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Question 10

Q Can I break my contract? I signed a preconstruction agreement, to purchase a condo or house and now I've changed my mind.

Q How can I get my deposit back?

Q I want my money back! What can I do?

Q Why does my real estate contract have a two year completion obligation?

Q The developer didn't finish in two years. Can I get my deposits back???

Q My Seller breached the purchase and sale agreement. Can I get my down payments back?

Q What is ILSA?

Q What is the Interstate Land Sales Full Disclosure Act?

Q Are there any federal laws that apply to sales of residential preconstruction Florida real estate (houses, town homes, villas, condominiums, etc.)??

Q Does HUD (the U.S. Dept of Housing and Urban Development) have any rules to help Buyers get deposits back?

Answer:

These are some of the questions that Florida lawyers hear everyday. There are certain limited circumstances in which a real property purchaser can cancel his contract and receive or recover a refund of his deposit. None of them should be viewed as easy or automatic. However, it is sometimes possible under the **Interstate Land Sales Full Disclosure Act** (sometimes referred to as 'ILSA' for short).

It is also sometimes possible under **Florida state law** --- see my Q& A on **"RESCISSION/DISCLOSURE ISSUES"** and/or **"Can I rescind a purchase of Florida real estate AFTER closing?"**.

We'll talk about ILSA here (the **Interstate Land Sales Full Disclosure Act**). There are many misunderstandings about this federal law. ILSA provides that any developer of large subdivisions (including condominiums), where units are being sold preconstruction, must register a property statement with HUD (US Dept of Housing and Urban Development) and must provide every prospective purchaser with a Property Report. This is a booklet with all kinds of disclosures about the property. It is NOT the same thing as a condominium declaration or Home Owner Covenants. It is a different kind of booklet. **If the development project is not exempt and the Developer fails to provide the Buyer with that Property Report, the buyer has a right to rescind and receive all their deposit back. That right extends for two years from the date the**

Buyer signs the contract. *Sometimes an argument can be made to extend that period, but it's better to rescind within the two year period.*

[ILSA is not strictly limited to residential properties. Industrial or commercial properties (office condominiums, for example) are exempt from ILSA **if, and only if**, specific criteria are met. Such criteria are not always met, so it is possible to sometimes revoke a contract for such a property and recover the deposit money].

Most Florida purchasers never see a HUD Property Report, because most developers say they have one or more exemptions (such as the popular 'two year completion obligation' in their contracts) and therefore claim to be exempt from ILSA.

However, CLAIMING to be exempt, and ACTUALLY BEING EXEMPT, are not always one and the same. **If a court examines a developer's compliance and finds it lacking, the developer may be stripped of the exemption.** In such cases, the project is indeed found to be subject to ILSA and the Buyer entitled to a Property Report. If the Developer didn't give that buyer a Property Report, then the Buyer, HAS A RIGHT TO RESCIND and get back ALL monies paid. *(Buyers/Purchasers who are, themselves, in the business of buying and selling properties to build on, may not be entitled to the protections of ILSA).*

You should not think this will happen automatically or without a fight, but in the right situation, the buyer may be entitled to a deposit refund and attorney fees. Also, the word developer is defined broadly – for instance, preferred builders who have taken over a large number of lots from the original developer and are selling them on "spec" (speculation), while relying on the developer's marketing efforts to bring customers in, might, in certain scenarios, also be subject to ILSA.

It's also important to understand the difference between rescission and calling the Seller into default.

RESCISSION: To **rescind**, you should have an argument that the contract, or the documents, fail for some reason to comply with state or federal law. Or, as discussed above, you might be able to prove that that the contract and documents fail to jump through certain hoops and therefore, are not entitled to exemption from ILSA (the Interstate Land Sales Full Disclosure Act).

DEFAULT: -One of many examples: **Failure to meet two year construction completion obligation.**

If the developer is properly exempt from ILSA, but fails to finish the building within two years (or fails to do something else which is material or important) the developer may be in default. To recover for default, we are saying the contract is good, we are enforcing it and you, Mr. Developer, have failed to fulfill your side of the contract and we want our remedies. Return of the deposit is NOT always an automatic remedy, but sometimes it is. You must look at the language of the contract. Do not assume anything. Further, the developer may have some permitted excuses (such as "force majeure" or "Acts of G-d" –also called 'impossibility of performance' or 'commercial frustration'-- for going over the deadline. However, sometimes

the excuses are not as extensive as the developer claims. Some Purchase and Sale Agreements go a bit overboard in defining what permits the developer to go beyond the two years. It's important to have competent Florida counsel examine the contract and to investigate the facts which actually caused the delay. Feel free to call our office for a consultation.

Occasionally, Developer contracts contain excuses for extensions, which may be permitted in other states, but might not be accepted in Florida. One example would be certain of the "impossibility" excuses sometimes cited for extending the two year construction completion period. "Material Shortages" or "Labor Shortages" may be valid delay excuses in other states, but not in Florida.

Find out more at <http://www.hud.gov/offices/hsg/sfh/ils/ilsexemp.cfm>

Florida courts generally interpret State and Federal disclosure laws to favor the consumer/home buyer. However, first, of course, one must evaluate whether proper disclosure has indeed been made.

ARMY - NAVY - AIR FORCE UNITED STATES ARMED SERVICES --MILITARY SERVICEMEMBERS—Florida has a law permitting military service personnel to cancel an agreement to purchase real property under certain circumstances.

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Deposit Recovery – Preconstruction Contracts—Two Year Construction Completion –Interstate Land Sales Full Disclosure Act – ILSA-- Cancel Condominium Purchase Contract—Rescind Real Estate Purchase And Sale Agreement –Condominium Preconstruction Required Disclosures--Revocation Of Real Estate Sales Contract – Deposit Recovery--Cancel Purchase Contract-- Recover deposit– HUD Property Report –Florida Condominium Mandatory Disclosures—Homeowner Association Disclosure Summary Required- Rescind Cancel Revoke --Mandatory HOA disclosure --Mandatory Florida condominium disclosures

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