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## LAND DEVELOPMENT LAWS

Federal and state laws require specific disclosures to be made to purchasers of unimproved lots in most real estate developments.

Under the Federal Interstate Land Sales Full Disclosure Act, a development must be registered with HUD and a disclosure document (called a property report) must be given to prospective purchasers, unless the development or a particular sale is exempt.

Under the Washington Land Development Act, as amended in 1992, a disclosure document (called a public offering statement), must be given to prospective purchasers, unless the development or a particular sale is exempt. There is no longer a registration requirement under state law.

Under federal law, a development is exempt from the registration and property report requirements if the development contains 100 or fewer lots. Under state law, a development is exempt if (a) the development contains fewer than 26 lots, (b) fewer than ten (i.e. nine or fewer) lots are *offered* for sale by a seller in any twelve-month period, or (c) the development is located within the limits of a city incorporated prior to 1974. Under both federal and state law, a particular sale in a development is exempt from the disclosure requirements if (a) there is a house on the lot at the time of the sale, (b) if the *seller* agrees to build a house on the lot within two years after the lot sale, or (c) if the lot is sold to a builder for the purpose of building a house thereon for resale.

Nonexempt lot sales in an unregistered development can be rescinded by the purchaser for up to two years after closing, and may subject the seller and agent to civil and/or criminal liability.

Presales and spec homes in an unregistered development pose no problem with respect to the land development laws. Both the sale of the lot from the developer to the builder and the sale of the completed house from the builder to the purchaser are exempt.

However, custom home sales in a nonexempt development present some complications. Since a developer cannot sell a lot in a nonexempt development directly to a purchaser, the purchaser must have the builder buy the lot from the developer, then convey the lot to the purchaser. In other words, two conveyances of the lot are required: one from the developer to the builder, and another from the builder to the purchaser. Both conveyances are exempt from the land development laws. In order to avoid excise tax on the second conveyance, the first conveyance must be to "[the builder], as nominee for [the purchaser]," and the funds with which the builder acquired the lot must have been furnished by the purchaser.

Therefore, to comply with the land development laws, and at the same time avoid a double excise tax, a custom home sale must be structured as follows: The builder, as nominee for the purchaser, must enter into an earnest money agreement with the developer for the purchase of the lot. The purchaser cannot be a party to or sign that first earnest money agreement, but the agreement may be conditioned upon the builder entering into an earnest money agreement and custom construction contract with the purchaser within a specified

period of time. The builder and the purchaser enter into a separate earnest money agreement for the *lot only* and a custom construction contract for the house, which must obligate the builder to complete the

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house within a period of two years or less after the closing of the lot purchase. The second earnest money agreement should be conditioned upon the builder obtaining title to the property, to protect the builder from being in default if the developer fails to perform. Both earnest money agreements can be entered into at the same time, and the earnest money deposit on the second agreement can be used as the deposit on the first agreement, if the second agreement so provides. Then, the purchaser obtains the construction financing. Both lot sales close simultaneously, using the purchaser's own funds and/or proceeds from the construction loan.

Most developments are marketed under the "builder-sale" exemption. However, if the developer wants to sell lots directly to the general public and the development is not otherwise exempt, then the development must be registered before any lots are even *offered* for sale to the public, and prospective purchasers must be given a copy of the property report or public offering statement. Purchasers of lots in a registered development have a two-day right of rescission after receiving the disclosure document, unless the particular transaction is exempt. Developers should be advised to consult their attorneys regarding the requirements of the land development laws before entering into *any* agreements to sell lots in their development.

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