

**These are generalizations only! Nothing herein creates an attorney-client relationship. Consult a Florida attorney for specific advice. PLEASE DO NOT SEND UNSOLICITED MATERIAL OR CONFIDENTIAL INFORMATION.**

**Question 6 RESCISSION /DISCLOSURE ISSUES: Can I legally rescind (cancel, terminate, void or revoke) an agreement or contract I signed to purchase Florida condominiums, or other real property and get my deposit money back? [TIMING IS CRITICAL]**

**Answer**

Florida statutes require disclosures specific to the type of real property you are buying, and give different 'RIGHT TO CANCEL' periods. You can find a wealth of information on Florida law and government at [www.myflorida.com](http://www.myflorida.com)

**Example:** Condominium purchase from a Developer.

Until such time as the condominium developer has furnished certain documents ('disclosure materials')\* to a person who has entered into a contract to purchase a residential condominium unit, the condominium purchase contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon. [\*This is a much longer laundry list than people generally realize].

You, the buyer or purchaser, may rescind your purchase agreement within 15 days from the date you receive ALL condominium documents AND AGAIN within 15 days from the date you receive any material modification of those documents which adversely or detrimentally affects you, (or prior to closing, whichever is first).

So, for example, if you haven't been given a certain required document yet, you might have a right to cancel the contract and recover your deposits. If you are receiving an amendment of a document you already received, you can only cancel if that amendment hurts you. **Often the cover letter from the developer will say that the developer doesn't view the amendments as material or adverse. That is their opinion.** However, you or your counsel should make an independent assessment and if you are in doubt, it may be safer to exercise your right to rescind the purchase agreement and recover your deposits BEFORE THE FIFTEEN (15) DAYS RUN OUT.

ALSO KEEP IN MIND: Condo developers are required to comply with many technical filing and escrow requirements. The developer's failure to comply with certain of these may give rise to Buyers' right to void their contracts. For instance, there are additional disclosures or warnings

which must be made in the body of the purchase and sale agreement itself. Failure to include such warnings or caveats, particularly regarding use of escrow monies/funds, is a ground to void the contract.

**Example:** You receive Condominium Modifications or Amendments (amendments to Prospectus or Condominium Declaration, Bylaws, Rules and Regulations, Budget, Management Agreement, etc. ) **OR** you learn there are Covenants, restrictions, easements, By Laws, rules or other relevant documents, which you did not receive with your original package **OR** you independently become aware of a significant change in the condominium itself.

You, the buyer or purchaser, may rescind within 15 days from the date you receive any material modification of the condominium documents which adversely or detrimentally affects you (or prior to closing, whichever is first). The Seller/Vendor/Developer is REQUIRED to give you a 'written statement' advising you of those rights when they deliver the amendments to you.

So, for example, if you haven't been given a certain required document yet, you might have an absolute right to cancel the contract.

If you are receiving an amendment of documents (Condominium Prospectus, Declaration, Articles of Incorporation, Bylaws or By-Laws, etc.) you already received, you can only cancel (void your agreement) if that amendment hurts you. ***Often the cover letter from the developer will say that the amendments are not material or adverse. That reflects the developer's view.*** You or your Florida counsel should make an independent assessment. If you are in doubt and/or need more time, it may be safer to exercise your right to rescind the condominium purchase agreement BEFORE THE FIFTEEN (15) DAYS RUN OUT. Consult a Florida attorney. **You may call our office at 239 280-4174 or see additional contact information below.**

Sometimes documents are modified to comply with changes in Florida law. Since substantive laws cannot generally apply retroactively, such a change may still be actionable if it is material and adverse to you. In other words, you may still have a right of revocation. Said another way, changes in the law might be found to only apply to people signing purchase agreements AFTER the new statute. If you already have a contract, you can argue your rights are defined by that contract. The United States Constitution forbids any law abridging the rights of existing contracts.

A word to the wise: If you are a Purchaser, don't take legal advice from the Seller/Developer. If you are a Seller, don't take legal advice from the Purchaser. Each party will honestly see the situation through the prism of

their own interests. A court may see it differently.

**Example:** Condominium purchase from individual.

You may rescind within 3 business days of receiving the condominium documents, or prior to closing, whichever is first.

**Example:** Homeowner Associations.

If the property is subject to assessments which can result in liens, you must be given a HOA Disclosure Summary pursuant to Florida Statute §720.401. You then have 3 days to rescind from receipt of the Disclosure and your contract should say that.

If the Seller failed to give you the Disclosure Summary Statement (properly filled out), the purchaser may void the contract by delivering written notice before receiving the disclosure summary or within three days after receipt of the disclosure summary or prior to closing, whichever first occurs. So, if you signed or executed a contract a year ago, but never received the HOA Disclosure Summary Statement, you can still rescind today and demand the return of your down payment / deposit, as well as monies you paid for extras or upgrades.

If the Seller gave you disclosure under the repealed Florida Statute §689.01, instead of under the current statute, or gave you a disclosure form which was not properly filled in as to critical information, I believe you may have a continuing right to rescind and recover your deposit, until you get the proper, filled out disclosure form. However, there is no decisional law on this point at the date of this writing, so you should consult the Florida attorney of your choice.

Also, many condominiums are also part of a Homeowner or master association. Attorneys disagree about the applicability of the law here. At least one Florida trial court has ruled that a buyer may revoke if he was not provided with the HOA Summary Disclosure for the community within which the condominium was located. This case is on appeal.

**Example:** Fraud

If the Seller has made deliberate material misrepresentations to you about the property and you relied on them and suffered damage, you can seek to rescind (BEFORE OR AFTER CLOSING) on the basis of fraud.

**Example:** Failure to disclose facts which materially affect the value of the

property.

This is a different standard than fraud. Where the Seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the Buyer, the Seller is under a duty to disclose them to the Buyer. If Seller fails to do so, Buyer may rescind, **EVEN AFTER CLOSING**.

If the Seller has made inadvertent misrepresentations or failed to disclose things which materially affect the value of the property, you may rescind. You don't have to prove the statements or lack of disclosure was deliberate or malicious – it's enough that something wasn't disclosed, **BUT**, it must be something important.

**Example:** Federal Law

There are instances where a failure to comply with certain federal laws, such as the **Interstate Land Sales Full Disclosure Act**, [15 U.S. C. 1701 et seq or **ILSA for short**], may provide a right to rescind and receive a FULL refund of purchase monies, even up to two (2) years after contract (**BEFORE OR AFTER CLOSING**). There is an argument that some contracts can be revoked as much as three (3) years after signing, in some instances. *{Be aware ILSA applies to 'lots' in 'subdivisions', terms which are defined broadly and can sometimes apply to scattered units or even campsites. ILSA can also apply to non-residential (commercial, office or industrial properties, though the law here is complex.)}* Many Florida developers take steps to exempt their projects from these laws. However, if the developer has not properly qualified for the exemption and/or their sales contract doesn't meet certain standards, a Court may find the exemption inapplicable and permit rescission. *{Sometimes, a project may be only PARTIALLY EXEMPT, in which case certain contract rights, such as a '20 day WRITTEN notice and opportunity to cure provision,' or a limitation to forfeiture of not more than a certain amount of the deposit, typically 15%, in certain instances, must be included in the purchase agreement. Courts are split on this, and appellate resolution is pending. Projects with 99 units or less are one example of subdivisions which have a PARTIAL EXEMPTION from ILSA }.*

**It is important to act timely here.** It is better to investigate your legal rights to deposit recovery or damages under the Interstate Land Sales Full Disclosure Act **BEFORE** the expiration of two years from the date you signed the contract. **DON'T WAIT.** In some instances, the two year period can be tolled (extended), but sooner is better.

Developers will sometimes cite administrative HUD Guidelines when they refuse to return your deposit money, but Florida state and federal courts may differ from the Guidelines in interpreting and applying ILSA (**Interstate Land Sales Full Disclosure Act 15 U.S. C. 1701 et seq;** or **ILSA for short**), to Florida real estate

transactions. Therefore, it's wise to check with our office or other Florida counsel. [HUD stands for the U.S. Dept of Housing and Urban Development. See <http://www.hud.gov/offices/hsg/sfh/ils/ilsexemp.cfm>]. Also try looking on [www.Findlaw.com](http://www.Findlaw.com) or <http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200725> for Federal regulations

**Example:** Out of State Residents purchasing real estate in Florida

Some states have laws protecting their own residents who are solicited to purchase real property in other states. For instance, a Florida developer may have been obligated to register to sell condominiums in your home state before the Developer conducted any sales activities in said state or completed a contract for sale with the resident of such state. This needs to be approached on a case by case basis. **Our office practices only in Florida.** In such an instance, we would need to associate counsel in your state of origin.

### CONCLUSION

There may be other situations in which you can rescind and get your money back. *This is not meant to be comprehensive and you should consult our office (see below) or other qualified Florida counsel to evaluate your rights and weigh the likelihood of dispute or litigation about a rescission / revocation.*

**As indicated, there are limited circumstances in which a buyer can void or revoke a purchase of Florida real estate even AFTER closing. This will often require litigation and should not be regarded as easy.**

Remember, as a point of general contract law, you can usually withdraw your offer to purchase or sell real estate anytime before the other party accepts and delivers to you (or your agent) a copy of the contract signed by said party. You should do this in writing. This is also true if they made changes (a counter offer) on their signed acceptance.

Industrial or commercial properties (office or hotel condominiums, for example) are exempt from ILSA **if, and only if**, specific criteria are met. Such criteria are not always met, so it is sometimes possible to revoke a contract for such a property.

COMMON ERROR. One mistake many home buyers make is to wait to consult counsel until after a developer has failed to meet a completion obligation, such as the **common two year construction (build-out) completion commitment**. **DO NOT DELAY** until after the two years runs, you may lose valuable rights by waiting. **Take action BEFORE the two years runs out, if at all possible.** However, there still may be some rights remaining after two years. The statute of limitations for the ILSA (Interstate Land Sales Full Disclosure Act) is three years. In other words, you should generally properly revoke within two years and, if monies not returned, a law suit on such revocation (or a suit for damages) generally must be filed within three (3) years after the date the purchaser executed the contract (i.e. the date the buyer became bound). There are some very limited exceptions where suit can be filed even after the three (3) year limitations period. Bottom line—the longer you wait, the more your options narrow.

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**Ross Lanier & Deifik PA 239 262-2874 or 262-6161** serves Collier & Lee counties (Naples, Fort Myers, Bonita Springs, Marco Island, Cape Coral, Estero).

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

**~ FLORIDA ONLY May 2008 ~**

The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask the attorney to send you free written information about the individual's qualifications and experience.