

Notice to Clients about the Interstate Land Sales Full Disclosure Act and the Consumer Financial Protection Bureau

July 22, 2011

On July 14, Carlton Fields participated in a conference call with Peggy Twohig, the Director of Non Bank Supervision in the new federal Consumer Financial Protection Bureau (“CFPB”), to discuss the Interstate Land Sales Full Disclosure Act (“ILSA”). Effective July 21, ILSA came under the jurisdiction of the CFPB; previously it was administered by the US Department of Housing and Urban Development (“HUD”). We sent out a Legal News Alert about the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 this morning. While ILSA itself has not changed, we expect the move to the CFPB will have several major effects, and that feeling was reinforced by the conference call. One intangible change is in policy. The CFPB consists not only of some former HUD officials, but also those from the Federal Trade Commission (Ms. Twohig’s background), the Treasury Department and the Federal Deposit Insurance Corporation. We expect that this new mix of individuals will produce an environment more protective of consumers, although possibly less protective of speculators. The CFPB may be more open to new ideas since many officials will not have the vested background in old policies, interpretations and procedures. The executive director for the CFPB has not yet been confirmed, although it has now been announced that President Obama nominated Richard Cordray, the former Ohio Attorney General, rather than Elizabeth Warren, who has set up the Bureau. Congressional Republicans are making attempts to change the structure of the Bureau through new legislation. The political uncertainty means that knowing a business or bank should do may be unclear for a while. There is a project underway to consider legislative revisions to ILSA. Shareholder Richard Linquanti is on a citizens’ committee that is making recommendations at the CFPB’s invitation, and he chairs the subgroup working specifically on exemptions to ILSA coverage or registration requirements. One direction seems to be establishing separate filing rules for single family lots and for condominiums, which may make ILSA registration filings less expensive and time-

consuming. There also seems to be a direction towards clarifying and even expanding which projects are exempt from ILSA. Unfortunately, it is unlikely that amending legislation will be considered before the 2013 Congress. As mentioned above, there will be a period of some uncertainty and this may affect ILSA policy. HUD adopted few substantive regulations. Instead, it relied on policy positions, typically in opinion letters and in a document referred to as the “Guidelines for Exemptions.” A number of court cases gave no weight to the Guidelines because they were not adopted under the rule-making authority of HUD, and one case ignored an issued opinion, leaving developers who relied on them stuck with the results of hostile court decisions. The CFPB is not adopting the Guidelines. The court cases around the country are inconsistent on many key issues. Therefore, until the CFPB exercises its rule-making authority – which will be several months at least – developers will be even more in the dark about significant exemption issues than has been true in recent years. Carlton Fields provides clients with advice about whether exemptions from ILSA might be available and how most conservatively to structure its contracts for compliance. Where exemptions are not available, we assist clients with the registration filings. We also defend clients in court and administrative proceedings for alleged ILSA violations. As new information concerning this transition of ILSA from HUD to the CFPB becomes available, we will provide you with updates. If you have ILSA issues or questions that you would like us to present to the CFPB for its legislative or regulatory consideration, please let us know. You can do that by contacting [Richard Linquanti](#) at 727.824.0036 or by email to rlinquanti@carltonfields.com.

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