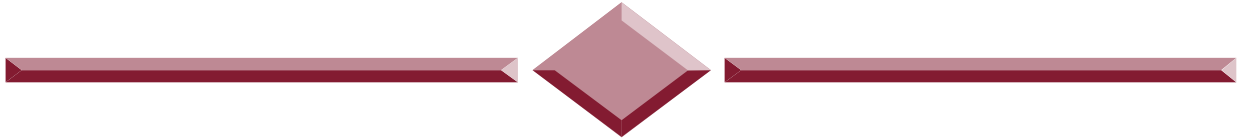


The Client Letter

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This newsletter addresses current issues and developments in the law relating to development of planned communities. It is published periodically for distribution to clients and friends of Hyatt & Stubblefield, P.C., Attorneys and Counselors. The information presented is not intended as specific legal advice to any person. Principles of law expressed in this newsletter are subject to change from time to time.



“What Is Your Number on Vacation?” A Brief Essay from Wayne Hyatt

In 1995, my wife had cancer surgery, and I remained with her in the hospital for 22 days. I was totally out of contact with office, partners, and clients on any and all subjects except how Amanda was doing. That "isolation" was a first for me, and I learned a number of important lessons. I would like to share two of those lessons with you.

It is important to note who the "you" in the preceding sentence is; I am writing this brief essay for you, our valued and greatly appreciated clients *and* for each of you who are the attorneys and staff at Hyatt & Stubblefield. The message, while slightly different for each group, is essentially the same for all of us.

The first lesson I learned is an important one that most of us do not really want to acknowledge, at least not deep down inside. That lesson was: I am *not* indispensable. The world did not come to an end because I was not available.

Most business people, but especially lawyers, have the feeling that they must be available, they must make the decisions, they must be the one to manage the deal, etc. Part of the reason may be the "I must be busy or I'm not relevant syndrome." Part of the reason simply may be Americans' addiction to "being busy" for the sake of being busy and thus "important." Whatever the reason, we tend to believe that we are "indispensable" when, in reality, we are not.

The second lesson I learned directly impacts the first and is an important reminder for attorney and client alike. When he learned I would be out for an extended period, an executive at a longstanding client said: "No worry; Hyatt & Stubblefield is seamless." And he was, and remains, correct in that observation. We work very hard to make every client the firm's client and one in which each attorney has a caring concern. There is always someone here to respond to a client's needs and to do so cheerfully and skillfully and with a genuine interest in those needs.

There is a third thing I have learned along the way and that is that each of us, whether a client or law firm employee, needs uninterrupted down time. We think we do not; we do not want to admit we are not capable of going full bore full time. But we do need it; we all do. And when we take that much-needed down time, we come back to our jobs far better prepared to do wisely and well whatever the job demands.

So, you ask, what prompted this brief essay? Last week one of our attorneys, preparing to leave for a week's vacation, told me a client wanted to be sure the attorney would be available throughout the vacation. I said, "Tell the client you are not available but that I—and others—will be here all week as a resource for whatever might arise." After all, we are *your* law firm, not just an office of nine lawyers.

My point is this: each of us—clients definitely included—need to take a real break without BlackBerries, cell phones, and deadlines destroying the quality time with family, nature, or just simple solitude. No one is indispensable, and the world will not come to end. In fact, the work will be waiting upon one's return. But each of us will be far better prepared, mentally and physically, to deal with it.

So, enjoy—truly enjoy—a safe, work-free vacation. And allow each of us to do so as well.

All the best to each of you.

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- “What Is Your Number on Vacation?”
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Is Your Project in Compliance with the Interstate Land Sales Full Disclosure Act?

The Interstate Land Sales Full Disclosure Act (the "Act"), 15 U.S.C. § 1701, *et seq.*, was enacted by Congress in 1968 to protect consumers from fraud and abuse in the sale or lease of land. The Act is a comprehensive statute requiring subdivision developers, unless exempt, to furnish prospective purchasers with pertinent information about lots offered for sale under a common promotional plan. Since the Act is an antifraud statute utilizing disclosure as its primary tool, it requires developers to file a statement of record with the Department of Housing and Urban Development ("HUD"). The statement of record includes a property report that must be given to all purchasers in advance of their signing any contract to purchase a home. In it, the developer must disclose, among other things, a description of access to the property, the availability of facilities for sewage, water, and other utilities, and the nature of the improvements to be installed by the developer.

Unless the project qualifies for an exemption, until a developer has complied with the Act, he or she may not directly or indirectly use interstate communication, interstate commerce, or the mails to communicate with potential buyers. Interstate commerce includes the U.S. mail, e-mail, telephone communication, and advertising in a publication such as a newspaper or magazine.

If a developer does not comply with the Act, the buyer has a right to rescind the contract anytime within two years from the date it was signed and may also receive, after complying with certain conditions, all of the money he or she has paid to the seller. The buyer may also bring an action at law or in equity to enforce the Act and may recover costs and reasonable attorneys' fees. In addition, HUD may enforce stiff penalties against developers who do not comply with the Act. If your development is not exempt from the Act, you must strictly comply with the Act or risk being subject to civil and criminal penalties.

Is Your Project Subject to the Act?

There are several common exemptions under the Act, and we would be happy to consult with you about whether your project qualifies for an exemption. However, as the cases outlined below indicate, developers are often unaware of the filing requirement. In addition, in some circumstances, a project that qualified for an exemption at the outset may lose the exemption when conditions change, such as when construction is delayed after contracts have been signed.

In *Winter v. Hollingsworth Properties, Inc.*, 777 F.2d 1444 (11th Cir. 1985), a suit was brought by the buyer of a condominium unit seeking rescission of his contract and the return of his deposit pursuant to the Act because the seller did not register the project with HUD. Apparently, the developer thought his project was exempt from the Act because he was selling condominium units. While there are many exemptions to the Act, the stat-

ute does apply to certain condominium projects, and the court ruled that the purchaser was entitled to rescind the contract.

In March of 2004, HUD fined developers Thomas and Betty Brewer \$215,000 because they failed to register their developments in Sugarmill Woods, Florida; Savannah Lakes, South Carolina; Apple Valley, Ohio; and Holiday Island, Arkansas and also engaged in a series of improper sales practices in connection with the sale of lots in these subdivisions. In addition to being fined, the Brewers were required as part of the settlement with HUD to convey two lots in a North Carolina subdivision to a receiver. The money and property from the settlement was used to aid purchasers who were injured by the Brewers' actions.

When Complying with the Act, You Must Be Accurate and Truthful

In *Johnson v. Stephens Development Corp.*, 538 F.2d 664 (5th Cir. 1976), Mabel Johnson and other plaintiffs ("Plaintiffs") who owned lots in the Kings Country subdivision located in Lake Cypress Springs, Texas sued Stephens Development Corporation ("Stephens") for knowingly violating the Act. The Plaintiffs claimed that Stephens misrepresented that a master plan existed and falsely promised, without intending to keep the promise, that there would be built a golf course, country club, Olympic-sized swimming pool, chapel, full service marina, archery range, offshore club, campgrounds, and asphalt boulevards. The United States Court of Appeals for the Fifth Circuit held that the evidence was clear that the Developer did not comply with the filing requirements of the Act. While Plaintiffs were awarded only nominal damages in this case, Stephens was required to pay their attorneys' fees and costs in bringing the suit.

In November, 2005, Cat Creek, LLC, the developer of The Gardens at Cat Creek and The Preserve at Cat Creek in North Carolina was fined by HUD for advertising to consumers that the Cat Creek neighborhoods would be serviced by a water system that had been approved by the State of North Carolina when, in fact, no such approval had been granted. Cat Creek, LLC was investigated by the State of North Carolina for its misdeeds and was assessed a penalty of \$15,000 for failing to comply with state regulatory requirements, for not obtaining the proper authorization for a water supply system, and for resuming construction after prior notice of a violation. In addition to paying the State of North Carolina for state regulatory violations, the developer was also fined \$8,500 by HUD for its federal law violations.

We would be pleased to send **The Client Letter** to friends and business associates who you feel would benefit from receiving it. Just send our office a note with their names and addresses or give us a call at 404-659-6600.

You Must Furnish Buyers with a Property Report Before They Sign a Contract

The underlying purpose of the Act is to insure that a buyer, prior to the purchase of real estate, is informed of facts which will enable him to make an informed decision about purchasing the property. The property report is required to reflect information about the development contained in a statement of record on filed with HUD. The Act unambiguously requires the seller to furnish a property report to the purchaser "in advance of the signing of any contract or agreement for sale or lease by the purchaser."

In *Law v. Royal Palm Beach Colony, Inc.*, 578 F.2d 98 (5th Cir. 1978), the Laws brought suit seeking to enforce their statutory right to rescind their purchase contract since Royal Palm Beach Colony, Inc. ("Royal Palm") had failed to timely furnish them with a property report as required by the Act. They executed a contract on April 20th to purchase property in Hernando County, Florida, and on May 8th, Royal Palm mailed a property report to the Laws with a cover letter that provided, "Enclosed you will find a property report which should have been signed at the time of your sale. Would you please read it carefully, then would you sign it and return it in the enclosed envelope." The Laws executed receipt of the property report on May 13th and continued to make installment payments on the contract until the following February. More than nine months after first signing

the contract, the Laws requested that Royal Palm rescind the contract. When Royal Palm refused, the Laws sued Royal Palm for violating the Act.

The United States Court of Appeals for the Fifth Circuit was not persuaded by Royal Palm's argument that it substantially complied with the Act by sending the Laws a copy of the property report several weeks after the Laws signed the contract and before Royal Palm had executed the contract. Since the Laws were not given a property report in advance of or at the time of their signing the contract, the court held that Royal Palm did not comply with the Act, and the Laws were entitled to rescind the contract and receive a complete refund of the monies paid to Royal Palm.

The first step in determining a compliance strategy for interstate land sales is to determine the project's eligibility for exemption or need to register with HUD under the Act. In addition, developers should be aware that many states also have some form of land sales statute by which they regulate the offering and sale of subdivided land in their state, including subdivided land located outside the state that is offered for sale to residents of the state. The next step of a compliance strategy is to identify those states that the developer considers to be target markets for the project and to conduct an analysis of the availability of exemptions or need to register in each of those states.

Creating Great Community Space

Public parks have been incorporated into residential development for many years. However, too often, these parks fail to become truly great community spaces. Too often, they become "destinations" that residents will visit infrequently rather than becoming integrated into residents' daily lives. Public parks also tend to focus on landscaping. The prevailing thought has been that the essential element of a great park should be beauty. However, the Project for Public Spaces ("PPS"), a New York nonprofit consulting group, asserts that, while beauty and design are important factors, factors such as the number of activities offered that appeal to different users, well-positioned and comfortable seating, and easy access are more important to make a public space a success. PPS advocates an understanding of the social ecology of the place before starting to develop a public space.

PPS has established 11 key elements for transforming public spaces into vibrant places:



1. The Community is the Expert – identify community members' talents, use their perspective, and seek a sense of community ownership.

2. Create a Place, Not a Design – A strong sense of community and a comfortable image are the goals.

3. Look for Partners – museums, schools, and other local institutions can provide valuable support to help get a project off the ground.

4. Observe – analyze existing public spaces with an eye toward why they do or do not work.

5. Have a Vision – Imagine specific activities occurring in a comfortable, significant place that makes the community proud.

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6. Start with the Flowers, then Experiment – the best spaces experiment with short-term improvements that can be tested and refined over many years.

7. Triangulate – bring at least three elements together, such as a children's reading room in a library, a children's playground in a park, and a food kiosk will attract more users than each on its own.

8. They Always Say, "It Can't Be Done" – be ready for obstacles, and remember one of Yogi Berra's great says: "If they say it can't be done, it doesn't always work out that way."

9. Form Supports Function – the concept for space is more important than the design

10. Money is Not the Issue – benefits can outweigh costs when the community and other partners are involved.

11. You are Never Finished – good public spaces respond to the changing needs of the community. Be open to those changes.



Inside News

- Jan Bozeman and David Herrigel are speaking on the subject of legal considerations when marketing and selling 50+ housing at the Building for Boomers and Beyond: 50+ Housing Symposium sponsored by the National Association of Home Builders to be held in Denver, Colorado on May 30 - June 1, 2007.
- Jo Anne Stubblefield is serving as the faculty chair for a two-day continuing legal education seminar entitled "Resort Real Estate and Clubs: Formation, Documentation and Operation," sponsored by the American Bar Institute-American Bar Association, to be held on July 12-13, 2007, in San Francisco, California.

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