

§ 1010.106

or agreement of sale or unless certain provisions are included in the contract or agreement, the purchaser is entitled to cancel the contract within two years from the date of signing the contract or agreement.

(ii) The deed must be a warranty deed, or where such a deed is not commonly used, a similar deed legally acceptable in the jurisdiction where the lot is located. The deed must be free and clear of liens and encumbrances.

(iii) The contract provisions are:

(A) A legally sufficient and recordable lot description; and

(B) A provision that the seller will give the purchaser written notification of purchaser's default or breach of contract and the opportunity to have at least 20 days from the receipt of notice to correct the default or breach; and

(C) A provision that, if the purchaser loses rights and interest in the lot because of the purchaser's default or breach of contract after 15% of the purchase price, exclusive of interest, has been paid, the seller shall refund to the purchaser any amount which remains from the payments made after subtracting 15% of the purchase price, exclusive of interest, or the amount of the seller's actual damages, whichever is the greater.

(iv) If a deed is not delivered within 180 days of the signing of the contract or if the necessary provisions are not included in the contract, the following statement shall be used in place of any other rescission language: "Under Federal law you may cancel your contract or agreement of sale any time within two years from the date of signing."

(e) At the time of submission, the developer may indicate its intention to comply with the red printing by an illustration or by a statement to that effect.

(f) The "Date of This Report" shall be the date on which the Director allows the Statement of Record to become effective and shall not be entered until the submission has become effective.

§ 1010.106 Table of contents.

(a) The second page(s) shall consist of a Table of Contents which lists the headings in the Property Report, the major subheadings, if any, and the page

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on which they appear. An example is set forth in section XI of the appendix to this part: Sample Entry in Table of Contents for Statement of Record.

(b) *Use of "You" and "We."* At the end of the Table of Contents insert the following remark: "In this Property Report, the words "you" and "your" refer to the buyer. The words "we," "us" and "our" refer to the developer."

§ 1010.107 Risks of buying land.

(a) The next page shall be headed "Risks of Buying Land" and shall contain the paragraphs listed in section XII of the appendix to this part: Required Paragraphs for Risks of Buying Land.

(b) Warnings. If the instructions of the Director require any warnings to be included in the Property Report portion, the following statement shall be added beneath the "Risks of Buying Land" under a heading "Warnings": "Throughout this Property Report there are specific warnings concerning the developer, the subdivision or individual lots. Be sure to read all warnings carefully before signing any contract or agreement." Both the heading, "Warnings," and the statement shall be printed in capital letters and enclosed in a box.

§ 1010.108 General information.

Insert and complete the format set forth in section XIII of the appendix to this part: Format for General Information.

§ 1010.109 Title to the property and land use.

(a) *General instructions.* (1) Below the heading "Title to the Property and Land Use" insert the introductory paragraphs set forth in section XIV of the appendix to this part: Paragraphs to be included in the General Report—Title to the Property and Land Use.

(2) *Information to be provided.* After the above introductory paragraphs provide the information required by the following instructions and questions. Follow a general form identical to the sample page set forth in section IX of the appendix to this part: Sample Page for Statement of Record.

(b) *Method of sale:*

(1) *Sales contract and delivery of deed.*
 (i) Will the buyer sign a purchase money or installment contract or similar instrument in connection with the purchase of the lot? When will a deed be delivered?

(ii) If an installment contract is used, include the following, or substantially the same, language in the disclosure narrative under "Method of Sale": "If you fail to make your payments required by the contract, you may lose your lot and all monies paid."

(iii) If, at the time of a credit sale, the developer gives the buyer a deed to the lot, what type of security must the buyer give the seller?

(iv) If the lots are to be sold on the basis of an installment contract, can the developer or the owner of the subdivision or their creditors encumber the lots under contract? If so, include the following warning in the disclosure narrative under the caption "Sales contract and delivery of deed": "The (indicate subdivision developer, owner, or their creditors) can place a mortgage on or encumber the lots in this subdivision after they are under contract. This may cause you to lose your lot and any monies paid on it."

(2) *Type of deed.* What type of deed will be used to convey title to lots in the subdivision?

(3) *Quitclaim deeds.* If a quitclaim deed is to be given to lot purchasers insert the below warning, or a warning which is substantially the same, in the disclosure narrative below the caption "Quitclaim Deeds." This particular warning may be deleted at the direction of the Director if an acceptable attorney's opinion is submitted with the Statement of Record which indicates that a quitclaim deed has a meaning in the jurisdiction where the subdivision is located which is substantially contrary to the effect of this warning. This warning shall be phrased substantially as follows: "The Quitclaim deed used to transfer title to lots in this subdivision gives you no assurance of ownership of your lot."

(4) *Oil, gas, and mineral rights.* If oil, gas or mineral rights have been reserved, insert the following statement or one substantially the same in the narrative answer under the caption "oil, gas, and mineral rights": "The

(indicate oil, gas, or mineral rights) to (state which lots) in this subdivision will not belong to the purchaser of those lots. The exercise of these rights could affect the use, enjoyment and value of your lot."

(c) *Encumbrances, mortgages and liens—(1) In general.* State whether any of the lots or common facilities which serve the subdivision, other than recreation facilities, are subject to a blanket encumbrance, mortgage or lien. If yes, identify the type of encumbrance (*e.g.*, deed of trust, mortgage, mechanics liens), the holder of the lien, and the lots covered by the lien. If any blanket encumbrance, mortgage, or lien is not current in accordance with its terms, so indicate.

(2) *Release provisions.* (i) Explain the effect of any release provisions of any blanket encumbrance, mortgage or lien and include the one of the following statements that pertains.

(A) If the release clauses are not included in a recorded instrument, insert the statement set forth in section XV of the appendix to this part: Statement on Release Provisions, or one substantially the same in the disclosure narrative below under the caption "Release Provisions."

(B) If the developer or subdivision owner states that the release provisions are recorded and that the lot purchaser may pay the release price of the mortgage, the statement shall be supported by documentation supplied in § 1010.209. If the purchaser may pay the release fee, state the amount of the release fee and inform the purchaser that the amount may be in addition to the contract payments unless there is a bona fide trust or escrow arrangement in which the purchaser's payments are set aside to pay the release price before any payments are made to the developer.

(C)(1) If there are no provisions in the blanket encumbrance for release of an individual purchaser's lot from a blanket encumbrance, include the warning set forth in section XVI of the appendix to this part: Warning for Release Provisions or a warning substantially the same, in the disclosure narrative under the "Release Provisions" caption.

(2) If the provisions for release of individual lots from the blanket encumbrance may be exercised only by the developer insert the following statement, or one substantially the same, in the disclosure narrative under the "Release Provisions" caption: "The release provisions in the (state the type of encumbrance) on (indicate all or particular lots) in this subdivision may be exercised only by us. Therefore, if we default on the (state type of encumbrance) before obtaining a release of your lot, you may lose your lot and any money you have paid for it."

(d) *Recording the contract and deed*—

(1) *Method or purpose of recording.* (i) State what protection, if any, recording of deeds and contracts gives a lot purchaser in your jurisdiction.

(ii) If the sales contract or deed may be recorded, so state. Also state whose responsibility it is to record the contract or deed.

(iii) If the developer or subdivision owner will not have the sales contract officially acknowledged or if the applicable jurisdiction will not record sales contracts, state that sales contracts will not be recorded and why they will not be recorded.

(iv) If at, or immediately after, the signing of a contract, the contract or a deed transfer to the buyer is not recorded by the developer or owner or if title to the lot is not otherwise transferred of record to a trust, or if other sufficient notice of transfer or sale is not placed of record, then the developer shall include the warning set forth in section XVII of the appendix to this part: Method and Purpose of Recording Warning, or substantially the same warning in the disclosure narrative under the caption "Method and Purpose of Recording." The reference to contracts shall be deleted from the above warning if the answer to paragraph (d)(1)(i) of this section indicates that recording of a contract in the subject jurisdiction does not protect the purchaser from claims of later purchasers or creditors of anyone having an interest in the land.

(2) *Title insurance.* If the developer does not deliver a title insurance policy to the buyer, state that the purchaser should obtain an attorney's opinion of title or a title insurance pol-

icy which will describe the rights of ownership which are being acquired in the lot. Recommend that an appropriate professional should interpret the opinion or policy.

(e) *Payments*—(1) *Escrow.* If purchasers' deposits, down payments, or installment payments are to be placed in a third party controlled escrow or similar account, describe the arrangement including the name and address of the escrow holder or similar person. If there is no such arrangement, insert the statement set forth in section XVIII of the appendix to this part: Escrow Statement. The questions regarding an escrow agreement or similar protection may be answered affirmatively only if the money is under the control of an independent third party, allowing a purchaser to receive a return of all money paid in the event of the developer's failure to convey title or the developer's default on any obligation which would otherwise result in the purchaser's loss of that money.

(2) *Prepayments.* Explain any prepayment penalties or privileges in everyday language.

(3) *Default.* What are the developer's or subdivision owners' remedies against a defaulted purchaser?

(f) *Restrictions on the use of your lot*—

(1) *Restrictive covenants.* (i) Have any restrictive covenants been recorded against the land in the subdivision? If so, do they contain items which require the purchaser to secure permissions, approvals or take any other action prior to using or disposing of his lot (*e.g.*, architectural control, developer's right of first refusal, building deadlines, etc.)? If any of these or similar items are included, explain their meaning and effect upon the purchaser.

(ii) If any restrictive covenants are to be used and if they have not been recorded, how will they be imposed? Include a statement to the effect that the restrictive covenants have not been recorded; that there is no assurance they will be applied uniformly; that they may be changed and that they may be difficult to enforce. If no restrictive covenants will be imposed, include a statement to the effect that, since there are no restrictive covenants on the use of the lots, they may be used

for purposes which could adversely affect the use and enjoyment of surrounding lots.

(iii) If there are restrictive covenants, whether recorded or unrecorded, the following statement shall be made: "A complete copy of these restrictions is available upon request."

(2) *Easements.* (i) Are there easements which may have an effect on the purchaser's building or lot use plans (*e.g.*, large drainage easements along lot lines, high voltage electric transmission lines, pipe lines or drainage easements which encroach upon the building area of the lot or inhibit its use)?

(ii) Is the subdivision subject to any type of flood control or flowage easements?

(iii) If the answer to either (2)(i) or (2)(ii) is in the affirmative, identify the affected lots and state the effect upon the use of the lots.

(g) *Plats, zoning, surveying, permits and environment*—(1) *Plats.* (i) Have the subdivision plans and plats of specific units been approved by the regulatory authorities? If the approvals have not been obtained, include a warning to the effect that regulatory authorities have not approved the proposed plats; that they may require significant alterations before they will approve them and they may not allow the land to be used for the purpose for which it is being sold.

(ii) Have plats covering the lots in this Report been recorded? If so, where are they recorded? If they have not been recorded, is the description of the lots given in this Report legally adequate for the conveyance of land in the jurisdiction where the subdivision is located? If it is not, include a statement to the effect that the description of the lots is not legally adequate for the conveyance of the lots and that it will not be until the plat is recorded.

(2) *Zoning.* For what purpose may the lots be used (*e.g.*, single family homes, camping, commercial)? Does this use conform to local zoning requirements and the restrictive covenants?

(3) *Surveying.* Has each lot been surveyed and is each lot marked for identification? If not, and the purchaser is responsible for the expense, state the estimated cost.

(4) *Permits.* Must the purchaser obtain a building permit before beginning construction on his lot? Where is the permit obtained? Are any other permits necessary to use the lot for the purpose for which it is sold or for construction in connection with its use?

(5) *Environment.* Has there been any environmental impact study prepared which considers the effect of the subdivision on the environment? If a study has been prepared, summarize any adverse conclusions and refer the lot buyer to the proper State Clearinghouse for complete information. If a study has not been prepared, include a statement that "No determination has been made as to the possible adverse effects the subdivision may have upon the environment and surrounding area." If the developer does not know whether an environmental impact study has been prepared, or the name and location of the Office where any study made can be found, inquiry should be made to the State or Area Clearinghouse established under the authority of title IV of the Intergovernmental Cooperation Act of 1968.

§ 1010.110 Roads.

(a) *Access to the subdivision.* (1) Is access to the subdivision provided by public or private roads? What type of surface do they have? How many lanes? What is the width of the wearing surface?

(2) Who is responsible for their maintenance? What is the cost to the purchaser, if any? Are any improvements contemplated? If so, when will they begin and when will they be completed? At whose expense?

(b) *Access within the subdivision.* (1) How have legal and physical access by conventional automobile been or will they be, provided to the lots (*e.g.*, road on recorded easement; right of way dedicated to the public; right of way dedicated to use of lot owners)?

(2) Who is responsible for the road construction? Is there any construction cost to the purchaser? Is there any financial assurance of completion? If there is no financial assurance of completion, enter a warning to the effect that no funds have been set aside in an escrow or trust account and there are