





When it comes to interstate land sales, developers shouldn't get a free pass

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By Jared H. Beck

Lawyers Alan S. Becker and Allen M. Levine have every right to advocate a position favorable to their big developer clients in the pages of your newspaper, Saturday, April 12. They are not, however, entitled to skew the facts in urging Congress to gut the

federal Interstate Land Sales Full Disclosure Act, one of the most important sources of protection afforded to buyers of residential real estate, including Florida condominiums. The authors are dead wrong on the following points:

1.) They state that ILSA was designed to protect buyers of "swampland or wasteland unsuitable for development," and the statute was "never intended to apply to real estate developments in highly urbanized areas, such as the major metropolitan areas of South Florida today." This is totally contrary to what the 11th Circuit held in 1985, upon carefully examining the intent of Congress in passing the law and the policies and regulations of the U.S. Department of Housing and Urban Development. Since then, no one has seriously disputed that ILSA applies to condos and other real estate in urban areas. Of course, they don't mention the relevant legislative history, but one is tempted to ask: Why do purchasers of vacant land deserve more protection from "unscrupulous developers" than purchasers of units in un-built condominiums?

2.) The authors characterize the ILSA requirements as "time-consuming and costly." True, it takes relatively more time and money for a developer to comply with ILSA than not to comply. But perhaps they should answer the following questions: How much did developers running roughshod over the federal disclosure requirements in their race to bring new buildings to market add more fuel to the fire of an already overheated South Florida housing market? How much did this mad dash by developers exacerbate the very problems that they now blame on disgruntled speculators, problems for which we as a society are currently paying very high costs indeed?

3) They further state that if buyers prevail in their claims under ILSA, "it will make matters even worse for the majority of buyers who honor their contracts but will pay the price for living in half-empty condominiums." This is a fallacy. Condominiums all over Florida are going to be half (or more) empty, regardless of whether buyers succeed in their claims in court. Many of these buyers cannot close on their purchases, even if they want to, due to the virtual impossibility of obtaining a mortgage in the present climate. The real issue is whether developers should pay the price for having willfully failed to comply with the provisions of a federal statute intended specifically to protect the very buyers from whom they were taking hefty deposits.

At the end of the day, they have written a thinly veiled advocacy piece on behalf of their clients, calling for a general amnesty in favor of those developers who violated ILSA — in many cases, willfully. The irony here is that the federal law governing sales of real estate is relatively non-burdensome. Fortunately, we live in a society of laws where changing economic conditions do not bear on whether or not a given statute on the books should be enforced. Real estate developers should not get a free pass from having to comply with federal law simply because the real estate market went south.

Jared H. Beck is an attorney from Miami.

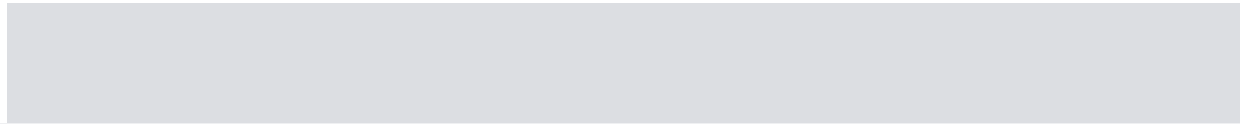
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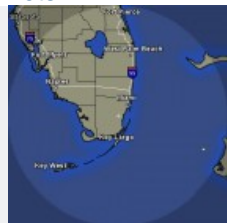
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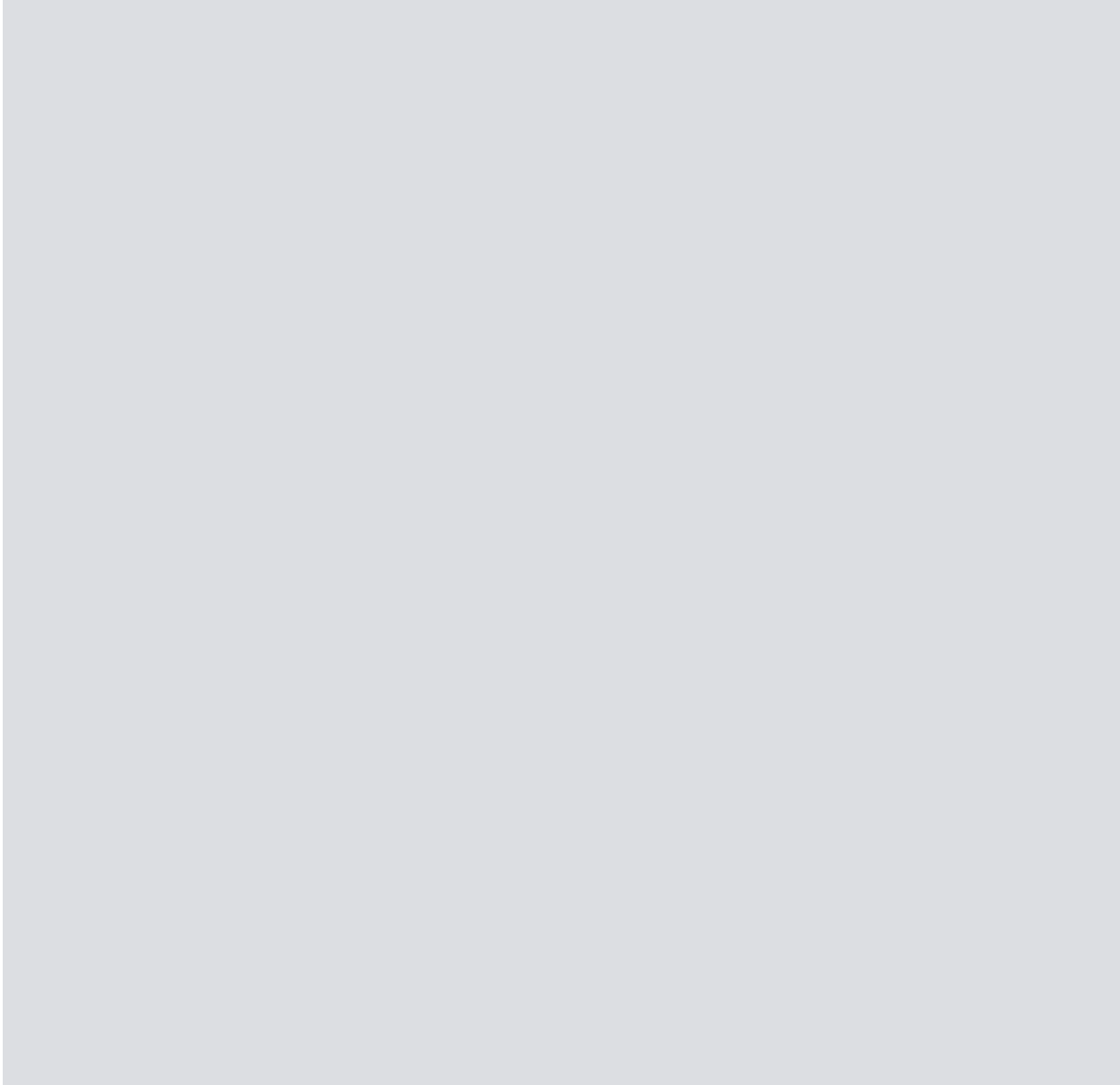
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