

Building a Home

If you want to build a new home, there are things you need to know before you begin. Learn about construction standards and about buying land, so you know your rights.

MPS Supplementing Model Building Codes

The Minimum Property Standards (MPS) establish certain minimum standards for buildings constructed under HUD housing programs. This includes new single-family homes, multi-family housing and healthcare-type facilities.



HUD Minimum Property Standards and How They Supplement the Model Building Codes

Until the mid-1980s, HUD maintained separate Minimum Property Standards for different types of structures. Since that time, HUD has accepted the model building codes, including over 250 referenced standards and local building codes, in lieu of separate and prescriptive HUD standards. However, there is one major area of difference between the MPS and other model building codes -- durability requirements. Homes and projects financed by FHA-insured mortgages are the collateral for these loans, and their lack of durability can increase the FHA's financial risk in the event of default. More specifically, the model codes do not contain any minimum requirements for the durability of items such as doors, windows, gutters and downspouts, painting and wall coverings, kitchen cabinets and carpeting. The MPS includes minimum standards for these, and other items, to ensure that the value of an FHA-insured home is not reduced by the deterioration of these components.

HUD Field Office Acceptance for Areas Without Building Codes

HUD requires that each property insured with an FHA mortgage meet one of the nationally recognized building codes or a state or local building code based on a nationally recognized building code. In areas where such state or local codes are used, HUD determines if the state or local code is comparable to the model building code. There are also areas of the United States that do not have building codes. If no state or local building code has been adopted, the appropriate HUD Field Office will specify a building code that is comparable to one of the nationally recognized model building codes.

Interstate Land Sales

The Interstate Land Sales program protects consumers from fraud and abuse in the sale or lease of land. In 1968, Congress enacted the Interstate Land Sales Full Disclosure Act, which is patterned after the Securities Law of 1933, and requires land developers to register subdivisions of 100 or more non-exempt lots with HUD, and to provide each purchaser with a disclosure document called a property report. The property report contains relevant information about the

subdivision and must be delivered to each purchaser before the signing of the contract or agreement.

Buying Lots from Developers

Be well informed when shopping for land. Lots may be marketed as sites for future retirement homes, for second home locations, or for recreational or campsite use. However, be wary of any investment aspect that may be stressed by sales personnel. If you plan to purchase a lot which is offered by promotional land sales, take plenty of time before coming to a decision. Before signing a purchase agreement, a contract, or a check:

- know your rights as a buyer;
- know something about the developer;
- know the facts about the development and the lot you plan to buy; and
- know what you are doing when you encounter high-pressure sales campaigns.

Generally, if the company from which you plan to buy is offering 100 or more unimproved lots for sale or lease through the mail or by means of interstate commerce, it may be required to register with the U.S. Department of Housing and Urban Development (HUD). This means that the company must file with HUD and provide prospective buyers with a property report containing detailed information about the property. Failure to do this may be a violation of federal law, punishable by up to five years in prison, a \$10,000 fine, or both. The information filed by the developer and retained by HUD must contain such items as these:

- a copy of the corporate charter and financial statement;
- information about the land, including title policy or attorney's title opinion, and copies of the deed and mortgages;
- information on local ordinances, health regulations, etc.;
- information about facilities available in the area, such as schools, hospitals and transportation systems;
- information about availability of utilities and water, and plans for sewage disposal;
- development plans for the property, including information on roads, streets and recreational facilities; and
- supporting documents, such as maps, plans and letters from suppliers of water and sewer facilities.

The company filing this information must swear and affirm that it is correct and complete, and an appropriate fee must accompany submission. The information is retained by HUD and is available for public inspection. The property report, which is also prepared by the developer, goes to the buyer. The law requires the seller to give the report to a prospective lot purchaser prior to the time a purchase agreement is signed. Ask for it. The seller is also required to have the buyer sign a receipt acknowledging receipt of the property report. Do not sign the receipt unless you have actually received the property report. Check the developer's property report before buying. This is the kind of information you will find in a property report:

- distances to nearby communities over paved and unpaved roads;

- existence of mortgages or liens on the property;
- whether contract payments are placed in escrow;
- availability and location of recreational facilities;
- availability of sewer and water service or septic tanks and wells;
- present and proposed utility services and charges;
- the number of homes currently occupied;
- soil and foundation conditions which could cause problems in construction or in using septic tanks; and
- the type of title the buyer may receive and when it should be received.



Read the Property Report Before Signing Anything

This report is prepared and issued by the developer of this subdivision. It is not prepared or issued by the federal government. Federal law requires that you receive this report prior to signing a contract or agreement to buy or lease a lot in this subdivision. However, no federal agency has judged the merits or value of the property. If you received the report prior to signing a contract or agreement, you may cancel your contract or agreement by giving notice to the seller any time before midnight of the seventh day following the signing of the contract or agreement. If you did not receive this report before you signed a contract or agreement, you may cancel the contract or agreement any time within two years from the date of signing.

Your Contract Rights

If the lot you are buying is subject to the jurisdiction of the Interstate Land Sales Full Disclosure Act, the contract or purchase agreement must inform you of certain rights given to buyers by that Act. The contract should state that the buyer has a "cooling-off" period of seven days (or longer, if provided by state law) following the day that the contract is signed to cancel the contract, for any reason, by notice to the seller, and get his or her money back. Furthermore, unless the contract states that the seller will give the buyer a warranty deed, within 180 days after the contract is signed, the buyer has a right to cancel the contract for up to two years from the day that the contract is signed, unless the contract contains the following provisions:

- a clear description of the lot so that the buyer may record the contract with the proper county authority;
- the right of the buyer to a notice of any default (by the buyer), and at least 20 days after receipt of that notice to cure or remedy the default;
- a limitation on the amount of money the seller may keep as liquidated damages, of 15% of the principal paid by the buyer (exclusive of interest) or the seller's actual damages, whichever is greater.

Contract Rights Concerning Property Reports

It has always been the law that if the developer has an obligation to register with the Interstate Land Sales Division, the developer or sales agent must give the buyer a copy of the current property report before the buyer signs a contract. Otherwise, the buyer has up to two years to cancel the contract and get their money back. That fact must also be clearly set forth in all contracts. You may have the right to void the contract if the subdivision has not been registered with HUD, or you were not given a property report. Furthermore, if the developer has represented that it will provide or complete roads, water, sewer, gas, electricity or recreational facilities in its property report, in its advertising, or in its sales promotions, the developer must obligate itself to do so in the contract, clearly and conditionally (except for acts of nature or impossibility of performance). In addition to the right to a full disclosure of information about the lot, the prospective buyer may have the right to void the contract and receive a refund of their money if the developer has failed to register the subdivision with HUD or has failed to supply the purchaser with a property report. While a purchaser may have the right to void the contract with the developer under these conditions, the purchaser may still be liable for contract payments to a third party if that contract has been assigned to a financing institution or some similar entity. The registration is retained by HUD and is available for public inspection. If the property report contains misstatements of fact, if there are omissions, if fraudulent sales practices are used, or if other provisions of the law have been violated, the purchaser may also sue to recover damages and actual costs and expenses in court against the developer. However, depending on when your sale occurred, you may be barred from taking further action due to the Act's statute of limitations. Your attorney can advise you further on this matter.

"Cooling-Off" Period

Even if you received the property report prior to the time of your signing of the contract or agreement, you have the right to revoke the contract or agreement by notice to the seller until midnight of the seventh day following the signing of the contract. You should contact the developer, preferably in writing, if you wish to revoke your contract and receive a refund of any money paid to date. Even if the property report is delivered to you before you sign a sales agreement, the law gives you a "cooling-off" period. This right cannot be waived.



A Word About the Interstate Land Sales Division

The HUD unit which administers the law, examines the developer's registration statement, and registers the land sales operator is the Interstate Land Sales Division. Except for disclosure purposes, this office is not concerned with zoning or land-use planning, and has no control over the quality of the subdivision. It does not dictate what land can be sold, to whom, or at what price. It cannot act as a purchaser's attorney. But it will help purchasers secure the rights given to them by the Interstate Land Sales Full Disclosure Act.

HUD is authorized by law to conduct investigations and public hearings, to subpoena witnesses and secure evidence, and to seek court injunctions to prevent violations of the law. If necessary,

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Exemptions from the Law

The prospective buyer should be aware that not all promotional land sales operations are covered by the law. If the land sales program is exempt, no registration is required by HUD, and there will be no property report. Here are some of the specific situations for which the statute allows exemptions without review by HUD, including the sale of:

- tracts of fewer than 100 lots which are not otherwise exempt;
- lots in a subdivision where every lot is 20 acres or more in size;
- lots upon which a residential, commercial or industrial building has been erected, or where a sales contract obligates the seller to build one within two years;
- certain lots which are sold only to residents of the state or metropolitan area in which the subdivision is located;
- certain low-volume sales operations (no more than 12 lots a year);
- certain lots that meet certain local codes and standards and are zoned for single-family residences or are limited to single-family residences by enforceable codes and restrictions; and
- certain lots, contained in multiple sites of fewer than 100 lots each, offered pursuant to a common promotional plan.

Other exemptions are available which are not listed above. If you have reason to believe that your sale is not exempt and may still be covered by the law, contact the Interstate Land Sales Division.

Know the Developer

Knowing your rights under the law is the first step in making a sensible land purchase. To exercise those rights, you also must know something about the honesty and reliability of the developer who offers the subdivision that interests you. Don't fail to ask questions. Whether you are contacted by a sales agent on the phone or by mail, at a promotional luncheon or dinner, in a sales booth at a shopping center, or in the course of your own inspection of the subdivision, make it your business to find out all you can about the company and the property. In addition, get any verbal promises or representations in writing. Don't fail to ask questions. If you are seriously interested in buying a lot, ask if the company is registered with HUD or is entitled to an exemption. Request a copy of the property report and take the time to study it carefully and thoroughly. If you still have unanswered questions, delay any commitment until you have investigated. Discuss current prices in the area with local independent brokers. Talk to other people who have purchased lots. A local Chamber of Commerce, Better Business Bureau, or consumer protection group may have information about the seller's reputation. Inquire through county or municipal authorities about local ordinances or regulations affecting properties similar to that which you plan to buy. Don't be high-pressured by sales agents.

Know the Facts About the Lot

Once you have decided on an appealing subdivision, inspect the property. Don't buy "sight unseen." Better yet, hire an InterNACHI inspector to perform a thorough property inspection. Also, check the developer's plans for the project and know what you are getting with your lot purchase. It's a good idea to make a list of the facts you will need to know. Some of the questions you should be asking, and answering, are these:

- How large will the development become?
- What zoning controls are specified?
- What amenities are promised?
- What provision has the developer made to assure construction and maintenance?
- What are the provisions for sewer and water service?
- Are all of the promised facilities and utilities in the contract?
- Will there be access roads or streets to your property, and how will they be surfaced? Who maintains them? How much will they cost?
- Will you have clear title to the property? What liens, reservations or encumbrances exist?
- Will you receive a deed upon purchase or a recordable sales contract?
- What happens to your payments? Are they placed in a special escrow account to pay for the property, or are they spent at once by the developer?
- If the developer defaults on the mortgage or goes bankrupt, could you lose your lot and investment to date to satisfy a claim against the development?
- What happens when the developer moves out? Is there a homeowners' association to take over community management?
- Are there restrictions against using the lot for a campsite until you are ready to build?
- Are there any annual maintenance fees or special assessments required of property owners?

This is a partial list of points to consider before you commit your money or your signature.

Know What You are Doing

Interstate land sales promotions often are conducted in a high-pressure atmosphere that sweeps unsophisticated buyers along. Before they are aware that they have made a commitment, these buyers may have signed a sales contract and started to make payments on a lot. They may be delighted with the selection made, but, if not, it may be too late for a change of mind.

Nine Dishonest Sales Practices

Here are some of the practices avoided by reliable sales operations. Watch out for them and exercise sales resistance if you suspect they are occurring:

1. concealing or misrepresenting facts about current and resale value. Sales agents may present general facts about the area's population growth, industrial or residential development, and real estate price levels as if they apply to your specific lot. You may be encouraged to believe that your piece of land represents an investment which will increase in value as regional

development occurs. A sales agent may tell you that the developer will re-sell the lot, if you request. This promise may not be kept. Future resale is difficult or impossible in many promotional developments because much of your purchase price -- sometimes as much as 40% -- has gone for an intensive advertising campaign and commissions for sales agents. You are already paying a top price and it is unlikely that anyone else would pay you more than you are paying the developer. You may even have to sell for less than the price you originally paid for the lot. Sales promotions often are conducted in a high-pressure atmosphere. Furthermore, when you attempt to sell your lot, you are in competition with the developer, who probably holds extensive, unsold acreage in the same subdivision. In most areas, real estate brokers find it impractical to undertake the sale of lots in subdivisions and will not accept such listings. It is unlikely that the lot you purchase through interstate land sales represents an investment, in the view of professional land investors. Remember, the elements of value of a piece of land are its usefulness, the supply, the demand, and the buyer's ability to re-sell it. The Urban Land Institute estimates that land must double in value every five years to justify holding it as an investment. In some areas, the cost of holding the land, such as taxes and other assessments, can run as high as 11% a year.

2. failure to honor refund promises or agreements. Some sales promotions conducted by mail, email or long-distance telephone include the offer of a refund if the property has been misrepresented, or if the customer inspects the land within a certain period of time and decides not to buy. When the customers request the refund, s/he may encounter arguments about the terms of the agreement. The company may even accuse its own agent of having made a money-back guarantee without the consent or knowledge of the developer. Sometimes, the promised refund is made, but only after a long delay.

3. misrepresentation of facts about the subdivision. This is where the property report offers an added measure of protection. A sales agent may offer false or incomplete information relating to either a distant subdivision or one which you visit. Misrepresentations often relate to matters such as the legal title, claims against it, latent dangers (such as swamps or cliffs), unusual physical features (such as poor drainage), restrictions on use, or lack of necessary facilities and utilities. Read the property report carefully with an eye to omissions, generalizations, or unproved statements that may tend to mislead you. If you are concerned about overlooking something important, discuss the report and the contract with a lawyer who understands real estate matters. The developer also may use advertisements that imply that certain facilities and amenities are currently available when they are not. Read the property report to determine whether these facilities and amenities are actually completed, or proposed to be completed in the future. If the company advertises sales on credit terms, the Truth in Lending Act requires the sales contract to fully set forth all terms of financing. This information must include total cost, simple annual interest, and total finance charges.

4. failure to develop the subdivision as planned. Many buyers rely upon the developer's contractual agreement or a verbal promise to develop the subdivision in a certain way. The promised attractions that influenced your purchase (golf course, marina, swimming pool, etc.) may never materialize after you become an owner. If they are provided, it may be only after a long delay. If you are planning on immediate vacation use of the property, or are working

toward a specific retirement date, you may find that the special features promised of the development are not available when you need them.

5. failure to deliver deeds and/or title insurance policies. Documents relating to the sales transaction may not be delivered as promised. Some sales in the promotional land development industry are made by contract for a deed to be delivered when the purchaser makes the last payment under the terms of the contract. A dishonest developer may fail to deliver the deed, or deliver it only after a long delay. A sales agent may offer false or incomplete information.

6. abusive treatment and high-pressure sales tactics. Some sales agents drive prospective customers around a subdivision in automobiles equipped with citizen band radios which provide a running commentary on lot sales in progress. The customer may be misled by this and other sales techniques to believe that desirable lots are selling rapidly and that a hurried choice must be made. Hurrying the buyers into a purchase they may later regret is only one ploy of high-pressure sales agents. More offensive is abusive language used to embarrass customers who delay an immediate decision to buy. In some instances, hesitant buyers have been isolated in remote or unfamiliar places where transportation is controlled by the sales agent or the agent's organization.

7. failure to make good on sales inducements. Free vacations, gifts, savings bonds, trading stamps, and other promised inducements are used to lure people to sales presentations or to development sites. These promised treats may never materialize. Sometimes, special conditions are attached to the lure, or a customer is advised that gifts go only to lot purchasers. A "free vacation" may be the means of delivering the prospective buyer to a battery of high-pressure sales agents in a distant place. The promised attractions may never materialize.

8. "bait and switch" tactics. Lots are frequently advertised at extremely low prices. When prospective buyers appear, they are told that the low-priced lots are all sold and then are pressured to buy one that is much more expensive. If the cheaper lot is available, it may be located on the side of a cliff or in another inaccessible location. If accessible, it may be much too small for a building or have other undesirable features. The buyers may be lured to the property with a certificate entitling them to a "free" lot. Often, the certificate bears a face value of \$500 to \$1,000. If the buyers attempt to cash it in, the amount is simply included in the regular price (often inflated) of the lot they choose. Often, this so-called "bait and switch" technique has a delayed fuse. Buyers who purchase an unseen lot for later retirement may be unpleasantly surprised when they visit the development. The lot they have paid for may be remote from other homes, shopping and medical facilities. It may be insufficiently developed for use. When the buyers complain, sales personnel attempt to switch them to a more expensive lot, applying the money paid for the original lot to an inflated price for the new one, and tacking on additional financing charges. If the unhappy purchasers lack sufficient funds to accept this alternative, they are left with an unusable, unmarketable first choice.

9. failure to grant rights under the Interstate Land Sales Full Disclosure Act. Purchasers may not be given copies of the property report before they sign a sales contract. Some sales agents withhold this detailed statement until customers choose a specific lot. Sometimes, the

buyers receive the report in a mass of promotional materials and legal documents. Unaware that the report is in their possession, they fail to read and understand it before signing a sales contract.