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P.L. 96-153, HOUSING AND COMMUNITY DEVELOPMENT AMENDMENTS OF
1979

HOUSE REPORT NO. 96-154
MAY 15, 1979

*3 yr to enforce
right to know about
2 yr retraction*

*2346 TITLE IV-- INTERSTATE LAND SALES

BACKGROUND

ELEVEN YEARS AGO CONGRESS PASSED THE INTERSTATE LAND SALES FULL DISCLOSURE ACT IN RESPONSE TO EVIDENCE OF EXTENSIVE FRAUD IN THE LAND SALES INDUSTRY. PURCHASERS LIVING IN THE SAME STATE WHERE THE LAND WAS LOCATED OR LIVING OUT OF STATE WERE PERSUADED TO BUY LAND THEY HAD NEVER SEEN BY SOPHISTICATED SALES FORCES PROMISING THAT LAND (WHICH MIGHT BE UNDER WATER OR SUITABLE ONLY FOR GRAZING PURPOSES) WAS A GOOD INVESTMENT, SUITABLE FOR HOMESITES AND EASILY RESALEABLE. WHERE LAND IS EXEMPT FROM THE PROVISIONS OF THE INTERSTATE LAND SALES FULL DISCLOSURE ACT, THESE PROBLEMS STILL EXIST. A RECENT SERIES OF NEWSPAPER ARTICLES IN THE ARMY TIMES, DESCRIBING PROBLEMS FACED BY ARMY PERSONNEL WHO BOUGHT EXEMPT LAND, IS REMINISCENT OF THOSE STORIES HEARD BY THE CONGRESS MORE THAN ELEVEN YEARS AGO.

IN MANY RESPECTS THE REGISTRATION AND DISCLOSURE PROCEDURES REQUIRED BY THE ACT AND THE ENFORCEMENT ACTIVITIES UNDERTAKEN BY THE OFFICE OF INTERSTATE LAND SALES REGISTRATION AT HUD (OILSR) HAVE SUCCEEDED IN CHANGING INDUSTRY PRACTICES. CONSUMERS HAVE ALSO BEEN ABLE TO MAKE MORE INFORMED JUDGMENTS ABOUT THEIR PURCHASES AFTER READING THE FEDERALLY REQUIRED PROPERTY REPORT. HOWEVER, EVEN WITH REGISTERED SUBDIVISIONS, PROBLEMS CONTINUE AS A RESULT OF THE FAILURE OF DEVELOPERS TO COMPLETE PROMISED AMENITIES, THE USE OF THE INSTALLMENT SALES CONTRACT AND THE BRIEF STATUTE OF LIMITATIONS WHICH PREMATURELY CUTS OFF DEFRAUDED PURCHASERS' ABILITY TO ACHIEVE A REMEDY. IN ADDITION, SMALL BUSINESSMEN AND PERSONS WHO SELL OCCASIONAL LOTS FROM A LARGER INVENTORY OF LAND HAVE BEEN SUBJECTED TO EXTENSIVE REGULATORY REQUIREMENTS.

LAST YEAR THE SENATE VERSION OF THE HOUSING AND COMMUNITY

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DEVELOPMENT AMENDMENTS OF 1978 CONTAINED TWO PROVISIONS WHICH WOULD EXEMPT FROM THE REGISTRATION, DISCLOSURE AND FRAUD PROVISIONS OF THE ACT ALL LAND SALES THAT WERE PRIMARILY INTRASTATE IN NATURE. THE CONFERENCE COMMITTEE REJECTED THIS BROAD BRUSH APPROACH AND DIRECTED THE OFFICE OF INTERSTATE LAND SALES REGISTRATION TO CONDUCT A STUDY WHICH WOULD FOCUS ON THE PROBLEMS OF IN-STATE PURCHASERS AND SMALL DEVELOPERS. BOTH THE STUDY AND THE EXTENSIVE HEARINGS HELD BY THE SUBCOMMITTEE ON GENERAL OVERSIGHT AND RENEGOTIATION AND THE HOUSING AND COMMUNITY DEVELOPMENT SUBCOMMITTEE OF THIS COMMITTEE CLEARLY INDICATE THE NECESSITY FOR COMPREHENSIVE AMENDMENTS TO THE ACT WHICH WILL BALANCE THE CONSUMER'S NEED FOR ADEQUATE PROTECTIONS AND REMEDIES WITH THE SMALL BUSINESSMAN'S CONCERN WITH OVER-REGULATION. THE BILL *31 ADDS SEVERAL EXEMPTIONS AND A STATE CERTIFICATION PROCEDURE WHICH WILL RESULT IN FEWER SUBDIVISIONS HAVING TO BE REGISTERED WITH OILSR BUT IT ALSO PROVIDES IMPROVED REMEDIES TO ASSIST DEFRAUDED CONSUMERS.

THE COMMITTEE EXPECTS THE AGENCY TO DEVOTE GREATER ATTENTION TO THE INVESTIGATION AND AGGRESSIVE PURSUIT OF THOSE DEVELOPERS ENGAGED IN FRAUDULENT SALES PRACTICES. THE COMMITTEE BELIEVES THIS BILL HAS PROVIDED IMPROVED REGULATORY AUTHORITY WHICH WILL BE USEFUL IN ADDRESSING THESE PROBLEMS, BUT CLEARLY, ENFORCED PERSONNEL REDUCTIONS, SUCH AS OCCURRED LAST YEAR, CAN ONLY IMPAIR OILSR'S ABILITY TO PROTECT CONSUMERS **2347 WHO BUY LAND. IT IS NOT REASONABLE TO EXPECT THE AGENCY RESPONSIBLE FOR REGULATING LAND SALE THROUGHOUT THE NATION TO FUNCTION EFFECTIVELY AND AGGRESSIVELY WITH A STAFF SMALLER THAN THE NUMBER OF PEOPLE USED BY THE STATE OF CALIFORNIA TO REGULATE LAND SALES WITHIN THAT SINGLE STATE.

OILSR HAS RECENTLY PUBLISHED COMPREHENSIVE REVISIONS OF THE REGULATIONS GOVERNING THE INTERSTATE LAND SALES PROGRAM. IN MANY RESPECTS THE COMMITTEE BELIEVES THESE REGULATIONS REPRESENT AN IMPROVEMENT IN TERMS OF PROTECTING THE CONSUMER AND REDUCING THE PAPERWORK BURDEN ON DEVELOPERS. HOWEVER, THE COMMITTEE IS CONCERNED BY THE REQUIREMENT THAT EACH AND EVERY DEVELOPER COMPLETELY REVISE AND REPRINT THE PROPERTY REPORTS DELIVERED TO CONSUMERS. THIS MAY BE APPROPRIATE IN INSTANCES WHERE THE NATURE OF THE SUBDIVISION OFFERING HAS CHANGED RADICALLY AND SUBSTANTIAL AMENDMENTS TO THE REGISTRATION STATEMENT ARE NECESSARY. HOWEVER, IT SEEMS UNNECESSARY, COSTLY AND BURDENSOME TO REQUIRE NEW PROPERTY REPORTS THAT ONLY REORGANIZE INFORMATION ALREADY AVAILABLE IN EXISTING PROPERTY REPORTS. A REASONABLE ALTERNATIVE WOULD BE TO REQUIRE A DEVELOPER TO ADD A CLARIFYING ADDENDUM TO AN EXISTING PROPERTY REPORT.

EXEMPTIONS FROM REGISTRATION AND DISCLOSURE REQUIREMENTS OF THE ACT

THE BILL, AS APPROVED BY THE COMMITTEE, INSTEAD OF EXEMPTING ALL LARGE AND SMALL DEVELOPERS WHO SELL PRIMARILY TO IN-STATE RESIDENTS, WOULD FOCUS PRECISELY ON THE PROBLEMS OF SMALL BUSINESSMEN AND WOULD RELIEVE MANY FROM AN EXPENSIVE REGULATORY BURDEN. NO FEDERAL REGISTRATION STATEMENT OR PROPERTY REPORT WOULD HAVE TO BE PREPARED FOR THE SALE OF LOTS WHEN: (1) THE LOTS ARE IN A SUBDIVISION CONTAINING LESS THAN 100 LOTS; (2) FEWER THAN 12 LOTS ARE SOLD PER YEAR FROM A SUBDIVISION CONTAINING 100 OR MORE LOTS; AND (3) MORE THAN 100 LOTS ARE OFFERED FOR SALE BUT THE LOTS ARE SCATTERED IN SEPARATE SITES, EACH SITE CONTAINS FEWER THAN 10 LOTS AND EACH PURCHASER MAKES AN ON-SITE INSPECTION PRIOR TO SALE.

THE COMMITTEE BILL WOULD RAISE THE EXEMPTION FROM THE REGISTRATION AND DISCLOSURE PROVISIONS TO SUBDIVISIONS OF LESS THAN 100 LOTS, AND WOULD CLARIFY THAT ONLY NON-EXEMPT LOTS WOULD BE COUNTED TO REACH THE 100-LOT THRESHOLD. OILSR INTERPRETED PRIOR LAW TO REQUIRE A DEVELOPER WHO HAD A SUBDIVISION CONTAINING 80 LOTS, 10 OF WHICH WERE NON-EXEMPT RAW LAND, 50 OF WHICH WERE EXEMPT BECAUSE THEY HAD HOMES ON THEM, AND 20 OF WHICH WERE EXEMPT BECAUSE THEY WERE PLANNED FOR COMMERCIAL DEVELOPMENT, TO REGISTER THE 10 NON-EXEMPT UNDEVELOPED LOTS BECAUSE THE TOTAL NUMBER OF LOTS IN THE SUBDIVISION EXCEEDED THE STATUTORY *32 THRESHOLD OF 50 LOTS. THAT TYPE OF AGGREGATION OF OTHERWISE EXEMPT LOTS COULD NO LONGER OCCUR.

EXEMPTIONS ARE PROVIDED FOR SUBDIVISIONS WITH FEWER THAN 12 SALES PER YEAR AND FOR SCATTERED SITE SUBDIVISIONS HAVING LESS THAN 10 LOTS IN EACH SITE. THE COMMITTEE BELIEVES THAT THESE EXEMPTIONS ARE APPROPRIATE BECAUSE IT IS LESS LIKELY THAT AN EXTENSIVE SALES CAMPAIGN OR PROMISES OF ELABORATE FUTURE AMENITIES WILL OCCUR IN THESE SITUATIONS. OILSR'S NEW REGULATIONS INCLUDE A SCATTERED SITE EXEMPTION FOR WHEN EACH SITE CONTAINS FEWER THAN 49 LOTS EACH. THE COMMITTEE IS CONCERNED THAT A **2348 LARGE DEVELOPER COULD TOO EASILY CIRCUMVENT THE INTENT OF THE ACT BY OFFERING LAND IN NUMEROUS 49 LOT PARCELS SO IT HAS LIMITED THE SCATTERED SITE EXEMPTION TO SITES CONTAINING 10 OR FEWER LOTS.

THE COMMITTEE ALSO REFINED THE EXEMPTION ENACTED INTO LAW LAST YEAR WHICH APPLIED TO THE SALE OF FULLY DEVELOPED, SINGLE-FAMILY LOTS IN REGULATED JURISDICTIONS. THE AMENDMENTS REMOVE UNNECESSARILY STRICT REQUIREMENTS BUT RETAIN PROTECTIONS NEEDED BY PURCHASERS. THE EXEMPTION WOULD APPLY TO THE SALE OF SINGLE-FAMILY LOTS, EVEN WHEN THE LOTS ARE LOCATED IN A

MIXED-USE DEVELOPMENT. THE REVISED PROVISION WOULD ALLOW THE USE OF A DEED OR GRANT OTHER THAN A WARRANTY DEED IN JURISDICTIONS WHERE A WARRANTY DEED IS NOT COMMONLY USED AND WHERE THE ALTERNATIVE DEED INCLUDES AT LEAST TWO IMPORTANT PROTECTIONS: A WARRANTY THAT THE GRANTOR HAS NOT CONVEYED THE LOT TO ANOTHER PERSON AND THAT THE LOT IS FREE FROM ENCUMBRANCES MADE BY THE GRANTOR. IN RECOGNITION OF DIFFERENT STATE PRACTICES, THE EXEMPTION WOULD BE LONGER REQUIRE A POLICY OF TITLE INSURANCE, BUT AT THE TIME OF CLOSING A TITLE INSURANCE BINDER OR TITLE OPINION WOULD HAVE TO BE ISSUED. THE SUBDIVISION'S STREETS COULD BE MAINTAINED EITHER BY THE LOCAL GOVERNMENT OR BY A HOMEOWNERS ASSOCIATION; WHERE A HOMEOWNERS ASSOCIATION IS OBLIGATED TO MAINTAIN THE ROADS, THE SELLER WOULD HAVE TO PROVIDE TO THE PURCHASER OR LESSEE PRIOR TO SIGNING THE CONTRACT OF SALE OR LEASE, A GOOD FAITH WRITTEN ESTIMATE OF THE COST OF CARRYING OUT SUCH AN OBLIGATION OVER THE FIRST TEN YEARS. THIS PROVISION WAS AMENDED TO RECOGNIZE THAT MANY HIGH QUALITY SUBDIVISIONS CONTAIN PROVIDE ROADS BUILT TO STANDARDS APPLICABLE TO LOCAL PUBLIC STREETS AND HIGHWAYS.

THE REQUIREMENT THAT FUTURE COSTS BE DISCLOSED IN INTENDED TO ASSURE THAT PURCHASERS BE ADVISED OF THE EXTENT OF THE OBLIGATION THE HOMEOWNERS ASSOCIATION WOULD HAVE FOR MAINTENANCE AND FOR ANY COSTS, INCLUDING BALLOON PAYMENTS RELATED TO THE CONSTRUCTION OF THE ROAD. WHILE IT WOULD BE IMPOSSIBLE FOR A DEVELOPER TO PROJECT THE EXACT COST OF MAINTAINING THE ROADS OVER 10 YEARS, A GOOD FAITH WRITTEN ESTIMATE SHOULD TAKE INTO ACCOUNT FACTS AND INFORMATION AS THEY EXIST AT THE TIME THE ESTIMATE IS MADE INCLUDING THE LIKELIHOOD OF NEEDED REPAIR GIVEN THE QUALITY OF THE ROAD CONSTRUCTED, LOCAL WEATHER AND TRAFFIC CONDITIONS AND REASONABLE PROJECTIONS REGARDING THE IMPACT OF INFLATION. FINALLY, THE AMENDMENT WOULD RESTRICT THE DEVELOPER'S USE OF THE TELEPHONE OR MAIL FOR PURPOSES OF OFFERING PROMOTIONAL GIFTS, TRIPS OR DINNERS, BUT NOT FOR OTHER BUSINESS PURPOSES. A NEW EXEMPTION HAS BEEN ADDED WHICH WOULD APPLY TO THE SALE OR LEASE OF LOTS WHERE ONE SELLER PROVIDES THE LOT AND A SECOND SELLER PROVIDES A MOBILE HOME WHICH WILL BE DELIVERED AND ERECTED UPON THE LOT WITHIN TWO YEARS OF SIGNING THE CONTRACT OF SALE OR LEASE. TO QUALIFY FOR THIS EXEMPTION, THE SELLERS MUST DEPOSIT ALL MONEY RECEIVED FROM THE PURCHASER IN INDEPENDENTLY-CONTROLLED ESCROW ACCOUNTS UNTIL THE TRANSACTIONS *33 ARE COMPLETED AND THE MOBILE HOME IS ERECTED UPON THE LOT. THOSE FUNDS WOULD BE RELEASED TO THE PURCHASER IF THE TRANSACTION IS NOT COMPLETED WITHIN TWO YEARS. IN ADDITION, THE LOT MUST CONFORM TO LOCAL CODES FOR MOBILE HOME

SUBDIVISIONS AND POTABLE WATER, SANITARY SEWAGE DISPOSAL AND ELECTRICITY MUST BE PROVIDED TO THE MOBILE HOME. THE PURCHASER MUST RECEIVE MARKETABLE TITLE AND WHERE COMMON FACILITIES, SUCH AS CLUBHOUSES, SWIMMING POOLS OR TENNIS COURTS ARE TO BE PROVIDED, THEY MUST BE COMPLETED OR FULLY FUNDED BY THE TIME THE HOME IS TO BE DELIVERED.

**2349 WHILE THE BILL LESSENS THE REGULATORY BURDEN BY EXEMPTING SEVERAL TYPES OF LAND SALES, THE BILL WOULD DELETE TWO EXEMPTIONS FOUND IN EXISTING LAW AND WOULD MODIFY A THIRD. ONE OF THE MAJOR LAND SALES PROBLEMS IS THE FREQUENCY OF BANKRUPTCY BY DEVELOPERS AND THEIR SUBSEQUENT FAILURE TO COMPLETE PROMISED AMENITIES. SINCE A COURT'S PRIMARY RESPONSIBILITY, WHETHER IN BANKRUPTCY OR PROBATE, LIES IN CONSERVING THE ESTATE AND SATISFYING CREDITORS, NOT WITH PROTECTING OR INFORMING PROSPECTIVE PURCHASERS, THE EXEMPTION FOR SALES PURSUANT TO COURT ORDER HAS BEEN DELETED.

IN ADDITION, LAST YEAR HUD RECOMMENDED DELETING THE EXEMPTION FOR SALES THAT OCCURRED AFTER AN ON-SITE INSPECTION BECAUSE THE INSPECTION DID NOT ASSURE THAT PURCHASERS WOULD BE ADEQUATELY INFORMED OF THE POTENTIAL PROBLEMS INVOLVED IN BUYING THAT LAND-- SUCH AS THE AVAILABILITY OF POTABLE WATER, THE EXISTENCE OF POTENTIAL EARTHQUAKE HAZARDS OR THE COST OF BRINGING ELECTRICITY OR TELEPHONE SERVICE TO EACH LOT. THE REPORT OILSR RECENTLY SUBMITTED TO CONGRESS CONFIRMS THAT AT LEAST ONE-THIRD OF ALL PERSONS COMPLAINING TO OILSR REGARDING LAND SALES PROBLEMS HAD MADE AN ON-SITE INSPECTION PRIOR TO PURCHASE OR LEASE.

OILSR HAS ALSO FOUND THAT MANY DEVELOPERS, PARTICULARLY IN THE WEST, ARE SUBDIVIDING LAND INTO LOTS WHICH ARE MORE THAN FIVE ACRES IN SIZE AND SELLING THEM FOR APPROXIMATELY THE SAME AMOUNT AS SMALLER LOTS SELL FOR IN OTHER PARTS OF THE COUNTRY. THE PRICE IS LOW ENOUGH TO BE APPEALING TO THE UNSOPHISTICATED BUYER, SALES ABUSES EXIST AND PROTECTION IS NEEDED. FOR THESE REASONS, THE EXEMPTION FOR THE SALE OF LOTS OF GREATER THAN 5 ACRES IS AMENDED TO EXEMPT SALES OF LOTS WHERE AT LEAST 90 PERCENT ARE 40 ACRES OR MORE AND ANY REMAINING LOTS ARE NO LESS THAN 30 ACRES.

STATE CERTIFICATION PROCEDURES

THE BILL ALSO RECOGNIZES THE BURDEN DUPLICATIVE STATE AND FEDERAL REGISTRATION AND DISCLOSURE REQUIREMENTS HAVE IMPOSED ON MANY DEVELOPERS AND PROVIDES THAT WHERE THE SECRETARY FINDS ADEQUATE STATE LAWS, COMPLIANCE WITH STATE PROCEDURES WILL BE ACCEPTABLE FOR PURPOSES OF FEDERAL REGISTRATION AND DISCLOSURE REQUIREMENTS. WHILE 23 STATES PRESENTLY ACCEPT THE HUD PROPERTY REPORT FOR STATE DISCLOSURE

PURPOSES, SEVERAL STATES IMPOSE THEIR OWN REGISTRATION AND DISCLOSURE REQUIREMENTS. OTHERS HAVE STRICT DEVELOPMENT STANDARDS THAT PROVIDE CONSUMERS WITH GREATER PROTECTION THAN DISCLOSURE WOULD. IN THOSE STATES, A DEVELOPER MUST PRESENTLY COMPLY WITH TWO SETS OF PROCEDURES-- ONE FOR THE STATE AND A SEPARATE ONE FOR OILSR. EVEN IN THE STATE OF CALIFORNIA, WHICH IS OFTEN CITED AS HAVING ONE OF THE MOST AGGRESSIVE AND SUCCESSFUL STATE PROGRAMS DESIGNED TO REGULATE AND IMPROVE THE LAND SALES INDUSTRY, OILSR HAS INTERPRETED THE PRESENT LAW TO REQUIRE *34 DEVELOPERS TO SUBMIT EXTENSIVE INFORMATION TO OILSR BEYOND THAT REQUIRED BY THE STATE OF CALIFORNIA. IN ADDITION, OILSR REQUIRES THE DEVELOPER TO REVEAL TO PURCHASERS INFORMATION THAT IS REDUNDANT GIVEN THE THOROUGHNESS OF THE SUBSTANTIVE DEVELOPMENT STANDARDS IMPOSED BY THE STATE.

THE BILL PROPOSES A PROCEDURE WHEREBY HUD WILL CERTIFY STATES WHOSE DISCLOSURE REQUIREMENTS, TAKEN AS A WHOLE, MEET OR EXCEED THE FEDERAL REQUIREMENTS. WHERE A STATE DOES NOT REQUIRE AS MUCH DISCLOSURE **2350 AS THE FEDERAL LAW BUT HAS DEVELOPMENT STANDARDS THAT PRECLUDE THE NECESSITY FOR DISCLOSING THAT INFORMATION TO CONSUMERS, A STATE MAY ALSO BE CERTIFIED. IN REVIEWING WHETHER A STATE HAS THE ADMINISTRATIVE CAPACITY TO REVIEW THE ACCURACY OF INFORMATION REQUIRED TO BE DISCLOSED UNDER STATE LAW, THE COMMITTEE IS CONCERNED THAT STATES NOT BE HELD TO A HIGHER STANDARD THAN THAT APPLIED TO OILSR'S OWN STAFF. ONCE CERTIFICATION OCCURS, A DEVELOPER SELLING OR LEASING LOTS IN THAT STATE WOULD ONLY HAVE TO COMPLY WITH THE STATE DISCLOSURE AND REGISTRATION REQUIREMENTS AND WOULD FORWARD COPIES OF THE DISCLOSURE STATEMENT AND SUPPORTING DOCUMENTATION TO OILSR. IF A STATE IS NOT CERTIFIED UNDER THIS PROGRAM, THE COMMITTEE EXPECTS THE SECRETARY TO INFORM THE STATE IN WRITING OF THE REASONS FOR THE REJECTION AND TO EXPLAIN WHAT CHANGES IN STATE LAW OR IN THE ADMINISTRATION OF THE PROGRAM WOULD BE NECESSARY FOR CERTIFICATION TO BE GRANTED. THIS PROCEDURE IS DESIGNED TO RECOGNIZE THE AGGRESSIVE ROLE PLAYED BY SEVERAL STATES AND TO ENCOURAGE OTHER STATES TO ASSUME GREATER RESPONSIBILITY FOR REGULATING THE SALE OF LAND. THE COMMITTEE BELIEVES THAT WHERE STATES HAVE NOT DEVELOPED STRONG LAWS WHICH ASSURE FULL DISCLOSURE ABOUT THE LAND IN QUESTION, CONSUMERS SHOULD NOT BE ABANDONED BY REMOVING THE PROTECTIONS AND REMEDIES PROVIDED BY THE EXISTING FEDERAL STATUTE.

FRAUD AND MISREPRESENTATION

SEVERAL AMENDMENTS EXTEND THE PROHIBITIONS AGAINST FRAUDULENT ACTIVITY AND INCREASE THE REMEDIES AVAILABLE TO

CONSUMERS WHO ARE DEFRAUDED, WITH THE EXCEPTION OF SEVEN TYPES OF SALES THAT REMAIN TOTALLY EXEMPT FROM THE ACT AS UNDER EXISTING LAW (LAND ON WHICH THERE IS, OR WITHIN TWO YEARS WILL BE, A BUILDING; INDEBTEDNESS SECURED BY A MORTGAGE; REIT SECURITIES; LAND SOLD BY A GOVERNMENT AGENCY; LAND SOLD TO PERSONS IN THE CONSTRUCTION BUSINESS; CEMETERY LOTS; AND LAND ZONED FOR INDUSTRIAL OR COMMERCIAL DEVELOPMENT), IT WILL BE UNLAWFUL TO USE FRAUDULENT MEANS TO SELL ALL OTHER TYPES OF LAND, EVEN LAND EXEMPT FROM THE REGISTRATION AND DISCLOSURE REQUIREMENTS OF THE ACT. BY EXTENDING THIS PROVISION TO SALES FROM SUBDIVISIONS OF LESS THAN 50 LOTS, THE COMMITTEE IS RECOGNIZING A RESPONSIBILITY TO PROVIDE CONSUMERS WITH A FEDERAL REMEDY FOR FRAUD WHETHER THE FRAUD OCCURS IN THE SALE OF A LOT OWNED BY A LARGE CORPORATE DEVELOPER OR A SMALL LOCAL DEVELOPER.

THE DEFINITION OF A PROHIBITED FRAUDULENT ACTIVITY IS AMENDED TO CONFORM MORE CLOSELY TO THE LANGUAGE FOUND IN THE SECURITIES LAWS. INSTEAD OF THE PROHIBITION AGAINST OBTAINING MONEY BY MEANS OF A MATERIAL MISREPRESENTATION WITH RESPECT TO ANY INFORMATION INCLUDED IN THE PROPERTY REPORT OR STATEMENT OF RECORD, IT WOULD BE UNLAWFUL TO SELL OR LEASE ANY LOT WHERE ANY PART OF THE STATEMENT OF RECORD OR PROPERTY REPORT CONTAINS AN UNTRUE STATEMENT OF MATERIAL FACT OR *35 OMITTS TO STATE A MATERIAL FACT REQUIRED BY THE ACT OR BY REGULATIONS TO BE STATED THEREIN. INSTEAD OF THE PROHIBITION AGAINST OBTAINING MONEY BY MEANS OF A MATERIAL REPRESENTATION WITH RESPECT TO ANY OTHER INFORMATION PERTINENT TO THE LOT OR SUBDIVISION AND UPON WHICH THE PURCHASER RELIES, IT WOULD BE UNLAWFUL IN SELLING OR LEASING, OR OFFERING TO SELL OR LEASE, ANY LOT 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 ***2351 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. WHILE THE PURCHASER'S ACTUAL RELIANCE WOULD NO LONGER HAVE TO BE AN ELEMENT OF PROOF, IT IS CLEAR THAT IN PROVING THAT AN UNTRUE OR OMITTED FACT WAS MATERIAL, IT MUST BE ESTABLISHED THAT THE FACT WAS IMPORTANT ENOUGH THAT A REASONABLE PERSON WOULD HAVE RELIED UPON IT IN MAKING A DECISION TO PURCHASE OR LEASE THAT PARTICULAR PIECE OF LAND.

THE LANGUAGE 'WITHIN THE CONTEXT OF THE OVERALL OFFER AND SALE OR LEASE' WAS INCLUDED TO MAKE CLEAR THAT A DEVELOPER IS NOT REQUIRED TO SAY EVERYTHING ABOUT THE SUBDIVISION IN EACH DISCRETE CONTACT WITH THE PURCHASER, BUT RATHER THAT WHAT

THE DEVELOPER DOES CHOOSE TO SAY MUST NOT OMIT IMPORTANT FACTS THAT WOULD BE NEEDED SO THAT THE PURCHASER WOULD NOT BE MISLED. WHERE THE LACK OF A DISCLOSURE MAY CREATE A PREDISPOSITION TO PURCHASE, AND DUE TO THE NATURE OF ANY SUBSEQUENT INFORMATION, OR THE LACK THEREOF, THIS PREDISPOSITION COULD NOT BE REASONABLY EXPECTED TO BE COUNTERVAILED, THEN THE OMISSION SHOULD BE CONSIDERED MISLEADING. CLEARLY, WHEN A SELLER DRAWS ATTENTION TO INFORMATION WHICH IS FAVORABLE TO THE SALE OF THE LOT AND DELAYS PROVIDING CONTRADICTORY INFORMATION, A PREDISPOSITION IS CREATED. ANY SUBSEQUENT INFORMATION OF A COUNTERVAILING NATURE MUST BE HIGHLIGHTED; IT IS NOT SUFFICIENT SIMPLY TO DELIVER THE INFORMATION TO THE PURCHASER. THE SELLER BY OMISSION HAS TAKEN ON AN AFFIRMATIVE OBLIGATION TO MAKE THE STATEMENTS CLEAR AND UNAMBIGUOUS TO THE PURCHASER. THIS IS PARTICULARLY IMPORTANT WHERE THE PRIMARY CONTACT BETWEEN THE PURCHASER AND THE SELLER IS THROUGH ADVERTISING OR THE MAILS. IN THIS CIRCUMSTANCE AN ADVERTISEMENT FOR 'LAKESIDE PROPERTY' WHICH OMITTS TO STATE THAT THE LAKE WAS DRY FOR SIX MONTHS OF THE YEAR OR AN ADVERTISEMENT FOR 'HOMESITES' WHICH FAILS TO MENTION THAT THE LAND WAS INAPPROPRIATE FOR SEPTIC TANKS AND A MUNICIPAL SEWAGE SYSTEM WAS UNAVAILABLE WOULD BE MISLEADING.

THE BILL WOULD ALSO PROHIBIT THE USE OF ADVERTISING AND PROMOTIONAL MATERIAL WHICH IS INCONSISTENT WITH INFORMATION REQUIRED TO BE DISCLOSED IN THE PROPERTY REPORT. FOR EXAMPLE, IT WOULD BE CONTRADICTORY TO ADVERTISE WOODED LOTS OR TO PICTURE WOODED HILLSIDES WHEN INFORMATION IN THE PROPERTY REPORT REVEALS THAT TIMBER RIGHTS TO THE LAND ARE UNDER OPTION OR HAVE BEEN SOLD, AND THAT THE EXERCISE OF SUCH RIGHTS WOULD DENUDE THE PROPERTY. THIS PROVISION CLEARLY DOES NOT MEAN THAT EVERYTHING INCLUDED IN THE PROPERTY REPORT MUST BE REVEALED IN THE ADVERTISING; HOWEVER, NOTHING IN THE ADVERTISING COULD CONTRADICT INFORMATION REVEALED IN THE PROPERTY REPORT.

THIS PROVISION DOES NOT GIVE OILSR THE AUTHORITY TO REQUIRE THE SUBMISSION FOR APPROVAL OF ADVERTISING MATERIAL PRIOR TO ITS USE. HOWEVER, THIS MATERIAL COULD BE REQUIRED TO BE SUBMITTED AS PART OF AN INVESTIGATION OF ALLEGED VIOLATIONS OF THE ACT. THE AGENCY *36 MAY ALSO ISSUE GUIDELINES REGARDING ADVERTISING THAT WOULD BE CONSIDERED CONTRADICTORY OR INCONSISTENT WITH THE PROPERTY REPORT OR WOULD BE CONSIDERED MISLEADING AND FRAUDULENT.

THE BILL WOULD ALSO REQUIRE THAT WHENEVER A DEVELOPER REPRESENTS ORALLY OR IN WRITING THAT ROADS, SEWERS (INCLUDING SEPTIC SYSTEMS), WATER OR ELECTRIC SERVICE, OR RECREATIONAL

AMENITIES WILL BE PROVIDED OR COMPLETED BY THE DEVELOPER, THE CONTRACT OF SALE OR LEASE MUST **2352 STIPULATE THAT SUCH SERVICES OR AMENITIES WILL BE PROVIDED OR COMPLETED. THIS PROVISION WAS INTENDED TO ASSURE THAT WHEN DEVELOPERS OR THEIR SALES AGENTS MAKE SEDUCTIVE PROMISES THROUGH ORAL OR WRITTEN REPRESENTATIONS OR ADVERTISEMENTS TO INDUCE INDIVIDUALS TO BUY LAND, THE INDIVIDUALS HAVE A CONTRACTUAL BASIS FOR ASSURING THE SERVICES OR AMENITIES ARE COMPLETED WITHIN A REASONABLE TIME. IT PROVIDES A STATUTORY BASIS FOR SUIT IF THE CONTRACT FAILS TO REFLECT THE REPRESENTATIONS THAT WERE MADE.

ADDITIONAL CONSUMER REMEDIES AND STATUTE OF LIMITATIONS

SINCE THE COMMITTEE BELIEVES A FULLY INFORMED CONSUMER IS ESSENTIAL FOR MINIMIZING FRAUDULENT SALES OR RECKLESS INVESTMENTS, SEVERAL PROVISIONS REGARDING THE AMOUNT OF TIME WHICH A CONSUMER HAS TO REVIEW THE PROPERTY REPORT AND TO CONSIDER OR RECONSIDER THE TRANSACTION HAVE BEEN AMENDED. EXISTING LAW GIVES THE PURCHASER OR LESSEE TWO YEARS TO VOID A CONTRACT OF SALE OR LEASE WHERE A PROPERTY REPORT HAS NOT BEEN GIVEN IN ADVANCE OR AT THE TIME OF SIGNING THE LEASE OR CONTRACT OF SALE. THIS BILL WOULD REQUIRE THAT THE PROPERTY REPORT ALWAYS BE GIVEN TO THE PURCHASER IN ADVANCE OF (NOT AT THE TIME OF) SIGNING THE CONTRACT OR AGREEMENT AND WHILE RETAINING THE TWO-YEAR REVOCATION PERIOD FOR FAILURE TO PROVIDE THE PROPERTY REPORT, THAT RIGHT MUST BE CLEARLY INDICATED IN THE CONTRACT OR AGREEMENT AND A PURCHASER OR LESSEE HAS A THIRD YEAR IN WHICH TO SUE TO ENFORCE THE RIGHT. BY REQUIRING THAT THE PROPERTY REPORT BE FURNISHED IN ADVANCE OF SIGNING, THE COMMITTEE HOPES TO ASSURE THAT THE PROSPECTIVE PURCHASER HAVE A REASONABLE OPPORTUNITY TO REVIEW AND BENEFIT FROM THE INFORMATION CONTAINED THEREIN. IF THE PROSPECTIVE PURCHASER DOES NOT HAVE THIS OPPORTUNITY, CLEARLY THE REPORT IS OF LESS VALUE IN EVALUATING THE ADVANTAGE AND DISADVANTAGE OF THE SALE OF LEASE. IF THE REPORT IS PROVIDED AT THE OUTSET OF, OR VERY EARLY IN THE SALE, LEASE, OR OFFERING PROCESS, THIS WOULD BE REASONABLE. IF THE REPORT WERE PROVIDED, A FEW SECONDS BEFORE OR VIRTUALLY SIMULTANEOUSLY WITH THE CONTRACT DOCUMENTS TO BE EXECUTED, THIS WOULD NOT MEET THE REQUIREMENTS OF THE ACT. DEVELOPERS AND THEIR AGENTS SHOULD BE CLEARLY AWARE OF THE ROLE THE COMMITTEE INTENDS THE REPORT TO PLAY AND THE IMPORTANCE AND VALUE WHICH THE COMMITTEE PLACES ON THE PROPERTY REPORT IN DESIGNING THEIR SALES PRACTICES AND PROCEDURES.

EXISTING LAW ALSO PROVIDES A THREE-DAY REVOCATION PERIOD WHERE A PROPERTY REPORT HAS NOT BEEN PROVIDED AT LEASE FORTY-



EIGHT HOURS PRIOR TO SIGNING THE CONTRACT OR AGREEMENT. THIS BILL EXTENDS THAT REVOCATION RIGHT TO AN ABSOLUTE TEN-DAY REVOCATION RIGHT, UNRELATED TO THE TIME A PROPERTY REPORT IS DELIVERED. IN ORDER TO ASSURE THAT ALL STATE LAWS PROVIDE AT LEAST A TEN-DAY MINIMUM REVOCATION PERIOD, NO LESSER FEDERAL OR STATE REVOCATION PERIOD SHALL BE IMPOSED EXCEPT A STATE MAY PERMIT A LONGER PERIOD. MANY LAND SALES OCCUR WHEN PURCHASERS ARE *37 VACATIONING OR AFTER AGGRESSIVE SALES CAMPAIGNS DIRECTED AT HAVING THE PURCHASER SIGN THE SALES OR LEASE AGREEMENT ON THE SAME DAY THE OFFER IS MADE. THREE DAYS IS TOO SHORT A PERIOD FOR MANY CONSUMERS TO THOROUGHLY REVIEW THE PROPERTY REPORT OR TO RECEIVE INDEPENDENT PROFESSIONAL ADVICE ON THE WISDOM OF THE TRANSACTION. TEN DAYS IS A **2353 MORE REASONABLE PERIOD WHICH WOULD NOT PLACE AN UNFAIR BURDEN ON DEVELOPERS.

THE COMMITTEE IS CONCERNED THAT ONE OF THE MOST COMMON METHODS USED FOR FINANCING THESE PURCHASES, THE INSTALLMENT SALES CONTRACT, MAY PROVIDE CONSUMERS TOO LITTLE PROTECTION FOR THEIR INVESTMENT.

UNDER THE TRADITIONAL INSTALLMENT CONTRACT, THE PURCHASER AGREES TO PAY FOR A LOT OVER A PERIOD OF YEARS, USUALLY SEVEN TO TEN, THROUGH MONTHLY INSTALLMENTS. THERE IS NO TRANSFER OF TITLE TO THE PURCHASER UNTIL PAYMENTS ARE COMPLETED AND, IN MANY CASES, PURCHASERS WHO FINISH PAYING DISCOVER THAT THE DEVELOPER IS UNABLE TO DELIVER CLEAR TITLE. MOST INSTALLMENT CONTRACTS CONTAIN A 'LIQUIDATED DAMAGES' CLAUSE WHICH PROVIDES THAT IN THE CASE OF DEFAULT BY THE PURCHASER, ALL MONEY PAID BY THE PURCHASER IS RETAINED BY THE DEVELOPER. THUS, THE BUYER BUILDS NO EQUITY PROPORTIONAL TO PAYMENT AS WOULD OCCUR UNDER A TRADITIONAL MORTGAGE METHOD OF FINANCING. IN SOME CASES, PEOPLE HAVE PAID OVER 90 PERCENT OF WHAT THEY OWE AND THEY HAVE BEEN LEFT WITH NOTHING WHEN THEY CANNOT CONTINUE TO PAY. ANOTHER PROBLEM WHICH RESULTS FROM THE INSTALLMENT CONTRACT METHOD OF FINANCING IS THAT DEVELOPERS OFTEN SELL THE INSTALLMENT CONTRACTS TO THIRD PARTIES. THE PURCHASER THEN OWES HIS PAYMENT TO THE THIRD PARTY, BUT, BECAUSE OF HOLDER IN DUE COURSE LAWS, THE PURCHASERS CANNOT FORCE THE THIRD PARTY TO FULFILL THE OBLIGATIONS OF THE DEVELOPER. IN ADDITION TO THESE PROBLEMS, BECAUSE THE PURCHASER DOES NOT GET TITLE UNTIL HE HAS COMPLETED PAYMENTS, HE MAY NOT HAVE USE OF THE PROPERTY FOR SEVEN TO TEN YEARS AFTER HE SIGNS THE CONTRACT OF SALE.

THE COMMITTEE BILL ALLOWS DEVELOPERS TO CONTINUE TO USE A FORM OF INSTALLMENT CONTRACT, BUT PROVIDES A TWO-YEAR RIGHT OF REVOCATION AT THE OPTION OF THE PURCHASER OR LESSEE IF THE CONTRACT DOES NOT PROVIDE CERTAIN PROTECTIONS FOR THE BUYER.

IT IS ANTICIPATED THAT THIS WILL SEVERELY RESTRICT THE USE OF LIQUIDATED DAMAGES CLAUSES AND THUS ALLOW PURCHASERS TO MORE ASSUREDLY BUILD EQUITY. IT SHOULD ALLOW THE BUYER TIME TO CURE BREACHES CAUSED BY LATE PAYMENTS AND ASSURE THAT CONTRACTS OR AGREEMENTS CONTAIN LEGALLY SUFFICIENT AND RECORDABLE DESCRIPTION OF THE BOUNDARIES OF THE LOT SO THAT PURCHASERS MAY PUBLICLY RECORD AND THUS PROTECT THEIR INTERESTS IN THEIR LOTS.

AN ADDITIONAL PROBLEM WITH THE EXISTING LAW RESULTED FROM THE COMBINATION OF THE USE OF INSTALLMENT CONTRACTS AND A SHORT THREE-YEAR STATUTE OF LIMITATIONS ON CIVIL SUITS. MANY LOT BUYERS PURCHASE THROUGH SEVEN- TO TEN-YEAR INSTALLMENT CONTRACTS. SINCE THE DEVELOPER IS NOT REQUIRED TO DELIVER TITLE UNTIL THE END OF THAT PERIOD, MANY DEFECTS IN THE PROPERTY OR THE TITLE ARE NOT DISCOVERED UNTIL LONG AFTER THE THREE-YEAR STATUTE OF LIMITATIONS IN THE PRESENT LAW HAS EXPIRED. THIS BILL EXTENDS THE STATUTE OF LIMITATIONS FOR MANY CAUSES OF ACTION TO THREE YEARS AFTER THE LAST PAYMENT HAS BEEN MADE UPON THE SALES CONTRACT.

THE FOREGOING AMENDMENTS WOULD NOT APPLY TO SALES TRANSACTIONS WHERE A PURCHASER, WITHIN SIX MONTHS OF SIGNING THE SALES CONTRACT, RECEIVES A WARRANTY DEED, OR WHERE A WARRANTY DEED IS NOT COMMONLY *38 USED, A DEED OR GRANT THAT WARRANTS THE GRANTOR HAS NOT CONVEYED THE LOT TO ANOTHER PERSON AND THE LOT IS FREE FROM ENCUMBRANCES MADE BY OR THROUGH THE GRANTOR.

STATUTE OF LIMITATIONS PROBLEMS HAVE NOT BEEN LIMITED TO PURCHASERS PAYING INSTALLMENT CONTRACTS. MANY PURCHASERS BUY LAND SIGHT UNSEEN, **2354 HOLD IT FOR MANY YEARS AS AN INVESTMENT AND NEVER VISIT THE PROPERTY UNTIL THEY PLAN TO RETIRE. ONLY WHEN THEY VISIT THE PROPERTY DO THEY DISCOVER THE PROMISED ROADS HAVE NOT BEEN PROVIDED OR MAINTAINED OR THE CLUBHOUSE HAS NOT BEEN BUILT OR THE LAND IS UNINHABITABLE BECAUSE WATER IS UNAVAILABLE OR THE LAND IS NOT SUITABLE FOR SEPTIC TANKS. MANY SUCH CONSUMERS HAVE NO REMEDY BECAUSE THE CURRENT STATUTE OF LIMITATIONS IN SECTION 1412 IS UNDULY SHORT. IN FACT, OVER 63 PERCENT OF THE PERSONS WHO COMPLAINED TO OILSR ABOUT LAND SALES PROBLEMS DURING A NINE-MONTH PERIOD IN 1978 HAD NO REMEDY BECAUSE THE STATUTE OF LIMITATIONS HAD EXPIRED. AT PRESENT, ACTIONS FOR LIABILITIES CREATED BY SECTION 1410(A) OR (B)(2) (WHICH BASICALLY INVOLVE UNTRUE STATEMENTS OR OMISSIONS OF MATERIAL FACT IN THE STATEMENT OF RECORD OR PROPERTY REPORT) MUST BE BROUGHT WITHIN ONE YEAR FROM DISCOVERY OR FROM WHEN DISCOVERY SHOULD HAVE BEEN MADE. ACTIONS FOR LIABILITIES CREATED BY SECTION 1410(B)(1) (WHICH BASICALLY INVOLVES THE SALE OF UNREGISTERED PROPERTY OR SALE BY FRAUD OR

- 5** Am. Jur. 2d Condominiums and Co-operative Apartments s 16, s 16. Full disclosure requirements (2007) **HN: 1 (So.2d)**
- 6** CJS Estates s 209, s 209. Rescission or cancellation of contract (2007)

Westlaw

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Rule 61B-24.001, F.A.C.

Fla. Admin. Code Ann. r. 61B-24.001

**FLORIDA ADMINISTRATIVE CODE
 ANNOTATED
 TITLE 61. DEPARTMENT OF BUSINESS
 AND PROFESSIONAL REGULATION
 SUBTITLE 61B. DIVISION OF FLORIDA
 LAND SALES, CONDOMINIUMS AND
 MOBILE HOMES
 CHAPTER 61B-24. CREATION OF
 CONDOMINIUM BY CONVERSION**

7D-24.001.

Rule 61B-24.001, F.A.C., 61 FL ADC 61B-24.001

61 FL ADC 61B-24.001
 END OF DOCUMENT

Current with rules included in the March 9, 2007
 issue of the Florida Administrative Weekly;
 see scope for specific rules in effect.

61B-24.001. Definitions; Creation of Condominium
 by Conversion.

(1) "Tenant" means a party to a rental agreement in
 residential occupancy of a place rented for the
 purpose of maintaining a place of residence. The
 term "tenant" excludes a party to a rental agreement
 or other person in transient occupancy.

(2) "Transient occupancy" means occupancy when
 it is the intention of the parties that the occupancy
 will be temporary. There is a rebuttable
 presumption that, when the dwelling unit occupied
 is the sole residence of the guest, the occupancy is
 non-transient. There is a rebuttable presumption
 that, when the dwelling unit occupied is not the sole
 residence of the guest, the occupancy is transient.

(3) Section 718.402, Florida Statutes, states that a
 developer creating a condominium by conversion
 must comply with Parts I and VI of the
 Condominium Act in order to create a
 condominium. The creation of the real property
 condominium ownership form is achieved when the
 developer complies with Part I of the Condominium
 Act.

Specific Authority 718.501(1)(f) FS. Law
 Implemented 718.104, 718.402, 718.606, 718.608
 FS. History--New 7-2-81, Formerly 7D-24.01,

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2 Cigal v. Leader Development Corp., 557 N.E.2d 1119, 1122, 408 Mass. 212, 216 (Mass. Aug 06, 1990) (NO. 5318) **HN: 1 (So.2d)**

Need for Librarians

H.R. CONF. REP. 96-706

P.L. 96-153, HOUSING AND COMMUNITY DEVELOPMENT AMENDMENTS OF
1979

HOUSE CONFERENCE REPORT NO. 96-706

DEC. 13, 1979

TITLE IV-- INTERSTATE LAND SALES

DEFINITIONS

THE HOUSE BILL CONTAINED A PROVISION TO (1) AMEND THE DEFINITION OF 'SUBDIVISION' SO THAT IT IS NOT RESTRICTED TO LAND DIVIDED INTO 50 OR MORE LOTS BUT APPLIES TO ALL LAND DIVIDED OR PROPOSED TO BE DIVIDED INTO LOTS, AND (2) CLARIFY THE TERM 'COMMON PROMOTIONAL PLAN' AS IT APPLIES TO A SUBDIVISION TO MEAN A PLAN UNDERTAKEN BY A SINGLE DEVELOPER OR A GROUP OF DEVELOPERS ACTING TOGETHER TO OFFER LOTS FOR SALE OR LEASE. THE SENATE AMENDMENT DID NOT CONTAIN A SIMILAR PROVISION. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION. THE CONFEREES BELIEVE THAT A COMMON PROMOTIONAL PLAN DOES NOT EXIST WHEN THE SOLE CONNECTION BETWEEN TWO OR MORE PARCELS OF LAND IS THAT THEY SHARE A COMMON EQUITY INVESTOR.

EXISTING EXEMPTIONS

THE HOUSE BILL DELETED TWO EXEMPTIONS FROM THE REGISTRATION, DISCLOSURE AND FRAUD PROVISIONS OF THE ACT: (1) SALE OR LEASE OF REAL ESTATE UNDER OR PURSUANT TO A COURT ORDER, AND (2) SALE OR LEASE OF REAL ESTATE WHICH IS FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES, AND ADVERSE CLAIMS, IF EACH PURCHASER OR SPOUSE HAS MADE A PERSONAL ON-THE-LOT INSPECTION OF THE REAL ESTATE. THE SENATE AMENDMENT DID NOT CONTAIN A SIMILAR PROVISION. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION.

EXEMPTIONS

LESS THAN 100 LOTS

THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT TO AMEND EXISTING LAW TO EXEMPT ONLY FROM THE REGISTRATION AND DISCLOSURE REQUIREMENTS OF THE ACT THE SALE OF LOTS IN A SUBDIVISION CONTAINING LESS THAN 100 LOTS WHICH ARE NOT OTHERWISE EXEMPT *75 **2434 UNDER SECTION 1403. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN AMENDMENT TO EXEMPT FROM ALL PROVISIONS OF THE ACT SUBDIVISIONS CONTAINING LESS THAN 25 LOTS, AND TO EXEMPT, ONLY FROM REGISTRATION AND DISCLOSURE REQUIREMENTS, LOTS IN A

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SUBDIVISION CONTAINING LESS THAN 100 LOTS WHICH ARE NOT EXEMPT UNDER SECTION 1403(A) OF THE ACT.

THE CONFEREES BELIEVE THAT THE 100 LOT EXEMPTION SHOULD NOT BE COMBINED WITH THE EXEMPTIONS IN SECTION 1403(B). HOWEVER, WHEN ONLY A SMALL NUMBER OF LOTS IN A SUBDIVISION CANNOT QUALIFY FOR ANY EXEMPTION, THE CONFEREES BELIEVE SUCH SMALL NUMBER OF LOTS SHOULD BE EXEMPT. THUS, THE CONFEREES DIRECT THE SECRETARY TO USE THE AUTHORITY AVAILABLE UNDER SECTION 1403(C) TO ISSUE EXEMPTIONS SO THAT SUCH LOTS CAN BE SOLD WITHOUT THE NEED FOR COMPLYING WITH THE REGISTRATION AND DISCLOSURE REQUIREMENTS OF THE ACT. CONSISTENT WITH THIS OBJECTIVE, THE SECRETARY SHOULD ISSUE REGULATIONS PROVIDING PROCEDURES WHEREBY DEVELOPERS MAY APPLY FOR AN EXEMPTION FOR A SMALL NUMBER OF LOTS. IN ADDITION, WHEN APPROPRIATE, THE SECRETARY SHOULD ISSUE A NO-ACTION LETTER.

FIRST 12 LOTS

THE HOUSE BILL, BUT NOT THE SENATE AMENDMENT, CONTAINED A PROVISION EXEMPTING THE SALE OR LEASE OF THE FIRST 12 LOTS OF A SUBDIVISION WHICH ARE SOLD OR LEASED, OR BOTH, IN ANY CALENDAR YEAR FROM THE REGISTRATION AND DISCLOSURE REQUIREMENTS, IF NOT MORE THAN 12 LOTS HAVE BEEN SOLD OR LEASED, OR BOTH, FROM THAT SUBDIVISION IN ANY PREVIOUS CALENDAR YEAR.

THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION AMENDED TO PROVIDE THAT THE EXEMPTION IS AVAILABLE IN THE FIRST YEAR OF SALE OR LEASE AFTER THE EFFECTIVE DATE OF THIS PROVISION ONLY IF 12 OR FEWER LOTS ARE SOLD OR LEASED DURING THAT YEAR AND THAT IN ANY SUBSEQUENT YEAR THE FIRST 12 LOTS SOLD OR LEASED WILL BE EXEMPT IF NOT MORE THAN 12 LOTS WERE SOLD OR LEASED IN ANY PREVIOUS YEAR AND ALL OF THE ABOVE 12 WHICH ARE SOLD OR LEASED ARE REGISTERED OR QUALIFY FOR ANOTHER EXEMPTION. THE CONFEREES WISH TO MAKE CLEAR THAT IF THE DEVELOPER INCREASED THE PACE OF SALE SO THAT MORE THAN 12 LOTS ARE SOLD OR LEASED IN A YEAR, THIS EXEMPTION WOULD BE AVAILABLE (OTHER THAN DURING THE FIRST YEAR) FOR ONLY THE FIRST 12 LOTS SOLD OR LEASED IN THAT YEAR BUT WOULD NOT BE AVAILABLE FOR THE SALE OF ANY SUBSEQUENT LOT EVEN THOUGH THE DEVELOPER MAY SELL ONLY 12 LOTS IN ANY OTHER YEAR. THE SECRETARY, CONSISTENT WITH THE INTENT OF THIS PROVISION, SHOULD PERMIT A DEVELOPER TO ESTABLISH A TWELVE MONTH PERIOD IN A MANNER WHICH ALLOWS THAT PERIOD TO CONFORM WITH THE DEVELOPER'S FISCAL OR TAX YEAR. FOR EXAMPLE, IF

THE FIRST SALE OF A LOT WERE MADE ON JANUARY 1, BUT THE DEVELOPER'S

TAX YEAR BEGAN ON JULY 1 AND NO MORE THAN 6 LOTS WERE SOLD IN THE INTERIM, THE NEXT TWELVE-MONTH PERIOD COULD BE ESTABLISHED BEGINNING ON JULY 1.

SALE OF LOTS FROM NONCONTIGUOUS PARCELS

THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT TO EXEMPT FROM THE REGISTRATION AND DISCLOSURE REQUIREMENTS OF THE ACT THE SALE OR LEASE OF LOTS WHERE EACH NONCONTIGUOUS PART OF A SUBDIVISION CONTAINS NOT MORE THAN 10 LOTS, AND WHERE EACH PURCHASER OR LEASEE (OR SPOUSE) HAS MADE AN ON-THE-LOT INSPECTION OF THE LOT PRIOR TO SIGNING THE CONTRACT TO PURCHASE OR LEASE. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN AMENDMENT WHICH RAISES FROM 10 TO 20 LOTS THE MAXIMUM SIZE OF ANY NONCONTIGUOUS PARCEL EXEMPTED FROM SUCH PROVISIONS.

*76 **2435 LARGE LOTS

THE HOUSE BILL CONTAINED A PROVISION TO EXEMPT FROM THE REGISTRATION AND DISCLOSURE REQUIREMENTS THE SALE OR LEASE OF LOTS IN A SUBDIVISION WHERE AT LEAST 90 PERCENT OF THE LOTS ARE EACH 40 ACRES OR MORE IN SIZE (INCLUSIVE OF EASEMENTS) AND ANY REMAINING LOTS ARE EACH 30 ACRES OR MORE IN SIZE (INCLUSIVE OF EASEMENTS). THE SENATE AMENDMENT DID NOT CONTAIN A SIMILAR PROVISION. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN AMENDMENT WHICH EXEMPTS FROM SUCH PROVISIONS ANY SUBDIVISION WHERE ALL THE LOTS ARE AT LEAST 20 ACRES IN SIZE (INCLUSIVE OF EASEMENTS).

REGULATED JURISDICTIONS

LIMITATION TO SINGLE FAMILY.-- THE HOUSE BILL CONTAINED A PROVISION TO AMEND THE REGULATED JURISDICTIONS EXEMPTION IN EXISTING LAW TO PROVIDE THAT 'EACH LOT' (RATHER THAN THE SUBDIVISION) IS EITHER ZONED FOR SINGLE FAMILY RESIDENCES OR, IN THE ABSENCE OF A ZONING ORDINANCE, IS LIMITED EXCLUSIVELY TO SINGLE FAMILY RESIDENCES. THE SENATE AMENDMENT WAS SIMILAR. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION. THE CONFEREES WISH TO EMPHASIZE THAT THE PHRASE 'EACH LOT' REFERS TO EACH LOT WHICH QUALIFIES FOR THIS EXEMPTION, BUT DOES NOT REQUIRE THAT EVERY LOT IN THE SUBDIVISION MUST BE ZONED FOR OR LIMITED TO SINGLE FAMILY RESIDENCES. LOTS THAT ARE NOT SINGLE FAMILY MUST EITHER QUALIFY FOR SOME OTHER EXEMPTION

(INCLUDING AN EXEMPTION PURSUANT TO SECTION 1403(C)) OR BE REGISTERED (OR, UNDER THE APPROPRIATE CIRCUMSTANCES, RECEIVE A NO-ACTION LETTER). THE PHRASE 'SINGLE FAMILY RESIDENCES' AS USED IN THIS PROVISION REFERS TO 1-4 FAMILY DWELLINGS.

WHILE LOTS ZONED FOR MULTI-FAMILY DWELLINGS TECHNICALLY ARE NOT ELIGIBLE FOR THIS EXEMPTION, THE CONFEREES BELIEVES THAT WHERE THE OTHER REQUIREMENTS OF THE REGULATED JURISDICTIONS EXEMPTION ARE MET, THE SECRETARY SHOULD USE THE AUTHORITY OF SECTION 1403(C) TO EXEMPT SUCH LOTS IN CASES WHERE SUCH EXEMPTION WOULD NOT BE INCONSISTENT WITH THE PROVISIONS OF SECTION 1403(C).

STREET CONSTRUCTION AND MAINTENANCE.-- THE HOUSE BILL CONTAINED A PROVISION TO AMEND THE EXISTING REGULATED JURISDICTIONS EXEMPTION TO PROVIDE THAT THE LOT MUST BE SITUATED ON A PAVED STREET WHICH (1) MEETS THE STANDARDS OF STREETS MAINTAINED BY THE APPLICABLE LOCAL GOVERNMENT AND IS ACCEPTABLE TO SUCH GOVERNMENT AND (2) IS MAINTAINED BY THE LOCAL GOVERNMENT OR A HOMEOWNER'S ASSOCIATION EXCEPT THAT WHERE A HOMEOWNER'S ASSOCIATION IS RESPONSIBLE, THE PURCHASER OR LESSEE (PRIOR TO SIGNING THE CONTRACT) IS PROVIDED WITH A GOOD FAITH WRITTEN ESTIMATE OF THE COST OF CARRYING OUT SUCH RESPONSIBILITY OVER THE FIRST TEN YEARS OF OWNERSHIP OR LEASE. THE SENATE AMENDMENT CONTAINED A SIMILAR PROVISION, EXCEPT IT PROVIDED THAT THE PAVED STREET (1) MUST BE BUILT TO A STANDARD ACCEPTABLE TO THE UNIT OF LOCAL GOVERNMENT IN WHICH THE SUBDIVISION IS LOCATED, AND (2) MUST BE MAINTAINED BY THE UNIT OF LOCAL GOVERNMENT OR THE LOCAL GOVERNMENT HAS APPROVED OTHER PROVISIONS TO INSURE PERPETUAL MAINTENANCE OF THE STREET; THE PROVISIONS DID NOT REQUIRE A GOOD FAITH ESTIMATE. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION. THE CONFEREES WISH TO CLARIFY THAT THE REQUIREMENTS THAT THE LOT BE SITUATED ON A ROAD WHICH IS ACCEPTABLE TO THE UNIT OF LOCAL GOVERNMENT WHERE THE LAND IS LOCATED CAN BE MET BY THE LOCAL GOVERNMENT FOLLOWING WHATEVER PRACTICE IT HAS PRESENTLY IN EXISTENCE FOR APPROVING *77 **2436 NEW ROADS. THE CONFEREES DO NOT INTEND THAT ANY NEW PROCEDURE BE ESTABLISHED BY THE LOCAL GOVERNMENT.

DEED.-- THE HOUSE BILL CONTAINED A PROVISION THAT 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 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 TO THE PURCHASER WITHIN 180 DAYS AFTER THE SIGNING OF THE SALES CONTRACT. THE SENATE AMENDMENT CONTAINED A SIMILAR PROVISION,

EXCEPT THAT IT PROVIDED THAT THE ALTERNATIVE TO A WARRANTY DEED IS A GRANT OR SIMILAR DEED CONVEYING TITLE TO REAL PROPERTY AND COMMONLY ACCEPTED IN THE STATE IN WHICH THE SUBDIVISION IS LOCATED. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN AMENDMENT DELETING THE PHRASE 'AT LEAST.' THE CONFEREES WISH TO EMPHASIZE THAT IN ALL CASES THE SELLER MUST USE A WARRANTY DEED, EXCEPT WHERE A WARRANTY DEED IS NOT COMMONLY USED IN THE JURISDICTION HE MUST USE A DEED THAT 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. THE DEED MAY INCLUDE ANY OTHER WARRANTIES COMMONLY USED IN THE JURISDICTION WHERE THE LOT IS LOCATED BUT HUD MAY NOT REQUIRE THE INCLUSION OF ANY OTHER WARRANTIES IN THE DEED. QUIT CLAIM DEEDS MAY NOT BE USED TO QUALIFY FOR THIS EXEMPTION.

TITLE.-- THE HOUSE BILL CONTAINED A PROVISION REQUIRING THAT AT THE TIME OF CLOSING, A TITLE INSURANCE BINDER OR TITLE OPINION SHALL BE IN EXISTENCE AND ISSUED OR PRESENTED TO THE PURCHASER OR LESSEE SHOWING THAT, SUBJECT TO SUCH EXCEPTIONS AS MAY BE APPROVED IN WRITING BY THE PURCHASER OR LESSEE PRIOR TO THE RECORDATION OF THE DEED OR EXECUTION OF THE LEASE, MARKETABLE TITLE IS VESTED IN THE SELLER OR LESSOR. THE SENATE AMENDMENT CONTAINED A SIMILAR PROVISION, EXCEPT IT PROVIDED (1) THAT THIS SUBSECTION MUST BE COMPLIED WITH PRIOR TO THE TIME OF CLOSING, (2) NO REFERENCE TO LESSEE AS WELL AS PURCHASER, AND (3) NO PROVISION FOR EXCEPTIONS TO THE MARKETABLE TITLE APPROVED IN WRITING BY THE BUYER PRIOR TO RECORDATION. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN AMENDMENT WHICH PROVIDES THAT THE EXCEPTIONS TO TITLE WILL BE APPROVED IN WRITING AT THE TIME OF CLOSING RATHER THAN PRIOR TO THE RECORDATION OF THE DEED.

SALES PROMOTION.-- THE HOUSE BILL CONTAINED A PROVISION PROHIBITING DIRECT MAIL OR TELEPHONE SOLICITATIONS WHICH OFFER 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. THE SENATE AMENDMENT DID NOT CONTAIN A SIMILAR PROVISION. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN AMENDMENT WHICH CLARIFIES THAT THE PROHIBITION IS WITH REGARD TO DIRECT MAIL OR TELEPHONE SOLICITATIONS WHICH OFFER GIFTS, TRIPS, DINNERS, OR OTHER PROMOTIONAL ITEMS TO INDUCE PROSPECTIVE PURCHASERS OR LESSEES TO VISIT THE SUBDIVISION OR TO PURCHASE OR LEASE A LOT. THIS RESTRICTION APPLIES TO THE SALE OR LEASE OF ALL LOTS IN THE SUBDIVISION. HOWEVER, UNDER THIS PROVISION, FINANCING INCENTIVES ARE NOT TO BE CONSIDERED PROMOTIONAL ITEMS.

MOBILE HOMES

THE HOUSE BILL CONTAINED A PROVISION THAT WAS NOT CONTAINED IN THE SENATE AMENDMENT TO EXEMPT FROM REGISTRATION AND DISCLOSURE PROVISIONS THE SALE OR LEASE OF A LOT IF A MOBILE HOME IS TO BE PLACED THERE AS *78 **2437 A PRIMARY RESIDENCE, AND THE LOT IS SOLD BY ONE PARTY AND THE MOBILE HOME BY ANOTHER UNDER CONTRACTS THAT OBLIGATE BOTH SUCH SELLERS TO CARRY OUT THEIR CONTRACTS WITHIN 2 YEARS; THE CONTRACTS MUST PROVIDE THAT ALL FUNDS RECEIVED BY THE SELLERS WILL BE HELD IN ESCROW BY PARTIES INDEPENDENT OF THE SELLERS UNTIL THE TRANSACTIONS ARE COMPLETED, AND SUCH FUNDS WILL BE RELEASED TO THE BUYER WITHOUT PREJUDICE IF THE LAND WITH A RESIDENTIAL HOME IS NOT CONVEYED WITHIN 2 YEARS. SUCH HOMESITE MUST CONFORM TO ALL LOCAL CODES FOR MOBILE HOME SUBDIVISIONS, IF ANY, AND MUST PROVIDE POTABLE WATER, SEWAGE DISPOSAL, ACCESS BY ROADS AND WHERE COMMON FACILITIES ARE TO BE PROVIDED, THEY MUST BE COMPLETED OR FULLY FUNDED. IN ADDITION, THE PURCHASER MUST RECEIVE MARKETABLE TITLE TO THE LOT. THE CONFERENCE REPORT ADOPTS THE HOUSE PROVISION WITH AN AMENDMENT WHICH DELETES THE TERM 'PRIMARY.' FOR THE PURPOSES OF THIS SECTION, A MOBILE HOME USED AS A 'RESIDENCE' MEANS THAT THE MOBILE HOME IS CAPABLE OF BEING LIVED IN THROUGHOUT THE YEAR.

INTRASTATE SALES

THE HOUSE BILL CONTAINED A PROVISION WHICH EXEMPTS FROM THE REGISTRATION AND DISCLOSURE REQUIREMENTS OF THE ACT THE SALE OR LEASE OF REAL ESTATE BY A DEVELOPER WHO IS ENGAGED IN A SALES OPERATION WHICH IS INTRASTATE IN NATURE IF THE LOT IS FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES, AND ADVERSE CLAIMS, THE PURCHASER OR HIS OR HER SPOUSE HAS MADE A PERSONAL ON-THE-LOT INSPECTION OF THE LOT TO BE PURCHASED, AND EACH PURCHASE OR LEASE AGREEMENT CONTAINS A CLEAR AND SPECIFIC STATEMENT DESCRIBING THE PARTY RESPONSIBLE FOR PROVIDING AND MAINTAINING THE ROADS, WATER FACILITIES, SEWER FACILITIES AND ANY EXISTING AMENITIES OR PROMISED AMENITIES. THE PROVISION FURTHER PROVIDED THAT, AS USED IN CONNECTION WITH THIS EXEMPTION, THE TERMS 'LIENS', 'ENCUMBRANCES', AND 'ADVERSE CLAIMS' DO NOT INCLUDE U.S. LAND PATENTS AND SIMILAR FEDERAL GRANTS OR RESERVATIONS, PROPERTY RESERVATIONS DEDICATED TO LOCAL BODIES OR PUBLIC UTILITIES FOR THE PURPOSE OF BRINGING PUBLIC SERVICES TO THE DEVELOPMENT, TAXES AND ASSESSMENTS IMPOSED BY THE STATE OR ANY OTHER SUCH AUTHORITY, INCLUDING A PROPERTY OWNER'S ASSOCIATION, WHICH, UNDER APPLICABLE STATE OR LOCAL LAW, CONSTITUTE LIENS ON THE LAND BEFORE THEY ARE DUE, OR BENEFICIAL PROPERTY RESTRICTIONS ENFORCEABLE BY OTHER LOT

OWNERS OR LESSEES IN THE SUBDIVISION, IF (1) THE DEVELOPER PRIOR TO ENTERING THE CONTRACT, HAS FURNISHED EACH BUYER WITH A STATEMENT OF ALL SUCH RESERVATIONS, TAXES, AND ASSESSMENTS APPLICABLE TO THE LOT TO BE PURCHASED OR LEASED, AND (2) RECEIPT OF SUCH STATEMENT HAS BEEN ACKNOWLEDGED IN WRITING BY THE BUYER OR LESSEE. FURTHERMORE, THE TERM 'INTRASTATE IN NATURE' WAS DEFINED TO MEAN SALES OR LEASE BY RESIDENTS OF A STATE TO RESIDENTS OF THAT STATE OF LAND SITUATED WITHIN THE STATE, PROVIDED THAT SUCH STATE REQUIRED DELIVERY OF A DISCLOSURE DOCUMENT, AS DETERMINED TO BE NECESSARY BY THE STATE, TO PURCHASERS OR LESSEES.

THE SENATE AMENDMENT CONTAINED A PROVISION SIMILAR TO THE PROVISION IN THE HOUSE BILL, EXCEPT THERE WAS NO DEFINITION OF 'INTRASTATE IN NATURE', AND THERE WAS NO REQUIREMENT THAT THE STATE PROVIDE FOR THE DELIVERY OF A DISCLOSURE DOCUMENT TO PURCHASERS. THE CONFERENCE REPORT CONTAINS THE SENATE PROVISION, AMENDED (1) TO REQUIRE THAT THE PURCHASER OR LESSEE RECEIVE A GOOD FAITH ESTIMATE OF THE COST OF PROVIDING ELECTRIC, WATER, SEWER, GAS AND TELEPHONE SERVICE TO THE LOT, AND THAT EACH PURCHASE OR LEASE AGREEMENT CONTAIN A CLEAR AND SPECIFIC STATEMENT DESCRIBING A GOOD FAITH ESTIMATE OF THE YEAR OF COMPLETION OF THE *79 **2438 ROADS, WATER FACILITIES, SEWER FACILITIES AND OTHER PROMISED AMENITIES, AND A PERIOD IN WHICH THE PURCHASER OR LESSEE MAY REVOKE THE CONTRACT WHICH IS 7 DAYS OR SUCH LONGER PERIOD AS REQUIRED PURSUANT TO STATE LAWS, AND (2) TO PROVIDE THAT 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 TOTALLY EXEMPT FROM THE ACT UNDER SECTION 1403(A), OR EXEMPT FROM REGISTRATION AND DISCLOSURE PURSUANT TO THE MOBILE HOME SITES OR THE SMSA EXEMPTION, IS SOLD TO RESIDENTS OF THE STATE IN WHICH THE LAND IS LOCATED.

THE AMENDED DEFINITION OF WHAT MAKES A SALES OPERATION 'INTRASTATE IN NATURE' ELIMINATES THE NEED FOR COMPLICATED REGULATIONS OR INTERPRETATIONS SPECIFYING ALLOWABLE AND PROHIBITED MARKETING PRACTICES. INSTEAD THE TEST IS INTENDED TO BE RESULT ORIENTED. IF A LOT QUALIFIES FOR ANY OF THE EXEMPTIONS UNDER SECTION 1403(A), OR IF IT QUALIFIES FOR THE MOBILE HOME SITE EXEMPTION OR THE SMSA EXEMPTION, THEN ALL SUCH LOTS MAY BE MARKETED AND SOLD TO OUT-OF-STATE RESIDENTS. HOWEVER, ANY LOT IN THE SUBDIVISION WHICH DOES NOT QUALIFY FOR ONE OF THESE EXEMPTIONS MUST BE SOLD TO A RESIDENT OF THE STATE IN ORDER FOR THE SUBDIVISION TO BE ELIGIBLE FOR THE INTRASTATE EXEMPTION. FOR THIS PURPOSE, A DEVELOPER MAY RELY ON A SIGNED CERTIFICATION BY THE PURCHASER OR LESSEE AS TO THE STATE OF HIS OR HER RESIDENCE.

IT IS THE INTENT OF THE CONFEREES THAT THE PROVISION REQUIRING THE LOT TO BE FREE AND CLEAR OF LIENS, ENCUMBRANCES AND ADVERSE CLAIMS MEANS THAT THE LOT MUST REMAIN FREE AND CLEAR OF LIENS FROM THE DATE THE CONTRACT IS SIGNED UNTIL A DEED IS DELIVERED OR THE LEASE EXPIRES (UNLESS THE LIEN IS SUBORDINATE TO THE LEASEHOLD INTEREST AND WOULD NOT AFFECT THE LESSEE'S RIGHT TO USE OR ENJOY THE LOT).

FURTHER, THE CONFEREES URGE THE SECRETARY TO USE THE AUTHORITY UNDER SECTION 1403(C) TO SPECIFY FURTHER EXEMPTIONS FROM THE FREE AND CLEAR REQUIREMENT SO THAT THE REQUIREMENT IS FOCUSED ON THOSE LIENS SPECIFIED IN THE NEW SMSA EXEMPTION.

SALES WITHIN 100-MILE RADIUS

THE SENATE AMENDMENT CONTAINED A PROVISION, NOT CONTAINED IN THE HOUSE BILL, WHICH EXEMPTED FROM THE REGISTRATION AND DISCLOSURE REQUIREMENTS OF THE ACT THE SALE OR LEASE OF NOT TO EXCEED 500 LOTS IN A SUBDIVISION TO A RESIDENT OF ANOTHER STATE WHOSE PRINCIPAL RESIDENCE IS WITHIN A RADIUS OF 100 MILES FROM THE PROPERTY IF: (A) THE LOT IS FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES, AND ADVERSE CLAIMS; (B) THE PURCHASER (OR HIS OR HER SPOUSE) HAS MADE A PERSONAL ON-THE-LOT INSPECTION; (C) EACH CONTRACT CONTAINS A CLEAR AND SPECIFIC STATEMENT DESCRIBING THE PARTY RESPONSIBLE FOR PROVIDING AND MAINTAINING THE ROADS, WATER AND SEWER FACILITIES, AND ANY PROMISED OR EXISTING AMENITIES; (D) THE DEVELOPER EXECUTES AND DELIVERS TO THE PURCHASER A WRITTEN DESIGNATION OF A PERSON WITHIN THE STATE OF RESIDENCE OF THE PURCHASER TO ACT AS THE DEVELOPER'S AGENT FOR SERVICE OF PROCESS, AND THE DEVELOPER ACKNOWLEDGES THAT HE SUBMITS TO THAT STATE'S LEGAL JURISDICTION; AND (E) THE DEVELOPER AFFIRMS (IN WRITING, ON A FORM PROVIDED BY THE SECRETARY AND KEPT ON FILE BY THE SECRETARY) THAT HE HAS COMPLIED WITH THE ABOVE CONDITIONS AND REQUIREMENTS.

THE SENATE PROVISION ALSO PROVIDED THAT, AS USED IN CONNECTION WITH THIS EXEMPTION, THE TERMS 'LIENS', 'ENCUMBRANCES', AND 'ADVERSE CLAIMS' DO NOT INCLUDE U.S. LAND PATENTS AND SIMILAR FEDERAL GRANTS OR *80 **2439 RESERVATIONS, PROPERTY RESERVATIONS DEDICATED TO LOCAL BODIES OR PUBLIC UTILITIES FOR THE PURPOSE OF BRINGING PUBLIC SERVICES TO THE DEVELOPMENT, TAXES AND ASSESSMENTS IMPOSED BY THE STATE OR ANY OTHER SUCH AUTHORITY, INCLUDING A PROPERTY OWNER'S ASSOCIATION, WHICH, UNDER APPLICABLE STATE OR LOCAL LAW, CONSTITUTES LIENS ON THE LAND BEFORE THEY ARE DUE, OR BENEFICIAL PROPERTY RESTRICTIONS ENFORCEABLE BY OTHER LOT OWNERS OR LESSEES IN THE SUBDIVISION, IF: (1) THE DEVELOPER, PRIOR TO ENTERING THE CONTRACT, HAS FURNISHED EACH BUYER WITH A STATEMENT OF ALL SUCH RESERVATIONS, TAXES AND ASSESSMENTS APPLICABLE TO THE LOT TO

BE PURCHASED, AND (2) RECEIPT OF SUCH STATEMENT HAS BEEN ACKNOWLEDGE IN WRITING BY THE BUYER.

THE CONFERENCE REPORT CONTAINS THE SENATE PROVISION WITH AN AMENDMENT TO PROVIDE THAT THE EXEMPTION APPLIES TO SUBDIVISIONS CONTAINING FEWER THAN 300 LOTS AND IN ORDER FOR A LOT TO QUALIFY FOR THE EXEMPTION, THE PRINCIPAL RESIDENCE OF THE PURCHASER OF LESSEE MUST BE WITHIN THE SAME SMSA AS THE LOT PURCHASED OR LEASED. THE AMENDMENT ALSO PROVIDES THAT IN ADDITION TO THE DISCLOSURE REQUIREMENTS SPECIFIED IN THE SENATE PROVISION, ALL LIENS, RESERVATIONS, TAXES, ASSESSMENTS, BENEFICIAL PROPERTY RESTRICTIONS WHICH WOULD BE ENFORCEABLE BY OTHER LOT OWNERS OR LESSEES IN THE SUBDIVISION, AND ADVERSE CLAIMS MUST BE DISCLOSED, AND EACH AGREEMENT MUST INCLUDE A GOOD FAITH ESTIMATE OF THE YEAR OF COMPLETION OF PROMISED AMENITIES AND A SEVEN DAY COOLING OFF PERIOD OR SUCH LONGER PERIOD AS MAY BE REQUIRED PURSUANT TO STATE LAWS. THE DEVELOPER MUST ALSO PROVIDE A GOOD FAITH ESTIMATE OF THE COST OF PROVIDING UTILITY SERVICE TO THE LOT. THE LOT MUST BE CLEAR OF LIENS, BUT NOT ENCUMBRANCES AND ADVERSE CLAIMS AS PROVIDED IN THE SENATE PROVISION, FROM THE DATE THE CONTRACT IS SIGNED UNTIL THE DEED IS DELIVERED OR THE LEASE EXPIRES. IN ADDITION TO THE EXCEPTIONS TO THE TERM 'LIENS' CONTAINED IN THE SENATE PROVISION, THE CONFERENCE REPORT ALSO PROVIDES FOR THE EXCEPTION OF OTHER INTERESTS DESCRIBED IN REGULATIONS PRESCRIBED BY THE SECRETARY.

THE CONFEREES DIRECT THE SECRETARY TO USE THIS AUTHORITY TO EXEMPT LIENS WHICH ARE SUBORDINATE TO THE LEASEHOLD INTEREST AND WHICH WOULD NOT AFFECT THE LESSEE'S RIGHT TO USE OR ENJOY THE LOT.

THE CONFEREES INTEND IN REGARD TO BOTH THE INTRASTATE AND SMSA EXEMPTIONS THAT IF THERE IS A BLANKET LIEN WITH RELEASE PROVISIONS, THE LOT MAY QUALIFY FOR THE EXEMPTION IF THE CONTRACT REQUIRES DELIVERY OF THE DEED WITHIN 180 DAYS OF SIGNING OF THE CONTRACT AND ALL PAYMENTS ARE PUT IN ESCROW. IN ADDITION, THE CONFEREES WISH TO CLARIFY THAT THE REQUIREMENT THAT A LOT BE 'FREE AND CLEAR' UNTIL THE DEED IS DELIVERED OR THE LEASE EXPIRES WOULD NOT BE VIOLATED IF A PURCHASER OR LESSEE ENCUMBERS THE LOT.

EXAMPLES OF THE TYPES OF RESERVATIONS, ENCUMBRANCES, ASSESSMENTS AND ADVERSE CLAIMS THAT MUST BE DISCLOSED INCLUDE, BUT ARE NOT LIMITED TO, EASEMENTS FOR INGRESS, EGRESS AND UTILITIES, STATE AND LOCAL PROPERTY TAXES, MINERAL RIGHTS, HOMEOWNER ASSOCIATION ASSESSMENTS, AND ANY RESTRICTIONS ON PROPERTY USE.

FOR PURPOSES OF THIS EXEMPTION A DEVELOPER MAY RELY ON A SIGNED CERTIFICATION BY THE PURCHASER OR LESSEE OF HIS OR HER

RESIDENCE.

UNDER BOTH THE INTRASTATE AND THE SMSA EXEMPTIONS, DEVELOPERS MUST PROVIDE PURCHASERS AND LESSEES WITH GOOD FAITH ESTIMATES OF THE COST OF INSTALLING ELECTRIC, WATER, SEWER, GAS AND TELEPHONE SERVICES. THE CONFEREES BELIEVE THAT TO COMPLY WITH THIS REQUIREMENT, A DEVELOPER COULD PROVIDE ESTIMATES FOR THE TYPES OF UTILITY SERVICE REASONABLY EXPECTED *81 **2440 TO BE UTILIZED IN THAT LOCATION. FOR EXAMPLE, WHERE SEPTIC SYSTEMS OR WATER WELLS ARE SUITABLE, GOOD FAITH ESTIMATES OF THEIR COST WOULD SATISFY THIS REQUIREMENT. THE CONFEREES ALSO WISH TO CLARIFY THAT GOOD FAITH ESTIMATES OF THE COST OF INSTALLING ELECTRIC, WATER, SEWER, GAS AND TELEPHONE SERVICES NEED NOT BE BASED ON INFORMATION OBTAINED AT THE DATE OF SIGNING THE CONTRACT OF SALE OR LEASE. INSTEAD, THE DEVELOPER MAY FULFILL THE REQUIREMENT BY PROVIDING A REASONABLY CURRENT ESTIMATE OF SUCH COSTS. FOR LOTS NOT YET SOLD, ESTIMATES SHOULD BE UPDATED EVERY TWO YEARS, OR MORE FREQUENTLY IF THE DEVELOPER HAS REASON TO BELIEVE THAT SIGNIFICANT COST INCREASES HAVE OCCURRED. FURTHER, THE PURCHASER OR LESSEE SHOULD BE INFORMED OF THE DATE ON WHICH THE ESTIMATE WAS MADE.

OPERATION OF EXEMPTIONS

THE CONFEREES INTEND THAT THE PROVISIONS OF SECTION 1403 SHALL BE APPLIED ON A LOT-BY-LOT BASIS EXCEPT WHERE THE CONTEXT INDICATES A REQUIREMENT THAT APPLIES TO A WHOLE SUBDIVISION. SOME EXEMPTIONS APPLY SOLELY ON A LOT-BY-LOT BASIS SO THAT EACH LOT MEETING THE REQUIREMENT IS EXEMPT REGARDLESS OF THE STATUS OF OTHER LOTS IN THE SUBDIVISION. THE EXEMPTIONS UNDER SECTION 1403(A)(2), (1)(5) THROUGH (A)(8), AND (B)(6) FALL INTO THIS CATEGORY.

SOME EXEMPTIONS ARE SUBDIVISION EXEMPTIONS AND APPLY ONLY WHERE EACH AND EVERY LOT IN THE SUBDIVISION MEETS THE REQUIREMENTS: FOR EXAMPLE, THE LARGE LOT EXEMPTION IN SECTION 1403(B)(4) OR THE EXEMPTIONS BASED SOLELY ON THE NUMBER OF LOTS IN A SUBDIVISION SUCH AS SECTION 1403(A)(1) AND (B)(1). NONE OF THESE PURE SUBDIVISION EXEMPTIONS MAY BE USED IN COMBINATION WITH ANY OTHER EXEMPTION.

OTHER EXEMPTIONS COMBINE AN INITIAL SUBDIVISION TEST OR TESTS WITH LOT-BY-LOT REQUIREMENTS. PARTICULAR LOTS THAT DO NOT MEET THESE LOT-BY-LOT REQUIREMENTS MUST EITHER QUALIFY UNDER SOME OTHER EXEMPTION OR BE REGISTERED. WHERE SUCH A HYBRID EXEMPTION EXISTS AND THE INITIAL SUBDIVISION TEST IS NOT SATISFIED, THEN NO LOTS IN THAT SUBDIVISION ARE ELIGIBLE FOR THAT EXEMPTION.

IN THE REGULATED JURISDICTIONS EXEMPTION, SECTION 1403(B)(5),

THERE ARE THREE SUBDIVISION TESTS: (1) THE UNIT OF LOCAL GOVERNMENT MUST SPECIFY MINIMUM STANDARDS FOR THE DEVELOPMENT OF SUBDIVISION LOTS WITHIN ITS BOUNDARIES; (2) THE SUBDIVISION MUST MEET ALL LOCAL CODES AND STANDARDS; AND (3) THERE MUST BE 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. ALL OTHER REQUIREMENTS IN THE REGULATED JURISDICTIONS EXEMPTION PROVISION ARE LOT-BY-LOT REQUIREMENTS.

IN THE SMSA EXEMPTION, SECTION 1403(B)(8), THE ONLY SUBDIVISION TEST IS THAT THE SUBDIVISION MUST CONTAIN FEWER THAN 300 LOTS. IF THIS TEST IS SATISFIED, THEN THE PARTICULAR LOTS THAT MEET ALL OTHER REQUIREMENTS SPECIFIED IN SECTION 1403(B)(8) ARE EXEMPT FROM REGISTRATION AND DISCLOSURE.

IN THE INTRASTATE EXEMPTION, SECTION 1403(B)(7), THE ONLY SUBDIVISION TEST IS THAT THE SALES OPERATION MUST BE 'INTRASTATE IN NATURE'. THIS TEST PERMITS THE SALE OR LEASE OF INDIVIDUAL LOTS PURSUANT TO SECTION 1403(A), (B)(6) OR (B)(8) EVEN THOUGH THEY ARE SOLD OR LEASED OUTSIDE THE STATE IN WHICH THE LAND IS LOCATED. HOWEVER, ALL OTHER LOTS IN THE SUBDIVISION WHICH DO NOT QUALIFY FOR THESE SPECIFIED EXEMPTIONS MUST *82 **2441 BE SOLD OR LEASED TO A RESIDENT OF SUCH STATE. IF THIS SUBDIVISION TEST IS SATISFIED, THEN THE PARTICULAR LOTS WHICH MEET ALL OTHER REQUIREMENTS SPECIFIED IN SECTION 1403(B) (7) ARE EXEMPT FROM REGISTRATION AND DISCLOSURE.

FOR EXAMPLE, IF A SUBDIVISION CONTAINED 500 LOTS, 50 OF WHICH WERE SOLD PURSUANT TO A CONTRACT TO BUILD A HOME WITHIN TWO YEARS AS PROVIDED UNDER SECTION 1403(A)(2) AND 50 WERE ZONED FOR COMMERCIAL USE AS PROVIDED UNDER SECTION 1403(A)(8) THE REMAINING 400 LOTS WOULD BE EXEMPT IF THEY WERE SOLD ONLY TO PERSONS RESIDING IN THE STATE WHERE THE LAND WAS LOCATED AND MET THE OTHER REQUIREMENTS OF THE INTRASTATE EXEMPTION. HOWEVER, THE SMSA AND INTRASTATE EXEMPTIONS COULD ONLY BE COMBINED IF THE SUBDIVISION CONTAINS LESS THAN 300 LOTS, SINCE THE SMSA EXEMPTION IS ONLY AVAILABLE FOR A SUBDIVISION OF THAT SIZE.

AS A GENERAL PRINCIPLE APPLYING TO EXEMPTIONS, THE CONFEREES EXPECT HUD TO USE DISCRETION AND NOT PUNISH A DEVELOPER FOR MINOR VIOLATIONS THAT OCCUR THROUGH INADVERTENCE. HUD MAY DETERMINE IN THESE CASES THAT THE DEVELOPER MAY RETAIN AN EXEMPTION IF THE DEVELOPER CORRECTS THE MISTAKE OR OFFERS TO REPURCHASE THE OFFENDING LOT OR LOTS. IN ADDITION, WHERE A DEVELOPER HAS FULLY COMPLIED WITH THE REQUIREMENTS REGARDING EXEMPT LOTS BUT HAS A SMALL NUMBER OF LOTS WHICH DO NOT QUALIFY FOR ANY EXEMPTION, THE CONFEREES DIRECT THE

SECRETARY TO USE THE AUTHORITY AVAILABLE UNDER SECTION 1403(C) TO PROVIDE EXEMPTIONS, OR TO ISSUE NO ACTION LETTERS SO THAT THESE SMALL NUMBER OF LOTS MAY BE SOLD WITHOUT REGISTRATION OR DISCLOSURE.

THE CONFEREES INTEND THAT THE TRANSITION FROM EXEMPTIONS AND REQUIREMENTS UNDER PRESENT LAW TO THE AMENDED LAW SHOULD NOT AFFECT REAL ESTATE ALREADY SOLD OR LEASED AS OF THE EFFECTIVE DATE OF THE AMENDMENTS. FOR EXAMPLE, LOTS SOLD BEFORE THE EFFECTIVE DATE OF THE AMENDMENTS PURSUANT TO THE PRESENT ON-SITE INSPECTION EXEMPTION WOULD NOT BE BROUGHT UNDER REQUIREMENTS OF THE AMENDED ACT. IF, AS OF THE EFFECTIVE DATE OF THE AMENDMENT, THE NUMBER OF LOTS IN THE SUBDIVISION THAT HAVE NOT YET BEEN SOLD UNDER THE ON-SITE INSPECTION EXEMPTION IS LESS THAN 100, THEN THESE LOTS WILL BE EXEMPT. HOWEVER, IF THE NUMBER OF SUCH REMAINING LOTS IS 100 OR MORE, THAN ALL THESE LOTS MUST EITHER QUALIFY UNDER OTHER EXEMPTIONS OR BE REGISTERED.

SINCE MANY OF THE NEW EXEMPTIONS BEING ENACTED ARE COMPLEX AND SELF-DETERMINING, THE CONFEREES DIRECT THE SECRETARY TO MAKE VERY CLEAR TO DEVELOPERS HOW THEY MAY TAKE ADVANTAGE OF THESE EXEMPTIONS WITHOUT NEEDING ADVISORY OPINIONS.

REQUIREMENTS RELATING TO THE SALE OR LEASE OF LOTS

LOTS REGISTERED WITH OILSR

THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT TO INCLUDE IN THE REQUIREMENTS FOR SALES OR LEASE OF LOTS NOT EXEMPT FROM THE REGISTRATION AND DISCLOSURE PROVISIONS OF THE ACT PROHIBITIONS AGAINST: (A) SELLING OR LEASING ANY LOT WHERE ANY PART OF THE STATEMENT OF RECORD OR THE PROPERTY REPORT CONTAINS AN UNTRUE STATEMENT OF A MATERIAL FACT REQUIRED TO BE STATED THEREIN; AND (B) DISPLAYING OR DELIVERING TO PROSPECTIVE PURCHASERS OR LESSEES ADVERTISING AND PROMOTIONAL MATERIAL WHICH IS INCONSISTENT WITH THE INFORMATION REQUIRED TO BE DISCLOSED IN THE PROPERTY REPORT. *83 **2442 THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN AMENDMENT WHICH CLARIFIES THAT THIS SECTION APPLIES TO INFORMATION REQUIRED TO BE INCLUDED IN THE PROPERTY REPORT AND STATEMENT OF RECORD PURSUANT TO SECTIONS 1405 THROUGH 1408 OF THE ACT AND ANY RULES AND REGULATIONS PROMULGATED PURSUANT TO THOSE SECTIONS. THE CONFEREES WISH TO FURTHER CLARIFY THAT ADVERTISING MAY INCLUDE INFORMATION NOT REQUIRED BY LAW TO BE DISCLOSED IN THE PROPERTY REPORT AND NEED NOT INCLUDE ALL THE INFORMATION THAT IS REQUIRED TO BE INCLUDED IN THE PROPERTY REPORT. HOWEVER, WHEN THE ADVERTISING DEALS WITH A SUBJECT REQUIRED TO BE ADDRESSED IN

THE PROPERTY REPORT, THE INFORMATION IN THE ADVERTISING SHOULD NOT BE INCONSISTENT WITH INFORMATION IN THE PROPERTY REPORT.

LOTS NOT EXEMPT FROM THE ACT

UNTRUE STATEMENTS.-- THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT PROVIDING THAT THE EXISTING PROHIBITION AGAINST OBTAINING MONEY OR PROPERTY BY MEANS OF A MATERIAL MISREPRESENTATION WITH RESPECT TO ANY INFORMATION UPON WHICH A PURCHASER RELIES IN REGARD TO THE SALE OR LEASE OF A LOT NOT EXEMPT FROM THE ACT IS AMENDED TO PROHIBIT THE OBTAINING OF MONEY OR PROPERTY BY MEANS OF ANY UNTRUE STATEMENT OR OMISSION OF A MATERIAL FACT THAT WOULD (IN LIGHT OF THE CIRCUMSTANCES IN WHICH IT WAS MADE AND IN THE CONTEXT OF THE OVERALL OFFER AND SALE OR LEASE) BE MISLEADING WITH RESPECT TO ANY INFORMATION PERTINENT TO THE LOT OR SUBDIVISION. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION.

WHILE THE PURCHASER'S ACTUAL RELIANCE WOULD NO LONGER HAVE TO BE AN ELEMENT OF PROOF, IT IS CLEAR THAT IN PROVING THAT AN UNTRUE OR OMITTED FACT WAS MATERIAL, IT MUST BE ESTABLISHED THAT THE FACT WAS IMPORTANT ENOUGH THAT A REASONABLE PERSON WOULD HAVE RELIED UPON IT IN MAKING A DECISION TO PURCHASE OR LEASE THAT PARTICULAR PIECE OF LAND.

THE LANGUAGE 'IN THE CONTEXT OF THE OVERALL OFFER AND SALE OR LEASE' WAS INCLUDED TO CLARIFY HOW TO DETERMINE THE MATERIALITY OF A FACT AND TO MAKE CLEAR THAT A DEVELOPER IS NOT REQUIRED TO SAY EVERYTHING ABOUT THE SUBDIVISION IN EACH DISCRETE CONTACT WITH THE PURCHASER, BUT RATHER THAT WHAT THE DEVELOPER DOES CHOOSE TO SAY MUST NOT OMIT IMPORTANT FACTS THAT WOULD BE NEEDED SO THAT THE PURCHASER WOULD NOT BE MISLED. CLEARLY, WHEN A SELLER DRAWS ATTENTION TO INFORMATION WHICH IS FAVORABLE TO THE SALE OF THE LOT AND DELAYS PROVIDING CONTRADICTORY INFORMATION, A PURCHASER MAY BE MISLED. ANY SUBSEQUENT INFORMATION OF A COUNTERVAILING NATURE MUST BE HIGHLIGHTED; IT IS NOT SUFFICIENT SIMPLY TO DELIVER THE INFORMATION TO THE PURCHASER. THE SELLER BY OMISSION HAS TAKEN ON AN AFFIRMATIVE OBLIGATION TO MAKE THE STATEMENTS CLEAR AND UNAMBIGUOUS TO THE PURCHASER. THIS IS PARTICULARLY IMPORTANT WHERE THE PRIMARY CONTACT BETWEEN THE PURCHASER AND THE SELLER IS THROUGH ADVERTISING OR THE MAILS. IN THIS CIRCUMSTANCE AN ADVERTISEMENT FOR 'LAKESIDE PROPERTY' WHICH OMITTS TO STATE THAT THE LAKE WAS DRY FOR 6 MONTHS OF THE YEAR OR AN ADVERTISEMENT FOR 'HOME-SITES' WHICH FAILS TO MENTION THAT THE LAND WAS INAPPROPRIATE FOR SEPTIC TANKS AND A MUNICIPAL SEWAGE SYSTEM WAS UNAVAILABLE WOULD BE MISLEADING.

SERVICES AND AMENITIES.-- THE HOUSE BILL CONTAINED A PROVISION

NOT CONTAINED IN THE SENATE AMENDMENT PROVIDING THAT IN ADDITION TO THE EXISTING PROHIBITIONS AGAINST EMPLOYING SCHEMES AND ARTIFICES TO DEFRAUD AND ENGAGING IN ANY PRACTICE OR COURSE OF BUSINESS THAT WOULD OPERATE AS A FRAUD WITH REGARD TO THE SALE OR LEASE OF LOTS NOT EXEMPT FROM THE ACT, IT WOULD BE A PROHIBITED ACT TO REPRESENT THAT ROADS, SEWERS, *84 **2443 WATER, ELECTRIC SERVICES, OR RECREATIONAL AMENITIES WILL BE PROVIDED OR COMPLETED BY THE DEVELOPER WITHOUT SO STIPULATING IN THE CONTRACT OF SALE OR LEASE.

THE HOUSE PROVISION IS CONTAINED IN THE CONFERENCE REPORT. IT IS NOT THE INTENTION OF THE CONFEREES TO IMPOSE A NEW SUBSTANTIVE REQUIREMENT ON THE DEVELOPER TO PROVIDE ROADS, SERVICES, WATER, ELECTRIC, SEWER, OR RECREATIONAL AMENITIES, BUT WHERE THE DEVELOPER REPRESENTS IN ANY MANNER THAT SUCH FACILITIES WILL BE PROVIDED OR COMPLETED BY THE DEVELOPER THE CONTRACT OF SALE OR LEASE UTILIZED IN THE TRANSACTION MUST CONTAIN PROVISIONS SO OBLIGATING THE DEVELOPER.

REVOCATION OF THE CONTRACT

COOLING-OFF PERIOD

THE HOUSE BILL CONTAINED A PROVISION TO AMEND THE EXISTING REQUIREMENT THAT A PURCHASER MAY REVOKE HIS CONTRACT UNTIL MIDNIGHT OF THE THIRD BUSINESS DAY WHERE A PROPERTY REPORT HAS BEEN RECEIVED LESS THAN 48 HOURS BEFORE HE SIGNED THE CONTRACT TO PROVIDE THAT: (1) ANY CONTRACT FOR THE SALE OR LEASE OF A LOT NOT TOTALLY EXEMPT FROM THE ACT MAY BE REVOKED AT THE OPTION OF THE PURCHASER OR LESSEE UNTIL MIDNIGHT OF THE 10TH DAY FOLLOWING THE SIGNING OF SUCH CONTRACT AND SUCH CONTRACT SHALL CLEARLY PROVIDE THIS RIGHT; AND (2) NO OTHER REVOCATION PERIOD SHALL BE IMPOSED BY FEDERAL OR STATE LAW, EXCEPT THAT ANY STATE MAY PERMIT A LONGER PERIOD WITHIN WHICH RIGHT MAY BE INVOKED. THE SENATE AMENDMENT DID NOT CONTAIN A SIMILAR PROVISION. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN AMENDMENT WHICH REDUCES THE COOLING-OFF PERIOD FROM 10 TO 7 CALENDAR DAYS OR SUCH LATER TIME AS MAY BE REQUIRED PURSUANT TO STATE LAWS AND WHICH DELETES THE REQUIREMENT THAT NO OTHER PERIOD BE IMPOSED PURSUANT TO FEDERAL LAW.

NONDELIVERY OF PROPERTY REPORT

THE HOUSE BILL CONTAINED A PROVISION TO AMEND THE EXISTING REQUIREMENT THAT A 2-YEAR OPTION TO VOID A CONTRACT BE PROVIDED WHERE A PROPERTY REPORT HAS NOT BEEN GIVEN TO A PURCHASER OR LESSEE IN ADVANCE OF OR AT THE TIME OF SIGNING A CONTRACT OR AGREEMENT FOR PURCHASE OR LEASE TO PROVIDE THE

RIGHT OF REVOCATION WHERE THE PROPERTY REPORT IS REQUIRED TO BE PROVIDED AND HAS NOT BEEN GIVEN IN ADVANCE OF SIGNING THE CONTRACT OR AGREEMENT. THE SENATE AMENDMENT CONTAINED A SIMILAR PROVISION WHICH PROVIDED THAT THE OPTION TO VOID EXISTS ONLY WHERE THE PROPERTY REPORT IS REQUIRED TO BE PROVIDED AND HAS NOT BEEN GIVEN TO THE PURCHASER IN ADVANCE OR AT THE TIME OF HIS SIGNING. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION.

CONTRACTS NOT CONTAINING CERTAIN PROVISIONS

THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT PROVIDING THAT ANY CONTRACT FOR THE SALE OR LEASE OF A LOT NOT EXEMPT FROM THE ACT MAY BE REVOKED BY THE PURCHASER OR LESSEE FOR 2 YEARS FROM SIGNING THE CONTRACT WHERE THE CONTRACT DOES NOT PROVIDE: (1) A LEGALLY SUFFICIENT AND RECORDABLE DESCRIPTION OF THE BOUNDARIES OF THE LOT, (2) THAT, IN THE EVENT OF A CONTRACT BREACH BY THE PURCHASER OR LESSEE, THE SELLER OR LESSOR WILL INFORM THE PURCHASER IN WRITING OF SUCH BREACH AND OF THE OPPORTUNITY TO REMEDY SUCH BREACH WITHIN 30 DAYS, AND (3) THAT, IF THE PURCHASER OR LESSEE LOSES HIS OR HER INTEREST OR RIGHTS IN THE LOT AS A RESULT OF A BREACH OF CONTRACT WHICH OCCURS AFTER THE PURCHASER *85 **2444 OR LESSEE HAS PAID 15 PERCENT OF THE LOT'S PURCHASE PRICE (EXCLUDING ANY INTEREST OWED UNDER THE CONTRACT), THE SELLER SHALL REFUND TO SUCH PURCHASER ANY AMOUNT REMAINING AFTER SUBTRACTING THE AMOUNT OF DAMAGES INCURRED BY THE SELLER OR LESSOR AS RESULT OF SUCH BREACH FROM THE AMOUNT PAID BY THE PURCHASE WITH RESPECT TO THE LOT'S PURCHASE PRICE (EXCLUDING ANY INTEREST). THE HOUSE PROVISION FURTHER PROVIDED THAT THIS SUBSECTION SHALL NOT APPLY TO THE SALE OF ANY LOT FOR WHICH THE PURCHASER RECEIVES A WARRANTY DEED WITHIN 180 DAYS AFTER THE SIGNING OF THE CONTRACT.

THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION, WITH AN AMENDMENT WHICH PROVIDES THAT SUCH CONTRACTS MAY BE REVOKED BY THE PURCHASER OR LESSEE FOR 2 YEARS FROM SIGNING THE CONTRACT WHERE THE CONTRACT DOES NOT PROVIDE: (1) A DESCRIPTION OF THE LOT THAT IS CLEARLY IDENTIFIABLE AND IN A FORM THAT IS ACCEPTABLE FOR RECORDING BY THE APPROPRIATE PUBLIC OFFICIALS RESPONSIBLE FOR MAINTAINING LAND RECORDS IN THE JURISDICTION IN WHICH THE LAND IS LOCATED, (2) THAT, IN THE EVENT OF DEFAULT OR BREACH OF CONTRACT OR AGREEMENT, THE BUYER MUST BE GIVEN 20 DAYS AFTER RECEIPT OF WRITTEN NOTICE TO CURE THE DEFAULT OR BREACH, AND (3) THAT, IN THE CASE OF DEFAULT OR BREACH AFTER THE PURCHASER HAS PAID 15 PERCENT OF THE PURCHASE PRICE OF THE LOT, THE SELLER OR LESSOR MAY RETAIN 15 PERCENT OF THE PURCHASE PRICE OF THE LOT OR ACTUAL DAMAGES,

WHICHEVER IS GREATER.

THE CONFEREES INTEND THAT IN DEFINING THE TERM 'PURCHASE PRICE' THE SECRETARY BE GUIDED BY THE CONCEPT OF 'CASH PRICE' AS DEFINED PURSUANT TO THE TRUTH IN LENDING ACT AND REGULATION Z. IN CALCULATING THE AMOUNT OF MONEY PAID WHICH SHALL BE EXCLUDED AS INTEREST FOR THE PURPOSE OF DETERMINING THE AMOUNT OF FUNDS RETAINABLE AS LIQUIDATED DAMAGES, THE ACTUARIAL METHOD SHALL BE UTILIZED.

REIMBURSEMENT

THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT PROVIDING THAT UPON REVOCATION OF THE CONTRACT UNDER ANY OF THE PROVISIONS OF THIS SECTION, AND UPON TENDER OF AN INSTRUMENT BY THE PURCHASER TO THE DEVELOPER CONVEYING HIS OR HER RIGHTS AND INTERESTS IN THE LOT, SUCH PURCHASER SHALL BE ENTITLED TO ALL MONEY PAID BY HIM OR HER UNDER SUCH CONTRACT. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN AMENDMENT WHICH PROVIDES THAT WHEN THE PURCHASER, EXERCISING HIS OR HER RIGHT OF REVOCATION, CONVEYS HIS OR HER RIGHT AND INTEREST IN THE LOT TO THE DEVELOPER, THE PROPERTY AND THE LEGAL INTEREST CONVEYED MUST BE IN A CONDITION SUBSTANTIALLY SIMILAR TO THE CONDITION IN WHICH IT WAS CONVEYED OR PURPORTED TO BE CONVEYED TO THE PURCHASER. IT IS THE INTENTION OF THE CONFEREES THAT THE RESPONSIBILITY OF THE PURCHASER TO CORRECT CONDITIONS WOULD GO ONLY TO RESTORING THOSE ITEMS OR CORRECTING THOSE CONDITIONS WHICH RESULTED IN DIMINISHED VALUE AS A RESULT OF HIS OR HER VOLUNTARY AND DELIBERATE OR NEGLIGENT ACTIONS.

CERTIFICATION OF STATE LAW

REQUIREMENTS

THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT PROVIDING THAT THE SECRETARY SHALL CERTIFY A STATE WHEN HE DETERMINES THAT: (A) WHEN TAKEN AS A WHOLE, THE LAWS AND REGULATIONS OF THE STATE WHICH ARE APPLICABLE TO THE SALE OR LEASE OF LOTS, NOT EXEMPT FROM THE REGISTRATION AND DISCLOSURE PROVISIONS OF THE ACT, *86 **2445 REQUIRE THE SELLER OR LESSOR TO DISCLOSE INFORMATION WHICH IS SUBSTANTIALLY EQUIVALENT OR GREATER THAN THE REQUIREMENTS OF SECTION 1408; AND (B) THE STATE'S ADMINISTRATION OF SUCH LAWS PROVIDES, TO THE MAXIMUM EXTENT PRACTICABLE, THAT SUCH INFORMATION IS ACCURATE. IN ADDITION, IN THE CASE OF A STATE WHOSE DISCLOSURE LAWS ARE LESS THAN THE FEDERAL REQUIREMENTS, THE SECRETARY SHALL CERTIFY SUCH A STATE WHEN HE DETERMINES THAT: (A) TAKEN

AS A WHOLE, THE LAWS OF THE STATE APPLICABLE TO THE SALE OR LEASE OR LOTS NOT EXEMPT FROM FEDERAL DISCLOSURE AND REGISTRATION REQUIREMENTS PROVIDE SUFFICIENT PROTECTION FOR PURCHASERS AND LESSEES WITH RESPECT TO THE MATTERS FOR WHICH INFORMATION IS NOT REQUIRED TO BE DISCLOSED BY SUCH LAWS; AND (B) THE STATE'S ADMINISTRATION OF SUCH LAWS PROVIDES THAT THE INFORMATION REQUIRED TO BE DISCLOSED IS ACCURATE, AND SUFFICIENT PROTECTION FOR PURCHASERS IS MADE AVAILABLE WITH RESPECT TO THOSE MATTERS ABOUT WHICH THERE IS DISCLOSURE. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION, AMENDED, SO THAT TO BE CERTIFIED, IN ADDITION TO OTHER REQUIREMENTS, A STATE'S LAWS MUST REQUIRE DISCLOSURE WHICH IS SUBSTANTIALLY EQUIVALENT TO (BUT NOT GREATER THAN) THE FEDERAL REQUIREMENTS, AND A STATE MUST AGREE TO ACCEPT AND ALLOW TO BE DISTRIBUTED FOR DISCLOSURE PURPOSES THE PROPERTY REPORT COVERING LAND LOCATED OUTSIDE THAT STATE AND OFFERED FOR SALE OR LEASE INSIDE THAT STATE WHEN THE LAND IS LOCATED IN A SECOND CERTIFIED STATE AND THE PROPERTY REPORT HAS BEEN APPROVED BY THE SECOND CERTIFIED STATE.

SUBSTITUTE FILINGS

THE HOUSE BILL PROVIDED THAT AFTER CERTIFICATION OF A STATE, THE SECRETARY SHALL ACCEPT FOR FILING UNDER SECTIONS 1405 THROUGH 1408 (AND DECLARE EFFECTIVE AS THE STATEMENT OF RECORD AND PROPERTY REPORT) AND DISCLOSURE MATERIALS FOUND ACCEPTABLE BY SUCH STATE (IN CONNECTION WITH THE SALE OR LEASE OF LOTS LOCATED WITHIN THE STATE), AND FURTHER, NOTHING IN THIS SUBSECTION SHALL PRECLUDE THE SECRETARY FROM EXERCISING THE AUTHORITY CONFERRED BY SECTIONS 1407(D) AND 1407(E) TO INVESTIGATE AND SUSPENDED THE STATEMENT OF RECORD AFTER A HEARING IF IT CONTAINS UNTRUE STATEMENTS OR OMISSIONS OF MATERIAL FACT. THE SENATE AMENDMENT DID NOT CONTAINS A SIMILAR PROVISION. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN AMENDMENT WHICH PROVIDES, IN ADDITION, THAT IN THE CASE OF LAND LOCATED IN A NON-CERTIFIED STATE BUT OFFERED FOR SALE IN A CERTIFIED STATE, THE SECRETARY MAY ACCEPT FOR PURPOSES OF FEDERAL FILING A STATEMENT OF RECORD AND A PROPERTY REPORT CONTAINING INFORMATION REQUIRED BY THE CERTIFIED STATE. THESE CERTIFIED STATE PROPERTY REPORTS BECOME THE FEDERAL PROPERTY REPORT AND MUST BE USED AS SUCH IN ALL STATES WHERE THAT PROPERTY IS OFFERED FOR SALE OR LEASE. IN ADDITION, WHEN A STATE FAILS TO BE CERTIFIED BY THE SECRETARY, THE SECRETARY MUST INFORM THE STATE IN WRITING OF CHANGES IN STATE LAW, REGULATION, OR ADMINISTRATION THAT ARE NEEDED IN ORDER TO OBTAIN CERTIFICATION. THE CONFEREES WISH TO MAKE CLEAR THAT THE DEPARTMENT HAS DISCRETION REGARDING WHETHER

TO DECLARE EFFECTIVE AS A FEDERAL PROPERTY REPORT, THE CERTIFIED STATE'S PROPERTY REPORT COVERING LAND LOCATED IN A NON-CERTIFIED STATE BUT SOLD IN THE CERTIFIED STATE. THUS, A STATE MAY BE CERTIFIED ONLY FOR SALES OF LAND LOCATED WITHIN THE STATE OR FOR BOTH SALES OF LAND LOCATED WITHIN AND OUTSIDE THAT STATE.

*87 **2446 REVIEW

THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT REQUIRING THE SECRETARY TO PERIODICALLY REVIEW THE LAWS, AND THE ADMINISTRATION THEREOF, OF STATES CERTIFIED UNDER THIS SECTION, AND SUCH CERTIFICATION MAY BE WITHDRAWN IF SUCH LAWS AND THEIR ADMINISTRATION NO LONGER MEET THIS SECTION'S REQUIREMENTS. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION.

STATE AUTHORITY

THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT PROVIDING THAT NOTHING IN THIS TITLE MAY BE CONSTRUED TO LIMIT THE AUTHORITY OF ANY STATE OR LOCAL GOVERNMENT TO ENACT ANY LAW WITH REGARD TO LAND SALES NOT IN CONFLICT WITH THIS TITLE; AND WHICH REQUIRES THE SECRETARY IN ADMINISTERING THIS TITLE, TO COOPERATE WITH STATE AUTHORITIES RESPONSIBLE FOR REGULATING LAND SALES. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION.

IT IS THE INTENTION OF THE CONFEREES THAT NOTHING IN THE PROVISIONS OF THIS SECTION WILL LIMIT ANY STATE'S POWER TO IMPOSE STRICT REGISTRATION REQUIREMENTS OR SUBSTANTIVE DEVELOPMENT STANDARDS ON DEVELOPERS WHO WANT TO SELL LAND WITHIN THAT STATE. ONCE A STATE IS CERTIFIED AND THAT STATE'S PROPERTY REPORT BECOMES FOR ALL PURPOSES THE FEDERAL PROPERTY REPORT, THE SECRETARY MAY REQUIRE A FEDERAL COVER SHEET SIMILAR TO THE ONE PRESENTLY IN USE.

CIVIL LIABILITIES

SPECIFIC PERFORMANCE

THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT TO ADD TO THE RELIEF AVAILABLE UNDER EXISTING LAW SPECIFIC PERFORMANCE, OR OTHER RELIEF WHICH THE COURT DEEMS EQUITABLE. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION.

DETERMINING RELIEF

THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT REQUIRING THAT IN DETERMINING RELIEF, THE COURT WILL TAKE INTO ACCOUNT, BUT NOT BE LIMITED TO THE FOLLOWING FACTORS: THE CONTRACT PRICE OF THE LOT; THE AMOUNT THE PURCHASER ACTUALLY PAID; THE COST OF ANY IMPROVEMENTS TO THE LOT; THE FAIR MARKET VALUE OF THE LOT AT THE TIME OF SALE; AND THE FAIR MARKET VALUE OF THE LOT AT THE TIME THE LOT WAS PURCHASED.

THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN AMENDMENT WHICH PROVIDES THAT THE COURT 'MAY,' RATHER THAN 'WILL,' TAKE THESE FACTORS INTO ACCOUNT; WHICH PROVIDES THAT THE COURT MAY CONSIDER THE FAIR MARKET VALUE OF THE LOT AT THE TIME RELIEF IS DETERMINED IN ADDITION TO THE VALUE AT THE TIME THE LOT WAS PURCHASED; AND THAT THE COURT MAY CONSIDER THE VALUE OF 'LEASEHOLDS,' AS WELL AS THE VALUE OF 'LOTS.'

ADDITIONAL RELIEF

THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT TO AMEND EXISTING LAW TO PERMIT RECOVERY FOR INTEREST, REASONABLE ATTORNEY'S FEES, INDEPENDENT APPRAISER'S FEES AND TRAVEL COSTS. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN AMENDMENT WHICH CLARIFIES THAT IN ADDITION TO RECOVERY FOR INTEREST, THE COURT MAY AWARD REASONABLE AMOUNTS FOR ATTORNEY'S FEES, INDEPENDENT APPRAISER'S FEES AND TRAVEL TO AND FROM THE LOT IN CONNECTION WITH THE SUIT.

*88 **2447 STATUTE OF LIMITATIONS

LIMITATIONS ON CIVIL ACTION

THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT PROVIDING THAT THE STATUTE OF LIMITATIONS FOR VIOLATIONS OF REGISTRATION, DISCLOSURE, FRAUD, AND MISREPRESENTATION, IS 3 YEARS AFTER DISCOVERY OR AFTER DISCOVERY SHOULD HAVE BEEN MADE, WHICHEVER IS LATER. THE HOUSE BILL ALSO INCLUDED A PROVISION NOT IN THE SENATE AMENDMENT WHICH DELETED THE EXISTING REQUIREMENT THAT IN NO EVENT MAY ANY ACTION BE BROUGHT BY A PURCHASER MORE THAN 3 YEARS AFTER THE SALE OR LEASE TO SUCH PURCHASER, AND WHICH PROVIDES THAT IN NO CASE SHALL ACTIONS BE BROUGHT MORE THAN 3 YEARS AFTER THE LAST PAYMENT HAS BEEN MADE ON A CONTRACT OF SALE OR LEASE OR 3 YEARS AFTER CONVEYANCE OF A WARRANTY DEED, WHICHEVER IS SHORTER.

THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN

AMENDMENT PROVIDING THAT--

(1) THE STATUTE OF LIMITATIONS WOULD BE 3 YEARS FROM THE DATE OF SIGNING THE CONTRACT FOR VIOLATIONS REGARDING ANY SALE OR LEASE:

(A) WITHOUT AN EFFECTIVE STATEMENT OF RECORD;

(B) WITHOUT DELIVERING A PROPERTY REPORT TO THE PURCHASER OR LESSEE PRIOR TO SIGNING THE CONTRACT;

(C) WHERE THE PROPERTY REPORT OR STATEMENT OF RECORD CONTAINS AN UNTRUE STATEMENT OF MATERIAL FACT OR OMITTS TO STATE A MATERIAL FACT;

(D) WHERE ADVERTISING IS USED THAT IS INCONSISTENT WITH INFORMATION REQUIRED TO BE IN THE PROPERTY REPORT OR STATEMENT OF RECORD; OR

(E) WHERE THE DEVELOPER REPRESENTS THAT UTILITIES AND AMENITIES WILL BE PROVIDED OR COMPLETED BY THE DEVELOPER WITHOUT SO STIPULATION IN THE CONTRACT OF SALE OR LEASE; AND

(2) THAT THE STATUTE OF LIMITATIONS WOULD BE 3 YEARS AFTER DISCOVERY OF THE VIOLATION OR AFTER DISCOVERY SHOULD HAVE BEEN MADE BY EXERCISE OF REASONABLE DILIGENCE FOR VIOLATIONS REGARDING ANY OFFER OR SALE OR LEASE THAT INVOLVES:

(A) EMPLOYING ANY DEVICE, SCHEME OR ARTIFICE TO DEFRAUD;

(B) OBTAINING MONEY BY MEANS OF ANY UNTRUE STATEMENT OF MATERIAL FACT OR ANY OMISSION 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

(C) ENGAGING IN ANY TRANSACTION, PRACTICE, OR COURSE OF BUSINESS THAT WOULD OPERATE AS A FRAUD OR DECEIT.

THE CONFEREES WISH TO CLARIFY THAT THE PURPOSE OF THE AMENDMENT CONTAINED IN THE CONFERENCE REPORT IS TO LIMIT TO 3 YEARS AFTER THE DATE OF SIGNING THE CONTRACT THOSE SUITS BASED ON REQUIREMENTS RELATED TO ADVERTISING, TO CONTRACT TERMS OR TO INFORMATION REVIEWED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PRIOR TO SALE. THE FACT OF A MATERIAL OMISSION OR THE USE OF AN UNTRUE STATEMENT OF MATERIAL FACT IN THE PROPERTY REPORT OR THE STATEMENT OF RECORD WOULD BE COVERED UNDER THIS STATUTE OF LIMITATIONS.

THE LONGER STATUTE OF LIMITATIONS WHICH REQUIRES A SUIT TO BE FILED WITHIN 3 YEARS FROM DISCOVERY OF THE VIOLATIONS APPLIES TO A VARIETY OF FRAUDULENT PRACTICES. IN BRINGING AN ACTION UNDER THE LONGER STATUTE OF *89 **2448 LIMITATIONS, A PLAINTIFF COULD USE EVIDENCE BASED ON VIOLATIONS COVERED BY THE SHORTER STATUTE OF LIMITATIONS PERIOD TO ESTABLISH THAT A FRAUD HAD OCCURRED. FOR EXAMPLE, SINCE CLEAR PROHIBITIONS EXIST IN THE LAW AGAINST THE USE OF UNTRUE STATEMENTS OR OMISSIONS OF MATERIAL FACT IN THE STATEMENT OF RECORD OR PROPERTY REPORT,

THESE VIOLATIONS WOULD BE RELEVANT IN ESTABLISHING WHETHER A FRAUD EXISTED IN THE CONTEXT OF THE WHOLE OFFER AND SALE OR LEASE.

REVOCATION

THE HOUSE BILL CONTAINED A PROVISION NOT CONTAINED IN THE SENATE AMENDMENT PROVIDING THAT ACTIONS TO ENFORCE RIGHTS OF REVOCATION UNDER SECTION 1404(B), (C) OR (D) MUST BE BROUGHT WITHIN 3 YEARS AFTER SIGNING THE CONTRACT OR LEASE, NOTWITHSTANDING DELIVERY OF A DEED TO A PURCHASER. THE CONFERENCE REPORT CONTAINS THE HOUSE PROVISION WITH AN AMENDMENT WHICH INCLUDES ACTIONS TO ENFORCE RIGHTS UNDER SECTION 1404(E).