

## Consumer Protection and the Interstate Land Sales Full Disclosure Act

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## CONSUMER PROTECTION AND THE INTERSTATE LAND SALES FULL DISCLOSURE ACT

Your own Florida estate — even a possibility that oil is lurking beneath the surface; but the salesman didn't tell you about the Flood Control Commission's easement over your swampland acre enabling it to flood your vacation or retirement paradise up to a depth of 10 feet for an indefinite period of time to protect against the flooding of other land. Your own homesite in lush Oregon, just right to escape the noise, grime, and crime of the city; after all, it's 110 miles away from the nearest town and 20 miles from the closest access road. Too often people buying vacation estates, retirement homesites, or investment acreage literally have bought a piece of the rock — lava rock, or in other instances, swampland or jungle, or other equally worthless real estate.<sup>1</sup>

The wails of defrauded innocents prompted the federal government to conduct a series of hearings on the land sales industry in 1963.<sup>2</sup> The investigations reached their legislative culmination in 1968 with passage of the Interstate Land Sales Full Disclosure Act.<sup>3</sup> The Department of Housing and Urban Development (HUD) which was charged with administering the Act, established the Office of Interstate Land Sales Registration (OILSR)<sup>4</sup> to implement and enforce it.

The Act makes it unlawful to sell in interstate commerce, land that is part of a common promotional scheme comprised of 50 or more lots prior to filing a Statement of Record with OILSR.<sup>5</sup> In addition,

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<sup>1</sup> See *Hearings on S. 2672 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency*, 89th Cong., 2d Sess. 2 (1966) [hereinafter cited as *1966 Hearings*].

<sup>2</sup> *Hearings Before the Senate Special Comm. on Aging*, 88th Cong., 1st Sess. (1963) [hereinafter cited as *1963 Hearings*]; *Hearings Before the Subcomm. on Frauds and Misrepresentations Affecting the Elderly of the Senate Special Comm. on Aging*, 88th Cong., 2d Sess. (1964); SENATE SUBCOMM. ON FRAUDS AND MISREPRESENTATIONS AFFECTING THE ELDERLY, 89TH CONG., 1ST SESS., REPORT ON FRAUDS AND DECEPTIONS AFFECTING THE ELDERLY (Comm. Print 1965). The initial inquiry focused on frauds affecting the elderly. However, by the time of the *1966 Hearings*, *supra* note 1, Congress had concluded that gullibility was not limited to older people and broadened the scope of the hearings to include all interstate land sales swindles. See *Hearings on S. 275 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency*, 90th Cong., 1st Sess. (1967).

<sup>3</sup> 15 U.S.C. § 1701 *et seq.* (1970). The avowed purpose of the Act is to "deter or prohibit the sale of land by use of the mails or other channels of interstate commerce through misrepresentation of material facts relating to the property." H.R. REP. NO. 1585, 90th Cong., 2d Sess. 2873, 3066 (1968). Considering that the Act is primarily a disclosure statute, perhaps it is more appropriate to say that its function is to enable the buyer to know as much about the property as the seller. U.S. DEP'T OF HOUSING AND URBAN DEV., BULL. NO. 15-f(2), CONSUMER PROTECTION — INTERSTATE LAND SALES (1970).

<sup>4</sup> 24 C.F.R. § 1700.75 (1972).

<sup>5</sup> 15 U.S.C. §§ 1701(3), 1703(a) (1970). Section 1703(a) provides in full:

the developer is required to provide each purchaser with a copy of a Property Report prior to the signing of the contract of sale.<sup>6</sup>

#### SCOPE

From the language of the statute itself, it is not clear whether condominiums are covered by the provisions of the Act. However, the preamble to the OILSR regulations which went into effect December 1, 1973 states:

The application of the Act to condominiums has been consistent OILSR policy since the issue was first raised in 1969. The bases for this position are that condominiums carry the indicia of and in fact are real estate, whether or not the units therein have been constructed. A condominium is accordingly viewed by OILSR as equivalent to a subdivision, each unit being a lot. . . . The right to condominium space is a form of ownership, not a structural description.<sup>7</sup>

However, the broad sweep of the Act is diluted to a great extent by certain exemptions provided therein. Section 1702(a)(3), known as the builder's exemption, absolves a seller from compliance with the registration provision as to lots upon which there are existing buildings, or where the sales contract obligates the seller to erect buildings<sup>8</sup> on the land within two years from the date of sale.<sup>9</sup>

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(a) It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce, or of the mails—

(1) to sell or lease any lot in any subdivision unless a statement or record with respect to such lot is in effect in accordance with section 1706 of this title and a printed property report, meeting the requirements of section 1707 of this title, is furnished to the purchaser in advance of the signing of any contract or agreement for sale or lease by the purchaser; and

(2) in selling or leasing, or offering to sell or lease, any lot in a subdivision—  
 (A) to employ any device, scheme, or artifice to defraud, or  
 (B) to obtain money or property by means of a material misrepresentation with respect to any information included in the statement of record or the property report or with respect to any other information pertinent to the lot or the subdivision and upon which the purchaser relies, or  
 (C) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

<sup>6</sup> *Id.* § 1703(a)(1). Only the Property Report must be furnished to the consumer; the Statement of Record is filed with OILSR. There is no substantial difference between the two. "A property report . . . shall contain such of the information contained in the statement of record . . . as the Secretary may deem necessary . . ." *Id.* § 1707(a). The Property Report need not include papers regarding the developer's mode of business organization, papers establishing the developer's title to the subdivision, copies of forms of conveyances to be used in the sale of lots, copies of instruments creating easements or restrictions, and financial data on the developer required by OILSR. *Id.* § 1705(7)-(11). Thus, the Property Report attempts to avoid a proliferation of, what is to the layman, confusing legal verbiage.

<sup>7</sup> 38 Fed. Reg. 23,866 (1973). OILSR recently re-emphasized this position. *See* 39 Fed. Reg. 7824 (1974).

<sup>8</sup> "Building" is defined as comprising "the dwelling unit and all utilities or systems necessary to support normal occupancy." 38 Fed. Reg. 23,866 (1973).

<sup>9</sup> 15 U.S.C. § 1702(a)(3) (1970) provides in pertinent part:

While it is clear that the statute does not apply to lots with existing buildings, numerous problems arise as to land sales in which a seller contracts to erect buildings within two years. In a recent release OILSR made it clear that colorable compliance by merely contracting to complete a project within two years will not be sufficient to circumvent registration and "OILSR would clearly have a remedy in its injunctive authority."<sup>10</sup>

Another area of consternation involves the quality and quantity of activity which will trigger the registration requirement. A comparison of section 1703(a)(1) with section 1703(a)(2)<sup>11</sup> reveals a dichotomy between selling and offering to sell and further adds to the confusion. Accordingly, developers have found it difficult to determine whether their projects are within the ambit of the exemption. OILSR perceived a four-faceted problem accompanying the builder's exemption: "a) [r]ecognition of exculpatory conditions, b) point at which transaction constitutes a sale, c) point at which the two-year period begins, d) point at which the two-year period ends."<sup>12</sup> OILSR has released guidelines to clear up these ambiguities.

In considering the propriety of exculpatory clauses, OILSR was cognizant of the realities affecting modern construction and local contract law which allows time extensions for acts of God or material shortages. Thus, OILSR will apply the builder's exemption despite language tending to extend construction beyond the two-year period if the contract "would be legally supportable in the jurisdiction where the building is being erected as impossible of performance for reasons beyond the control of the developer."<sup>13</sup> This provision enables the builder to take advantage of the exemption notwithstanding an uncontrollable delay in the construction schedule. By agreeing to follow the contract law of the local jurisdiction, OILSR has provided certainty and uniformity for builder and consumer, in accordance with established local practice.

OILSR defines a sale as "[a]ny transaction for consideration whereby a purchaser is obligated to acquire a building or a condominium

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[T]he provisions of this chapter shall not apply to . . . the sale or lease of any improved land on which there is a residential, commercial, or industrial building, or to the sale or lease of land under a contract obligating the seller to erect such a building thereon within a period of two years . . . .

<sup>10</sup> 39 Fed. Reg. 7824 (1974).

<sup>11</sup> 15 U.S.C. § 1703(a)(1) (1970) makes it illegal to sell lots absent compliance with the Act, while § 1703(a)(2) prohibits fraudulent methods in the sale or offering for sale.

<sup>12</sup> 39 Fed. Reg. 7825 (1974).

<sup>13</sup> *Id.*

unit directly or indirectly . . . ."<sup>14</sup> However, in order to assess the market for a given condominium, the builder may engage in pre-sale activity including what OILSR terms a reservation. By a reservation, a purchaser expresses an intention to buy a condominium unit and may even place a deposit with the builder. This is not considered a sale so long as the builder places the funds in escrow, the deposits are refundable, and a further affirmative act of the consumer is required before a binding obligation arises. The builder, at the time of the reservation, may not disseminate what purports to be the OILSR Property Report or a state report if in fact the subdivision is still unregistered, unless a disclaimer to that effect is clearly made in the document. OILSR has indicated that failure to disclaim registration would be a violation of section 1703(a)(2)(C) of the Act.<sup>15</sup>

OILSR deems the two-year period to run from the date of signing of a contract obligating a builder to erect a structure, and does not encompass any pre-sale activity within that period.<sup>16</sup> By the end of the two years, the condominium must have reached such a stage of completion as to permit, in cases of units intended as primary residences, their owners to occupy them, "i.e., physically habitable."<sup>17</sup> Under this rule, it would appear that nonessential parts of the common facilities need not be fully completed within two years. However, recreational condominiums, that is, developments where "the promotion of the common facilities is the primary inducement to purchase,"<sup>18</sup> must not only have whatever living quarters are proposed to be completed within two years, but also must have all common facilities ready for use.

Other exemptions include those subdivisions falling below the jurisdictional threshold, i.e., fewer than 50 units; subdivisions wherein the lots are all more than five acres in size; the sale of land under court order; evidences of indebtedness secured by a mortgage or deed of trust on real estate; securities issued by a real estate investment trust; real estate sold by a governmental agency; cemetery lots; and sales to persons intending to engage in the business of constructing buildings thereon.<sup>19</sup> Although it is possible that a development will comprise

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<sup>14</sup> *Id.*

<sup>15</sup> 15 U.S.C. § 1703(a)(2)(C) (1970) prohibits "any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

<sup>16</sup> 39 Fed. Reg. 7825 (1974).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 15 U.S.C. § 1702(a) (1970).

fewer than 50 units, it is difficult to visualize application of any other of these exemptions to condominiums.

Section 1702(a)(10)<sup>20</sup> grants an exemption if the affected real estate is free of all liens, encumbrances and adverse claims, and the purchaser or his spouse makes an on-lot inspection. Excluded from the scope of "liens, encumbrances and adverse claims" are unpaid taxes, assessments imposed by a public body, and beneficial property restrictions enforceable by other lot owners. The builder must furnish his purchaser with a letter approved by OILSR delineating all reservations, taxes, assessments and restrictions affecting the property, and obtain from him an acknowledgment or receipt therefor. While the inspection device may effectively remove from the ambit of the Act vacation homesteads in the Poconos where the promoter offers the consumer free transportation for a personal visit, its applicability to condominiums is highly questionable due to the financing requirements of construction. The builder must, in the vast majority of circumstances, obtain large amounts of money, which pragmatically entails a mortgage on the property—a lien within the meaning of the statute. It would take a very well-healed developer to construct a condominium *sans* loans, and thus utilize this exemption.

As OILSR itself recognizes, the builder's exemption all but eliminates from coverage those condominiums intended for use as primary residences.<sup>21</sup> The wisdom of this exemption is questionable even though it is likely that a person about to buy a home or the equivalent of one, will personally inspect the site,<sup>22</sup> hire a lawyer, and take further "protective steps."<sup>23</sup>

The recreational condominium will more often be within the ambit of the Act than the residential type since "if a condominium dwelling unit is merely incidental to the common facilities . . . all common facilities must be completed within the two-year period to qualify for the exemption . . ."<sup>24</sup> Thus, the buyer of a unit in a ski resort

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<sup>20</sup> *Id.* § 1702(a)(10).

<sup>21</sup> 38 Fed. Reg. 23,866 (1973).

<sup>22</sup> 1963 *Hearings, supra* note 2, at 304. The value of such a visit, however, is questionable, since discovery of underground faults is highly unlikely.

<sup>23</sup> Coffey & Welch, *Federal Regulation of Land Sales: Full Disclosure Comes Down to Earth*, 21 CASE W. RES. L. REV. 5, 41 (1970) [hereinafter cited as Coffey & Welch]. While recognizing that the buyer will most likely take these extra precautions, the argument is made that such an exemption should not be allowed unless the builder can show that purchasers do not need the protection afforded by the Act. *Id.*

<sup>24</sup> 38 Fed. Reg. 23,866 (1973). Of course, the dwelling unit must also be completed within this time period.

OILSR has further defined the recreational condominium as one in which "the promotion of the common facilities is the primary inducement to purchase." 39 Fed. Reg.

condominium, for example, may find protection afforded by the Act due to the greater length of time required for construction of the common facilities, while his urban home-hunting counterpart may not.<sup>25</sup>

#### SPECIFIC PROVISIONS AND REMEDIES

Among the facts the sponsor must include in the Statement of Record and Property Report are: a legal description of the land and its topography, the condition of its title, general terms including the range of prices, the present access to the subdivision, the existence of any unusual circumstances relating to noise or safety, the availability of public utilities including sewage facilities, any improvements to be added by the developer, and if there is a blanket encumbrance upon the land, its effect upon the purchaser.<sup>26</sup>

Before a Property Report may be distributed to any buyers, the Statement of Record must be accepted by OILSR.<sup>27</sup> The Statement of Record becomes effective on the thirtieth day after its filing unless OILSR determines that it is incomplete or inaccurate in some material respect and requests additional information.<sup>28</sup> In that case, the effective date of the Statement may be further delayed to thirty days after the

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7825 (1974). In other words, the buyer is not seeking a primary residence so much as a seasonal or part-time retreat in which the recreational facilities are the major attraction. Under such a test, the advertising scheme employed by the promoter will obviously be important in determining whether recreational facilities are the primary inducement to purchase. Thus, a developer asking prospective purchasers to buy into a condominium far from their places of work, emphasizing the unique recreational package being offered, would be well advised to register with OILSR or be prepared to live up to the terms of a contract obligating him to complete the entire project within two years.

<sup>25</sup> The dichotomy in treatment of the residential purchaser versus the vacation retreat seeker is supportable since the care of the buyer shopping for a home will undoubtedly be greater than that of a buyer purchasing a once-a-month hideaway. In addition, condominiums to be used as primary residences normally will be near population centers and more readily accessible by transportation than would a mountain retreat, thus making personal inspection of the former easier.

<sup>26</sup> 15 U.S.C. § 1705 (1970). OILSR regulations for filing the Statement of Record, 24 C.F.R. § 1710.105 (1972), and preparing the Property Report, 24 C.F.R. § 1710.110 (1972), are a veritable maze. The complexity of compliance is equaled by the technicality of the result; it is enough to stymie the efforts to comprehend of all but the most intrepid. It is indeed questionable how much effect such a mass of technical information can have upon a layman. While this may create a bonanza for lawyers consulted by would-be buyers (in addition to supplementing the business of attorneys serving real estate developers), a great many buyers are, in all likelihood, discouraged from even reading the Property Report because of its "legalese," thus severely compromising its value. See Comment, *A Handbook to the Interstate Land Sales Full Disclosure Act*, 27 ARK. L. REV. 65, 77 (1973); cf. Coffey & Welch, *supra* note 23, at 64, wherein comfort is taken in the belief that at least the administrators of the state land sales regulatory agencies will read the Property Report.

<sup>27</sup> 15 U.S.C. § 1707(b) (1970).

<sup>28</sup> *Id.* § 1706(a). It should be noted that the Secretary may accelerate the effective date of the Statement of Record if he deems it to be in the public interest.

receipt of such additional information.<sup>29</sup> The developer must amend his Statement of Record, and consequently his Property Report, every time a material change occurs.<sup>30</sup> OILSR is empowered to suspend the Statement of Record once issued, if it determines the information to be false or incomplete,<sup>31</sup> thus making further sales illegal.

If a buyer receives a Property Report less than 48 hours prior to the signing of the agreement of sale, he may revoke the contract within the next three business days.<sup>32</sup> Prior to a recent amendment to the Act,<sup>33</sup> a consumer could waive this right by acknowledging in writing that before signing he in fact received, read, and understood the Property Report, and had, in addition, personally inspected the lot. The wisdom of eliminating the availability of a waiver is apparent, since many buyers might sign such a waiver without carefully examining the Report and thus inadvertently surrender the rescission right.

Jurisdiction over an unscrupulous developer may be obtained in either federal or state courts since they have concurrent jurisdiction,<sup>34</sup> and it is virtually impossible for a seller to dodge service of process.<sup>35</sup>

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<sup>29</sup> *Id.* § 1706(b). The developer need not provide the additional information and can instead request a hearing by OILSR.

<sup>30</sup> *Id.* § 1706(c). The filing of an amendment subsequent to the acceptance of the Statement of Record results in a suspension of the effectiveness of the Statement only if the Secretary deems it necessary to protect consumers.

<sup>31</sup> *Id.* § 1706(d), (e). Section 1706(e) gives OILSR wide-ranging powers to investigate land developers. Failure to cooperate with the agency subjects a developer to the same sanction as a false or omitted material fact — *viz.* suspension of the Statement of Record.

<sup>32</sup> *Id.* § 1703(b), *as amended*, Pub. L. No. 93-383, § 812(c)(1)(A) (Aug. 22, 1974). This right is somewhat akin to the right of rescission granted the consumer in a credit transaction involving a security interest in real property by the Federal Truth-in-Lending Act, 15 U.S.C. § 1601 *et seq.* (1970). Section 1635 of that Act gives a consumer the right of rescission up until midnight of the third business day following a transaction in which a security interest is obtained in property used or expected to be used as the consumer's principal residence. *See* 12 C.F.R. § 226.9 (1972). At first blush, this would seem to provide an additional aid to the condominium buyer financing his purchase. However, section 1635(e) provides that "[t]his section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling." Thus, were the buyer obtaining his first mortgage he could not invoke this right. In addition, there might be some difficulty getting the seller to return the money paid should the seller and lender be different people. For a treatment of the rescission right in real property transactions given by the Truth-in-Lending Act, see Aldridge, *Truth-in-Lending in Real Estate Transactions*, 48 N.C.L. Rev. 427, 445-51 (1970).

<sup>33</sup> Pub. L. No. 93-383, § 812(c)(1)(B) (Aug. 22, 1974), *amending* 15 U.S.C. § 1703(b) (1970).

<sup>34</sup> 15 U.S.C. § 1719 (1970). "The district courts of the United States . . . shall have jurisdiction of offenses and violations under this chapter . . . concurrent with State courts . . ."

<sup>35</sup> Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place . . . and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

Since the developer is under an absolute duty to disclose specific facts, there is no need for a defrauded buyer to prove scienter.<sup>36</sup> Nor is it essential for the purchaser to show his reliance upon a misleading statement for liability to attach; instead the burden is shifted to the developer who, to avoid damages, must show that the buyer knew the true state of affairs.<sup>37</sup> The fact that reliance need not be proven makes a class action under the Act feasible.<sup>38</sup>

The consumer may recover as damages the difference between the

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<sup>36</sup> *Id.* § 1709(a),(b)(2). The applicable sections of the Act contain no qualifying language to suggest the necessity to show intent on the part of the developer. The scienter requirement was one reason why the mail fraud statutes were so difficult to utilize in land sales cases. Coffey & Welch, *supra* note 23, at 11.

For an insightful examination of the remedies available to a buyer prior to the Interstate Land Sales Act, see 21 RUTGERS L. REV. 714, 717-25 (1967), where, in the consideration of the mail fraud statutes and the Federal Trade Commission's (FTC) control over misleading advertising, it is noted that both provide only after-the-fact remedies. The consumer is not protected until after he has been swindled, and temporary injunctive relief is unavailable during the investigative period, thus permitting the fraud to continue until an adjudication is reached.

However relatively ineffective FTC sanctions may be against land developers misrepresenting their products (as compared to the disclosure requirements of the Interstate Land Sales Act), they have recently been imposed against the organization which marketed Rio Rico in Arizona and Barefoot Bay in Florida, and many other "vacation paradises" either under water or inaccessible by any means short of half-track or submarine as the case may be. GAC Corporation of Miami has filed a consent order with the FTC which obligates the company to give refunds or exchanges to several thousand of its over 50,000 customers. It is estimated that compliance could cost up to \$17 million. Although the payments affect only a portion of the purchasers, the refunds do not have to begin for 2 years after the commissioner's final order, and the payments may then be stretched over 8 years. The corporation has also agreed to disclose a "number of factors involved in the purchase of land," including the fact that certain subdivisions "will not be developed in any manner and virtually all lots therein are inaccessible by conventional means of transportation." N.Y. Times, March 27, 1974, at 25, col. 1. It should be noted that the company claimed that since 1969 it has operated within state and federal regulations, and no longer sells unimproved land, which is the subject of the consent order—a remarkably well-timed withdrawal from the market that at the time came under the protection of the Interstate Land Sales Act. Apparently that withdrawal was not completely successful since the provisions of the Act have also been invoked against GAC. The corporation has agreed to amend its Property Report so as to inform prospective purchasers of the "plans" for development and improvement of the land. Furthermore, anyone purchasing land from GAC after March 25, 1974, and before receiving the amended Property Report, may void the sale and receive a complete refund. *See* N.Y. Times, March 31, 1974, at 22, col. 3.

<sup>37</sup> 15 U.S.C. § 1709(a) (1970). In some cases, however, the fact that the consumer knew the truth may not bar him from recovery if he has been furnished with a false Property Report. Coffey & Welch, *supra* note 23, at 60-61.

<sup>38</sup> *See* Hoffman v. Charnita, Inc., 58 F.R.D. 86, 89-91 (M.D. Pa. 1973) (sewage disposal facilities misrepresented). In denying a class action on the basis of common law fraud, the court pointed out that in each individual case it must be shown that the misrepresentation induced the purchase, and the defendant has the right to examine each individual buyer as to causation. On the other hand, in permitting a class action based on the defendant's violation of the Interstate Land Sales Act, the court noted that the buyers need not prove reliance on the misrepresentation, and that the omission or falsity in the Property Report distributed to all the members of the class is sufficient to sustain the action.

purchase price and the lesser of the value of the land at the time suit was commenced or the price received in a bona fide re-sale either before suit was brought or a judgment received, and in addition, the reasonable cost of any improvements he made.<sup>39</sup> Actions stemming from false or misleading Statements of Record or Property Reports must be initiated within one year after their discovery was or should have been made, but in no case more than three years after sale.<sup>40</sup> If, however, the action is based upon invalidity of the Statement of Record, failure to provide a Property Report before the buyer contracts, or use of fraudulent selling materials or methods, the statute of limitations expires two years from the date of the violation.<sup>41</sup> The consumer's overall position is improved immeasurably by the fact that any attempt by the developer to contractually nullify the remedies provided by the Act will be void.<sup>42</sup>

Since the remedies of the Act are additional to any others afforded a buyer by law or in equity,<sup>43</sup> the purchaser may also rely on the common law<sup>44</sup> and state regulations<sup>45</sup> for recourse. After a delinquent developer

<sup>39</sup> 15 U.S.C. § 1709(c) (1970). There is, however, no provision for attorneys' fees.

<sup>40</sup> *Id.* § 1711.

<sup>41</sup> *See id.*

<sup>42</sup> *Id.* § 1712. "Any condition . . . binding any person acquiring any lot . . . to waive compliance with any provision of this chapter . . . shall be void."

<sup>43</sup> *Id.* § 1713. "The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity."

<sup>44</sup> For a comparison of common law remedies with those provided by the Act, see Coffey & Welch, *supra* note 23, at 50-52. The common law remedies include an equitable action for rescission to restore the status quo, RESTATEMENT OF CONTRACTS § 471 (1932), or a tort action for deceit which allows a more generous measure of damages but requires more rigorous proof, including a showing of scienter. W. PROSSER, HANDBOOK OF THE LAW OF TORTS §§ 107, 110 (4th ed. 1971).

<sup>45</sup> OILSR may determine whether a state's regulations produce substantially the same effects as those brought about by the Act. If such a finding is made, the federal registration requirement may be fulfilled by merely filing a copy of documents acceptable to the particular state's regulatory agency. 15 U.S.C. § 1708(a) (1970). It has been suggested that this will encourage states to propose land sales regulatory acts consistent with the federal requirements, and thus reduce the administrative burdens of developers. Walsh, *Consumer Protection in Land Development Sales*, 42 PENN. B. ASS'N Q. 38, 42 (1971). Until recently, filings under the laws of only four states — California, Florida, Hawaii, and New York — have been accepted by OILSR. 24 C.F.R. § 1710.26 (1972). OILSR has determined, however, that the filing requirements of these states no longer meet federal standards, and thus, the agency will accept no alternative filings from these states after January 1, 1974. 39 Fed. Reg. 39,720 (1974).

State property reports fall into two categories depending on whether the land is situated within the state. OILSR utilizes this distinction in deciding whether a federal property report is necessary. A first-level exemption is accorded to state property reports governing land situated within that state. When the state property report deals with property not located in the state, a second-level exemption must be sought. It should be noted that OILSR has recently re-assessed its policy of granting exemptions. *See* U.S. REAL ESTATE WEEK, April 22, 1974, at 4. As of May 1, 1974, second-level exemptions will no longer be available. Moreover, OILSR administrator George Bernstein announced that the agency is "leaning against" acceptance of any state property report in lieu of a HUD

has faced the wrath of an irate consumer, he may still be subject to criminal prosecution for *willful* violation of the Act or regulations, which can mean imprisonment of up to five years and/or fines to \$5,000.<sup>46</sup>

#### CONCLUSION

Congress did not wish to impose an all-pervasive, paternalistic federal regulatory system upon the land sales industry.<sup>47</sup> It chose to enact a full disclosure statute instead of one empowering an agency with wide discretion to consider the merits of the offering and vested with the power to stop a development if it is determined to be over-priced, unsuitable for habitation, etc.<sup>48</sup> Admittedly, under a full disclosure statute, not all inequities will be eliminated. This type of enactment does not attempt to legislate away the stupidity, greed, or foolishness of the consumer; instead it strives to eliminate, or at least lessen, his ignorance.<sup>49</sup>

Because of the exemption granted to land occupied or to be occupied by buildings within two years by section 1702(a)(3), the Interstate Land Sales Full Disclosure Act affords the condominium buyer sparse protection. To abolish that exemption, however, would be to place rapidly-constructed housing developments with a common scheme under the coverage of the Act — a result totally antithetical to the legislative intent.

Although a comprehensive protection package for condominium purchasers is desirable, the Interstate Land Sales Full Disclosure Act is not truly the proper vehicle for such an undertaking. Any attempt to make it so would be to engraft a purpose alien to a *land* sales act. If such aid is to come from government, it should come in a form aimed at structures, not land; and if from the private sector, from the building industry, not the land sales business interests.

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property report. *Id.* This shift in policy is opposed by the states who feel that the federal property report will confuse the consumer and the developers who dread the expense and delay inherent in filing dual property reports.

<sup>46</sup> 15 U.S.C. § 1717 (1970). "Any person who willfully violates any of the provisions of this chapter . . . shall upon conviction be fined not more than \$5,000 or imprisoned not more than five years, or both."

<sup>47</sup> Coffey & Welch, *supra* note 23, at 17.

<sup>48</sup> 25 STAN. L. REV. 605, 608 (1973).

<sup>49</sup> "We can't protect people from their own foolishness." George K. Bernstein, Interstate Land Sales Administrator, *quoted in* The Wall Street Journal, Jan. 24, 1974, at 32, col. 3.