(Pub. L. 90–321, title IX, § 918, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3740; amended Pub. L. 97–375, title II, § 209(a), Dec. 21, 1982, 96 Stat. 1825.)

REFERENCES IN TEXT

For effective date of this subchapter, referred to in subsec. (a), see section 921 of Pub. L. 90–321, set out as an Effective Date note under section 1693 of this title.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–375 struck out requirement that the Attorney General make a report on the same terms as the Board, and that such report also contain an analysis of the impact of this subchapter on the operation, workload, and efficiency of the Federal courts, and substituted ''necessary and appropriate'' for ''necessary or appropriate''.

§ 1693q. Relation to State laws

This subchapter does not annul, alter, or affect the laws of any State relating to electronic fund transfers, except to the extent that those laws are inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency. A State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection afforded by this subchapter. The Board shall, upon its own motion or upon the request of any financial institution, State, or other interested party, submitted in accordance with procedures prescribed in regulations of the Board, determine whether a State requirement is inconsistent or affords greater protection. If the Board determines that a State requirement is inconsistent, financial institutions shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This subchapter does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply.

(Pub. L. 90–321, title IX, § 919, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3741.)

§ 1693r. Exemption for State regulation

The Board shall by regulation exempt from the requirements of this subchapter any class of electronic fund transfers within any State if the Board determines that under the law of that State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

(Pub. L. 90–321, title IX, § 920, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3741.)

CHAPTER 42—INTERSTATE LAND SALES

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§ 1701. Definitions

For the purposes of this chapter, the term—

(1) ''Secretary'' means the Secretary of Housing and Urban Development;

(2) ''person'' means an individual, or an unincorporated organization, partnership, association, corporation, trust, or estate;

(3) ''subdivision'' means any land which is located in any State or in a foreign country and is divided or is proposed to be divided into lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan;

(4) ''common promotional plan'' means a plan, undertaken by a single developer or a group of developers acting in concert, to offer lots for sale or lease; where such land is offered for sale by such a developer or group of developers acting in concert, and such land is contiguous or is known, designated, or advertised as a common unit or by a common name, such land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan;

(5) ''developer'' means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision;

(6) ''agent'' means any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision; but shall not include an attorney at law whose representation of another person consists solely of rendering legal services;

(7) ''blanket encumbrance'' means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a subdivision or affecting more than one lot offered within a subdivision except that such term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority;

(8) ''interstate commerce'' means trade or commerce among the several States or between any foreign country and any State;

(9) ''State'' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

(10) ''purchaser'' means an actual or prospective purchaser or lessee of any lot in a subdivision; and

(11) ''offer'' includes any inducement, solicitation, or attempt to encourage a person to acquire a lot in a subdivision.

(Pub. L. 90–448, title XIV, § 1402, Aug. 1, 1968, 82 Stat. 590; Pub. L. 93–383, title VIII, § 812(a), Aug. 22, 1974, 88 Stat. 736; Pub. L. 96–153, title IV, § 401, Dec. 21, 1979, 93 Stat. 1122; Pub. L. 100–628, title X, § 1089(a), Nov. 7, 1988, 102 Stat. 3283.)

Amendments

1988—Par. (10). Pub. L. 100–628 inserted ''and'' after semicolon.

1979—Par. (3). Pub. L. 96–153 substituted provisions defining ''subdivision'' as the division or proposed division of land into lots for the purpose of sale or lease as part of a common promotional plan, for provisions defining ''subdivision'' as the division or proposed division of land into fifty or more lots for the purpose of sale or lease as part of a common promotional plan and presumptions respecting activities as being deemed part of such common promotional plan.

Pars. (4) to (11). Pub. L. 96–153 added par. (4) and redesignated former pars. (4) to (10) as (5) to (11), respectively.

1974—Par. (3). Pub. L. 93–383, § 812(a)(1), inserted '', located in any State or in a foreign country'' after ''any land''.

Par. (7). Pub. L. 93–383, § 812(a)(2), inserted ''or between any foreign country and any State'' after ''States''.

Effective Date of 1979 Amendment

Section 410 of title IV of Pub. L. 96–153 provided that: ''The amendments made by this title [enacting section 1719a of this title and amending this section and sections 1702, 1703, 1708, 1709, 1711, 1715, and 1717 of this title] shall become effective on the effective date of regulations implementing such amendments, but in no case later than six months following the date of enactment of this Act [Dec. 21, 1979], except that section 1403(b)(7) of the Interstate Land Sales Full Disclosure Act [section 1702(b)(7) of this title], contained in the amendment made by section 402, shall become effective on the date of enactment.''

Effective Date

Section 1423, formerly § 1422, of title XIV of Pub. L. 90–448, as renumbered by Pub. L. 96–153, title IV, § 409, Dec. 21, 1979, 93 Stat. 1132, provided that: ''This title [enacting this chapter] shall take effect upon the expiration of two hundred and seventy days after the date of its enactment [Aug. 1, 1968].''

Short Title

Section 1401 of title XIV of Pub. L. 90–448 provided that: ''This title [enacting this chapter] may be cited as the 'Interstate Land Sales Full Disclosure Act'.''

§ 1702. Exemptions

(a) Sale or lease of lots generally

Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to—

(1) the sale or lease of lots in a subdivision containing less than twenty-five lots;

(2) the sale or lease of any improved land on which there is a residential, commercial, condominium, or industrial building, or the sale or lease of land under a contract obligating the seller or lessor to erect such a building thereon within a period of two years;

(3) the sale of evidence of indebtedness secured by a mortgage or deed of trust on real estate;

(4) the sale of securities issued by a real estate investment trust;

(5) the sale or lease of real estate by any government or government agency;

(6) the sale or lease of cemetery lots;

(7) the sale or lease of lots to any person who acquires such lots for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease of such lots to persons engaged in such business; or

(8) the sale or lease of real estate which is zoned by the appropriate governmental authority for industrial or commercial development or which is restricted to such use by a declaration of covenants, conditions, and restrictions which has been recorded in the official records of the city or county in which such real estate is located, when—

(A) local authorities have approved access from such real estate to a public street or highway;

(B) the purchaser or lessee of such real estate is a duly organized corporation, partnership, trust, or business entity engaged in commercial or industrial business;

(C) the purchaser or lessee of such real estate is represented in the transaction of sale or lease by a representative of its own selection;

(D) the purchaser or lessee of such real estate affirms in writing to the seller or lessor that it either (i) is purchasing or leasing such real estate substantially for its own use, or (ii) has a binding commitment to sell, lease, or sublease such real estate to an entity which meets the requirements of subparagraph (B), is engaged in commercial or industrial business, and is not affiliated with the seller, lessor, or agent thereof; and

(E) a policy of title insurance or a title opinion is issued in connection with the transaction showing that title to the real estate purchased or leased is vested in the seller or lessor, subject only to such exceptions as may be approved in writing by such purchaser or the lessee prior to recordation of the instrument of conveyance or execution of the lease, but (i) nothing herein shall be construed as requiring the recordation of a lease, and (ii) any purchaser or lessee may waive, in writing in a separate document, the requirement of this subparagraph that a policy of title insurance or title opinion be issued in connection with the transaction.

(b) Sale or lease of lots subject to other statutory registration and disclosure requirements

Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions requiring registration and disclosure (as specified in section 1703(a)(1) of this title and sections 1704 through 1707 of this title) shall not apply to—

(1) the sale or lease of lots in a subdivision containing fewer than one hundred lots which are not exempt under subsection (a) of this section;

(2) the sale or lease of lots in a subdivision if, within the twelve-month period commencing on the date of the first sale or lease of a lot in such subdivision after the effective date of this subsection, or on such other date within that twelve-month period as the Secretary may prescribe, not more than twelve lots are sold or leased, and the sale or lease of the first twelve lots in such subdivision in any subsequent twelve-month period, if not more than twelve lots have been sold or leased in any preceding twelve-month period after the effective date of this subsection;

(3) the sale or lease of lots in a subdivision if each noncontiguous part of such subdivision contains not more than twenty lots, and if the purchaser or lessee (or spouse thereof) has made a personal, on-the-lot inspection of the lot purchased or leased, prior to signing of the contract or agreement to purchase or lease;

(4) the sale or lease of lots in a subdivision in which each of the lots is at least twenty acres (inclusive of easements for ingress and egress or public utilities);

(5) the sale or lease of a lot which is located within a municipality or county where a unit of local government specifies minimum standards for the development of subdivision lots taking place within its boundaries, when—

(A)(i) the subdivision meets all local codes and standards, and (ii) each lot is either zoned for single family residences or, in the absence of a zoning ordinance, is limited exclusively to single family residences;

(B)(i) the lot is situated on a paved street or highway which has been built to standards applicable to streets and highways maintained by the unit of local government in which the subdivision is located and is acceptable to such unit, or, where such street or highway is not complete, a bond or other surety acceptable to the municipality or county in the full amount of the cost of completing such street or highway has been posted to assure completion to such standards, and (ii) the unit of local government or a homeowners association has accepted or is obligated to accept the responsibility of maintaining such street or highway, except that, in any case in which a homeowners association has accepted or is obligated to accept such responsibility, a good faith written estimate of the cost of carrying out such responsibility over the first ten years of ownership or lease is provided to the purchaser or lessee prior to the signing of the contract or agreement to purchase or lease;

(C) at the time of closing, potable water, sanitary sewage disposal, and electricity

have been extended to the lot or the unit of local government is obligated to install such facilities within one hundred and eighty days, and, for subdivisions which do not have a central water or sewage disposal system, rather than installation of water or sewer facilities, there must be assurances that an adequate potable water supply is available year-round and that the lot is approved for the installation of a septic tank;

(D) the contract of sale requires delivery of a warranty deed (or, where such deed is not commonly used in the jurisdiction where the lot is located, a deed or grant which warrants that the grantor has not conveyed the lot to another person and that the lot is free from encumbrances made by the grantor or any other person claiming by, through, or under him) to the purchaser within one hundred and eighty days after the signing of the sales contract;

(E) at the time of closing, a title insurance binder or a title opinion reflecting the condition of the title shall be in existence and issued or presented to the purchaser or lessee showing that, subject only to such exceptions as may be approved in writing by the purchaser or lessee at the time of closing, marketable title to the lot is vested in the seller or lessor;

(F) the purchaser or lessee (or spouse thereof) has made a personal, on-the-lot inspection of the lot purchased or leased, prior to signing of the contract or agreement to purchase or lease; and

(G) there are no offers, by direct mail or telephone solicitation, of gifts, trips, dinners, or other such promotional techniques to induce prospective purchasers or lessees to visit the subdivision or to purchase or lease a lot;

(6) the sale or lease of a lot, if a mobile home is to be erected or placed thereon as a residence, where the lot is sold as a homesite by one party and the home by another, under contracts that obligate such sellers to perform, contingent upon the other seller carrying out its obligations so that a completed mobile home will be erected or placed on the completed homesite within a period of two years, and provide for all funds received by the sellers to be deposited in escrow accounts (controlled by parties independent of the sellers) until the transactions are completed, and further provide that such funds shall be released to the buyer on demand without prejudice if the land with the mobile home erected or placed thereon is not conveyed within such two-year period. Such homesite must conform to all local codes and standards for mobile home subdivisions, if any, must provide potable water, sanitary sewage disposal, electricity, access by roads, the purchaser must receive marketable title to the lot, and where common facilities are to be provided, they must be completed or fully funded;

(7)(A) the sale or lease of real estate by a developer who is engaged in a sales operation which is intrastate in nature. For purposes of this exemption, a lot may be sold only if—

(i) the lot is free and clear of all liens, encumbrances, and adverse claims;

(ii) the purchaser or lessee (or spouse thereof) has made a personal on-the-lot inspection of the lot to be purchased or leased;

(iii) each purchase or lease agreement contains—

(I) a clear and specific statement describing a good faith estimate of the year of completion of, and the party responsible for, providing and maintaining the roads, water facilities, sewer facilities and any existing or promised amenities; and

(II) a nonwaivable provision specifying that the contract or agreement may be revoked at the option of the purchaser or lessee until midnight of the seventh day following the signing of such contract or agreement or until such later time as may be required pursuant to applicable State laws; and

(iv) the purchaser or lessee has, prior to the time the contract or lease is entered into, acknowledged in writing the receipt of a written statement by the developer containing good faith estimates of the cost of providing electric, water, sewer, gas, and telephone service to such lot.

(B) As used in subparagraph (A)(i) of this paragraph, the terms ''liens'', ''encumbrances'', and ''adverse claims'' do not include United States land patents and similar Federal grants or reservations, property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, taxes and assessments imposed by a State, by any other public body having authority to assess and tax property, or by a property owners' association, which, under applicable State or local law, constitute liens on the property before they are due and payable or beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, if—

(i) the developer, prior to the time the contract of sale or lease is entered into, has furnished each purchaser or lessee with a statement setting forth in descriptive and concise terms all such liens, reservations, taxes, assessments and restrictions which are applicable to the lot to be purchased or leased; and

(ii) receipt of such statement has been acknowledged in writing by the purchaser or lessee.

(C) For the purpose of this paragraph, a sales operation is ''intrastate in nature'' if the developer is subject to the laws of the State in which the land is located, and each lot in the subdivision, other than those which are exempt under subsection (a), (b)(6), or (b)(8) of this section, is sold or leased to residents of the State in which the land is located; or

(8) the sale or lease of a lot in a subdivision containing fewer than three hundred lots if—

(A) the principal residence of the purchaser or lessee is within the same standard metropolitan statistical area, as defined by the Office of Management and Budget, as the lot purchased or leased;

(B) the lot is free and clear of liens (such as mortgages, deeds of trust, tax liens, me-

chanics liens, or judgments) at the time of the signing of the contract or agreement and until a deed is delivered to the purchaser or the lease expires. As used in this subparagraph, the term ''liens'' does not include (i) United States land patents and similar Federal grants or reservations, (ii) property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, (iii) taxes and assessments imposed by a State, by any other public body having authority to assess and tax property, or by a property owners' association, which, under applicable State or local law, constitute liens on the property before they are due and payable or beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, or (iv) other interests described in regulations prescribed by the Secretary;

(C) the purchaser or lessee (or spouse thereof) has made a personal on-the-lot inspection of the lot to be purchased or leased;

(D) each purchase or lease agreement contains (i) a clear and specific statement describing a good faith estimate of the year of completion of and the party responsible for providing and maintaining the roads, water facilities, sewer facilities and any existing or promised amenities; and (ii) a nonwaivable provision specifying that the contract or agreement may be revoked at the option of the purchaser or lessee until midnight of the seventh day following the signing of such contract or agreement or until such later time as may be required pursuant to applicable State laws;

(E) the purchaser or lessee has, prior to the time the contract or lease is entered into, acknowledged in writing receipt of a written statement by the developer setting forth (i) in descriptive and concise terms all liens, reservations, taxes, assessments, beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, and adverse claims which are applicable to the lot to be purchased or leased, and (ii) good faith estimates of the cost of providing electric, water, sewer, gas, and telephone service to such lot;

(F) the developer executes and supplies to the purchaser a written instrument designating a person within the State of residence of the purchaser as his agent for service of process and acknowledging that the developer submits to the legal jurisdiction of the State in which the purchaser or lessee resides; and

(G) the developer executes a written affirmation to the effect that he has complied with the provisions of this paragraph, such affirmation to be given on a form provided by the Secretary, which shall include the following: the name and address of the developer; the name and address of the purchaser or lessee; a legal description of the lot; an affirmation that the provisions of this paragraph have been complied with; a statement that the developer submits to the jurisdiction of this title with regard to the sale or lease; and the signature of the developer.

(c) Rules and regulations

The Secretary may from time to time, pursuant to rules and regulations issued by him, exempt from any of the provisions of this chapter any subdivision or any lots in a subdivision, if he finds that the enforcement of this chapter with respect to such subdivision or lots is not necessary in the public interest and for the protection of purchasers by reason or the small amount involved or the limited character of the public offering.

(Pub. L. 90–448, title XIV, § 1403, Aug. 1, 1968, 82 Stat. 590; Pub. L. 91–152, title IV, § 411, Dec. 24, 1969, 83 Stat. 398; Pub. L. 93–383, title VIII, § 812(b), Aug. 22, 1974, 88 Stat. 736; Pub. L. 95–557, title IX, § 907, Oct. 31, 1978, 92 Stat. 2127; Pub. L. 96–153, title IV, § 402, Dec. 21, 1979, 93 Stat. 1123.)

REFERENCES IN TEXT

The effective date of this subsection, referred to in subsec. (b)(2), probably means the effective date of title IV of Pub. L. 96–153, section 402 of which amended subsec. (b) of this section generally. For the effective date of title IV, see section 410 of Pub. L. 96–153, set out as an Effective Date of 1979 Amendment note under section 1701 of this title.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–153 revised existing provisions formerly set out as pars. (1) to (11) into pars. (1) to (8) and, as so revised, substituted provisions relating to sale or lease of lots in a subdivision containing less than twenty-five lots, etc., for provisions relating to sale or lease of real estate not pursuant to a common promotional plan to offer or sell fifty or more lots in a subdivision, etc.

Subsec. (b). Pub. L. 96–153 revised existing provisions formerly set out as pars. (1) to (7) into pars. (1) to (8) and, as so revised, substituted provisions setting forth criteria respecting sale or lease of lots subject to other statutory registration and disclosure requirements, for provisions setting forth criteria respecting sale or lease of lots in municipality or county with minimum standards.

1978—Subsec. (a)(3). Pub. L. 95–557, § 907(a)(1), inserted ''condominium'' after ''commercial''.

Subsec. (a)(10). Pub. L. 95–557, § 907(a)(2), inserted ''United States land patents or Federal grants and reservations similar to United States land patents, nor to'' after ''do not refer to''.

Subsec. (a)(11). Pub. L. 95–557, § 907(a)(3), inserted ''or which is restricted to such use by a declaration of covenants, conditions, and restrictions which has been recorded in the official records of the city or county in which such real estate is located'' before ''when''.

Subsecs. (b), (c). Pub. L. 95–557, § 907(b)(1), (2), added subsec. (b) and redesignated former subsec. (b) as (c).

1974—Subsec. (a)(11). Pub. L. 93–383 added par. (11).

1969—Subsec. (a)(10). Pub. L. 91–152 substituted provisions requiring a personal on-the-lot inspection of the real estate for provisions requiring a personal inspection of the lot and restricted definition of terms ''liens'', ''encumbrances'', and ''adverse claims'' so as not to include taxes and assessments imposed by a State, a public body having authority to assess and tax property, or a property owners' association, which, under the applicable law, constitute liens before they are due and payable, and so as not to include beneficial property restrictions enforceable by other lot owners or lessees in the subdivision under the specified conditions.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but

in no case later than six months following Dec. 21, 1979, except that subsec. (b)(7) shall be effective on Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1703, 1708 of this title.

§ 1703. Requirements respecting sale or lease of lots

(a) Prohibited activities

It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce, or of the mails—

(1) with respect to the sale or lease of any lot not exempt under section 1702 of this title—

(A) to sell or lease any lot unless a statement of record with respect to such lot is in effect in accordance with section 1706 of this title;

(B) to sell or lease any lot unless a printed property report, meeting the requirements of section 1707 of this title, has been furnished to the purchaser or lessee in advance of the signing of any contract or agreement by such purchaser or lessee;

(C) to sell or lease any lot where any part of the statement of record or the property report contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein pursuant to sections 1704 through 1707 of this title or any regulations thereunder; or

(D) to display or deliver to prospective purchasers or lessees advertising and promotional material which is inconsistent with information required to be disclosed in the property report; or

(2) with respect to the sale or lease, or offer to sell or lease, any lot not exempt under section 1702(a) of this title—

(A) to employ any device, scheme, or artifice to defraud;

(B) to obtain money or property by means of any untrue statement of a material fact, or any omission to state a material fact necessary in order to make the statements made (in light of the circumstances in which they were made and within the context of the overall offer and sale or lease) not misleading, with respect to any information pertinent to the lot or subdivision;

(C) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser; or

(D) to represent that roads, sewers, water, gas, or electric service, or recreational amenities will be provided or completed by the developer without stipulating in the contract of sale or lease that such services or amenities will be provided or completed.

(b) Revocation of nonexempt contract or agreement at option of purchaser or lessee; time limit

Any contract or agreement for the sale or lease of a lot not exempt under section 1702 of this title may be revoked at the option of the purchaser or lessee until midnight of the seventh day following the signing of such contract or agreement or until such later time as may be required pursuant to applicable State laws, and such contract or agreement shall clearly provide this right.

(c) Revocation of contract or agreement at option of purchaser or lessee where required property report not supplied

In the case of any contract or agreement for the sale or lease of a lot for which a property report is required by this chapter and the property report has not been given to the purchaser or lessee in advance of his or her signing such contract or agreement, such contract or agreement may be revoked at the option of the purchaser or lessee within two years from the date of such signing, and such contract or agreement shall clearly provide this right.

(d) Additional authority for revocation of nonexempt contract or agreement at option of purchaser or lessee; time limit; applicability

Any contract or agreement which is for the sale or lease of a lot not exempt under section 1702 of this title and which does not provide—

(1) a description of the lot which makes such lot clearly identifiable and which is in a form acceptable for recording by the appropriate public official responsible for maintaining land records in the jurisdiction in which the lot is located;

(2) that, in the event of a default or breach of the contract or agreement by the purchaser or lessee, the seller or lessor (or successor thereof) will provide the purchaser or lessee with written notice of such default or breach and of the opportunity, which shall be given such purchaser or lessee, to remedy such default or breach within twenty days after the date of the receipt of such notice; and

(3) that, if the purchaser or lessee loses rights and interest in the lot as a result of a default or breach of the contract or agreement which occurs after the purchaser or lessee has paid 15 per centum of the purchase price of the lot, excluding any interest owed under the contract or agreement, the seller or lessor (or successor thereof) shall refund to such purchaser or lessee any amount which remains after subtracting (A) 15 per centum of the purchase price of the lot, excluding any interest owed under the contract or agreement, or the amount of damages incurred by the seller or lessor (or successor thereof) as a result of such breach, whichever is greater, from (B) the amount paid by the purchaser or lessee with respect to the purchase price of the lot, excluding any interest paid under the contract or agreement,

may be revoked at the option of the purchaser or lessee for two years from the date of the signing of such contract or agreement. This subsection shall not apply to the sale of a lot for which, within one hundred and eighty days after the signing of the sales contract, the purchaser receives a warranty deed (or, where such deed is not commonly used in the jurisdiction where the lot is located, a deed or grant that warrants at

least that the grantor has not conveyed the lot to another person and that the lot is free from encumbrances made by the grantor or any other person claiming by, through, or under him or her).

(e) Repayment of purchaser or lessee upon revocation of all money paid under contract or agreement to seller or lessor

If a contract or agreement is revoked pursuant to subsection (b), (c), or (d) of this section, if the purchaser or lessee tenders to the seller or lessor (or successor thereof) an instrument conveying his or her rights and interests in the lot, and if the rights and interests and the lot are in a condition which is substantially similar to the condition in which they were conveyed or purported to be conveyed to the purchaser or lessee, such purchaser or lessee shall be entitled to all money paid by him or her under such contract or agreement.

(Pub. L. 90–448, title XIV, § 1404, Aug. 1, 1968, 82 Stat. 591; Pub. L. 93–383, title VIII, § 812(c)(1), Aug. 22, 1974, 88 Stat. 737; Pub. L. 96–153, title IV, § 403, Dec. 21, 1979, 93 Stat. 1127.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–153 substituted provisions setting forth criteria in par. (1) with respect to the sale or lease of any lot not exempt under section 1702 of this title, for provisions relating to the sale or lease of any lot in any subdivision with accompanying required statement of record and printed property report, and in par. (2) with respect to the sale or lease, or offer to sell or lease, any lot not exempt under section 1702(a) of this title, for provisions relating to the sale or lease, or offer to sell or lease, any lot in a subdivision through the use of specified prohibited activities.

Subsec. (b). Pub. L. 96–153 substituted provisions relating to revocation of contracts or agreements for the sale or lease of a lot not exempt under section 1702 of this title, for provisions relating to voidability of contracts or agreements for the purchase or lease of lots in subdivisions covered by this chapter.

Subsecs. (c) to (e). Pub. L. 96–153 added subsecs. (c) to (e).

1974—Subsec. (b). Pub. L. 383 substituted ''until midnight of the third business day following the consummation of the transaction'' for ''within forty-eight hours'' and struck out provisions relating to exceptions of contracts or agreements stipulating to the nonapplicability of the revocation authority to certain purchasers.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 812(c)(2) of Pub. L. 93–383 provided that: ''The amendments made by paragraph (1) [amending this section] shall be effective sixty days after the date of the enactment of this Act [Aug. 22, 1974].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1702, 1709, 1711 of this title.

§ 1704. Registration of subdivisions

(a) Filing of statement of record

A subdivision may be registered by filing with the Secretary a statement of record, meeting the requirements of this chapter and such rules and regulations as may be prescribed by the Secretary in furtherance of the provisions of this chapter. A statement of record shall be deemed effective only as to the lots specified therein.

(b) Payment of fees; use by Secretary

At the time of filing a statement of record, or any amendment thereto, the developer shall pay to the Secretary a fee, not in excess of $1,000, in accordance with a schedule to be fixed by the regulations of the Secretary, which fees may be used by the Secretary to cover all or part of the cost of rendering services under this chapter, and such expenses as are paid from such fees shall be considered nonadministrative.

(c) Filing deemed to have taken place upon receipt of statement of record accompanied by fee

The filing with the Secretary of a statement of record, or of an amendment thereto, shall be deemed to have taken place upon the receipt thereof, accompanied by payment of the fee required by subsection (b) of this section.

(d) Availability of information to public

The information contained in or filed with any statement of record shall be made available to the public under such regulations as the Secretary may prescribe and copies thereof shall be furnished to every applicant at such reasonable charge as the Secretary may prescribe.

(Pub. L. 90–448, title XIV, § 1405, Aug. 1, 1968, 82 Stat. 592.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1702, 1703, 1708 of this title.

§ 1705. Information required in statement of record

The statement of record shall contain the information and be accompanied by the documents specified hereinafter in this section—

(1) the name and address of each person having an interest in the lots in the subdivision to be covered by the statement of record and the extent of such interest;

(2) a legal description of, and a statement of the total area included in, the subdivision and a statement of the topography thereof, together with a map showing the division proposed and the dimensions of the lots to be covered by the statement of record and their relation to existing streets and roads;

(3) a statement of the condition of the title to the land comprising the subdivision, including all encumbrances and deed restrictions and covenants applicable thereto;

(4) a statement of the general terms and conditions, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision;

(5) a statement of the present condition of access to the subdivision, the existence of any unusual conditions relating to noise or safety which affect the subdivision and are known to the developer, the availability of sewage disposal facilities and other public utilities (including water, electricity, gas, and telephone

facilities) in the subdivision, the proximity in miles of the subdivision to nearby municipalities, and the nature of any improvements to be installed by the developer and his estimated schedule for completion;

(6) in the case of any subdivision or portion thereof against which there exists a blanket encumbrance, a statement of the consequences for an individual purchaser of a failure, by the person or persons bound, to fulfill obligations under the instrument or instruments creating such encumbrance and the steps, if any, taken to protect the purchaser in such eventuality;

(7)(A) copy of its articles of incorporation, with all amendments thereto, if the developer is a corporation; (B) copies of all instruments by which the trust is created or declared, if the developer is a trust; (C) copies of its articles of partnership or association and all other papers pertaining to its organization, if the developer is a partnership, unincorporated association, joint stock company, or any other form of organization; and (D) if the purported holder of legal title is a person other than developer, copies of the above documents for such person;

(8) copies of the deed or other instrument establishing title to the subdivision in the developer or other person and copies of any instrument creating a lien or encumbrance upon the title of developer or other person or copies of the opinion or opinions of counsel in respect to the title to the subdivision in the developer or other person or copies of the title insurance policy guaranteeing such title;

(9) copies of all forms of conveyance to be used in selling or leasing lots to purchasers;

(10) copies of instruments creating easements or other restrictions;

(11) such certified and uncertified financial statements of the developer as the Secretary may require; and

(12) such other information and such other documents and certifications as the Secretary may require as being reasonably necessary or appropriate for the protection of purchasers.

(Pub. L. 90–448, title XIV, § 1406, Aug. 1, 1968, 82 Stat. 592; Pub. L. 91–609, title IX, § 909, Dec. 31, 1970, 84 Stat. 1811.)

AMENDMENTS

1970—Par. (5). Pub. L. 91–609 required the statement of record to contain a statement of the existence of any unusual conditions relating to noise or safety which affect the subdivision and are known to the developer.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1702, 1707, 1708 of this title.

§ 1706. Effective date of statements of record and amendments thereto

(a) Thirtieth day after filing or such earlier date as determined by Secretary; consolidation of subsequent statement with earlier recording

Except as hereinafter provided, the effective date of a statement of record, or any amendment thereto, shall be the thirtieth day after the filing thereof or such earlier date as the Secretary may determine, having due regard to the public interest and the protection of purchasers. If any amendment to any such statement is filed prior to the effective date of the statement, the statement shall be deemed to have been filed when such amendment was filed; except that such an amendment filed with the consent of the Secretary, or filed pursuant to an order of the Secretary, shall be treated as being filed as of the date of the filing of the statement of record. When a developer records additional lands to be offered for disposition, he may consolidate the subsequent statement of record with any earlier recording offering subdivided land for disposition under the same promotional plan. At the time of consolidation the developer shall include in the consolidated statement of record any material changes in the information contained in the earlier statement.

(b) Incomplete or inaccurate statements of record

If it appears to the Secretary that a statement of record, or any amendment thereto, is on its face incomplete or inaccurate in any material respect, the Secretary shall so advise the developer within a reasonable time after the filing of the statement or the amendment, but prior to the date the statement or amendment would otherwise be effective. Such notification shall serve to suspend the effective date of the statement or the amendment until thirty days after the developer files such additional information as the Secretary shall require. Any developer, upon receipt of such notice, may request a hearing, and such hearing shall be held within twenty days of receipt of such request by the Secretary.

(c) Amendment of statement of record

If, at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement, the developer shall promptly file an amendment thereto. Upon receipt of any such amendment, the Secretary may, if he determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, suspend the statement of record until the amendment becomes effective.

(d) Suspension of statement of record containing untrue statement or omission to state material fact; notice and hearing; termination of order of suspension

If it appears to the Secretary at any time that a statement of record, which is in effect, includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Secretary may, after notice, and after opportunity for hearing (at a time fixed by the Secretary) within fifteen days after such notice, issue an order suspending the statement of record. When such statement has been amended in accordance with such order, the Secretary shall so declare and thereupon the order shall cease to be effective.

(e) Examination to determine issuance of order; access to records; order suspending statement of record upon failure to cooperate

The Secretary is hereby empowered to make an examination in any case to determine wheth-

er an order should issue under subsection (d) of this section. In making such examination, the Secretary or anyone designated by him shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the developer, any agents or any other person, in respect of any matter relevant to the examination. If the developer or any agents shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of an order suspending the statement of record.

(f) Service of notices

Any notice required under this section shall be sent to or served on the developer or his authorized agent.

(Pub. L. 90–448, title XIV, § 1407, Aug. 1, 1968, 82 Stat. 593.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1702, 1703, 1708 of this title.

§ 1707. Property report

(a) Contents of report

A property report relating to the lots in a subdivision shall contain such of the information contained in the statement of record, and any amendments thereto, as the Secretary may deem necessary, but need not include the documents referred to in paragraphs (7) to (11), inclusive, of section 1705 of this title. A property report shall also contain such other information as the Secretary may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of purchasers.

(b) Promotional use

The property report shall not be used for any promotional purposes before the statement of record becomes effective and then only if it is used in its entirety. No person may advertise or represent that the Secretary approves or recommends the subdivision or the sale or lease of lots therein. No portion of the property report shall be underscored, italicized, or printed in larger or bolder type than the balance of the statement unless the Secretary requires or permits it.

(Pub. L. 90–448, title XIV, § 1408, Aug. 1, 1968, 82 Stat. 594.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1702, 1703, 1708 of this title.

§ 1708. Certification of substantially equivalent State law

(a) Criteria; request by State

(1) A State shall be certified if the Secretary determines—

(A) that, when taken as a whole, the laws and regulations of the State applicable to the sale or lease of lots not exempt under section 1702 of this title require the seller or lessor of such lots to disclose information which is at least substantially equivalent to the information required to be disclosed by section 1707 of this title; and

(B) that the State's administration of such laws and regulations provides, to the maximum extent practicable, that such information is accurate.

(2) In the case of any State which is not certified under paragraph (1), such State shall be certified if the Secretary determines—

(A) that, when taken as a whole, the laws and regulations of the State applicable to the sale or lease of lots not exempt under section 1702 of this title provide sufficient protection for purchasers and lessees with respect to the matters for which information is required to be disclosed by section 1707 of this title but which is not required to be disclosed by such State's laws and regulations; and

(B) that the State's administration of such laws and regulations provides, to the maximum extent practicable, that (i) information required to be disclosed by such laws and regulations is accurate, and (ii) sufficient protection for purchasers and lessees is made available with respect to the matters for which information is not required to be disclosed.

(3) Any State requesting certification must agree to accept a property report covering land located in another certified State but offered for sale or lease in the State requesting certification if the property report has been approved by the other certified State. Such property report shall be the only property report required by the State with respect to the sale or lease of such land.

(b) Filing of State disclosure materials and related documentation for purposes of Federal statement of record and property report requirements; acceptance by Secretary

After the Secretary has certified a State under subsection (a) of this section, the Secretary shall accept for filing under sections 1704 through 1707 of this title (and declare effective as the Federal statement of record and property report which shall be used in all States in which the lots are offered for sale or lease) disclosure materials found acceptable, and any related documentation required, by State authorities in connection with the sale or lease of lots located within the State. The Secretary may accept for such filing, and declare effective as the Federal statement of record and property report, such materials and documentation found acceptable by the State in connection with the sale or lease of lots located outside that State. Nothing in this subsection shall preclude the Secretary from exercising the authority conferred by subsections (d) and (e) of section 1706 of this title.

(c) Notice to State upon failure to meet requirements and remedial action necessary for certification

If a State fails to meet the standards for certification pursuant to subsection (a) of this section, the Secretary shall notify the State in writing of the changes in State law, regulation, or administration that are needed in order to obtain certification.

(d) Periodic review of certified States' laws, regulations, and administration; withdrawal of certification

The Secretary shall periodically review the laws and regulations, and the administration thereof, of States certified under subsection (a) of this section, and may withdraw such certification upon a determination that such laws, regulations, and the administration thereof, taken as a whole, no longer meet the requirements of subsection (a) of this section.

(e) State and local governmental authorities affected; cooperation with State authorities

Nothing in this chapter may be construed to prevent or limit the authority of any State or local government to enact and enforce with regard to the sale of land any law, ordinance, or code not in conflict with this chapter. In administering this chapter, the Secretary shall cooperate with State authorities charged with the responsibility of regulating the sale or lease of lots which are subject to this chapter.

(Pub. L. 90–448, title XIV, § 1409, Aug. 1, 1968, 82 Stat. 594; Pub. L. 96–153, title IV, § 404, Dec. 21, 1979, 93 Stat. 1129.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–153 substituted provisions setting forth criteria for determinations respecting certifications of substantially equivalent State law for purposes of disclosure requirements of this chapter, for provisions relating to cooperation with State authorities in administering this chapter.

Subsec. (b). Pub. L. 96–153 substituted provisions relating to filing requirements for State disclosure materials and related documentation for purposes of Federal statement of record and property report requirements, for provisions relating to the jurisdiction of the particular State real estate commission or similar body.

Subsecs. (c) to (e). Pub. L. 96–153 added subsecs. (c) to (e).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

§ 1709. Civil liabilities

(a) Violations; relief recoverable

A purchaser or lessee may bring an action at law or in equity against a developer or agent if the sale or lease was made in violation of section 1703(a) of this title. In a suit authorized by this subsection, the court may order damages, specific performance, or such other relief as the court deems fair, just, and equitable. In determining such relief the court may take into account, but not be limited to, the following factors: the contract price of the lot or leasehold; the amount the purchaser or lessee actually paid; the cost of any improvements to the lot; the fair market value of the lot or leasehold at the time relief is determined; and the fair market value of the lot or leasehold at the time such lot was purchased or leased.

(b) Enforcement of rights by purchaser or lessee

A purchaser or lessee may bring an action at law or in equity against the seller or lessor (or successor thereof) to enforce any right under subsection (b), (c), (d), or (e) of section 1703 of this title.

(c) Amounts recoverable

The amount recoverable in a suit authorized by this section may include, in addition to matters specified in subsections (a) and (b) of this section, interest, court costs, and reasonable amounts for attorneys' fees, independent appraisers' fees, and travel to and from the lot.

(d) Contributions

Every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

(Pub. L. 90–448, title XIV, § 1410, Aug. 1, 1968, 82 Stat. 595; Pub. L. 96–153, title IV, § 405, Dec. 21, 1979, 93 Stat. 1130.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–153 substituted provisions relating to violations of section 1703(a) of this title and scope of relief authorized in suits brought against such violations, for provisions relating to suits for untrue statements or omissions to state material fact in statement of record.

Subsec. (b). Pub. L. 96–153 substituted provisions relating to enforcement of rights by the purchaser or lessee against the seller or lessor, for provisions relating to suits by the purchaser against the developer or agent.

Subsec. (c). Pub. L. 96–153 substituted provisions authorizing interest, court costs, etc., to be recoverable in suits under this section, for provisions relating to enumeration of damages recoverable in suits under this section.

Subsec. (d). Pub. L. 96–153 reenacted provisions without change.

Subsec. (e). Pub. L. 96–153 struck out subsec. (e) which set forth limitation on amount recoverable under this section.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1711 of this title.

§ 1710. Court review of orders

(a) Petition; jurisdiction; findings of Secretary; additional evidence; finality

Any person, aggrieved by an order or determination of the Secretary issued after a hearing, may obtain a review of such order or determination in the court of appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order or determination, a written petition praying that the order or determination of the Secretary be modified or be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record upon which the order or de-

termination complained of was entered, as provided in section 2112 of title 28. No objection to an order or determination of the Secretary shall be considered by the court unless such objection shall have been urged before the Secretary. The finding of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon a hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts by reason of the additional evidence so taken, and shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. Upon the filing of such petition, the jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Secretary, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) Stay of Secretary's order

The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

(Pub. L. 90–448, title XIV, § 1411, Aug. 1, 1968, 82 Stat. 595.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1717a of this title.

§ 1711. Limitation of actions

(a) Section 1703(a) violations

No action shall be maintained under section 1709 of this title with respect to—

(1) a violation of subsection (a)(1) or (a)(2)(D) of section 1703 of this title more than three years after the date of signing of the contract of sale or lease; or

(2) a violation of subsection (a)(2)(A), (a)(2)(B), or (a)(2)(C) of section 1703 of this title more than three years after discovery of the violation or after discovery should have been made by the exercise of reasonable diligence.

(b) Section 1703(b) to (e) violations

No action shall be maintained under section 1709 of this title to enforce a right created under subsection (b), (c), (d), or (e) of section 1703 of this title unless brought within three years after the signing of the contract or lease, notwithstanding delivery of a deed to a purchaser.

(Pub. L. 90–448, title XIV, § 1412, Aug. 1, 1968, 82 Stat. 596; Pub. L. 96–153, title IV, § 406, Dec. 21, 1979, 93 Stat. 1131.)

AMENDMENTS

1979—Pub. L. 96–153 designated existing provisions as subsec. (a), substituted provisions setting forth limitations relating to any action maintained under section 1709 of this title, for provisions setting forth limitations relating to any action maintained to enforce any liability created under section 1709(a) or (b)(2) of this title, and added subsec. (b).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

§ 1712. Contrary stipulations void

Any condition, stipulation, or provision binding any person acquiring any lot in a subdivision to waive compliance with any provision of this chapter or of the rules and regulations of the Secretary shall be void.

(Pub. L. 90–448, title XIV, § 1413, Aug. 1, 1968, 82 Stat. 596.)

§ 1713. Additional remedies

The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

(Pub. L. 90–448, title XIV, § 1414, Aug. 1, 1968, 82 Stat. 596.)

§ 1714. Investigations, injunctions, and prosecution of offenses

(a) Permanent or temporary injunction or restraining order; jurisdiction

Whenever it shall appear to the Secretary that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule or regulation prescribed pursuant thereto, he may, in his discretion, bring an action in any district court of the United States, or the United States District Court for the District of Columbia to enjoin such acts or practices, and, upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Secretary may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the appropriate criminal proceedings under this chapter.

(b) Investigations; publication of information concerning violations

The Secretary may, in his discretion, make such investigations as he deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or regulation prescribed pursuant thereto, and may require or permit any person to file with him a statement in writing, under oath or otherwise as the Secretary shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Secretary is authorized, in his discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which he may deem necessary or proper to aid in the enforcement of the provisions of this chapter, in the prescribing of rules

and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this chapter relates.

(c) Oaths and affirmations; subpena power

For the purpose of any such investigation, or any other proceeding under this chapter; the Secretary, or any officer designated by him, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the Secretary deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(d) Contempt; court order requiring attendance and testimony of witnesses; jurisdiction

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memorandums, and other records and documents. And such court may issue an order requiring such person to appear before the Secretary or any officer designated by the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(Pub. L. 90–448, title XIV, § 1415, Aug. 1, 1968, 82 Stat. 596; Pub. L. 91–452, title II, § 220, Oct. 15, 1970, 84 Stat. 929.)

AMENDMENTS

1970—Subsec. (e). Pub. L. 91–452 struck out subsec. (e) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–452, and for amendment not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

§ 1715. Administration

(a) Delegation of functions, duties, and powers; scope of delegations; appointment, etc., of delegates; right of appeal

The authority and responsibility for administering this chapter shall be in the Secretary of Housing and Urban Development who may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, hearing, determining, ordering, or otherwise acting as to any work, business, or matter under this chapter. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department in compliance with sections 3105, 3344, 5372, and 7521 of title 5. The Secretary shall by rule prescribe such rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(b) Hearings

All hearings shall be public and appropriate records thereof shall be kept, and any order issued after such hearing shall be based on the record made in such hearing which shall be conducted in accordance with the provisions of subchapter II of chapter 5, and chapter 7, of title 5.

(c) Procedures applicable

The Secretary shall conduct all actions with respect to rulemaking or adjudication under this chapter in accordance with the provisions of chapter 5 of title 5. Notice shall be given of any adverse action or final disposition and such notice and the entry of any order shall be accompanied by a written statement of supporting facts and legal authority.

(Pub. L. 90–448, title XIV, § 1416, Aug. 1, 1968, 82 Stat. 597; Pub. L. 95–251, § 2(a)(5), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95–454, title VIII, § 801(a)(3)(J), Oct. 13, 1978, 92 Stat. 1222; Pub. L. 96–153, title IV, § 407, Dec. 21, 1979, 93 Stat. 1131; Pub. L. 98–479, title II, § 202(d), Oct. 17, 1984, 98 Stat. 2228.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–479 substituted ''subchapter II of chapter 5, and chapter 7, of title 5'' for ''the Administrative Procedure Act''.

1979—Subsec. (c). Pub. L. 96–153 added subsec. (c).

1978—Subsec. (a). Pub. L. 95–454 substituted ''5372'' for ''5362''.

Pub. L. 95–251 substituted ''administrative law judges'' for ''hearing examiners'' wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as a note under section 5361 of Title 5, Government Organization and Employees.

§ 1716. Unlawful representations

The fact that a statement of record with respect to a subdivision has been filed or is in effect shall not be deemed a finding by the Sec-

retary that the statement of record is true and accurate on its face, or be held to mean the Secretary has in any way passed upon the merits of, or given approval to, such subdivision. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing.

(Pub. L. 90–448, title XIV, § 1417, Aug. 1, 1968, 82 Stat. 598.)

§ 1717. Penalties for violations

Any person who willfully violates any of the provisions of this chapter, or the rules and regulations prescribed pursuant thereto, or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this chapter, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both.

(Pub. L. 90–448, title XIV, § 1418, Aug. 1, 1968, 82 Stat. 598; Pub. L. 96–153, title IV, § 408, Dec. 21, 1979, 93 Stat. 1132.)

AMENDMENTS

1979—Pub. L. 96–153 substituted ''$10,000'' for ''$5,000''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 effective on effective date of regulations implementing such amendment, but in no case later than six months following Dec. 21, 1979, see section 410 of Pub. L. 96–153, set out as a note under section 1701 of this title.

§ 1717a. Civil money penalties

(a) In general

(1) Authority

Whenever any person knowingly and materially violates any of the provisions of this chapter or any rule, regulation, or order issued under this chapter, the Secretary may impose a civil money penalty on such person in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.

(2) Amount of penalty

The amount of the penalty, as determined by the Secretary, may not exceed $1,000 for each violation, except that the maximum penalty for all violations by a particular person during any 1-year period shall not exceed $1,000,000. Each violation of this chapter, or any rule, regulation, or order issued under this chapter, shall constitute a separate violation with respect to each sale or lease or offer to sell or lease. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

(b) Agency procedures

(1) Establishment

The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a) of this section. The standards and procedures—

(A) shall provide for the imposition of a penalty only after a person has been given an opportunity for a hearing on the record; and

(B) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Final orders

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (a) of this section, consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before December 15, 1989), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(4) Reviewability of imposition of penalty

The Secretary's determination or order imposing a penalty under subsection (a) of this section shall not be subject to review, except as provided in subsection (c) of this section.

(c) Judicial review of agency determination

(1) In general

After exhausting all administrative remedies established by the Secretary under subsection (b)(1) of this section, a person aggrieved by a final order of the Secretary assessing a penalty under this section may seek judicial review pursuant to section 1710 of this title.

(2) Order to pay penalty

Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(d) Action to collect penalty

If any person fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (a) of this section, after the determination or order is no longer subject to review as provided by subsections (b) and (c) of this section, the Secretary may request the Attorney General of the United States to bring an action in any appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(e) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) "Knowingly" defined

The term ''knowingly'' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(g) Regulations

The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(h) Use of penalties for administration

Civil money penalties collected under this section shall be paid to the Secretary and, upon approval in an appropriation Act, may be used by the Secretary to cover all or part of the cost of rendering services under this chapter.

(Pub. L. 90–448, title XIV, § 1418a, as added Pub. L. 101–235, title I, § 111(a), Dec. 15, 1989, 103 Stat. 2014.)

EFFECTIVE DATE

Section 111(b) of Pub. L. 101–235 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply only with respect to—

''(1) violations referred to in the amendment that occur on or after the effective date of this section [Dec. 15, 1989]; and

''(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of violation referred to in the amendment that occurs on or after such date.''

§ 1718. Rules, regulations, and orders

The Secretary shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon him elsewhere in this chapter. For the purpose of his rules and regulations, the Secretary may classify persons and matters within his jurisdiction and prescribe different requirements for different classes of persons or matters.

(Pub. L. 90–448, title XIV, § 1419, Aug. 1, 1968, 82 Stat. 598.)

§ 1719. Jurisdiction of offenses and suits

The district courts of the United States, the United States courts of any territory, and the United States District Court for the District of Columbia shall have jurisdiction of offenses and violations under this chapter and under the rules and regulations prescribed by the Secretary pursuant thereto, and concurrent with State courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter. Any such suit or action may be brought to enforce any liability or duty created by this chapter. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291 of title 28. No case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States, except where the United States or any officer or employee of the United States in his official capacity is a party. No costs shall be assessed for or against the Secretary in any proceeding under this chapter brought by or against him in the Supreme Court or such other courts.

(Pub. L. 90–448, title XIV, § 1420, Aug. 1, 1968, 82 Stat. 598; Pub. L. 100–628, title X, § 1089(b), Nov. 7, 1988, 102 Stat. 3283.)

AMENDMENTS

1988—Pub. L. 100–628 struck out ''(a)'' after section designation.

§ 1719a. Repealed. Pub. L. 104–66, title I, § 1071(c), Dec. 21, 1995, 109 Stat. 720

Section, Pub. L. 90–448, title XIV, § 1421, as added Pub. L. 96–153, title IV, § 409, Dec. 21, 1979, 93 Stat. 1132, directed Secretary to submit to Congress biennial reports on administration of this chapter and its impact upon land development industry and purchasers and lessees of undeveloped land.

§ 1720. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this chapter.

(Pub. L. 90–448, title XIV, § 1422, formerly § 1421, Aug. 1, 1968, 82 Stat. 599; renumbered § 1422, Pub. L. 96–153, title IV, § 409, Dec. 21, 1979, 93 Stat. 1132.)

CHAPTER 43—NEWSPAPER PRESERVATION

Sec.
1801. Congressional declaration of policy.
1802. Definitions.
1803. Antitrust exemptions.
(a) Joint operating arrangements entered into prior to July 24, 1970.
(b) Written consent for future joint operating arrangements.
(c) Predatory practices not exempt.
1804. Reinstatement of joint operating arrangements previously adjudged unlawful under antitrust laws.

§ 1801. Congressional declaration of policy

In the public interest of maintaining a newspaper press editorially and reportorially independent and competitive in all parts of the United States, it is hereby declared to be the public policy of the United States to preserve the publication of newspapers in any city, community, or metropolitan area where a joint operating arrangement has been heretofore entered into because of economic distress or is hereafter effected in accordance with the provisions of this chapter.

(Pub. L. 91–353, § 2, July 24, 1970, 84 Stat. 466.)

SHORT TITLE

Section 1 of Pub. L. 91–353 provided that: ''This Act [enacting this chapter] may be cited as the 'Newspaper Preservation Act'.''