exemption that was being relied upon.

The number of lots within a subdivision is particularly important when relying on the full exemption for sales of fewer than 25 lots or the partial exemption for sales of fewer than 100 lots (discussed below).

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Several cases have been brought against national homebuilders attempting to include all of the lots in their various projects that were advertised on the same website or under a common name to assert ILSA violations. In *Trotta, supra,* the court concluded there was no common promotional plan because the builder's projects were on separate sites, had separate advertising, were sold out of separate sales offices, and had separate registrations with state regulatory agencies. 551 F. Supp. 2d. at 1363-64. By contrast, the court in *Paniaguas v. Aldon Cos.*, 2006 WL 2568210 (N.D. Ind. Sept. 5, 2006), held that there was a genuine issue of material fact as to whether two separate projects were part of a common promotional plan and should be considered a single subdivision. In that case, the two projects were under common ownership with a common name, the same model home was used to promote both, and the covenants for one project were given to purchasers of the other.

When it comes to subdivisions and common promotional plans, a question that often comes up is whether or not a homebuilder who purchases several lots within a subdivision from a developer for resale is a "developer" or "agent" for purposes of ILSA. Additionally, are all of the lots within the subdivision considered a subdivision under ILSA, or does the subdivision include only the lots sold by the homebuilder? To answer these questions, we have to look at the definitions of developer and agent under ILSA.

A developer is defined as "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). An agent is defined in relevant part as "any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision . . . ." *Id.* § 1701(6). In *Orsi v. Kirkwood*, 999 F.2d 86, 90 (4th Cir. 1993), the court concluded that the homebuilder was not the agent of the developer when it did not act in concert, neither party had any financial interest in the other, there were no common directors or officers, and the sale of lots from the developer to the homebuilder was an arms-length transaction. The court in *Tomlinson v. Village Oaks Development Co., LLC*, 2003 WL 21180644 (S.D. Ind. Apr. 17, 2003), reached a similar conclusion. *See also Barker v. Hostetter,* 2014 WL 1464319 (E.D. Pa. Apr. 15, 2014) (finding public offering statement sufficient to identify subdivision declarants as developers even though the property was actually conveyed to plaintiffs by declarants' successor in title). Therefore, as long as the roles of the homebuilder and developer remain distinctly separate, both can avoid the ILSA pitfall of a builder being considered a developer or agent of a developer.

Registration

Developers typically avoid registering their projects with the CFPB if an exemption is available because the process of registering can be quite daunting, time-consuming, and expensive. The statement of record that is filed with the CFPB consists of a property report and an additional information and documentation section. The property report contains several required disclosures about the project and warnings about the risk of purchasing land, the method of sale, the condition of title to the property, encumbrances and restrictive covenants, the status of utilities, roads, sewage systems, local services, recreational facilities, construction schedules, subdivision characteristics, owners associations, taxes, etc., and must include a cost sheet and forms for cancellation. *See* 12 C.F.R. § 1010.100(b); *id. Appendix A to Part 1010- Standard Model Forms & Clauses* § VIII.

The property report must be given to the purchaser before signing a contract. 15 U.S.C. § 1703(c). If not provided before contract signing, the purchaser has a two-year rescission right. *Id*. ILSA also prohibits the sale of any lot when any part of the property report contains an untrue statement of material fact or omits a material fact required to be stated. *Id*. § 1703(a)(2)(B). An amendment to the property report must be filed with the CFPB within 15 days of any change of material fact. 12 C.F.R. § 1010.23. The additional

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information and documentation section of the statement of record consists of supporting documentation of the disclosures that are made in the property report (i.e., lots of exhibits) and about the developer, including its financial condition. The additional information and documentation section is not given to purchasers. Annual reports of activity are also required to be filed with the CFPB. *Id*. § 1010.310.

The Exemptions

Exemptions are self-determining and do not require prior approval from the CFPB; they must be applicable at the time of contract. *Id*. § 1010.4(b). Exemptions are not applicable when the method of sale or lease is adopted to evade ILSA. 15 U.S.C. § 1702(a); 12 C.F.R. § 1010.4(a).

Case law suggests that a developer should state in its sales contract or lease form that the developer is relying on a particular exemption and that the reliance is based on a "legitimate business purpose," such as improving the marketability and financing options for the project, or saving costs that would otherwise be required in filing and maintaining the ILSA registration. *See Gentry v. Harborage Cottages-Stuart, LLLP*, 602 F. Supp. 2d 1239, 1249 (S.D. Fl. 2009) (finding no evidence in the record of a legitimate business purpose and specifically noting that no legitimate purpose was evidenced by the purchase agreements); *but see Double AA Int'l. Inv. Grp., Inc. v. Swire Pac. Holdings, Inc*., 674 F. Supp. 2d 1344, 1355 (S.D. Fl. 2009) (although legitimate business reason was not stated in the purchase agreements, the company filed an affidavit in the court action stating that the company could save considerable time and money by structuring the project in a way that took advantage of the ILSA exemptions). Case law also indicates that for a purchaser to prove an exemption was used to evade ILSA, the purchaser must show bad faith or fraudulent intent. *Atteberry v Maumelle Co*., 60 F.3d 415, 421 (8th Cir. 1995).

There are several statutory and regulatory exemptions under ILSA. Some are commonly used, but others are more obscure. Some are full exemptions from all the requirements of ILSA, but others are partial exemptions, and ILSA's anti-fraud provisions and contract disclosure requirements still apply. The anti-fraud provisions prohibit the use of any device or scheme to defraud or deceive purchasers, the making of an untrue statement of material fact or omission of a material fact, or the representation that roads, utilities, or recreational amenities will be provided or completed without stipulating such representations in the contract of sale. 15 U.S.C. § 1703(a)(2). The full statutory exemptions can be found at 15 U.S.C. section 1702(a), the partial statutory exemptions at 15 U.S.C. section 1702(b), and the partial regulatory exemptions at 12 C.F.R. § 1010.14.

Improved Lot Exemption

One of the more commonly used exemptions is the improved lot exemption, which exempts improved lots on which there is a building or where the seller contractually obligates itself to construct a building within two years. 15 U.S.C. § 1702(a)(2). The obligation to complete construction ends when a certificate of occupancy is issued for the building. *See Harvey v. Lake Buena Vista Resort, LLC*, 568 F. Supp. 2d 1354, 1367 (M.D. Fla. 2008). It is not sufficient to estimate a construction completion date or to make the purchaser's obligations contingent on the two-year completion date being met. *Cruz v. Leviev Fulton Club, LLC*, 711 F. Supp. 2d 329, 336-38 (S.D.N.Y 2010). The seller's obligation to complete must be an absolute contractual obligation under the laws of the jurisdiction where the building is to be constructed. *Atteberry, supra,* at 419-20 (citing HUD Guidelines). When using the improved lot exemption, a seller must be careful not to use force majeure clauses in its contracts that are too broad, that limit purchaser's remedy of specific performance, or that impose contingencies on seller's performance in such a way that the seller's obligation becomes illusory under state contract law.

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In *Samara Development Corp. v. Marlow*, 556 So. 2d 1097, 1100 (Fla. 1990), the Florida Supreme Court stated that "in order for the developer to be 'obligated' to complete the building within two years, the obligation must be unrestricted and the contract must not limit the purchaser's right to seek specific performance or damages." A contract that provides the purchaser with the return of the deposit on the seller's breach of its obligation to complete construction within two years seems to be acceptable as long as it is not the exclusive remedy. *Nideh v. Midtown Alexandria L.L.C.*, 300 F. App'x 203 (4th Cir. 2008). Likewise, limitations on consequential damages or special damages are acceptable, as long as there are other remedies available at law or in equity and there are no limitations on the purchaser's right to specific performance. *Hardwick Props. Inc. v. Newbern*, 711 So. 2d 35 (Fla. Dist. Ct. App. 1998). The key is that the seller's obligation cannot be illusory, so any damages in the contract that are available to a purchaser must be sufficient enough to cause the seller to fulfill its obligation. Similarly, any force majeure clauses that allow for seller's nonperformance or construction delays beyond the two-year period are acceptable if such provisions are legally recognized as defenses to contract actions in the jurisdiction where the building is to be constructed. *See Tedder v. Harbour Phase I Owners, LLC*, 2009 WL 1043911 (M.D. Fla. Apr. 17, 2009).

Developers often make the mistake of including a laundry list of events in their contracts that will excuse their performance. If such events are not recognized as force majeure events in the jurisdiction, then the exemption will be lost. Contingencies on seller's performance, such as financing or title contingencies or seller's ability to obtain a building permit, will also violate the exemption. *See Princeton Homes, Inc. v. Virone*, 612 F.3d 1324, 1331-32 (11th Cir. 2010).

One Hundred Lot Exemption

Another commonly used exemption is the 100 lot exemption. This is a partial statutory exemption for subdivisions containing less than 100 lots, which are not otherwise exempt under one of the full statutory exemptions. 15 U.S.C. § 1702(b)(1). It was often used in the sales of condominium units in under-construction high-rise buildings where completion of construction in two years was not possible. Developers would "stack" the 100 lot exemption with the improved lot exemption. They would sell the first 99 units using the 100 lot exemption and then sell any remaining units under the improved lot exemption once construction of the building could be completed within two years.

Many of the cases surrounding the stacking of exemptions focused on whether the exemptions existed at the time of contract. For example, in *Nickell v. Beau View of Biloxi, L.L.C.*, 636 F.3d 752, 756-57 (5th Cir. 2011), the developer planned to sell four towers of condominium units, each with 112 units. The plaintiffs in the case entered into sales contracts in July 2005, and Hurricane Katrina occurred a month later, causing sales to dwindle significantly. The seller ultimately entered into only 87 contracts. The plaintiffs settled on their units in 2007 and then demanded rescission in 2008. The developer argued that it planned to sign 90 contracts using the 100 lot exemption and then the remaining 22 contracts using the improved lot exemption. The court held that the exemption was not available at the time of sale, reasoning that the 22 lots sought to be exempt under the improved lot exemption had to be exempt at the time the developer sought to invoke the 100 lot exemption. And because no contracts obligating the developer to complete construction within two years existed at the time plaintiffs signed their contracts, the sales were not exempt. *See also Bodansky v. Fifth on Park Condo, LLC*, 635 F.3d 75, 83-84 (2d. Cir. 2011) (observing that exemptions are determined at the time the contract is signed because it allows the buyer to make an informed decision).

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Condominium Exemption

Congress enacted a partial statutory exemption for condominiums, which became effective on March 25, 2015, and exempts the sale or lease of a condominium unit that is not already exempt under a full statutory exemption from ILSA's registration and disclosure requirements. 15 U.S.C. § 1702(b)(9). Like any other partial exemption, the sale or lease of a condominium unit is still subject to ILSA's antifraud provisions.

A "condominium unit" means a unit of residential or commercial property to be designated for separate ownership pursuant to a condominium plan or declaration provided that upon conveyance (1) the owner of such unit will have sole ownership of the unit and an undivided interest in the common elements appurtenant to the unit; and (2) the unit will be an improved lot. *Id*. § 1702(d). The exemption for condominium units did away with the need for stacking exemptions for pre-construction condominiums and much of the confusion surrounding when the exemptions apply.

The exemption also eliminated confusion regarding the requirement that the contract for the sale or lease of a nonexempt condominium unit include a lot description in a form acceptable for recording. *Id*. § 1703(d)(1). This was particularly problematic for pre-construction sales of condominium units where a condominium plat and declaration could not legally be recorded until construction was complete. *See Bacolitas v. 86th & 3rd Owner, LLC*, 2010 WL 3734088 (S.D.N.Y. Sept. 21, 2010) (holding that lot description needed to be immediately recordable and unit legally existing at the time of contract, otherwise contract was revocable), *rev'd* 702 F.3d 673 (2d Cir. 2012) (description of condominium unit in purchase agreement was sufficient); *see also Berkovich v. Vue-North Carolina, LLC*, 2011 WL 5037124 (W.D. N.C. Oct. 24, 2011) (description in contract of sale did not satisfy state's requirements for legal descriptions of condominiums).

Contract Disclosures

ILSA requires certain consumer protection provisions in contracts for lots that are not exempt under one of the full statutory exemptions. 15 U.S.C. § 1703(d). Such contracts must include an initial seven-day right of rescission, and a two-year right of rescission if the purchaser does not receive a property report. *Id*. §§ 1703(b), (c). If a deed is not delivered within 180 days of signing the contract, the purchaser is entitled to a two-year right of rescission if the contract does not contain a legally sufficient and recordable lot description, 20 days' notice of a right to cure a default, and a damages limitation of 15 percent of the purchase price or actual damages, whichever is greater. *Id*. § 1703(d).

It is unclear if lots that are partially exempt under ILSA are also exempt from these contract requirements. Before the real estate market downturn in 2008, it was understood among developers and industry experts that partially exempt lots were also exempt from the contract requirements. Indeed, HUD officials had taken the position that such was the case. But several courts rejected the agency's interpretation, finding it contrary to the express terms of the statute. *See Pugliese v. Pukka Dev., Inc*., 524 F. Supp. 2d 1370 (S.D. Fla. 2007) (rejecting HUD's advisory opinion), *rev'd* 550 F.3d 1299 (11th Cir. 2008); *Trotta, supra*, at 1364 (rejecting HUD representative's affidavit). In *Pugliese,* the court explained that section 1702(b) expressly states that "the provisions requiring registration and disclosure (as specified in section 1703(a)(1) of this title and sections 1704 through 1707 of this title) shall not apply to [the transactions identified in that subsection]." Because section 1702(b)'s exemption is limited to those provisions, the court concluded that other sections—including section 1703(d)'s contract requirements—still apply. 524 F. Supp. 2d at 1374.

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The Eleventh Circuit disagreed, reversing the lower court's decision. *Pugliese*, 550 F.3d at 1306. The appellate court relied upon the agency's interpretation of the language in section 1703, which gives a right of revocation to "[a]ny contract or agreement which is for the sale or lease of a lot *not exempt under section 1702* of this title and which does not [comply with the contract requirements]." 15 U.S.C. § 1703(d) (emphasis added). "[W]e defer to HUD's longstanding opinion that the phrase 'not exempt under section 1702' found in § 1703(d) means that if the sale or lease of a lot is exempt from *any* ILSA provision under § 1702, then it is also exempt from the right of revocation granted in § 1703(d)." 550 F.3d at 1306. Other recent decisions are in agreement with this interpretation. *See Bartley v. Merrifield Town Ctr., LLP*, 580 F. Supp. 2d 495 (E.D. Va. 2008) (developers exempt from any provision of section 1702 are exempt from the contract provisions in § 1703); *Mayersdorf v. Paramount Boynton, LLC*, 910 So. 2d 887 (Fla. Dist. Ct. App. 2005) (same).

CFPB Enforcement

Since taking over enforcement authority from HUD, the CFPB has been actively enforcing ILSA. The CFPB publicized its enforcement action against a Kentucky developer, 3D Resorts-Bluegrass LLC, in December 2013. Consumer Financial Protection Bureau, 3D Resorts-Bluegrass LLC (Green Farm), https://bit.ly/3kgeERQ. It entered into a consent order with the trustee for the developer, as the developer had filed a bankruptcy petition in 2011. *In re 3D Resorts-Bluegrass LLC*, No. 2013-CFPB-0002 (Consumer Fin. Prot. Bureau Dec. 2, 2013), https://bit.ly/2T62crB. The consent order included a judgment for monetary relief, and the developer was ordered to pay affected purchasers for the harm identified in the consent order. However, the consent order noted the developer's inability to pay and the CFPB received an unsecured claim of $500,000 in the bankruptcy case, which was to be used to provide redress. Also, $1 in civil monetary penalties was awarded. *Id*.

Similarly, in 2015 the CFPB entered into a consent order with a Tennessee developer, International Land Consultants, Inc., and several individuals involved in a Tennessee development known as Hawks Bluff. *In re Int'l Land Consultants, Inc*., No. 2015-CFPB-0010 (Consumer Fin. Prot. Bureau May 1, 2015), https://bit.ly/3k0rHXo. They admitted to making false statements in their property reports and marketing materials that the development's roads would be maintained by the developer until they were accepted by the county—however, neither happened. Under the terms of the consent order, the developer was required to repair the roads to satisfy requirements established in an independent engineering report. *Id*.

Private Causes of Action

In addition to enforcement action by the CFPB, purchasers can bring a private cause of action and seek to rescind the contract. As discussed throughout this article, the common issues that have been litigated include the definition of a developer, applicability of the improved lot exemption, stacking with the improved lot exemption, evasion of ILSA, recordable legal descriptions of condominium units, and damages limitations in contracts. As discussed, purchasers can rescind their lot contracts for two years from the date of signing if it violates ILSA and can bring suit within three years. 15 U.S.C. §§ 1703 and 1711.

Another issue commonly litigated is the statute of limitations. In the case where the developer mistakenly believes it is exempt from ILSA and its contract does not disclose the two-year rescission right, at least one court has concluded that the rescission period begins from the date the purchaser discovers or should have discovered the rescission right, instead of the contract date, when the developer failed to provide notice of the rescission right. *Plaza Court, L.P., v. Baker-Chaput*, 2009 WL 1809921, at * 7-8 (Fla. Dist. Ct. App. June 26, 2009). Other courts, however, have held that the two-year period runs from the contract signing

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date, and the developer's failure to provide notice of the rescission right does not excuse the purchaser's failure to exercise the right within that period. *Taylor v. Holiday Isle, LLC*, 561 F. Supp. 2d 1269, 1274-75 (S.D. Ala. 2008).

The *Taylor* court also rejected the purchaser's argument that its action was timely because its lawsuit to rescind was brought within the three-year statute of limitations in section 1711 even though the purchaser failed to comply with the two-year rescission period. The court harmonized the rescission period and the statute of limitations as follows:

> Section 1703(c) provides that a purchaser must exercise revocation rights within two years. If the developer/seller refuses to honor the purchaser's timely rescission of the purchase agreement under § 1703(c), then the purchaser has a third year (pursuant to § 1711(b)) in which to file suit to enforce that right of rescission. But if the purchaser fails to rescind the contract within those first two years, as required by § 1703(c), that right of rescission is extinguished by the plain operation of that section, such there would no longer be any § 1703(c) right to enforce via the three-year limitations period provided by § 1711(b).

Id. at 1273. Stated differently, the court said, "a plaintiff's rescission claim requires compliance with *both* § 1703(c)'s two-year limit for exercising the right of rescission and § 1711(b)'s three-year limit for filing suit based on the seller's refusal to honor said rescission." *Id*.; *see also Werdmuller Von Elgg v. Carlisle Developers, Inc*., 2009 WL 961144 (M.D. Fla. 2009) (following *Taylor* and *Ditthardt v. North Ocean Condos, LP*, 580 F. Supp 2d 1288 (S.D. Fla. 2008), which also held that the right to rescind in section 1703 must be asserted within two years, even though plaintiffs had three years in which to bring suit).

Conclusion

This article is an overview of the myriad issues that have arisen regarding ILSA's exemptions and applications. Given the hefty civil and criminal penalties available to the CFPB for enforcement and the revocation remedy available to purchasers, developers and their attorneys must carefully examine the applicability of ILSA to the marketing and sales of their projects.

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