

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 7 CAN I RESCIND A PURCHASE OF FLORIDA REAL ESTATE AFTER CLOSING?

Answer

Yes, in some limited circumstances. This will often require litigation and should not be regarded as easy.

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 and recover your money 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 and demand the return of deposit monies. 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: Florida Condominium and HOA Statute

If you bought a Florida condominium, or property in a HomeOwners' Association, in reasonable reliance upon any material information that is false or misleading in the developer's advertising and promotional materials, including the **prospectus, brochures or newspaper advertising**, you may have a cause of action to **sue for damages**, for up to one year* AFTER you close. **You will NOT have a right to rescind on this basis after closing.** [*This period is sometimes longer, depending upon the circumstances].

Example: Federal Law

There are instances where a failure to comply with certain federal laws, such as

the **Interstate Land Sales Full Disclosure Act**, may provide a right to rescind and receive a FULL refund of purchase monies (including those paid for upgrades and extras), even up to two (2) years* after the date THE BUYER SIGNED the contract (even after closing). [*Sometimes longer, depending on the circumstances]. **IMPORTANT –COMMON MISTAKE:** This revocation period *has nothing to do with* whether the builder did or did not promise to complete, or even completed construction within two years and many people get confused here]. Many Florida developers take steps to exempt their projects from these laws. However, IF the sale, is not properly qualified for the exemption (whether residential or commercial, hotel or office) and/or the sales contract doesn't meet certain standards, a Court may find the exemption inapplicable and so permit rescission. It is important to act timely here. That means rescind/voke PROPERLY, if at all possible, BEFORE the two years has expired.

CONCLUSION

There may be other situations in which you can rescind and obtain a return of your deposit funds. This is not meant to be comprehensive and you should consult Florida counsel to evaluate your rights and weigh the likelihood of dispute or litigation about a rescission.

Remember, you can generally withdraw your offer to purchase or sell real estate anytime before the other party 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 either party made changes (a counter offer) on their signed acceptance, which the other party did not then accept in writing.

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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.

Celia Deiflik, Attorney