

## § 1010.1

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### APPENDIX A TO PART 1010: STANDARD AND MODEL FORMS AND CLAUSES

AUTHORITY: 12 U.S.C. 5512, 5581; 15 U.S.C. 1718.

SOURCE: 76 FR 79489, Dec. 21, 2011, unless otherwise noted.

## Subpart A—General Requirements

### § 1010.1 Definitions.

(a) *Statutory terms.* All terms are used in accordance with their statutory meaning in 15 U.S.C. 1702, unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) *Other terms.* As used in this part: *Act* means the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701.

*Advisory opinion* means the formal written opinion of the Director as to jurisdiction in a particular case or the applicability of an exemption under §§1010.5 through 1010.15, based on facts submitted to the Director.

*Available for use* means that in addition to being constructed, the subject facility is fully operative and supplied with any materials and staff necessary for its intended purpose.

*Beneficial property restrictions* means restrictions that are enforceable by the lot owners and are designed to control the use of the lot and to preserve or enhance the environment and the aesthetic and economic value of the subdivision.

*Date of filing* means the date a Statement of Record, amendment, or consolidation, accompanied by the applicable fee, is received by the Director.

*Good faith estimate* means an estimate based on documentary evidence. In the case of cost estimates, the documentation may be obtained from the suppliers of the services. In the case of estimates of completion dates, the documentation may be actual contracts let, engineering schedules, or other evi-

dence of commitments to complete the amenities.

*ILSRP* means the Interstate Land Sales Registration Program.

*Lot* means any portion, piece, division, unit, or undivided interest in land located in any state or foreign country, if the interest includes the right to the exclusive use of a specific portion of the land.

*Owner* means the person or entity who holds the fee title to the land and has the power to convey that title to others.

*Parent corporation* means that entity which ultimately controls the subsidiary, even though the control may arise through any series or chain of other subsidiaries or entities.

*Principal* means any person or entity holding at least a 10 percent financial or ownership interest in the developer or owner, directly or through any series or chain of subsidiaries or other entities.

*Rules* means all rules adopted pursuant to the Act, including the general requirements published in this part.

*Sale* means any obligation or arrangement for consideration to purchase or lease a lot directly or indirectly. The terms “sale” or “seller” include in their meanings the terms “lease” and “lessor”.

*Senior Executive Officer* means the individual of highest rank responsible for the day-to-day operations of the developer and who has the authority to bind or commit the developing entity to contractual obligations.

*Site* means a group of contiguous lots, whether such lots are actually divided or proposed to be divided. Lots are considered to be contiguous even though contiguity may be interrupted by a road, park, small body of water, recreational facility, or any similar object.

*Start of construction* means breaking ground for building a facility, followed by diligent action to complete the facility.

### § 1010.2 [Reserved]

### § 1010.3 General applicability.

Except in the case of an exempt transaction, a developer may not sell or lease lots in a subdivision, making

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use of any means or instruments of transportation or communication in interstate commerce, or of the mails, unless a Statement of Record is in effect in accordance with the provisions of this part. In non-exempt transactions, the developer must give each purchaser a printed Property Report, meeting the requirements of this part, in advance of the purchaser's signing of any contract or agreement for sale or lease. Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB Control No. 3170-0012.

### § 1010.4 Exemptions—general.

(a) The exemptions available under §§ 1010.5 through 1010.16 are not applicable when the method of sale, lease or other disposition of land or an interest in land is adopted for the purpose of evasion of the Act.

(b) With the exception of the sales or leases which are exempt under § 1010.5, the anti-fraud provisions of the Act (15 U.S.C. 1703(a)(2)) apply to exempt transactions. The anti-fraud provisions make it unlawful for a developer or agent to employ any device, scheme, or artifice to:

- (1) Defraud;
- (2) To obtain money or property by means of any untrue statement of a material fact, or
- (3) To omit to state a material fact necessary in order to make the statements made not misleading, with respect to any information pertinent to the lot or subdivision; or
- (4) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

(c) The anti-fraud provisions of the Act require that certain representations be included in the contract in transactions which are not exempt under § 1010.5. Specifically, the Act requires that if a developer or agent represents that roads, sewers, water, gas or electric service or recreational amenities will be provided or completed by the developer, the contract must stipulate that the services or amenities will be provided or completed. See § 1011.15(f).

(d) Eligibility for exemptions available under §§ 1010.5 through 1010.14 is self-determining. With the exception of the exemptions available under §§ 1010.15 and 1010.16, a developer is not required to file notice with or obtain the approval of the Director in order to take advantage of an exemption. If a developer elects to take advantage of an exemption, the developer is responsible for maintaining records to demonstrate that the requirements of the exemption have been met.

(e) A developer may present evidence, or otherwise discuss, in an informal hearing before the Office of Nonbank Supervision, the Bureau's position on the jurisdiction or non-exempt status of a particular subdivision.

### § 1010.5 Statutory exemptions.

A listing of the statutory exemptions is contained in 15 U.S.C. 1703. In accordance with 15 U.S.C. 1703(a)(2), if the sale involves a condominium or multi-unit construction, a presale clause conditioning the sale of a unit on a certain percentage of sales of other units is permissible if it is legally binding on the parties and is for a period not to exceed 180 days. However, the 180-day provision cannot extend the 2-year period for performance. The permissible 180 days is calculated from the date the first purchaser signs a sales contract in the project or, if a phased project, from the date the first purchaser signs the first sales contract in each phase.

### § 1010.6 One hundred lot exemption.

The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, the subdivision has contained fewer than 100 lots, exclusive of lots which are exempt from jurisdiction under § 1010.5. In the sale of lots in the subdivision that are not exempt under § 1010.5, the developer must comply with the Act's anti-fraud provisions, set forth in § 1010.4(b) and (c).

### § 1010.7 Twelve lot exemption.

(a) The sale of lots is exempt from the registration requirements of the Act if, beginning with the first sale after June 20, 1980, no more than twelve lots in the subdivision are sold in the subsequent twelve-month period.