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News Analysis: Tearing up condo contracts over a 40-year-old law

Inside the contentious mechanics of the obscure legislation condo owners are using to take on developers -- Are mixed-use spaces next?

By Kyle Swenson

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With a glut of condos comes legal trouble, as both area developers and buyers are realizing this month.

The tension between purchasers rethinking their condo buys and developers eager to close contracts has produced a wave of lawsuits targeting area developments such as Ashland City's Braxton and the Gulch's Terrazzo and Icon projects.



Each suit cites an obscure federal statute, the Interstate Land Sales Full Disclosure Act. That law was passed in 1968 by Congress and has become the go-to for lawsuits against condo developments in heavily saturated markets like Florida and Nevada. The Nashville suits invoke the various developments' failure to comply with the act as grounds for the purchasers' right to tear up their contracts.

But the issue of compliance here is far from clear cut. The statute is notoriously oblique according to attorneys familiar with the act, and with these first filings, it seems Nashville's continuing condo saga has entered a sticky and nebulous legal terrain.

Under the statute, all developments not subject to exemption must register with the U.S. Department of Housing and Urban Development. However, developers often either consider themselves exempt or simply ignore the compliance. HUD's **online listing** of registered developments shows Tony Giarratana's Signature Tower as the only Nashville-area project registered.

"[The act] is still active but it's not one of those things that gets a whole lot of attention," William Durl, the field office director of the Nashville HUD office, told *NashvillePost.com*.

In addition to registering with HUD, the act says all nonexempt developments must prepare a Federal Property Report, a detail-heavy document that outlines the amenities and characteristics of the development. Buyers must be given the Property Report prior to signing a purchasing contract.

The process, however, can be extremely unwieldy. It took nine months and hundreds of thousands of dollars to register the Signature Tower with HUD and prepare the Property Reports, developer Tony Giarratana told *NashvillePost.com*.

But if a nonexempt development fails to go put a Property Report before a buyer, the act gives that buyer the option to walk away with a refunded deposit.

“[The act] states this very clearly,” said Jared Beck, a Miami real estate attorney. “It says if the buyer doesn’t get a property report before they sign, they have a two-year period in which they can revoke the contract.”

In the Braxton, Terrazzo and Icon suits, the plaintiffs allege the developments were not exempt from the act, failed to register and provide a Property Report, and that therefore the purchasers are entitled to walk with their cash.

Such suits, which have flooded Florida courtrooms, often hinge on the murky question of whether or not a development is actually exempt, Beck said. The number of units a development has is nonnegotiable, but 90 percent of the cases regarding the act involve questions of whether a property was constructed in a two-year window, he said.

Developers often pad the signing contracts they put before buyers with clauses for special contingencies such as natural disasters or material shortages to widen the two-year time span.

“This is where a lot of the fight is,” Beck said. “The buyers bring lawsuits and they point to these contingencies and say, ‘Actually, you’ve left yourself so much room to not build the project in two years, you actually don’t get the exemption under the act, meaning you should have provided a property report.’”

Regardless of whether the Nashville suits are successful in prying purchasers from their contracts, the fact that the area’s condo backers failed to register under the act smells like a novice’s naivete.

On one hand, the statute is easy to ignore. Besides the exhaustive process, HUD can’t ensure developers register or punish those who don’t.

Also, in the middle of a buying boom like the one earlier this decade, developers don’t want to slow down their timelines for the approval process, especially if the initial buyer reaction is strong and it looks like all their units will quickly close.

But the assumption of exemption leaves properties open to lawsuits like the ones Nashville is now seeing. In markets such as Florida, nearly all developments more than 100 units register, Beck said, in order to protect themselves against such legal action.

There’s another wrinkle: The act could also take on an added significance when applied to

Nashville's mixed-use properties. Part of the statute protects against misrepresentation. Developers are obliged to build all of the amenities that they say will be included in the property. However, it's unclear how this applies to mixed-use components like retail stores or restaurants.

According to lawyers who spoke with *NashvillePost.com*, a development that fails to land the office, retail or food tenants it advertised could be sued for misrepresenting amenities under the act.

Whether the recent local lawsuits will hold their own in court remains to be seen. But their appearance does signal that Nashville can finally claim to be a first-rate condo market — and share all the legal issues that go along with it.

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