

September 13, 2011

APPEAL: Plaintiffs are entitled to return of condo deposits

The plaintiffs sued alleging Harborage violated the ILSFDA in two ways: Harborage did not provide a property report and it made material misrepresentations in the Site Plan. Harborage admitted it never provided a property report to plaintiffs before they signed the purchase agreements. But it claimed it was not required to provide the reports because of two exemptions that removed the project from ILSFDA. Properties are exempt when the contract requires the seller to erect the building within two years. And subdivisions are exempt when they contain fewer than 100 units.

One version of the purchase agreements applied to 36 units and required Harborage to complete the project within two years. Another version of the purchase agreement was used for the remaining 90 units in the project. But absent from this version was the two-year completion language because it applied to fewer than 100 units — a requirement to meet the second exception.

The 11th Circuit rejected Harborage's arguments that the exemptions applied. The court found the two-contract method of disposing the units lacked any legitimate business purpose. Unable to prove such purpose, the court held Harborage's method was impermissibly "adopted for the purpose of evading the ILSFDA's requirements."

Without the exemptions Harborage was subject to ILSFDA. The plaintiffs were entitled to the return of their deposits, as well as attorney fees and costs, because Harborage failed to timely provide the property report.

Case: Harborage Cottages-Stuart, LLLP v. Gentry

Case no.: 09-14636

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