

§ 1715.15

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§ 1715.15 Unlawful sales practices—statutory provisions.

The statutory prohibitions against fraudulent or misleading sales practices are set forth at 15 U.S.C. 1703(a). With respect to the prohibitions against representing that certain facilities will be provided or completed unless there is a contractual obligation to do so by the developer:

(a) The contractual covenant to provide or complete the services or amenities may be conditioned only upon grounds that are legally sufficient to establish impossibility of performance in the jurisdiction where the services or amenities are being provided or completed;

(b) Contingencies such as acts of God, strikes, or material shortages are recognized as permissible to defer completion of services or amenities; and

(c) In creating these contractual obligations developers have the option of incorporating by reference the Property Report in effect at the time of the sale or lease. If a developer chooses to incorporate the Property Report by reference, the effective date of the Property Report being incorporated by reference must be specified in the contract of sale or lease.

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§ 1715.20 Unlawful sales practices—regulatory provisions.

In selling, leasing or offering to sell or lease any lot in a subdivision it is an unlawful sales practice for any developer or agent, directly or indirectly, to:

(a) Give the Property Report to a purchaser along with other materials when done in such a manner so as to conceal the Property Report from the purchaser.

(b) Give a contract to a purchaser or encourage him to sign anything before delivery of the Property Report.

(c) Refer to the Property Report or Offering Statement as anything other than a Property Report or Offering Statement.

(d) Use any misleading practice, device or representation which would deny a purchaser any cancellation or refund rights or privileges granted the purchaser by the terms of a contract or

any other document used by the developer as a sales inducement.

(e) Refuse to deliver a Property Report to any person who exhibits an interest in buying or leasing a lot in the subdivision and requests a copy of the Property Report.

(f) Use a Property Report, note, contract, deed or other document prepared in a language other than that in which the sales campaign is conducted, unless an accurate translation is attached to the document.

(g) Deliberately fail to maintain a sufficient supply of restrictive covenants and financial statements or to deliver a copy to a purchaser upon request as required by §§ 1710.109(f), 1710.112(d), 1710.209(g) and 1710.212(i).

(h) Use, as a sales inducement, any representation that any lot has good investment potential or will increase in value unless it can be established, in writing, that:

(1) Comparable lots or parcels in the subdivision have, in fact, been resold by their owners on the open market at a profit, or;

(2) There is a factual basis for the represented future increase in value and the factual basis is certain, and;

(3) The sales price of the offered lot does not already reflect the anticipated increase in value due to any promised facilities or amenities. The burden of establishing the relevancy of any comparable sales and the certainty of the factual basis of the increase in value shall rest upon the developer.

(i) Represent a lot as a homesite or building lot unless:

(1) Potable water is available at a reasonable cost;

(2) The lot is suitable for a septic tank operation or there is reasonable assurance that the lot can be served by a central sewage system;

(3) The lot is legally accessible; and

(4) The lot is free from periodic flooding.

§ 1715.25 Misleading sales practices.

Generally, promotional statements or material will be judged on the basis of the affirmative representations contained therein and the reasonable inferences to be drawn therefrom, unless the contrary is affirmatively stated or appears in promotional material, or

unless adequate safeguards have been provided by the seller to reasonably guarantee the occurrence of the thing inferred. For example, when a lot is represented as being sold by a warranty deed, the inference is that the seller can and will convey fee simple title free and clear of all liens, encumbrances, and defects except those which are disclosed in writing to the prospective purchaser prior to conveyance. The following advertising and promotional practices, while not all inclusive, are considered misleading, and are used to evaluate a developer's or agent's representations in determining possible violations of the Act or regulations. (In this section "represent" carries its common meaning.)

(a) *Proposed improvements.* References to proposed improvements of any land unless it is clearly indicated that (1) the improvements are only proposed or (2) what the completion date is for the proposed improvement.

(b) *Off-premises representations.* Representing scenes or proposed improvements other than those in the subdivision unless

(1) It is clearly stated that the scenes or improvements are not related to the subdivision offered; or

(2) In the case of drawings that the scenes or improvements are artists' renderings;

(3) If the areas or improvements shown are available to purchasers, what the distance in road miles is to the scenes or improvements represented.

(c) *Land use representations.* Representing uses to which the offered land can be put unless the land can be put to such use without unreasonable cost to the purchaser and unless no fact or circumstance exists which would prohibit the immediate use of the land for its represented use.

(d) *Use of "road" and "street".* Using the words "road" or "street" unless the type of road surface is disclosed. (All roads and streets shown on subdivision maps are presumed to be of an all-weather graded gravel quality or higher and are presumed to be traversable by conventional automobile under all normal weather conditions unless otherwise shown on the map.)

(e) *Road access and use.* Representing the existence of a road easement or right-of-way unless the easement or right-of-way is dedicated to the public, to property owners or to the appropriate property owners association.

(f) *Waterfront property.* References to waterfront property, unless the property being offered actually fronts on a body of water. Representations which refer to "canal" or "canals" must state the specific use to which such canal or canals can be put.

(g) *Maps and distances.* (1) The use of maps to show proximity to other communities, unless the maps are drawn to scale and scale included, or the specific road mileage appears in easily readable print.

(2) The use of the terms such as "minutes away", "short distance", "only miles", or "near" or similar terms to indicate distance unless the actual distance in road miles is used in conjunction with such terms. Road miles will be measured from the approximate geographical center of the subdivided lands to the approximate downtown or geographical center of the community.

(h) *Lot size.* Representation of the size of a lot offered unless the lot size represented is exclusive of all easements to which the lot may be subject, except for those for providing utilities to the lot.

(i) *"Free" lots.* Representing lots as "free" if the prospective purchaser is required to give any consideration whatsoever, offering lots for "closing costs only" when the closing costs are substantially more than customary, or when an additional lot must be purchased at a higher price.

(j) *Pre-development prices.* References to pre-development sales at a lower price because the land has not yet been developed unless there are plans for development, and reasonable assurance is available that the plans will be completed.

(k) *False reports of lot sales.* Repeatedly announcing that lots are being sold or to make repetitive announcements of the same lot being sold when in fact this is not the case.

(l) *Guaranteed refund.* Use of the word "guarantee" or phrase "guaranteed refund" or similar language implying a

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money-back guarantee unless the refund is unconditional.

(m) *Discount certificates.* The use of discount certificates when in fact there is no actual price reduction or when a discount certificate is regularly used.

(n) *Lot exchanges.* Representations regarding property exchange privileges unless any applicable conditions are clearly stated.

(o) *Resale program.* Making any representation that implies that the developer or agent will resell or repurchase the property being offered at some future time unless the developer or agent has an ongoing program for doing so.

(p) *Symbols for conditions.* The use of asterisks or any other reference symbol or oral parenthetical expression as a means of contradicting or substantially changing any previously made statement or as a means of obscuring material facts.

(q) *Proposed public facilities.* References to a proposed public facility unless money has been budgeted for construction of the facility and is available to the public authority having the responsibility of construction, or unless disclosure of the existing facts concerning the public facility is made.

(r) *Non-profit or institutional name use.* The use of names or trade styles which imply that the developer is a nonprofit research organization, public bureau, group, etc., when such is not the case.

§ 1715.27 Fair housing.

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601, *et seq.*, and its implementing regulations and guidelines apply to land sales transactions to the extent warranted by the facts of the transaction.

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§ 1715.30 Persons to whom subpart B is inapplicable.

Newspaper or periodical publishers, job printers, broadcasters, or telecasters, or any of the employees thereof, are not subject to this subpart unless the publishers, printers, broadcasters, or telecasters—

(a) Have actual knowledge of the falsity of the advertisement or

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(b) Have any interest in the subdivision advertised or

(c) Also serve directly or indirectly as the advertising agent or agency for the developer.

Subpart C—Advertising Disclaimers

§ 1715.50 Advertising disclaimers; subdivisions registered and effective with HUD.

(a) The following disclaimer statement shall be displayed below the text of all printed material and literature used in connection with the sale or lease of lots in a subdivision for which an effective Statement or Record is on file with the Secretary. If the material or literature consists of more than one page, it shall appear at the bottom of the front page. The disclaimer statement shall be set in type of at least ten point font.

Obtain the Property Report required by Federal law and read it before signing anything. No Federal agency has judged the merits or value, if any, of this property.

(b) If the advertising is of a classified type; is not more than five inches long and not more than one column in print wide, the disclaimer statement may be set in type of at least six point font.

(c) This disclaimer statement need not appear on billboards, on normal size matchbook folders or business cards which are used in advertising nor in advertising of a classified type which is less than one column in print wide and is less than five inches long.

(d) A developer who is required by any state, or states, to display an advertising disclaimer in the same location, or one of equal prominence, as that of the federal disclaimer, may combine the wording of the disclaimers. All of the wording of the federal disclaimer must be included in the resulting combined disclaimer.

PART 1720—FORMAL PROCEDURES AND RULES OF PRACTICE

Subpart A—Rules and Rulemaking

Sec.

1720.1 Scope of rules in this subpart.

1720.5 Initiation of rulemaking.

1720.10 Investigations and conferences.