

Interstate Land Sales: Many States Require Registration to Market to Their Residents

It goes without saying that all builders should be aware of laws governing land sales in their states and should have an attorney to consult on land development questions. In addition, though, you should know that federal law and more than 30 state codes include consumer protection provisions that regulate interstate sales, marketing, and leasing of subdivision properties.

Builders who, unknowingly or otherwise, violate these laws, can be (and have been) slapped with fines. Criminal penalties may include jail time.

These laws may include requirements to “register” details about a subdivision in which lots are being sold through an application process and payment of a filing fee. To enforce these requirements, states have been known to “mystery shop” land sellers via the Internet; when the targeted company responds with marketing materials, a fine is incurred.

Registration fees may be hundreds of dollars, with the amount sometimes tied to the number of lots being advertised or sold. The registration may need to be renewed annually.

Advertising may be defined—as in Minnesota’s law—as “any communication made to induce prospective purchasers to visit or attend an offer or sales presentation,” including by printed means or electronic vehicles. Some state laws, such as New Hampshire’s, prohibit using gifts or prizes to encourage prospects to attend sales presentations or visit communities.

In some cases, buyers have years to rescind a land purchase if the sale is found to be in violation of state law. Violations can bring both civil and criminal penalties to a developer, those who control the developer (either directly or indirectly), and salespeople. These laws may require bonds to be posted and may also include specific contract and escrow requirements.

Interstate Land Sales Full Disclosure Act

Some laws include exceptions for smaller subdivisions, and some sales are exempt under the Interstate Land Sales Full Disclosure Act (ILSFDA), a federal law with its own requirements that is separate and distinct from individual state laws.

Under the ILSFDA, developers must register subdivisions with the U.S. Department of Housing and Urban Development (HUD) and provide a Property Report before a contract or agreement is signed. That report contains information such as distances from the property being offered to nearby communities over paved or unpaved roads; present and proposed utility services and charges; and soil and foundation conditions. Similarly, many state laws have provisions for this disclosure.

But while the ILSFDA, passed by Congress in 1968, generally applies to offers of 100 or more lots, state laws may encompass much smaller subdivisions and offers.

Arizona, California, Florida, and Minnesota are certified under HUD so that if a builder has effectively registered with those states, HUD will accept that state's disclosure document in lieu of the standard federal registration. Similarly, some states will accept specific elements of a federal filing as a substitute for their own paper work requirements. However, *sellers still must meet all other filing, registration, and fee requirements applicable in that state.*

For more information on ILSFDA, including a Q&A for developers, go online to HUD's Interstate Land Sales page at <http://www.hud.gov/offices/hsg/sfh/ils/ilshome.cfm>.

Following is a list of *examples* of state laws governing interstate land sales and marketing, including brief overviews of some relevant laws that all builders, developers and sales agents should be aware of, and, where available, contact information. The following list is not necessarily comprehensive nor up to date, as laws can and do change frequently. **Before marketing to or answering inquiries from potential clients in any state, builders are forewarned to contact the appropriate state agency to learn the particulars of that state's laws. And, as always when it comes to legal questions, consult with a knowledgeable professional before you do anything.**¹

Many states also have separate regulations governing timeshare sales, including camping memberships, which are not addressed in this Business Management Resource.

State-by-State Resources

Alaska

Requires sellers to register with the Department of Community and Economic Development (<http://www.dced.state.ak.us/>) and deliver a public offering statement to Alaska buyers.

Arizona

Some improved lots outside of the state that are exempt under the ILSFDA and those in a state that require a disclosure document to prospective purchasers are exempt. However, the state requires all advertising to be reviewed and the project to be inspected by a state representative at the developer's expense. Buyers have three years to rescind purchases of land not exempt or registered according to Arizona law. The Subdivision Public Report Application and other forms are available online at http://www.re.state.az.us/Library_Subdivisions_forms.htm.

California

Requires registration of out-of-state offerings with the Real Estate Commissioner (<http://www.dre.ca.gov/aboutdre.htm>), who has 10 days to notify applicants of registration or notification of deficiencies in the their application. The law also mandates specific disclaimers in advertising and contracts.

Connecticut

Developers who have registered with HUD under the ILSFDA may submit a copy of the Statement of Record, promotional plans and advertising materials in place of state-mandated materials, but still must post a bond and pay a per-subdivision filing fee. All must keep proof, for seven years, of prospectus delivery to customers 72 hours before a contract is signed. The Department of Consumer Protection (license.services@po.state.ct.us) and other agencies relevant to land sales can be found online at <http://www.ct.gov/dcp/cwp/view.asp?A=1622&Q=287752>.

Delaware

Similar to above. You can read the relevant code here (<http://www.delcode.state.de.us/title24/c029/sc02/index.htm>). The Real Estate Commission is under the Division of Professional Regulation (<http://www.dpr.delaware.gov/>).

Florida

Requires developers or promoters to register with the state and deliver a public offering statement. Buyers have seven days to cancel a contract and three years to rescind if the law is violated. Florida's Uniform Land Sales Practices Act (<http://www.myflorida.com/dbpr/lsc/landsales/index.shtml>) is online at <http://www.myflorida.com/dbpr/lsc/landsales/index.shtml>.

Georgia

Requires delivery of a property report to prospective purchasers of properties in Georgia (<http://www.georgia.gov/00/home/0,2061,4802,00.html>) and elsewhere. Documents must be available for inspection at the project site and developers must keep receipts for three years from property report deliveries. Purchasers have two years from contract signing to revoke contracts that were made in violation of the law.

Hawaii

Subdivided properties both inside and outside Hawaii must be registered with the Director of Commerce and Consumer Affairs (<http://www.hawaii.gov/dcca/>) for approval of the advertising material and promotional plan. The public offering statement must be delivered to buyers, who may rescind a contract within seven days or within four years if the sale is found to have violated the law.

Idaho

Buyers have five years to revoke the purchase of an out-of-state lot or time share property if state requirements, including registration with the state and delivery of a public offering statement to buyers, are not followed. Promotional plans and advertising material must be approved by the Idaho Real Estate Commission (<http://www.idahorealestatecommission.com/>).

Illinois

Interests in out-of-state subdivisions with 25 or more lots must be registered with the Commissioner of Banks and Real Estate. Receipts of delivery of property reports to prospective buyers before a contract is executed must be kept for three years. A commissioner may inspect a project onsite at the developer's expense. Buyers have two years to revoke a contract if the property report was not received as deemed under the law. For more information, go online to the Division of Professional Regulation (<http://www.idfpr.com/dpr/re/TSL5.asp>).

Indiana

Out-of-state timeshare (and camping membership) developers must register with the Consumer Protection Division of the Office of the Attorney General (<http://www.in.gov/attorneygeneral/contact/>). Purchasers may cancel a contract within 72 hours (excluding Sundays and legal holidays).

Iowa

An application, proposed offering statement and advertising materials must be filed with the Iowa Real Estate Commission (<http://www.state.ia.us/government/com/prof/sales/contact.html>). Those who fail to meet these state requirements can be found criminally liable. A commissioner may inspect the property onsite at the developer's expense.

Kansas

Requires registration with the Kansas Securities Commissioner (<http://www.securities.state.ks.us/home.html>) of certain subdivision lands both in and out of state. The commissioner must review and approve the promotion and advertising plan. Buyers have four years after their first payment to rescind if the land was offered for sale in violation of state law.

Kentucky

Sellers of out-of-state land must get approval from the Real Estate Commission and register with the state Attorney General. Those who have registered with HUD must furnish copies of those registrations with the state. Buyers may cancel within five days of signing a contract.

Michigan

Requires registration of offerings of subdivided properties in projects with 25 or more lots. You can download a variety of forms and documents by scrolling down to the Land Sales section of the Boundary Commission (http://www.michigan.gov/cis/0,1607,7-154-10573_18022_18024---,00.html) Web page, Michigan Office of Policy and Legislative Affairs, Department of Labor and Economic Development. Also requires approval of promotional plan and advertising materials. If registered with HUD, copies of those documents may be submitted for state registration accompanied by an addendum to satisfy other state requirements. Land may be inspected by the state agency at the developer's expense. Buyers may cancel within five days of receiving a copy of the executed contract and property report or void the contract at any time if the property

report was not furnished to the purchaser. Sales may be revoked by a buyer if they act within three years after a violation of state law is discovered and within six years after the first payment is made.

Minnesota

The subdivision developer must register with the Commissioner of Commerce (<http://www.state.mn.us/portal/mn/jsp/content.do?subchannel=-536881389&id=-536881352&agency=Commerce>), pay a filing fee, be licensed by the state and deliver a public offering statement to prospects. Developers must keep receipts for these deliveries for three years. Buyers have three years to void a contract if an offering was not registered as required. Those exempted under HUD's multiple site subdivision exemption remain exempt and copies of statements to the federal agency or other states may substitute for the Minnesota filing.

Nebraska

Sellers must be residents of Nebraska and licensed real estate brokers. Developers must apply to the state Real Estate Commission (<http://www.nrec.state.ne.us/>) for certificates and pay a fee to register each 100 lots or fraction to be offered. Buyers who close a purchase without actually seeing the property have the right to rescind a sale, with the developer's recovery limited to foreclosure without a deficiency judgment. Contracts for sale that fail to comply with the law are void. Registration and delivery of a public offering statement must occur at least 48 hours before a sale.

Nevada

Businesses or persons offering properties subdivided into 35 or more parcels or interests generally are required to be licensed with the Real Estate Division of the Department of Business and Industry (<http://www.red.state.nv.us/FUF.htm>), subject to disclosure requirements to prospects—including information about public services and utilities—and approval of sales plans, practices and advertising. Receipts for the delivery of property reports must be maintained for three years or for one year after the buyer's final payment is made. HUD statements of record are accepted in licensing only to the extent that they meet state requirements.

New Hampshire

Developers and those acting as their agents must be licensed and New Hampshire (<http://www.state.nh.us/>) prohibits using gifts and prizes to procure a sale or even attendance at a sales meeting. HUD statements of record and a property report may substitute for the same state-required documents. Buyers may cancel within five days or revoke a sale that violates the law up to two years after the violation occurs, or within six years after the first payment.

New Jersey

Requires registration with the New Jersey Real Estate Commission (<http://www.state.nj.us/dobi/remnu.shtml>) and delivery of a public offering statement to a purchaser. Buyers may cancel within seven days.

New Mexico

The state prescribes standards for advertising the sale or lease of both in- and out-of-state properties. A disclosure statement to prospects must be filed with the county clerk, board of county commissioners and Attorney General (<http://www.ago.state.nm.us/cu/offices.htm>), as well as being delivered to the prospective buyers. A HUD statement of record may substitute for the state's disclosure statement. Purchasers have six months to revoke a sale in which they did not have the opportunity for prior inspection and six years to rescind if a sale violated the state law.

New York

The offering statement must be filed with the Department of State (<http://www.dos.state.ny.us/about/contact.asp>) as well as being delivered to prospective buyers. Properties may be inspected by the state at the cost of the developer and each contract must include the right to cancel within seven days.

North Carolina

Transferring or selling land in North Carolina on an unrecorded plat is a misdemeanor.

North Dakota

Offerings of properties in subdivisions with five or more lots must be registered with the state Real Estate Commission (<http://www.ncgov.com/>) and the promotion plan and advertising materials must be approved in advance. A commission representative may inspect the project at the developer's expense. Contracts for sales that violate the law may be voided by an action taken within three years of the violation being discovered or up to five years after the sale (whichever occurs first).

Ohio

Transfer of a lot before a subdivision plat is recorded incurs a fine in Ohio (<http://ohio.gov/>).

Oklahoma

Sales materials must be approved in advanced, sales agents licensed, and a public offering statement must be delivered by a purchaser 48 hours before selling subdivided parcels. Developers must keep receipts from delivery of these public offering statements for three years. As long as they satisfy state requirements, HUD's statement of record may be filed as a substitute. Periodic on-site inspections may be made at the cost of the developer. Sales may be revoked within five years of a violation of state law. The Oklahoma Real Estate Commission is online at <http://www.ok.gov/OREC/>.

Oregon

A notice of intention to offer the properties must be filed, sales literature submitted for review, and a public report to be distributed to prospects must be prepared. Receipts proving that the public report was delivered must be kept by the developer for three years. Allows three business days for sales to be rescinded.

The state of Oregon Real Estate Agency, responsible for licensing, education and enforcement of state real estate laws that apply to brokers and real estate marketing organizations, is online at http://www.rea.state.or.us/REA/EDU/about_us.shtml.

Pennsylvania

Requires sellers to file a statement of record, except for properties exempt under ILSFDA. HUD documents or those filed in other states may be substituted for state-required documents. The state Real Estate Commission has information regarding reciprocal licensure and other relevant laws and regulation at <http://www.dos.state.pa.us/bpoa/cwp/view.asp?Q=433107>.

Rhode Island

Out-of-state subdivision property sales must be registered, approved and licensed by the Department of Business Regulation (<http://www.dbr.state.ri.us/index.html>). Property registered under ILSFDA is exempt. Developers must keep receipts of delivery of the required offering statement to prospects for seven years. The state must approve advertising and sales methods and a department representative may inspect properties on site at the developer's expense. Buyers have 72 hours to revoke a contract if they do not receive the offering statement at least 72 hours prior to contract signing.

South Carolina

Requires registration with the state Real Estate Commission, which oversees the approval of advertising materials and the promotional plan. A public offering statement must be delivered to buyers. If a sale is conducted in violation of the law, the buyer has four years after the first payment is made to rescind the purchase.

South Dakota

Developers must obtain a certificate from the state Real Estate Commission (<http://www.llr.state.sc.us/POL/RealEstateCommission/>) and submit for approval a public offering statement, prior to distributing it to prospects. Buyers have four months to inspect the property and 20 days to rescind a purchase. Contracts that violate the state law are void.

Tennessee

Punishes sales by reference to an unrecorded plat in Tennessee (<http://www.tennesseeanytime.org/>) as a misdemeanor.

Texas

Similar to above. Texas is online at <http://www.state.tx.us/>.

Utah

Offerings of subdivided properties must be registered with the state Division of Real Estate of the Department of Commerce (<http://realestate.utah.gov/>), which regulates advertising and sales practices. Subdivisions registered with HUD are exempt. Buyers

have five days to cancel a contract or four years after the first payment if a sale violated state law.

Virginia

Regulates sales by installment land contracts in subdivisions of 100 or more lots. Virginia is online at <http://www.virginia.gov/cmsportal/>.

Washington

Regulates offerings in subdivisions of 26 or more lots, requires delivering a public offering statement two business days before a contract is executed, and allows a purchaser two business days to rescind if the statement is not furnished by the required deadline. Washington is online at <http://access.wa.gov/>.

West Virginia

Out-of-state property offered for sale and representatives selling those properties in West Virginia must be registered with the Commissioner of Securities (<http://www.wvauditor.com/securities/contact.shtml>).

Wisconsin

Provides for fines and/or imprisonment for selling lots on unrecorded plats. Wisconsin is online at <http://www.wisconsin.gov/state/home/app?COMMAND=gov.wi.state.cpp.command.LoadPortalHome>.

Wyoming

Provides penalties for false advertising in subdivision sales. Wyoming is online at <http://wyoming.gov/>.

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