

Bur. of Consumer Financial Protection

§ 1010.114

the purpose for which they are sold, or if:

(2) The developer is contractually obligated to the purchaser to complete all facilities, utilities and amenities promised by it in the Statement of Record, and:

(i) The developer has made financial arrangements, such as the posting of surety bonds (corporate or individual notes or bonds are not acceptable), irrevocable letters of credit, escrow or trust accounts, to assure that the facilities, utilities and amenities will be completed by the dates set out in the Property Report or contract;

(ii) The sales contract provides for delivery of a deed within 180 days of the signing of the contract which conveys title free of any mortgage or lien, or the developer has filed an assurance of title agreement with ILSRP as outlined in §1010.212(e); and

(iii) Any down payments or deposits are held in an escrow or trust account.

(c) If the developer's financial statements have been audited, did the accountant qualify the opinion or decline to give an opinion? If so, why was the opinion qualified or declined?

(d) The following statement shall appear: "A copy of our financial statements for the period ending _____ is available from us upon request."

(e) The information furnished in §1010.212(b) may necessitate a warning as to costs and/or feasibility of the completion of the subdivision.

§ 1010.113 Local services.

(a) *Fire protection.* Describe the availability of fire protection and indicate whether it is available year round.

(b) *Police protection.* Describe the availability of police protection.

(c) *Schools.* State whether elementary, junior high and senior high schools are available to residents of the subdivision. Is school bus transportation available from within the subdivision?

(d) *Hospital.* Give the name and location of the nearest hospital and state whether ambulance service is available.

(e) *Physicians and dentists.* State the location of the nearest physicians' and dentists' offices.

(f) *Shopping facilities.* State the location of the nearest shopping facilities.

(g) *Mail service.* If there is no mail service to the subdivision, describe the arrangements the purchasers must make to receive mail service.

(h) *Public transportation.* Is there public transportation available in the subdivision or to nearby towns? If not, give the location of the nearest public transportation and the distance from the subdivision.

§ 1010.114 Recreational facilities.

(a) *Recreational facilities to be covered.* Unless otherwise indicated, all information required by paragraphs (b) and (c) of this section shall be provided for only those recreational facilities which

(1) The developer is contractually responsible to provide or complete and which are:

(i) Within, adjacent or contiguous to the subdivision, and

(ii) Maintained substantially for the use of lot owners; or

(2) For which a third party is responsible and which are:

(i) Within, adjacent or contiguous to the subdivision, and

(ii) Maintained substantially for the use of lot owners.

(b) *Recreational facility chart.* Complete the chart found in section XXV of the appendix to this part: Recreational Facility Chart in accordance with the instructions which follow it. This chart shall immediately follow the §1010.114 heading. Limit the chart to facilities provided essentially for use of lot buyers.

(1) *Facility.* Identify each recreational facility. Identify closely related facilities (e.g., swimming pool and bathhouse) separately only if their availability dates differ. If any recreational facility is not owned by the developer, insert a warning below the chart phrased substantially as follows: "We do not own the (name of facility or facilities) so we can not assure its (their) continued availability."

(2) *Percent complete.* State the present percentage of completion of construction for each recreational facility.

(3) *Estimated date of start of construction.* Insert the estimated date of the start of construction for the facility (month and year).

(4) *Estimated date available for use.* If the construction of the facility is not complete or if it is not available to lot owners for its intended use, indicate the estimated date (month and year) that the facility will be available for use. If the “estimated date available for use” for any facility has been amended to delay it to a later date, indicate such delay in a statement immediately below the chart. Underline the response. This statement shall include the name of the facility and the prior estimated availability date, and it shall be referenced to the appropriate facility listed on the chart by use of an asterisk or other appropriate symbol. If a facility is 100 percent completed and in use, no date is needed.

(5) *Financial assurance of completion.* If the construction of the facility is not complete, state whether there is any financial assurance of completion. If none, state “none.” If such exists, state the type of assurance (*i.e.*, bond, escrow, or trust). If no documentation for such assurance has been provided in § 1010.214 of the Statement of Record, then do not indicate such assurance on the chart, but in place of such assurance on the chart state “none.”

(6) *Buyer’s annual cost or assessments.* State the lot buyer’s annual cost or assessments for using the facility. These costs should include any applicable property owners’ association assessment, and the developer’s maintenance assessment. If the cost information is lengthy, you may use an asterisk or other appropriate symbol and include the cost information in a paragraph below the chart.

(c) Information to be provided below the recreational facility chart and related warnings.

(1) *Constructing the facilities.* If the facilities are not complete, indicate who is responsible for the construction of the facilities. Indicate whether the purchaser will be required to pay any of the cost of construction of these facilities (estimate and disclose such cost, if any).

(2) *Maintaining the facilities.* Indicate who is responsible for the operation and maintenance of these facilities.

(3) *Facilities which will be leased to lot purchasers.* If no facilities covered here will be leased to a Property Owners’

Association or other lot owners in the subject subdivision, omit this caption and any information requested under it from the Property Report. If such leases exist or are anticipated, state which facilities are or will be leased and indicate the term of the lease. Also, state whether the lot owners will have an opportunity to terminate or ratify the lease after control of the Property Owners’ Association is turned over to them. Indicate whether the owner of a recreational facility leased to the Property Owners’ Association or other lot owners may encumber it and whether the holders of such encumbrances may acquire the leased facilities and not honor the lease. Indicate whether the lease payments may be increased on an escalating or other basis and what costs or expenses, if any, will be borne by the owner. State whether the lease can be assigned or sublet. State how the lease can be terminated.

(4) *Transfer of the facilities.* If there are presently any liens or mortgages on any of these recreational facilities, describe such liens or mortgages. If the developer, or owner of the subdivision, their principals, or subsidiaries, intend to transfer the title of a listed recreational facility in the future, explain at what time, by what type of conveyance, and to whom such transfer will be made. Disclose any adverse effects on, or cost to, lot purchasers which may be caused by such transfer. If any facility is to be transferred to lot owners as a Property Owners’ Association or otherwise, state whether the facility will be transferred free and clear of all liens and encumbrances. If not, state the amount of the encumbrance to be assumed and disclose any contractual conditions on such transfer which relate to lot purchasers.

(5) *Permits.* If the necessary permits have not been obtained for the construction and/or use of the facilities, identify the facilities for which such permits have not been obtained and include the following statement, or one substantially the same, in the narrative under the caption “Permits”: “The (identify the permit or license) has not been obtained and therefore there is no assurance that the lot owners will be able to use the (identify the facility).”

(6) *Who may use the facilities.* Indicate who will be permitted to use the recreational facilities (*e.g.*, lot owners, their guests, employees of developer, general public). If the general public will be permitted to use the facilities include the following statement in the narrative under the caption "Who may use the facilities": "The (identify the facility) is open to use by the general public and their use of the facility may limit use of it by lot owners."

§ 1010.115 Subdivision characteristics and climate.

(a) *General topography.* What is the general topography and the major physical characteristics of the land in the subdivision? State the percentage of the subdivision which is to remain as natural open space and as developed parkland. Are there any steep slopes, rock outcroppings, unstable or expansive soil conditions, etc., which will necessitate the use of special construction techniques to build on, or use, any lot in the subdivision? If so, identify the lots affected, and describe the techniques recommended. If any lots in the subdivision have a slope of 20%, or more, include a warning that "Some lots in this subdivision have a slope of 20%, or more. This may affect the type and cost of construction."

(b) *Water coverage.* Are any lots, or portions of any lots, covered by water at any time? What lots are affected? When are they covered by water? How does this affect their use for the purpose for which they are sold? Can the condition be corrected? At what cost to the purchaser?

(c) *Drainage and fill.* Identify the lots which require draining or fill prior to being used for the purpose for which they are being sold. Who will be responsible for any corrective action? If the purchaser is responsible, what are the estimated costs?

(d) *Flood plain.* Is the subdivision located within a flood plain or an area designated by any Federal, state or local agency as being flood prone? What lots are affected? Is flood insurance available? Is it required in connection with the financing of any improvements to the lot? What is the estimated cost of the flood insurance?

(e) *Flooding and soil erosion.* (1) Does the developer have a program which provides, or will provide, at least minimum controls for soil erosion, sedimentation or periodic flooding throughout the subdivision?

(2) If there is a program, describe it. Include in the description information as to whether the program has been approved by the appropriate government officials; when it is to start; when it is to be completed (month and year); whether the developer is obligated to comply with the program and whether there is any financial assurance of completion.

(3) If there is no program or if the program has not been approved by the appropriate officials or if the program does not provide minimum protection, include a statement to the effect that the measures being taken may not be sufficient to prevent property damage or health and safety hazards. A minimum program will usually provide for:

(i) Temporary measures such as mulching and seeding of exposed areas and silt basins to trap sediments in runoff water, and

(ii) Permanent measures such as sodding and seeding in areas of heavy grading or cut and fill along with the construction of diversion channels, ditches, outlet channels, waterway stabilizers and sediment control basins.

(f) *Nuisances.* Are there any land uses which may adversely affect the subdivision (*e.g.*, unusual or unpleasant noises or odors, pollutants or nuisances such as existing or proposed industrial activity, military installations, airports, railroads, truck terminals, race tracks, animal pens, noxious smoke, chemical fumes, stagnant ponds, marshes, slaughterhouses and sewage treatment facilities)? If any nuisances exist, describe them. If there are none, state there are no nuisances which affect the subdivision.

(g) *Hazards.* (1) Are there any unusual safety factors which affect the subdivision (*e.g.*, dilapidated buildings, abandoned mines or wells, air or vehicular traffic hazards, danger from fire or explosion or radiation hazards)? Is the developer aware of any proposed plans for construction which may create a nuisance or safety hazard or adversely affect the subdivision? If there are any