
COURT RULINGS NARROW ONE HUNDRED LOT EXEMPTION UNDER THE INTERSTATE LAND SALES FULL DISCLOSURE ACT

Charles E. Land

The Interstate Land Sales Full Disclosure Act (the “Act”) has taken on new importance for residential developers and builders as purchasers seek ways to escape contracts to purchase residential property. Two recent decisions by the U.S. District Court for the Eastern District of Virginia highlight the need for careful planning to qualify for exemptions under the Act. In addition to providing a brief overview of the Act and its accompanying regulations, this article summarizes how the recent decisions narrow the usefulness of the One Hundred Lot Exemption.

The Act is an antifraud statute originally enacted as part of the Housing and Urban Development Act of 1968. In order to prevent false and deceptive practices in the sale of unimproved tracts of land or condominium units, the Act requires that a developer of a covered subdivision or condominium file a statement of record and provide a property report to prospective purchasers prior to executing a purchase agreement unless the transaction qualifies for either a full or partial exemption. The U.S. Department of Housing and Development (“HUD”) has issued interpretive rules to guide developers as to what types of transactions qualify for an exemption.

In March of 2010, the Alexandria Division of the U.S. District Court for the Eastern District of Virginia issued two opinions addressing the Act’s so-called “Sales to Builders Exemption” and the “One Hundred Lot Exemption.” The Sales to Builders exemption is a full exemption from the Act’s requirements where the buyer acquires lots to engage in construction of residences for the purpose of resale. In contrast, the One Hundred Lot Exemption is a partial exemption. It exempts a developer from the Act’s requirements to file a statement of record and provide prospective purchasers a property report, but not its anti-fraud provisions. The One Hundred Lot Exemption applies to the sale or lease of lots in a project containing fewer than one hundred lots or condominium units which do not otherwise qualify for a full exemption. In other words, if a project has one hundred or more lots or units and a number of lots or units qualify for full exemptions, leaving ninety-nine or fewer non-exempt lots remaining that do not qualify for full exemptions; the development qualifies for the One Hundred Lot Exemption.

At issue in the recent cases was whether a developer may claim the One Hundred Lot Exemption where the developers originally intended to sell a number of the lots in a subdivision to builders (to qualify for the Sales to Builders Exemption) but had not yet done so. The buyers sought to void their contracts due to the developers’ failure to deliver a property report. In defense, the developers claimed that the transactions qualified for the One Hundred Lot Exemption.

In order to qualify for the One Hundred Lot Exemption, the developers attempted to show that of the 164 lots in the development, it had intended to sell more than 64 lots to builders. Because those lots would fall under the Sales to Builders Exemption, the sale of the remaining lots qualified for the One Hundred Lot Exemption because there would then be fewer than one hundred non-exempt lots remaining. The developer relied on the HUD guidelines which provide that the One Hundred Lot Exemption may be applied where other full exemptions, like the Sales to Builders Exemption, result from past or “future” sales. The guidelines lead to the conclusion that so long as a developer has not entered into more than ninety-nine contracts that do not qualify for any full exemption, the One Hundred Lot Exemption applies.

continued to page 2

The District court disagreed, emphasizing that, even in light of HUD guidelines, the exemptions under the Act should be read as narrowly as possible. The Court did not apply the HUD guidelines, but said it was not bound by them. The court concluded that the development did not qualify for the One Hundred Lot Exemption because the Sales to Builders Exemption does not apply to intended, but not yet completed, future sales. Because the developer had not actually sold enough lots to bring the number of non-exempt lots below one hundred, the development did not qualify for the One Hundred Lot Exemption.

For residential developers in the Eastern District of Virginia, the court's decision limits the use of the One Hundred Lot Exemption to situations in which at the time of the first contract for the sale of a lot or condominium unit that is not covered by a full exemption there are no more than ninety-eight other lots or condominium units that are not covered by a full exemption.

The foregoing overview is intended to provide an introductory summary of the Act and recent case law affecting the interpretation of exemptions and HUD guidelines. For more information regarding Act compliance, please contact Charles E. Land.

about the author



Charles E. Land is a partner in the firm's Norfolk office and is the Co-Chair of the Real Estate Strategies Group. His practice focuses on helping clients develop, buy and sell property for residential, commercial or industrial use. Chip can be reached at (757) 624.3131 or celand@kaufcan.com.

real estate strategies spotlight

Ann K. Crenshaw is a partner in the firm's Virginia Beach office. Her practice includes commercial real estate services in the areas of zoning, land use, commercial real estate development, commercial real estate transactions, including purchasing and leasing. She also practices in the areas of commercial loan workouts, creditor's rights/bankruptcy, business restructuring, and commercial litigation. Ann can be reached at (757) 491.4044 or akcrenshaw@kaufcan.com.



Hometown: Virginia Beach, Virginia

College: Sweet Briar College

Law School: College of William & Mary School of Law

Last Book Read: The Immortal Life of Henrietta Lacks by Rebecca Skloot

William L. Holt is an associate in the firm's Williamsburg office. His practice includes a variety of real estate services including land use, zoning, and commercial and residential development and financing. He also practices in the areas of business law and estate planning. Will can be reached at (757) 259.3885 or wlholt@kaufcan.com.



Hometown: Franklin, Virginia
College: Christopher Newport University
Law School: College of William & Mary School of Law
Last Book Read: Getting Things Done by David Allen



Otto W. Konrad is a partner in the firm's Richmond Office. His practice includes a variety of commercial real estate and includes the development and leasing of shopping centers, multi-site retail establishments, office buildings and multi-family housing projects. He also has expertise in RESPA, commercial bankruptcy and commercial foreclosures. Otto can be reached at (804) 771.5715 or owkonrad@kaufcan.com.

Hometown: Richmond, Virginia
College: University of Tennessee
Law School: Washington & Lee University School of Law
Last Book Read: Blind But Now I See: A Biography of Music Legend Doc Watson by Kent Gustavson

REAL ESTATE STRATEGIES

who we are

Michael E. Barney	mebarney@kaufcan.com	(757) 491.4040
Elaina L. Blanks	elblanks@kaufcan.com	(757) 624.3110
Ann K. Crenshaw	akcrenshaw@kaufcan.com	(757) 491.4044
Lawrence G. Cumming	lkcumming@kaufcan.com	(757) 224.2910
Gregory R. Davis	grdavis@kaufcan.com	(757) 259.3820
Dustin H. DeVore	dhdevore@kaufcan.com	(757) 259.3808
Paul W. Gerhardt	pwgerhardt@kaufcan.com	(757) 259.3860
Amy L. Harman	alharman@kaufcan.com	(757) 624.3007
Sandra R. Hirth	srhirth@kaufcan.com	(804) 771.5721
William L. Holt	wlholt@kaufcan.com	(757) 259.3885
Barry W. Hunter	bwhunter@kaufcan.com	(757) 624.3291
E. Andrew Keeney	eakeeney@kaufcan.com	(757) 624.3153
Otto W. Konrad	owkonrad@kaufcan.com	(804) 771.5715
Charles E. Land	celand@kaufcan.com	(757) 624.3131
Vincent J. Mastracco Jr.	vjmastracco@kaufcan.com	(757) 624.3213
Sarah E. Messersmith	semessersmith@kaufcan.com	(757) 224.2950
E. Duffy Myrtetus	edmyrtetus@kaufcan.com	(804) 771.5750
Marina Liacouras Phillips	mlphillips@kaufcan.com	(757) 624.3279
John W. Richardson	jwrichardson@kaufcan.com	(757) 491.4004
C. Edward Russell Jr.	cerussell@kaufcan.com	(757) 624.3108
Mark A. Short	mashort@kaufcan.com	(757) 873.6351
Jeffrey M. Stedfast	jmstedfast@kaufcan.com	(757) 624.3242
Timothy O. Trant II	totrant@kaufcan.com	(757) 259.3823
Hazel C. Uhlenhopp	hcuhlenhopp@kaufcan.com	(804) 771.5782
Shepelle Watkins-White	swwhite@kaufcan.com	(757) 546.4135

If you would like to be added to the Kaufman & Canoles mailing list or if your name, title, company, or address needs to be revised, please notify Kerry A. Martinolich Kaufman & Canoles, P.O. Box 3037, Norfolk VA 23514 T (757) 624.3158 F (757) 624.3169 kamartinolich@kaufcan.com

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