REGULATION OF INTERSTATE LAND SALES: IS FULL DISCLOSURE SUFFICIENT?

*RENEE M. FRIEDMAN**

Over twenty million people have purchased lots in subdivided land[1] as an investment or second residence.[2] Recent statistics indicate that the number of such purchases will continue to increase.[3] Typically, lot sales of subdivided land reap immense profits for speculators and developers.[4] Yet, buyers find the enterprise far from satisfying when promoters misrepresent qualities of a lot or fail to

* B.A., Northwestern University, 1976; J.D., Washington University, 1980.

1. P. SIMKO, 3 PROMISED LANDS: SUBDIVISIONS AND THE LAW 3 (1978) [hereinafter cited as P. SIMKO].

2. *See For Sale: Bad Deals in Land*, CHANGING TIMES, Aug., 1977, at 13. Historically, experts considered investment in undeveloped land safe and profitable. Now, such practices are risky. *See* Train, *Investing in Land*, FORBES, Mar. 20, 1978, at 104.

3. *Compare* 1973 Department of Housing and Urban Development (HUD), STATISTICAL YEARBOOK *with* statistics given for 1977 and 1978 in Letter from Henderson, Director Policy Development & Control Div., Office of Interstate Land Sales Registration (OILSR) to Renee Friedman (Feb. 14, 1979) [hereinafter cited as Henderson Letter]. *See also* PLUS, May, 1979, at 16.

Huge corporations have entered into the land development business, greatly increasing the number of subdivisions available for lot sales. To maintain profit levels, companies continue to create more subdivisions. TASK FORCE ON LAND USE & URBAN GROWTH OF CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY, THE USE OF LAND, A CITIZEN'S POLICY GUIDE TO URBAN GROWTH 69 (1973) [hereinafter cited as TASK FORCE ON LAND USE].

4. Many millionaires started as land speculators. Profit margins are so large that several hundred dollars may be spent to market a single lot. *See* M. PAULSON, THE GREAT LAND HUSTLE 4, 101 (1972). The minimum mark-up on many lots is 2,000%. *Land Sales Boom—Let the Buyer Beware*, 37 CONSUMER REP. 606 (1972).

provide necessary capital improvements.[5] Traditional real estate law offers little help to the consumer who falls prey to slick salespeople peddling poor deals.[6] Unfortunately, the principle of *caveat emptor*, or "buyer beware,"[7] justifies this hands-off policy towards consumer problems and continues to influence the development of real estate law.

When Congress passed the Interstate Land Sales Full Disclosure Act[8] (ILSFDA) in 1968, few remedies protected the consumer from deceptive and fraudulent sales.[9] Promulgated only after extensive publicity of consumer abuse[10] and years of congressional hearings,[11] the Act attempts to provide consumers with accurate information rel-

---

5. Breakdown of consumer complaints received by the Office of Interstate Land Sales Registration (OILSR):

a. oral misrepresentation—37%
b. failure to provide improvements—28%
c. failure to provide property report—10%
d. use of sales pitch for investment—10%
e. alteration of contracts—6%
f. failure to deliver deed—5%
g. failure to provide promised gifts—4%

Henderson Letter, *supra* note 3. In 1979, OILSR received approximately 16,300 consumer complaints, inquiries and developer responses. Phone conversation with Chris Peterson, OILSR (Mar. 28, 1980).

The swindled include blue collar workers as well as various professionals. *See In Pursuit of the Second Home*, NEWSWEEK, April 17, 1972, at 84. *See generally* A. WOLFF, UNREAL ESTATE (1973).

6. *See* P. SIMKO, *supra* note 1, at 9-31.

7. The maxim of ["buyer beware"] applies forcibly in this case. . . . Whatever morality may require, it is too much for commerce to require that the vendor should see for the purchaser. It is enough for him, in point of law, that he does not conceal the knowledge of secret defects, nor give a warranty. . . .

Sherwood v. Salmon, 2 Day 128, 136 (Conn. 1805).

Stoic epistemology, the theoretical basis for Anglo-Saxon law, provides reason for the "buyer beware" principles. All men, according to Stoic philosophy, possess rationality and have a moral obligation to exercise it. Thus, man bears responsibility for each of his actions and decisions and must accept blame if he fails to correctly use his rationality. *See* G. Dorsey, Jurisculture (1973) (unpublished student materials, Washington University School of Law).

8. *See* 15 U.S.C. §§ 1700-1720 (1976 & Supp. III 1979).

9. *See* Young, *Land Sales and Development: Some Legal and Conceptual Considerations*, 3 REAL EST. L.J. 44, 46 (1974). Common law actions in fraud and deceit were very difficult to prove. *Id.* State laws failed to adequately rectify the problem. Armbrister, *Land Frauds: Look Before You Buy*, SAT. EVEN. POST, April 27, 1903, at 17, 22.

10. *See* M. PAULSON, *supra* note 4, at 5.

11. *E.g., Hearings Before the Senate Subcomm. on Frauds and Misrepresentations*

evant to the purchase decision.[12] Additionally, ILSFDA includes consumer redress for failure to receive requisite information.[13]

Operating under the assumption that consumers automatically reach rational decisions when presented with adequate information, the Act's drafters, consistent with the *caveat emptor* philosophy, included no substantive regulations.[14] They believed that the market, perfected by regulations requiring disclosure, would insure wise consumer purchases and environmentally sound uses of land.[15] Under this framework, no additional controls to protect consumers or insure non-destructive land development are justifiable.[16]

Despite these presuppositions, the present number of complaints received by the Office of Interstate Land Sales Registration[17] (OILSR), coupled with the Act's limited scope, reveal ILSFDA's in-

---

Affecting the Elderly of the Senate Special Comm. on Aging, 88th Cong., 2d Sess. 343 (1964).

12. *See* 15 U.S.C. § 1707 (1976). *See also* notes 78-96 and accompanying text *infra*, for discussion of provisions.

13. *See* 15 U.S.C. § 1709 (1976 and Supp. III 1979) (creates civil liabilities for fraud and failure to provide requisite information). *See also* Note, *Interstate Land Sales Regulation: The Case for an Expanded Federal Role*, 6 U. MICH. J. L. REF. 511, 512 (1972).

14. *See* Note, *The Interstate Land Sales Full Disclosure Act*, 21 RUTGERS L. REV. 714, 717 (1967). The Act patterns itself after the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa (1976 & Supp. III 1979), which contains no substantive regulations. Gandal, *General Outline of the Interstate Land Sales Full Disclosure Act*, 3 REAL EST. L. J. 3, 4 (1974). *Cf.* SEC, DISCLOSURE TO INVESTORS: A REAPPRAISAL OF FEDERAL ADMINISTRATIVE POLICIES UNDER THE 1933 & 1934 ACTS (The Wheat Report, CCH 1969) (the purpose of full disclosure in relation to the sale of securities is to provide information basic to rational decisions).

15. *See* Coffey & Welch, *Federal Regulation of Land Sales: Full Disclosure Comes Down to Earth*, 21 CASE W. RES. L. REV. 5, 50-70 (1969).

Opponents of government regulation believe that no justification exists for regulations requiring provision of information. Sellers of superior products will accordingly disseminate information concerning the frauds of their competitors in an attempt to get ahead. When there is an absence of such information, theorists rationalize that the market is acting to balance the cost of disclosure with the potential benefit ensuing from disclosure. Government regulation often forces uneconomical disclosure in cases where the need does not counterbalance the cost. *See* Pitofsky, *Beyond Nader: Consumer Protection and the Regulation of Advertising*, 90 HARV. L. REV. 661, 663, 667 (1977).

16. *See* Coffey & Welch, *supra* note 15, at 18.

17. *See* 24 C.F.R. § 1700-1715 (1980), establishing the OILSR as the administrative office within HUD.

INFORM, a New York public interest group, reports that OILSR receives approximately 3,000 consumer complaints per year. *See* P. SIMKO, *supra* note 1, at 4.

adequacies. Full disclosure does not always guarantee optimal purchase decisions. Any adequate solution to the land sales problem, therefore, apparently necessitates substantive federal regulations.[18] By examining the legislative goals and comparing them to the actual operation of the Act, this Note will identify the Act's deficiencies and suggest methods of improvement.

I. THE SUBDIVISION PROBLEM

Congress enacted ILSFDA to remedy the adverse effects suffered by consumers when land was subdivided.[19] Unscrupulous developers exploited consumers by omitting or misrepresenting material facts concerning lot characteristics, promised improvements, and terms of sale.[20]

A. *Environmental Problems*

Land use plans in the United States typically fail to pay sufficient heed to large areas of virgin land.[21] Further, where a local government has no land use plan, developers can easily obtain permits to

18. *See generally* P. SIMKO, *supra* note 1, at 430.

Employment of substantive environmental standards indirectly aids the consumer who bears the cost of poor subdivision planning through decreased value and expenditures for improvements necessary to correct damages. *Id.* at 475. *See generally* Case & Jester, *Securities Regulations of Interstate Land Sales and Real Estate Development—A Blue Sky Administrator's Viewpoint* (pts. 1-2), 7 URB. LAW. 215, 385 (1975).

Given its record over the past ten years, the Act cannot achieve perfect information or force consumers to act on the facts disclosed. It therefore fails to prevent unwise purchases by consumers.

The market fails to account for variables such as consumer and environmental effects (*i.e.*, externalities). Market responses in subdivision developing that do not account for such external factors are not completely rational, thus are undeserving of reliance. *Cf.* Mandelker, *Control of Competition as a Proper Purpose in Zoning*, URBAN LAND USE POLICY: THE CENTRAL CITY 23 (R. Andrews ed. 1972) (analogous application of ideas to zoning controls).

19. *See* Note, *Interstate Land Sales Regulation*, 1974 WASH. U. L.Q. 123, 125. Congress hoped the legislation would protect the land sales industry which had suffered adverse publicity. *Id.* An estimated 85% of all developers operate legitimate businesses. A small minority of con artists have injured the entire industry's reputation. *See* Armbrister, *supra* note 9, at 17.

20. *See* P. SIMKO, *supra* note 1, at 430. *See also* Armbrister, *supra* note 9, at 18 (misrepresented sales have occurred in Arizona, New Mexico, Oregon, Florida, Panama, Costa Rica, and Brazil).

21. *See* Case & Jester, *supra* note 18, at 395-400. Many lots were in the middle of nowhere, without neighboring residents, shopping facilities, schools, etc.

subdivide.[22] All too often, lack of protective foresight by local governments creates premature subdivisions with their attendant problems.[23] Developers frequently divide lots into grid patterns without considering what would be best suited to future development.[24]

Physical and environmental constraints, not considered by developers' plans, traditionally frustrated the provision of improvements when circumstances required more expensive alternative facilities.[25] If developers were unable to finance these additional costs, buyers who had completed payments found themselves with an uninhabitable tract of vacant land, very different from the retirement or vacation paradise of their dreams;[26] unsuitable lands typically create dead subdivisions.[27] Usually, developers divided tracts into very small parcels rendering them useless for farming or other alternative future development. Since ownership was so fragmented, there was little chance of reassembling title to a tract large enough to develop efficiently.[28] Inflated prices incident to developers' huge profits also lessened the probability of later development since it was too costly to buy the land from others.[29] Uninhabited subdivisions would lay fal-

22. *Id.*

23. The contractual covenants provided the buyer with rights; the consumer, however, could rarely recover any damages. The developer had either gone out of business or moved to another state and could not receive service of process, necessary for institution of a civil suit. *E.g.*, GAC, at one time one of the largest land sales corporations in the country, declared bankruptcy in 1976. *See* P. SIMKO, *supra* note 1, at 49. This incident occurred following a Federal Trade Commission (FTC) order to reimburse dissatisfied customers. Financing for improvements usually depends upon the success of the selling campaign as pooled purchase money pays development costs. Insufficient sales receipts caused many developers to disband capital development.

24. *See generally* note 1 *supra*.

25. *See* A. WOLFF, *supra* note 5, at 204.

26. *See* Armbrister, *supra* note 9, at 18. *See also* A. WOLFF, *supra* note 5, at 275. Most of these purchases occur without benefit of an attorney to point out title defects to the unwary buyer.

27. *See* TASK FORCE ON LAND USE, *supra* note 3, at 103. England has a strict planning system for vacant spaces due to high demand for land. *Id.*

28. Speculators acquire large tracts of undeveloped land and divide them into lots prior to market demand, confident that demand will occur in response to growing needs. This process occurs without fault where plans exist to 1) anticipate future land needs, 2) limit the number of lots made available to foster efficiency in developing capital improvements, and 3) prevent flooding the market. *See* A. WOLFF, *supra* note 5, at 15.

29. "Of all men's activities, his use of the land has the most far-reaching impact . . ." *Id.* at 58. Damage to land may far outweigh the loss suffered by individual

low, subject to erosion[30] and sedimentation in bodies of water.[31]

Even improved subdivisions suffered the ill effects of the development process on the environment. The problems included erosion and disruption of food chains,[32] as well as air[33] and water pollution.[34] Additionally, water treatment facilities often inadequately met the needs of the growing residential community intended for the subdivision site.[35]

B. *Consumer Problems*

Many buyers who acquired land without prior inspection later learned that they owned homesites on rocky hillsides, flood plains, or undrained swamps.[36] In several instances, despite marketing efforts advertising lots as future homes, contracts failed to provide for necessary improvements such as utilities, sewer systems, and roads.[37] Frequently, developers could not finance the completion of such improvements even if the contract promised their provision.[38] Consumers could then either abandon the idea of using the lot as a homesite, or could finance costly improvements themselves, notwithstanding that the purchase price purportedly included these develop-

---

consumers. The effects of poor land use practices indirectly affect millions of people. *See* M. PAULSON, *supra* note 4, at 5.

30. *See* A. WOLFF, *supra* note 5, at 10.

31. Lot value depends upon the facilities provided by the improvement association which was typically controlled by the seller. *See* Comment, *State Securities Law: A Valuable Tool for Regulating Investment Land Sales*, 7 N.M. L. REV. 265, 267 (1977).

32. *See generally* A. WOLFF, *supra* note 5.

33. *See* TASK FORCE ON LAND USE, *supra* note 3, at 275-76.

34. With land titles scattered, towns are unable to plan for their own growth. If few owners reside in the subdivison, problems arise from their demand for community services and capital improvements. The sparse population and development patterns provide an inadequate tax base to support such endeavors. Often there is little or no industrial development to contribute money to localities via property taxes. *See* A. WOLFF, *supra* note 5, at 71.

35. *Id.* at 73. The companies that provide improvements as well as those which offer only raw land realize approximately 85% of their profit from lot sales. *Id.* at 71.

36. *Id.* at 190.

37. *See* TASK FORCE ON LAND USE, *supra* note 3, at 277.

38. Vegetation and wildlife have often suffered as a result of incompletion. *Id.* at 190.

mental costs.[39]

Other clever developers took advantage of the "special service district concept" whereby a quasi-governmental body sold bonds, backed by assets in the district, to pay for capital improvements. Before developers sold their lots, they obtained approval of bond issuers to cover the cost of improvements. Once selling lots to unsuspecting buyers, the special service district levied assessments to repay the debt, holding liens against all property in the district.[40] As a result of the precarious financial situation of many developers, title problems occurred. Banks which lent money to capitalize a selling endeavor retained security interests in the subdivision properties. Due to the encumbrance, subsequent lot purchasers could not claim clear title to the lots on which they had put money down.[41]

Despite the myriad of problems arising from subdivision sales, consumers have continued to invest money in lot purchases. High pressure sales techniques typified marketing of subdivision lots. Seeking huge profit margins, salespeople zealously recruited customers with fast talk, empty promises, fancy dinners and free gifts.[42]

Persuasive sellers possessed an overbearing influence upon a buyer's ability to determine whether the purchase fit his or her needs and expectations.[43] Stressing the historic profitability of land as an investment,[44] promoters, inadequately trained as investment counselors,[45] consulted lists to pick targets for their sales pitches.[46] Promoters downplayed the high risks that participation in their deals

39. Dust dislodged by carving grid divisions into the land has caused air pollution. *See* A. WOLFF, *supra* note 5, at 190.

40. Fertilizers, oil products, and detergents create water pollution. *Id.* at 31. Bad planning has ruined water tables which once supplied fresh water. *See* Armbrister, *supra* note 9, at 82.

41 *See* Mischone & Michael, *Private Lot Ownership at the Lake of Egypt in Southern Illinois*, 8 DEPT. OF FORESTRY, SCH. OF AGRICULTURE 12 (Southern Ill. Univ., Jan. 1972).

42. *See* TASK FORCE ON LAND USE, *supra* note 3, at 82.

43. *See* Case & Jester, *supra* note 18, at 401-02.

44. "Americans have greatly exaggerated notions about what land is worth." A. WOLFF, *supra* note 5, at 61. Consistent with *caveat emptor* is "the notion that anybody who gets cheated in a land deal has only himself to blame." TASK FORCE ON LAND USE, *supra* note 3, at 158. *See also* note 4 and accompanying text *supra*.

45 Generally, states do not require special training for sales pesonnel. Many sellers are incapable of answering reasonable investor questions. *See* Case & Jester, *supra* note 18, at 401-02.

46. *Id.*

entailed.[47] Many sellers neglected to mention that the *specific* lots sold represented an extremely speculative undertaking.[48] Because a buyer rarely considered significant negative factors, the purchase decision did not evidence a buyer's true desire to buy the specific land. Instead, an artificial demand occurred, causing inflated prices.[49]

Offering easy credit terms, sellers convinced those who traditionally believed they could not afford a second home to buy land.[50] Long-term installment contracts and small monthly payments created a market among people in the middle-income bracket.[51] Risks shifted from the development industry to the buyer since under an installment contract, transfer of title does not occur until the buyer has completed *all* payments. Although a buyer may have diligently made payments when due, the absence of performance bonds or escrow accounts left the buyer with little more than an empty lot if the developer failed to complete improvements and went bankrupt.[52] Promoters failed to mention the effects of liquidated damage clauses; misled buyers later discovered that upon any default in payment they forfeited ownership of the lot regardless of the amount already paid.[53]

Incident to the foregoing practices, consumers lost substantial amounts of money. Prior to passage of ILSFDA, existing means of policing the land industry failed to solve the problems. Self-regulation by the industry was unsuccessful,[54] as were efforts by various

47. *See* TASK FORCE ON LAND USE, *supra* note 3, at 178.

48. *See* P. SIMKO, *supra* note 1, at 430. Developers divide large tracts into large numbers of lots, thereby flooding the market. Without the high pressure marketing procedures of the developer firms, the lone consumer is lucky to get a fraction of the purchase price upon sale.

Left unimproved by the developer, land lies wasted and the consumer loses money. *See* Case & Jester, *supra* note 18, at 408.

49. Although demand usually is a legitimate pricing factor, artificial demand does not elicit true value. Buyers think of the purchase as an investment, and therefore do not take the care they would normally in buying a home. Developers employ emotional appeals to impede buyers' rational judgment. *See* P. SIMKO, *supra* note 1, at 27-34.

50. *Id.* at 430.

51. *Id.*

52. Installment sales contracts are not deeds; they do not transfer ownership or rights to use land. *See generally* Warren, *California Installment Land Sales Contracts: A Time for Reform*, 9 U.C.L.A. L. REV. 608 (1962).

53. *See generally* Case & Jester, *supra* note 18.

54. There is no counterpart to the National Association of Security Dealers

consumer and public interest groups.[55] Existing legal remedies were ineffective; common law failed to require developers to diligently disclose significant information[56] and diverse state laws provided insufficient protection.[57] Local governments, responsible for subdivision regulation, were ill-equipped to formulate complex master plans needed for control, nor could they adequately oversee developer operations.[58] Supreme Court decisions allowed broad interpretation of remedial securities laws,[59] but governments seldom enforced these regulations[60] to prohibit fraudulent land sales.[61]

(NASD) for the land sales industry to establish disciplinary action and standards of conduct for promoters. As a result, voluntary compliance is much more difficult to achieve. *See* Case & Jester, *supra* note 18, at 440.

55. *E.g.*, The Better Business Bureau spent years cautioning potential land buyers. *See* M. PAULSON, *supra* note 4, at 5.

56. *See* RESTATEMENT OF TORTS § 651 (1972). *See also* Coffey & Welch, *supra* note 15, at 337.

57. Each state provided different protections—some lax and others aggressive—creating a need for uniformity. *Compare* N.Y. ENVIR. CONSERV. LAW § 3-0301 (McKinney Supp. 1977) *with* ILL. ANN. STAT. ch. 30 §§ 371-389 (Smith-Hurd Supp. 1979).

58. *See* Comment, *supra* note 31, at 268.

59. *See* Tcherepnin v. Knight, 389 U.S. 332, 338 (1967); SEC v. Howey Co., 328 U.S. 293, 299 (1946). Broad interpretation of the definition of a security is necessary beause of the variety of schemes devised to reap profits at the expense of others which the securities laws are intended to regulate. *Id.*

60. 15 U.S.C. §§ 77a-77aa, 78a (1976).

61. No "investment contract" is involved when a person invests in real estate with the hope perhaps of earning a profit as the result of a general increase in values concurrent with the development of the neighborhood, as long as he does not do so as part of an enterprise whereby it is expressly or impliedly understood that the property will be developed or operated by others.

L. LOSS, SECURITIES REGULATION 491 (2d ed. 1961).

The nature of the underlying realty purchase does not warrant protection as an investment security. Real property's intrinsic market value apart from the risk of the developer's enterprise seems to be the major differential between land deals and "securities." In contrast, market value is inextricably tied to the risk of the venture in traditional securities transactions. *Contra*, SEC v. Howey Co., 328 U.S. 293 (1946) (an intangible interest need not be found for a security to exist). Professor Coffey explains the failure of courts to accept subdivision lot sales as securities by saying that the buyer cannot at the same time receive the full *quid pro quo* and place value at the risk of an enterprise. *See* Coffey, *The Economic Realities of a "Security": Is There a More Meaningful Formula?*, 18 W. RES. L. REV. 367, 387 (1967).

The courts' attitudes in excluding subdivision sales from the definition of a security does not give sufficient weight to the economic realities involved in the transaction, which indicate that the risks taken by subdivision pruchasers and their initial motivation to buy are very similar to those of investors in traditional securities. *Id.* at 412.

II. PROVISIONS OF THE ACT

A. *Purpose*

Proponents of corrective legislation recognized the need for increased anti-fraud and full disclosure legislation, believing the securities law model to be the most effective form of remediation.[62] Hearings revealed that Congress intended ILSFDA to be coextensive with federal securities legislation.[63] Expressing his opinion during the Senate hearings, the Commissioner of the Securities and Exchange Commission (SEC) stated that furnishing buyers with written information would adequately protect them.[64] Optimism with respect to the legislation, patterned after the Securities Act of 1933,[65] prevented legislators from seeing the need for further substantive regulation.[66]

Although Congress modeled ILSFDA after securities law in recognition of the analogous problems between purchases of securities and land,[67] the SEC received no authority to administer the new law. Rather, Congress established the Office of Interstate Land Sales Registration,[68] within the Department of Housing and Urban Development (HUD), to do so.

---

62. *See generally Hearings Before the Senate Subcomm. on Frauds & Misrepresentations Affecting the Elderly of the Senate Special Comm. on Aging*, 88th Cong., 2d Sess. 343 (1964). "[F]alse communication, including the failure to communicate, is the most dangerous . . . and the most feared art of human society." Green, *The Communicative Torts*, 54 TEX. L. REV. 1, 9 (1975).

63. For a full discussion of the legislative history of the ILSFDA, see Coffey & Welch, *supra* note 15.

64. The legislature adopted Louis Brandeis' optimism in the powers of full disclosure to cure all evils: "Sunlight is said to be the best of disinfectants, electric light the most efficient policeman." The law was not made, he indicated, to prevent people from making bad bargains. *See generally* L. BRANDEIS, OTHER PEOPLE'S MONEY, AND HOW BANKERS USE IT (1933).

65. 15 U.S.C. §§ 77a-77aa (1976 & Supp. III 1979).

66. Aside from belief in the benefits of full disclosure, the entactment of substantive regulation was impeded by the American Land Developers Association (ALDA), which lobbied strongly against meaningful legislation. *See generally* TASK FORCE ON LAND USE, *supra* note 3.

67. Buyers may give money to others in order to gain profit and thereby subject themselves to risks out of their direct control. The buyer does not have the same degree of access to information as the seller. Further, in many instances, land developers, as security sellers, use the purchase price to finance the enterprise.

68. *See* 15 U.S.C. § 1715(a) (1976 & Supp. III 1979).

B. *Scope*

The Act does not offer protection for all actions within the entire land sales industry. Jurisdiction under the Act depends on the use of interstate instrumentalities[69] in connection with the sale, although the actual misstatement upon which a suit is based need not occur by such means.[70] Regulations exempt wholly intrastate offerings,[71] however, regardless of whether or not the developer relied on interstate instrumentalities.

The Act's protection is further limited in that it applies only to developers selling or leasing totally undeveloped land[72] pursuant to a common promotional plan. A subdivision must contain at least fifty lots and each lot must contain less than five acres of land.[73] If a purchaser personally makes an inspection of the land and it is free and clear of all liens and encumbrances, or if a buyer purchases for business reasons, the Act exempts the sale from coverage.[74]

The ILSFDA does not provide liability for all persons involved in the selling transaction.[75] Although Congress rejected holding "controlling" persons liable, the Act retains aider and abettor liability similar to that under federal securities law.[76] For the Act to be mean-

69. *See* 15 U.S.C. § 1703(a) (1976 & Supp. III 1979).

70. *See* Bongratz v. W.L. Belvidere, Inc., 416 F. Supp. 27, 30 (N.D. Ill. 1976). As under the Securities Act, it is sufficient to prove jurisdiction by showing minimal use of interstate communications. Commodore Prop., Inc. v. Hills, 417 F. Supp. 1388, 1390 (D. Neb. 1976).

71. *See* 24 C.F.R. § 1710.14(a)(2)(iii) (1980).

72. According to the Act, undeveloped land is unimproved land with no buildings or contracts obligating the construction of any structures within two years. *See* 15 U.S.C. § 1702(a)(3) (1976).

73. *Id.* §§ 1701(3), 1702(a)(2). The Ninth Circuit qualified this provision in De Luz Ranchos Inv., Ltd. v. Coldwell Banker & Co., 608 F. 2d 1297, 1302 (9th Cir. 1979), holding that the exemption is not applicable if *some* lots in the same subdivision contain less than five acres and some more.

74. 15 U.S.C. § 1702(a)(9), (10) (1976). Other exemptions include the sale of land by either the government or a real estate investment trust. *See id.* § 1702 (6), (7).

75. *See, e.g.*, Paquin v. Four Seasons of Tenn., Inc., 519 F.2d 1105, 1111 (5th Cir. 1975) (salesman who had no selling authority, but whose name appeared on the sales contract and received 9% commission was *not* held liable beause he was not the actual seller); Adema v. Great Northern Dev. Co., 374 F. Supp. 318 (N.D. Ga. 1973) (lender financing purchase of land is not liable, notwithstanding plaintiff's allegation that lender participated in a joint venture with developer); Konopisos v. Phillips, 30 N.C. App. 209, 226 S.E.2d 522 (1976) (Act is not applicable to purchasers' assignee).

76. *See* Timmreck v. Munn, 433 F. Supp. 396, 406 (N.D. Ill. 1977) (banks liable under Act if they participate in and aid the advancement of the fraudulent scheme).

ingful, it must make fraudulent planners and profiteers liable.[77]

C. *Requirements and Prohibitions*

The Act requires that sellers prepare and distribute accurate property reports to all purchasers[78] and file detailed statements of record with the OILSR.[79] These provisions insure that purchasers receive pertinent information otherwise unavailable, concerning such facts as condition of title, developer's financial ability to execute the development scheme, conditions of sale, risk factors, limitations on land use, and encumbrances attached to the property.[80] The ILSFDA requires developers to specifically describe the state of capital improvements by demanding information concerning the number of dwellings already sold and expected to be sold, and the availability and cost of paved roads, water, sewage, public utilities or their alternatives, and safety factors.[81]

Although the Act requires a developer to submit enough information for HUD to evaluate the nature of the offering, the disclosure is neither exhaustive nor comprehensive. Regardless of the project's soundness, registration automatically becomes effective thirty days after the developer files the information with OILSR unless the Secretary determines that the statements are incomplete or inaccurate.[82] An unprofitable or risky deal does not constitute sufficient grounds for refusing registration.

The Act prohibits the use of false or misleading statements in either OILSR-required reports or in connection with other material information relied upon by the purchaser. To deter developers from

---

But see Bartholomew v. Northampton Nat'l Bank of Easton, 584 F.2d 1288, 1294 (3rd Cir. 1978) (dictum limits aider and abettor liability to banks, holding them liable only when bank officers were "insiders" in transaction).

77. *See* McCown v. Heidler, 527 F.2d 204, 207 (10th Cir. 1975) (holding that liability extends beyond developers).

78. *See* 15 U.S.C. § 1717 (1976); *see* Law v. Royal Palm Beach Colony, Inc., 578 F.2d 98 (5th Cir. 1978) (vendee can rescind sale if not given property report prior to sale).

79. *See* 15 U.S.C. §§ 1704-1705 (1976).

80. *See* 24 C.F.R. § 1710.110 (1980). For example, "Special Risk Factors" must be included in the property report stating that "the future value of land is very uncertain; do not count on appreication." *Id.*

81. *See* 15 U.S.C. § 1707 (1976 & Supp. III 1979); 24 C.F.R. §§ 1710.101-.103, 1715.25 (1980).

82. *See* 15 U.S.C. § 1706 (1976 & Supp. III 1979).

breaking the rules and to offer consumers some redress, it provides both civil[83] and criminal sanctions.[84] Failure to comply with OILSR rules may support a cause of action by a buyer or an OILSR suspension order.[85]

If a buyer does not receive a property report, he or she may rescind the sale whether or not the purchaser received the requisite information by other means.[86] Liability for fraud similarly attaches in connection with a sale when a developer defrauds or obtains money by material misrepresentation with respect to information in the statement of record or property report or any other information pertinent to the lot upon which the purchaser relies.[87] Authorities do not, however, interpret the statute to impose liability upon a developer for *every* omission; there is no affirmative duty to supply all material information.[88] Only that material information required in the regulations need be included in seller statements and literature.[89] The Fifth Circuit Court of Appeals in *Paquin v. Four Seasons of Tennessese*[90] defined "material" information as that which a reasonable investor might have considered important in making a decision.[91]

83. *Id.* § 1709(a), (b). *See, e.g.*, United States v. Pocono Int'l Corp., 378 F. Supp. 1265 (S.D.N.Y. 1974) (cannot describe as suitable for homesite without misrepresenting unless adequate sewage systems exist or will exist).

84. *See* 15 U.S.C. § 1717 (1976 & Supp. III 1979), providing for fine of up to $5,000 or imprisonment of not more than five years or both. *See* United States v. Steinhilber, 484 F.2d 386, 390 (8th Cir. 1973) (knowing violation required for conviction).

85. *See* 15 U.S.C. § 1709 (1976 & Supp. III 1979).

86. Rockefeller v. High Sky, Inc., 394 F. Supp. 303 (E.D. Penn. 1975). Additionally, if the court finds no damage, vendee alleging developer violations may receive nominal damages. Johnson v. Stephens Dev. Corp., 538 F.2d 664 (5th Cir. 1976).

87. *See* 15 U.S.C. §§ 1703, 1709 (1976 & Supp. III 1979). *See, e.g.*, Bryan v. Amrep Corp., 429 F. Supp. 313 (S.D.N.Y. 1977) (reliance need not be proven for liability under § 1703(a)(2)(A) and (C), but must be proven under § 1703(a)(2)(B)).

88. *See, e.g.*, Husted v. Amrep Corp., 429 F. Supp. 298, 311 (S.D.N.Y. 1977); *see also* Coffey & Welch, *supra* note 15, at 63.

89. *See* 24 C.F.R. § 1710.102(j)(2) (1980).

90. *See* 519 F.2d 1105, 1111, *reh. denied*, 522 F.2d 1270 (5th Cir. 1975) (though Four Seasons Development Company was wholly owned by a bankrupt corporation, the court held this fact not material).

91. *Compare Paquin with* TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 448 (1976) (in securities law, the materiality test is whether a reasonable investor *would* attach significance to the undisclosed fact. The importance of the distinction may be exaggerated since it is unlikely that any jury would apply the standards differently). The dissent in *Pacquin* sets out alternative applications of the materiality test. 519 F.2d at 1112.

In addition to providing affirmative subjects of disclosure, regulations promulgated in 1973 prohibit false or misleading advertising,[92] as well as certain unlawful sales practices.[93] An extensive list provides standards for determining whether a statement is misleading.[94] The OILSR recognized the need for advertisement regulations to strengthen other anti-fraud provisions of the Act. To prevent a developer from subverting the Act by flooding the market with additional information that fails to meet the standards of truth required for the property report and statement of record, the regulations require that all advertisements contain a disclaimer that HUD has not approved the offering, and an advisement to obtain a HUD property report.[95] Additionally, all ads must be materially similar to the statement of record and property report.[96]

D. *Administration*

Four divisions within the OILSR administer the Act by receiving and checking registration statements, handling complaints, and establishing new regulations.[97] Compliance with the Act is extremely costly for developers due to the complexity of the requirements and the need to prepare additional registration reports to meet state registration requirements. In addition to a maximum filing fee of one thousand dollars, there are attorney and accountant fees, as well as costs from delay.[98] To avoid these fees, developers try to structure

---

92. *See* 24 C.F.R. § 1715.5-.15 (1980). The rules require sellers to be specific in their representations so as not to mislead buyers. *E.g.*, property cannot be called "waterfront" without meeting specified criteria. *Id.* § 1715.15(e). Consumers need protection from deceptive advertising where market incentives insufficiently guarantee disclosure of the truth. *See generally* Pitofsky, *supra* note 15.

93. 24 C.F.R. § 1715.25 (1980).

94. Section 1715.15 is actually applicable to both advertising and sales practices. The rules treat implied representations and presumptions as positive assertions. *Id.* § 1715.15(jj).

95. *Id.* § 1715.10(a).

96. *Id.* § 1715.5(a)(3).

97. *Id.* § 1700.25; *see* Lynn v. Biderman, 536 F.2d 820, 825 (9th Cir. 1976) (Secretary of HUD may secure information to serve as basis for further regulations). Upon receipt of complaints, OILSR will attempt to negotiate compliance without recommending adminstrative action. *See* Gandal, *General Outline of the Interstate Land Sales Full Disclosure Act*, 3 REAL EST. L.J. 3, 6 (1974).

98. *See* Note, *The Interstate Land Sales Full Disclosure Act: An Analysis of Adminisitrative Policies Implemented in the Years 1968-1975*, 26 CATH. U. L. REV. 348, 365 n.103 (1977). It commonly takes 60 to 70 days to complete the filing process.

their deals within the regulatory exemptions;[99] or, they submit property reports prepared for state agencies which the OILSR has agreed to accept in lieu of preparation of a separate federal report.[100]

The Act also gives the OILSR latitude to enforce its rules through its authority to hold administrative hearings and suspend interstate sales.[101] Additionally, the Secretary of HUD has the authority to promulgate new rules and regulations as deemed appropriate.[102]

III. IMPLEMENTATION

Although Congress enacted ILSFDA in 1968,[103] little public awareness of the OILSR exists.[104] Notwithstanding public hearings held in 1971[105] and optimism that given a few years to establish itself the OILSR would become as competent and effective as the SEC,[106] ILSFDA has failed to fully protect consumers and the environment from the harm and corrupton caused by subdividers.[107]

It was not until 1972 that HUD reported its first three convictions under ILSFDA.[108] To date, there have been only fifteen more criminal convictions and a total of thirty-three injunctive cases brought.[109]

Rarely is a report perfect when first received. *See* Henderson Letter, *supra* note 3. In fiscal year 1979, OILSR received $327,502 in funds collected from developers. *See* Letter from OILSR to Renee Friedman (Mar. 18, 1980).

99. *See* 24 C.F.R. § 1710.13 (1980).

100. *See, e.g.*, Happy Inv. Group v. Lakeworld Properties, Inc., 396 F. Supp. 175 (N.D. Cal. 1975).

101. *See* 15 U.S.C. § 1714(a)(b) (1976 & Supp. III 1979).

102. *Id.* § 1715.

103. The ILSFDA became effective April 28, 1969.

104. *See Land Sales Boom—Let the Buyer Beware*, 37 CONSUMER REP. 606 (1972). OILSR does not aggressively employ its investigatory powers. *See* Note, *supra* note 13, at 516. Recent information does not alter this assessment. *See* Henderson Letter, *supra* note 3.

105. *See* Klink & White, *The Accountants Reshape the Retail Land Sales Industry*, 3 REAL EST. REV. 47, 48 (1973).

106. *See* Note, *supra* note 19, at 138. *See also* Case & Jester, *supra* note 18, at 411.

107. Criminal enforcement actions brought by the OILSR from its inception through December 31, 1979 have involved 23 companies and 64 individual defendants. In February, 1979, OILSR estimated that buyers brought 139 private actions. *See* Henderson Letter, *supra* note 3.

108. *See* 1972 HUD STATISTICAL YEARBOOK. Administrative action taken against 207 developers led to suspension of sales in many cases.

109. Phone conversation with Chris Peterson, OILSR (Mar. 28, 1980). One rea-

With a staff of eighty-six people, the agency cannot adequately police the entire land sales industry.[110]

Recognizing its limitations, OILSR does not inspect subdivisions or verify statements made in registration reports unless it has reason to suspect inaccuracies. The agency tries to concentrate its minimal resources to foster consumer awareness of the risks inherent in buying subdivision lots instead of vainly investigating developments for fraud.[111] As a result of this attitude, property reports may give buyers false security by causing them to think they know all that is necessary to make an intelligent purchase decision. Since OILSR has not compared the buyer's particular site to the statements made in the reports, this assumption is far from accurate.[112]

Although OILSR has increased its enforcement activities against

---

son for infrequent prosecution may be the laxity with which subdividers respond to questions in reports. Answers are so vague that they can mislead the buyer without subjecting the developer to accusations of untruthfulness. *See* A. WOLFF, *supra* note 5, at 260-61.

As of September 30, 1978, OILSR received 9,162 filings representing 5,391,251 lots and 4,980 claims for exemptions. Henderson Letter, *supra* note 3. *See* United States v. Amrep, 545 F.2d 797 (2d Cir. 1976); Schenker v. United States, 529 F.2d 96 (9th Cir. 1976).

110. Phone conversation with Chris Peterson, OILSR (Mar. 28, 1980). In 1978, before a budget cutback, there were 106 staff persons. *See* Henderson Letter, *supra* note 3. In fiscal year 1979, OILSR's received over 3,000 filings to examine. Phone conversation with Chris Peterson, OILSR (Mar. 28, 1980). This figure represents a decrease from fiscal year 1978 which produced 4,617 filings. *See* Henderson Letter, *supra* note 3. The drop may be due to changes in the economy and the promulgation of new regulations by OILSR. Phone conversation with Chris Peterson, OILSR (Mar. 28, 1980).

OILSR investigates developers only after it receives consumer complaints. *See For Sale: Bad Deals in Land*, CHANGING TIMES, Aug., 1977, at 13, 14. In 1975, only 40% of the projects subject to the ILSFDA had been registered. *See* Case & Jester, *supra* note 18, at 412. Apparently this situation is reversing as the OILSR becomes aware of unregistered sites through its complaint process. Phone conversation with Chris Peterson, OILSR (Mar. 28, 1980).

111. *See* GENERAL ACCOUNTING OFFICE, NEED FOR IMPROVED CONSUMER PROTECTION IN INTERSTATE LAND SALES 34 (1973). In calendar year 1979, OILSR received approximately 16,300 complaints, inquiries, and developer responses. Phone conversation with Chris Peterson, OILSR (Mar. 28, 1980). This number is far too large for any agency the size of the OILSR to handle.

112. *E.g.*, one corporation represented in a report that it is understood that adequate water existed through all lots yet it never stated the basis of this understanding. In reality, water lines existed through only two of the lots. *See* A. WOLFF, *supra* note 5, at 91-92.

developers since 1976,[113] the agency has not yet achieved effective regulation. As HUD's major concern traditionally has been to encourage and promote real estate development, rather than to police it,[114] subdivision enforcement poses a new and administratively difficult situation.

IV. EVALUATION

A. *ILSFDA Compared with Securities Law*

As a full disclosure act, ILSFDA contains many flaws. Reports required by the Act confuse many potential purchasers by their complexity, rather than offering any valuable information.[115]

The ILSFDA, although patterned after securities law, does not cover land purchasers as extensively as the SEC protects securities buyers. HUD, unlike the SEC, has no experience in protecting investors against financial risk; rather, it is mainly concerned with the quality of housing. Unlike the Securities Act of 1933,[116] ILSFDA limits its liability to developers[117] rather than extending to "any person" involved in the illegality.[118] Further, no liability attaches to a developer who uses fraudulent statements outside the scope of the written reports unless the buyer proves reliance.[119] The Act thus

---

113. *E.g.*, during 1977, OILSR conducted 1,000 "rescission exercises" in which a seller must notify buyers of their right to rescind. By this process consumers regained $162 million. *See* P. SIMKO, *supra* note 1, at 390. In addition, OILSR discovered 993 unregistered subdivisions and issued over 300 suspension orders. *See* Henderson Letter, *supra* note 3.

114. Dealing with subdivisions distracts HUD and is counterproductive to its developer orientation. *See* A. WOLFF, *supra* note 5, at 262.

115. *See* P.SIMKO, *supra* note 1, at 34. They are too long and often too complex for laypeople. Unlike the prospectus requirement of the SEC, the OILSR enforces no clarity requirement for reports even though the need is greater than in the securities field where there is an information filtration system between seller and buyer. *See* Coffey & Welch, *supra* note 15, at 18-19; Note, *Accountants Financial Disclosure and Investors' Remedies*, 18 N.Y. L.F. 681 (1973).

116. 15 U.S.C. § 77a-77aa (1976 & Supp. III 1979).

117. *Id.* at § 1703 (1976 & Supp. III 1979). Liability likewise does not arise for "offering" to sell land without a statement of record. *Id.* Yet, under securities law, violations can occur if an issuer offers to sell prior to "filing" a registration statement. *Id.* at § 77(l).

118. *Compare* 15 U.S.C. § 1703(b) *with id.* § 77(l).

119. *See* note 87 and accompanying text *supra*. It is unclear, however, whether proof of reliance is needed to assert a violation for misleading advertising under the amended rules. *See* notes 92-94 and accompanying text *supra*.

gives little more than common law tort protection when misstatements occur outside the scope of mandated reports.[120] Under federal securities law, sellers are liable for fraudulent misrepresentations even if they receive exemptions from registration.[121] The ILSFDA, however, limits its anti-fraud provisions to those developments which must register.[122]

The major defect of ILSFDA relative to the Securities Act is its failure to prohibit pure omissions.[123] If a developer complies with all affirmative disclosure requirements without misstatement, the omission of a material factor not specifically requiring inclusion does not result in liability.[124] Clearly, the Act's failure to deal with material omissions inhibits equalized information between parties.[125]

If Congress is serious about controlling land sale problems, the SEC, rather than HUD, should take administrative responsibility for the Act. Congress should also amend ILSFDA to provide the same insurance for full disclosure that the 1933 securities law offers investors.[126] Presently, investors in real estate corporate securities receive more information than buyers of the land.[127] Yet sophisticated investors, unlike land buyers, do not need the information quite as desperately.[128]

---

120. *See* RESTATEMENT (SECOND) OF TORTS § 256 (1972).

121. *See* 15 U.S.C. § 78(j) (1976).

122. 15 U.S.C. § 1703 (1976 & Supp. III 1979).

123. A pure omission is the absence of a statement concerning a material fact. *See* Coffey & Welch, *supra* note 15, at 63.

124. *See* note 87 and accompanying text *supra*.

125. *Cf.* Section 10(b)(5) of the Securities and Exchange Act of 1934 (SEA) for language regulating pure omissions. 15 U.S.C. § 78(j) (1976).

126. The land buyer tends to be less sophisticated than the securities investor and thus needs as much protection as, if not more than, a security buyer. Indeed, security transactions are typically conducted for consumers by sophisticated brokers, expert in the market and able to interpret the complex prospectuses required by the SEC. Buyers of subdivided land, on the other hand, purchase directly from developers and therefore do not avail themselves of expert advice.

127. Many real estate limited partnership interests come under the regulatory purview of the SEC, which has more comprehensive reporting requirements than ILSFDA. *See* Dahlik, *Real Estate Partnerships and the Securities Laws: A Primer*, 12 CREIGHTON L. REV. 781 (1979).

128. *See, e.g.*, Davis v. Rio Ranch Estates, Inc., 401 F. Supp. 1045, 1049 (S.D. N.Y. 1975) (buyer of subdivision lot held unprotected by securities laws although lawyer treated purchase as investment). *See generally* United Hous. Foundation, Inc. v. Forman, 421 U.S. 837 (1975).

It is curious that courts have not applied securities law concepts to most land purchases.[129] One explanation is that courts may view ILSFDA as sufficient to protect land purchasers without resort to the federal securities law.[130] While generally expanding the number of transactions that will be considered a "security,"[131] courts have taken a myopic approach to the economic realities involved in selling land.[132] The Supreme Court has held that securities laws exist for the protection of persons who invest money seeking capital return.[133] Money paid for a home or homesite does not fall within the Court's definition of such an investment.[134] Despite the Court's interpretation of land purchase motives, in one survey seventy percent of prospective customers reported that they were primarily interested in purchasing for investment rather than enjoyment purposes.[135]

Securities laws protect investors who give control of their money to the enterprise of another. The investor typically has no direct access to information about the enterprise upon which his profit and return of capital depend. Since a security is worth only as much as the enterprise, the investor's risk is completely in the hands of those who conduct the enterprise.[136] The securities laws provide protection by insuring that investors receive all pertinent information concerning the underlying enterprise.

---

129. Professor Coffey expressed the belief that someday land sales would come under the federal securities umbrella. *See* Coffey & Welch, *supra* note 15, at 13. Several states already consider real estate transactions of this type as securities transactions. *E.g.*, FLA. STAT. § 163.260-.270 (1976); N.Y. REAL PROP. LAW § 337 (McKinney 1968 & 1978-79 Supp.); OHIO REV. CODE ANN. § 1707 (Page 1980).

130. One of the factors used to determine whether a transaction will be labeled a "security" is the purchasers' need for the type of protections that are offered under securities laws. *See generally* Coffey & Welch, *supra* note 15. Courts that believe the ILSFDA meets this need are less likely to find a "security."

131. *See* Case & Jester, *supra* note 18, at 411.

132. For a court's ironic application of economic realities to this question, see Happy Inv. Group v. Lakeworld Props., Inc., 396 F. Supp. 175, 179-80 (N.D. Cal. 1975) (although purchasers relied upon defendants to create a viable recreational subdivision, and the sales literature represented the purchase as an investment, the court held that the transaction did not constitute sale of a security).

133. *See* United Hous. Foundation, Inc. v. Forman, 421 U.S. 837 (1975) (residents' interests in cooperative housing project not a security).

134. *See* Happy Inv. Group v. Lakeworld Props., 396 F. Supp. 175, 180-81 (N.D. Cal. 1975).

135. *See* TASK FORCE ON LAND USE, *supra* note 3, at 266; Fogel v. SellAmerica, Ltd., 445 F. Supp. 1269, 1277 (S.D.N.Y. 1978).

136. *See* SEC v. Howey Co., 328 U.S. 293 (1946) for the elements of a "security".

Analogously, purchasers of land depend on the seller to install improvements which give value to otherwise worthless property. The real "value" to the purchaser is not in the raw land, but in an improved subdivision development.[137] The lot buyer, like the securities investor, gives money to the developer's enterprise and stands to risk that entire amount on the hope that the enterprise is successful. Sellers of subdivision lots often finance the cost of improvements through sales revenue, making the success of the buyer dependent upon the seller's solvency. As the securities/land development analogy illustrates, buyers in both situations are unaware of the underlying enterprise of the issuer/developer; they give money to others, and bear the risk if it is lost.[138]

The above transactional elements, which typically define the existence of a security, should be applied to land sales. If the government did not regulate securities, authorities would fear the deleterious effects on the capital market. Similarly, unregulated land sales have had a major adverse effect upon the environment, consumers, and land prices.[139] Unfortunately, the land sales industry, through its lobbying efforts, continues to impede the addition of helpful regulations which would put ILSFDA on par with federal securities laws.[140]

The wide scope of permitted exemptions also contributes to ILSFDA's weakness by allowing developers to avoid registration. Despite section 1702(a) of the Act,[141] which prohibits exemptions designed to evade the Act's intent, the OILSR does not sufficiently curtail the use of exemptions to prevent ardent abuses.[142] Limiting

137. *See* Comment, *supra* note 31, at 267.

138. *See* Coffey & Welch, *supra* note 15, at 20; Comment, *Applying the Interstate Land Sales Full Disclosure Act*, 51 OR. L. REV. 381, 391 (1972).

139. Premature subdivisions have spawned catastrophic development plans. Comment, *State Securities Regulation of Interstate Land Sales*, 10 URBAN L. ANN. 271 (1975).

140. *See* Coffey & Welch, *supra* note 15, at 39. OILSR still does not require developers to reveal all pertinent facts needed by a buyer. *See, e.g.*, Campbell v. Glacier Park Co., 381 F. Supp. 1243 (D. Idaho 1974) (no violation for developer who changes plans in contravention of sales contract following sale). OILSR could, but does not, require developers to disclose information regarding the property's actual value. *See* TASK FORCE ON LAND USE, *supra* note 3, at 178.

141. 15 U.S.C. § 1702(a) (1976 & Supp. III 1979).

142. *See* Note, *Consumer Protection and the Interstate Land Sales Full Disclosure Act*, 48 ST. JOHN'S L. REV. 947, 948 (1974); Case & Jester, *supra* note 18, at 434.

the availability of exemptions would further aid enforcement akin to that rendered under securities laws.

B. *Inadequacy of Full Disclosure to Solve the Problems*

Initially, Congress justified the cost of requiring disclosure, claiming that legitimate developers already spent similar amounts in preparing reports.[143] Legitimate businesses, therefore, could not compete with less scrupulous sellers who refused to bear such cost unless required by law. Many developers now feel that they are required to disclose far too much information resulting in high compliance costs which translate into higher consumer prices.[144] Much of the information is of no help to the buyer, who would much rather save money than pay for useless information.[145]

Even if full disclosure could adequately control consumer problems, legislation which purports to cure the evils of the land sales industry must adequately address the adverse environmental effects of subdividing land. Strict regulations are needed to compel the land sales industry to meet standards required in the Urban Growth and New Community Act of 1970[146] to assure nondestructive planned land use.

The Supreme Court drastically narrowed ILSFDA's potential to prevent land abuse when it decided *Flint Ridge Development Co. v. Scenic Rivers Association*.[147] The Court's conclusion in *Flint Ridge* was that HUD has no obligation to conduct environmental impact studies before approving registration.[148] ILSFDA strictly requires HUD to approve registration within thirty days of proper filing to protect developers from costly delays; the Court found such a limited

143. *See* Coffey & Welch, *supra* note 15, at 20.

144. *Id.* at 54. Compliance is difficult since OILSR does not preempt the various state laws requiring different information. Many developers do not even understand what the law requires of them. *See* Bearman, *Caveat Emptor in Sales of Realty—Recent Assaults upon the Rule*, 14 VAND. L. REV. 541, 572 (1961).

145. *See* Pridgen, *The Interstate Land Sales Full Disclosure Act: The Practitioner's Problems & Suggestions for Improvement*, 4 REAL EST. L. J. 127, 134-35 (1975-76); Note, *Regulation of Interstate Land Sales*, 25 STAN. L. REV. 605, 621 (1973).

146. 42 U.S.C. §§ 4501-4532 (1976 & Supp. III 1979). *See* Note, *supra* note 13, at 526.

147. 426 U.S. 776 (1976).

148. *Id.* at 791. The court noted that the National Environmental Protection Act (NEPA) requires the preparation of EIS's on all federal actions significantly affecting the quality of the environment. *Id.* at 785.

period inadequate in which to prepare an environmental impact statement.[149] Although the Secretary of HUD may use its rulemaking authority to demand that developers provide an impact statement as part of the full disclosure requirement, the Court said that a court may not force HUD to do this.[150] Industry pressures and HUD's lack of aggressiveness have prevented the addition of meaningful regulations of this type.[151] Whereas the OILSR may receive some information on environmental factors, no requirements are comprehensive in this respect. In any event, the agency cannot withhold registration soley because a development plan would injure the environment.

Although the OILSR's performance may not appear successful, it is hard to realistically estimate the full impact of ILSFDA in controlling land sale abuses. The deterrent value served by the Act's provisions may have saved consumers from potential abuse. Additionally, the threat of suit may be responsible for favorable settlements in favor of purchasers.[152] Even if purchasers or the OILSR do not investigate statements made, a developer may face investigation and prosecution by state agencies having stricter guidelines than the OILSR.[153] In any event, the present situation in the land sales industry has certainly improved somewhat since passage of ILSFDA gave buyers a better chance to protect themselves.[154]

149. 426 U.S. at 790-91. Where there is an agency conflict, NEPA gives way to the ILSFDA. *Id.* at 788.

150. *See* Colorado Pub. Interest Research Group, Inc. v. Hills, 420 F. Supp. 582 (D. Colo. 1976).

151. *See* Case & Jester, *supra* note 18, at 419-20, 432.

152. *Id.* at 441-42.

153. *See* Coffey & Welch, *supra* note 15, at 64. Many states possess authority to suspend sales of developments characterized as unfair. Under the ILSFDA, an aggrieved buyer may have a valid cause of action, whereas he could not prove the elements of an action in common law deceit. Note, *supra* note 19, at 136-37.

154. *Cf.* Pitofsky, *supra* note 15, at 664 (until the government intervened and required disclosure, accurate information was unavailable in many product areas. Thus, consumers may feel less impelled to look out for themselves, knowing a federal agency is involved in registering the development).

The government can never ensure *total* protection; it cannot require disclosure of all information connected with a transaction. By determining what consumers most need to know and requiring disclosure of those factors, the government helps ensure that the market will function efficiently. *See* Whitford, *The Functions of Disclosure Regulation in Consumer Transactions*, 1973 WIS. L. REV. 400, 423.

C. *Achievement of Purpose*

If the ultimate purpose of ILSFDA were merely to equalize information between buyer and seller, the Act could have the potential for great success.[155] With added regulations requiring more disclosures and better resources for enforcement so that the OILSR would function more like the SEC, the Act could provide potential purchasers with all material information.[156]

The underlying purpose of the ILSFDA, however, made clear by the corresponding purposes of achieving both rational purchase decisions and environmentally sound uses of land,[157] is to change consumer behavior. Despite their distaste for paternalism, the drafters conceded that protection naturally results from disclosure. Notwithstanding the presence of increased information due to ILSFDA, however, the statute does not achieve wholesale protection and rational uses of land. Only substantive regulations can achieve full protection;[158] although full disclosure imparts knowledge, it does not insure that the receiver will understand or act upon it.[159] Consumers buy, regardless of unfavorable information, convinced that real estate cannot be a bad investment.[160] If this problem was of such severity that Congress enacted disclosure regulations, Congress should now consider other legislative action to remedy ILSFDA's unsolved problems.[161] Even if the need for substantive regulation is recognized, however, the wisdom of such regulation will remain open for

155. *See* Note, *supra* note 142, at 956 (the intent of the act was to eliminate ignorance, not poor judgment).

156. *See* Note, *supra* note 106, at 136.

157. *See* Law v. Royal Palm Beach Colony, Inc., 578 F. 2d 98, 99 (5th Cir. 1978) (action by land purchaser against lender for rescission).

158. The most effective state laws are those having substantive regulations. *E.g.*, CAL. BUS. & PROF. CODE §§ 11000-11030 (West 1964 & Supp. 1977).

159. *See* L. LOSS, SECURITIES REGULATIONS 35 (2d ed. 1961). A former OILSR administrator, George Bernstein, realized this and suggested that the federal government seek more quantitative regulation if the states failed to increase their regulation of the industry. *See* Gose, *Interstate Land Sales*, 9 REAL PROP. PROB. & TRUST J. 7, 10, 39 (1974).

160. *See* P. SIMKO, *supra* note 1, at 34. *Cf.* Whitford, *supra* note 154, at 417 (the purpose of truth-in-lending legislation is not simply to disseminate information, but rather "to produce a greater degree of cost-effective comparative shopping" and to "affect decisions whether to enter credit transactions at all").

161. Having purportedly valid regulations on the books makes it easy for developers to convince buyers that they are investing in a good deal. *See* A. WOLFF, *supra* note 5, at 236-40.

speculation given the federal government's previous record on consumer regulation and the possible impropriety of a paternalistic role for government.[162]

V. ALTERNATIVES TO ILSFDA

Current legislation gives no single federal agency control over all the variables necessary to insure rational land development.[163] Any substantive legislation must create meaningful standards and simultaneously allow for individual community needs.[164] At present, there is no policy agreement as to what these standards should be.[165] Although local governments possess the authority to regulate subdivision development,[166] they lack the resources and expertise to formulate and administer meaningful controls.[167] In addition to dis-

162. *Cf.* New State Ice Co. v. Liebmann, 285 U.S. 262, 309-11 (1932) (Brandeis, J., dissenting) (national standards would not solve economic problems; let the market control rather than man).

163. *See* D. MANDELKER, PLANNING AND CONTROL OF LAND DEVELOPMENT: CASES AND MATERIALS 128, 281, 812, 821 (1979) [hereinafter cited as D. MANDELKER]; 42 U.S.C. § 4501 (Supp. III 1979) (The National Urban Policy and New Community Development Act calls for a national policy to guide specific decisions affecting patterns of development).

164. Usually land use plans have resulted *after* private initiative has predetermined the policy. *See* P. SIMKO, *supra* note 1, at 33.

165. *See* Tarlock, *Not in Accordance with a Comprehensive Plan: A Case Study of Regional Shopping Center Location Conflicts in Lexington, Kentucky*, 1970 URBAN L. ANN. 133, 169-73 (American land use controls evidence a faith in the market to achieve an optimum allocation, thereby precluding the need for governmental land use planning).

Lack of demand for undeveloped land may justify refusal to allow development unless proper assurances are made that development will occur in the future because of need.

166. Some jurisdictions that have a comprehensive plan also have "consistency provisions." *See* AM. SOC'Y PLAN. OFFICIALS, LOCAL CAPITAL IMPROVEMENT AND MANAGEMENT 61 (HUD Office of Policy Development and Research, 1977). Using zoning law to regulate land use provides another method of control. *See* Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926); Just v. Marinette County, 56 Wis. 2d 7, 201 N.W.2d 761 (1972). While police power is broad, it is not unlimited. Refusal of the right to develop may be an unconstitutional regulation. *See* French Inv. Co. v. City of New York, 39 N.Y.2d 587, 350 N.E.2d 381, 385 N.Y.S.2d 5 (1976). Yet, justification for such regulation may exist if the controls make the property owner bear the negative costs of poor development which decrease the value of his land rather than conferring a "benefit" on society.

167. *See* P. SIMKO, *supra* note 1, at 58. *See also* Mandelker, *The Role of Law in the Planning Process*, 1965 LAW & CONTEMP. PROB. 26, 32. Many local governments allow large-scale development when promoters convince community businessmen

cretionary mechanisms[168] such as the use of environmental impact statements to determine feasibility of a development project, a comprehensive plan must guide land use decisions.[169]

Federal preemptive legislation or adoption of a new uniform land sales act would offer uniformity over the existing variety of compliance standards which confuse developers and escalate costs for purchasers.[170] Due to the extensive expertise and care used in drafting a uniform act, the rights and obligations of the buyer and seller are more likely to be satisfactorily addressed.[171] Preemption of land sales regulations with substantive federal controls would supply a holistic approach to the problem.[172] Alternatively, federal law could establish minimum standards to govern subdivided land sales, granting each state enforcement authority and power to promulgate stricter standards. To formulate the content of these regulations, Congress might employ the experience gained by the Federal Trade Commission (FTC)[173] as well as states[174] which have adopted sub-

---

and officials that the community will benefit from development. Inexperienced, and influenced by color pictures and promises, local governments approve subdivisions without full realization of the ramifications of their decision upon the future. Jones, *Selling the Mileage: A Nice Piece of Desert*, 213 NATION 616, 622 (1971). Local governments must provide costly services for these developments that tax the entire established community. *See* TASK FORCE ON LAND USE, *supra* note 3, at 279.

168. Presently, local land use controls place primary reliance on discretionary mechanisms. *See* TASK FORCE ON LAND USE, *supra* note 3, at 189.

169. If controls are too discretionary, they lack force of law and lack public acceptance if there are no shared value judgments. *See* D. MANDELKER, THE ZONING DILEMMA 32 (1971); TASK FORCE ON LAND USE, *supra* note 3, at 27. If a plan exists to curtail discretion, it must be consistent with the values of those given the power of enforcement. If they are inconsistent with administrator's values, biases will guide the discretionary review rather than the plan's real intention. *See generally* Tarlock, *supra* note 165.

170. *See* Coffey & Welch, *supra* note 15, at 17. Federal preemption, however, is not a realistic possibility given the legislative trends in the area. The Uniform Land Sales Act currently is in use in 9 states. *See* notes 190-207 and accompanying text *infra* for an explanation of possible improvements of this Act.

171. *See* the prefatory note to the Uniform Condominium Act in 7 UNIFORM LAWS ANNOTATED 97 (West 1978).

172. To date, congressional efforts to legislate a national land use law have failed. *See generally* P. SIMKO, *supra* note 1.

173. Section 45(a)(1) of the FTC Act states that "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful." 15 U.S.C.A. § 45(a)(1) (West Supp. 1980).

The FTC may use cease-and-desist orders to prevent persons from employing deceptive practices. *Id.* at § 45(b). A developer who violates an order may be subject to civil penalties. *Id.* at § 45(m)(1)(A).

stantive legislation.

A. *The FTC Example*

Presently, the FTC handles many problems within the scope of the OILSR. Just as OILSR has authority to investigate promoters of subdivision lots, the FTC has powers to order the preparation of reports by sellers.[175] Civil penalty provisions exist for deception,[176] and criminal penalties for willful, false advertisement.[177]

The FTC has begun to exercise its powers to control deceptive practices in the land sales area and has achieved more success than the OILSR. Beginning in 1973, the FTC prohibited developers from misleading buyers;[178] one year later, consumers recovered nearly seventeen million dollars in payments which they had forfeited as liquidated damages.[179]

Additionally, the FTC ordered substantive changes in promoter practices, going well beyond OILSR protection. The buyer receives a ten-day cooling-off period to rescind his contract, and the seller must clearly disclose risk factors[180] as well as other material information just as the SEC requires under Rule 10b-5 to prevent omissions.[181] When contracts represent the existence of improvements not actually supplied, the FTC's consent orders occasionally provide for specific performance.[182] In one of their most substantive rulings, the FTC decided that a contract was unfair when it had been signed under

---

174. *See* text accompanying notes 190-207 *infra*.

175. 15 U.S.C.A. § 46(a) (West Supp. 1980).

176. *Id.* § 45(a)(1).

177. *Id.* § 50.

178. *See In re* Urban Redev., Inc., 83 F.T.C. 692 (1973) (consent order to cease and desist advertising nonexistent improvements).

179. *In re* GAC Corp., 84 F.T.C. 163 (1974). *See In re* ITT Corp., 88 F.T.C. 933, 949 (1976) (buyer cannot lose more than 44.8% of purchase price as liquidated damages).

180. *See In re* Las Animas Ranch, Inc., 89 F.T.C. 255, 275 (1977). The FTC issued an order requiring the promoter of a risky development project to disclose that the investment was "speculative and risky" and "unlikely to increase in value" or be marketable. Cavanaugh Corp., [1977] TRADE REG. REP. (CCH) ¶ 23,177.

181. *See In re* Horizon Corp., 85 F.T.C. 1021 (1975).

182. *See, e.g., In re* ITT Corp., 88 F.T.C. 933 (1976). *See also* Flagg Indus., 90 F.T.C. 226 (1977) (required developer to make $4.1 million in improvements); *In re* Great Western United Corp., [1977] TRADE REG. REP. (CCH) ¶ 21,261 ($4,000,000 ordered in cash refunds for misrepresentation of site as an investment and $16 million commitment ordered for capital improvements). Generally, it is difficult to act

circumstances in which it was improbable that the buyer would read or understand the sales documents.[183] This decision recognized the difference between providing a buyer with information and making sure that he or she can act upon it.

Although the aforementioned remedies are more extensive than those of OILSR, FTC weaknesses prevent it from adequately dealing with land sale problems. Administration under the Federal Trade Commission Act (FTCA) is very slow;[184] thus, the Commission cannot act prophylactically to protect potential buyers. Even though the FTC has recovered large sums of money for consumers, the total represents a small portion of the actual losses suffered.[185] No private right of action to recover damages exists under the FTCA, and the FTC deals only with cases having a potential impact on a large number of persons.[186] Thus, the cheated individual may have no legal recourse.

In spite of its authority to promulgate regulations specifically applicable to the land sales industry, the FTC has not done so.[187] The rulemaking process is time-consuming and costly. In view of the OILSR's responsibility for policing the land industry,[188] it is unlikely that the FTC will use its own scarce resources to take over another agency's work and issue a Trade Rule Regulation (TRR) for land sales.[189]

B. *State Controls*

In addition to the FTC, several states have effective substantive enforcement rules. Some states regulate land sales under their Blue Sky securities laws which allow the securities administrator to refuse registration if a developer's plan is unfair.[190] Under the Minnesota

---

against false advertising since the campaign is usually over and has done its damage by the time that a cease and desist order issues.

183. *See In re* GAC Corp., 84 F.T.C. 163 (1974). *See also* Bankers Life and Cas. Co., [1976] TRADE REG. REP. (CCH) ¶ 21,253.

184. Administrative hearings take at least thirty days and the FTC lacks the staff and funds to police its rulings. Coffey & Welch, *supra* note 15, at 11-12.

185. *See For Sale: Bad Deals in Land*, CHANGING TIMES, Aug., 1977, at 14.

186. *See* 16 C.F.R. § 2.3 (1980).

187. *See* 15 U.S.C. § 57a (1976).

188. *See* P. SIMKO, *supra* note 1, at 57.

189. *Compare* 15 U.S.C. § 52 *with* 15 U.S.C. § 57a. *See also* St. Louis Post-Dispatch, Apr. 6, 1980, at 13A.

190. *See, e.g.*, OHIO REV. CODE ANN. § 1707.01-.33 (Page 1980) (includes real

Subdivided Land Sales Practices Act,[191] the state will not register a subdivision unless the developer shows compliance with zoning laws and environmental standards, an ability to convey clear title, and that it will complete needed improvements.[192]

New York has creatively adapted traditional land use controls to defer development in relation to the availability of public facilities by means of phased expansion.[193] If a residential developer wants to subdivide, the lots have to be near required facilities, or else the town may deny permission to develop.[194]

New York law also provides for the evaluation of environmental factors[195] in similar fashion to an EIS, and prohibits the sale of worthless land.[196] Employees of New York's Department of State personally inspect every subdivision prior to approval, requiring the posting of performance bonds sufficient to improve the land.[197]

California law is in some respects the most progressive of any state regulation. Finding full disclosure legislation an inadequate solution to the land sales problems, California enacted additional substantive

---

estate *outside* of the state in its definition of security). *See also* Case & Jester, *supra* note 18, at 398. Even though the state may disapprove of an issuer on substantive grounds, Ohio does not represent that any deal is safe. Devoe v. State, 48 Ohio App. 311, 357 N.E.2d 396 (1975).

191. *See* MINN. STAT. ANN. § 83.20-.42 (West Cum. Supp. 1980).

192. *Id.* § 83.23.

193. *See* Golden v. Planning Bd., 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972), *appeal dismissed*, 409 U.S. 1003 (1972) (if the developer failed to provide improvements, the town had to provide the required facilities over an 18-year period in any case). *Ramapo* may not now be good law due to a change in justices on the New York high court; the dissenting judge now is Chief Justice. *See* AM. SOC'Y OF PLAN. OFFICIALS, LOCAL CAPITAL IMPROVEMENT & MANAGEMENT 64 (HUD Office of Policy Development, 1977). *See also* Horizon Adirondack Corp. v. N.Y., 88 Misc. 2d 619, 388 N.Y.S.2d 235 (Ct. Cl. 1976).

194. Permits are issued on the basis of points awarded for the availability of services. *See* P. SIMKO, *supra* note 1, at 330.

195. *See* N.Y. ENVT'L CONSERV. L. § 3-0301(1)(b) (McKinney Supp. 1979-1980). *Contra* for federal projects, Flint Ridge Dev. Co. v. Scenic Rivers Ass'n 426 U.S. 776 (1976), *reh. denied*, 429 U.S. 875 (1976).

In Ton-da-Lay v. Diamond, 44 A.D. 2d 430, 436, 355 N.Y.S.2d 820, 826 (1974), *reh. denied*, 362 N.Y.S.2d 156 (1974), decided on other grounds, the court stated that regulations under the law must provide a developer with sufficient information concerning what he must do to comply. This is often hard to accomplish.

196. *See* N.Y. ENVT'L CONSERV. L. § 3-0301(1)(b) (McKinney Supp. 1979-1980).

197. *See* M. PAULSON, *supra* note 4, at 169.

requirements.[198] Aside from requiring affirmative disclosure of the land's fair market value, the law treats the transaction like that of a security.[199] The Commissioner of Real Estate has authority to deny issuing a property report if the promoter cannot finance the advertised improvement, if the land cannot be used for the stated purpose, or if the sale would constitute misrepresentation, deceit or fraud.[200] As in New York, the state inspects all the property; in California, however, a development may not receive approval if its costs are excessive.[201]

Because of those strict regulations, which relate exclusively to land outside the state, relatively few real estate deals are marketed in California.[202] Notwithstanding its strict rules aimed at consumer protection, the California Subdivided Lands Act offers no controls over the environmental impact that a development may have[203] and provides weak sanctions.[204] Perhaps this is due to the consumer protection purpose of the California law; the land that California law affects is *not* located within the State of California, and California has little interest or jurisdiction in controlling out-of-state environmental factors.

Using the New York and Minnesota models, with added California-type consumer protection laws, states could improve the land sales situation in the absence of federal preemptive legislation. State initiative, however, is unrealistic; although problems concerning land sales continue, only the few states mentioned have adopted meaningful legislation. These facts, coupled with the unsuccessful results achieved under federal control,[205] suggest that regulaton should fol-

198. *See* CAL. BUS. & PROF. CODE §§ 11000-11030 (West Supp. 1980). *See also* Note, *supra* note 13, at 522.

199. *See* CAL. BUS. & PROF. CODE § 10237.1(c) (West Supp. 1980).

200. Also, zoning must be compatible with use, and adequate erosion and flood prevention plans must be provided. *Id.* at § 11025.3.

201. *See, e.g.*, Towne Dev. Co. v. Lee, 63 Cal. 2d 147, 403 P.2d 724, 45 Cal. Rptr. 316 (1965) (sum constituted adequate and fair consideration for land).

202. *See generally* A. WOLFF, *supra* note 5.

203. *Contra*, N.Y. ENVT'L CONSERV. L. § 3-0301(1)(b) (McKinney Supp. 1979-1980).

204. *See* TASK FORCE ON LAND USE, *supra* note 3, at 624.

205. Presently the OILSR attempts to enforce the Act on a budget of only $2.539 million and a staff ceiling of 86 persons. Letter from Director Weaver, OILSR to Renee Friedman (Mar. 13, 1980).

low a federal delegation model.[206] Under this approach federal law would authorize each state to adopt and administer its own subdivision regulations through a permit system meeting federal minimum requirements. States would receive federal grants to implement their programs over which they would maintain exclusive jurisdiction. If a state failed to promulgate a satisfactory plan, federal requirements similar to the New York, Minnesota, and California models would preempt any existing state laws regulating the area. The threat of federal preemption and the thought of federal funding should provide adequate incentives for each state to implement its own plans taking advantage of the state's ability to tailor federal minimum requirements to meet its unique needs.[207]

VI. CONCLUSION

Any meaningful legislation should prevent land sales which do not insure development of habitable communities. Even if a buyer receives all pertinent sales information, he or she may not *use* it when deciding to buy. Emotional factors interfere with rational buying decisions, especially when developers feed such feelings. Where there is irrational decisionmaking, the market will not yield economic land use.[208] Regulations must provide guidance for efficient, nondestructive land use. Sensible rules will not jeopardize legitimate developments.

The public has begun to realize that the caveat "buyer beware" will not protect the environment or people from greedy promoters who will sell anything they can get someone to buy.[209] Unless the government helps to conserve land for proper uses, the land will be unable to support future needs.[210] And unless government concerns itself with consumer *use* of disclosed information rather than solely

206. Examples of legislation adopting this approach include: Air Pollution and Control Act, 42 U.S.C.A. § 7410 (West Supp. 1980); Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1252-63 (Supp. III 1979).

To an extent, existing federal environmental controls regulate subdivisions in this way, for example, by prohibiting coastal subdivision development in some areas.

207. *Cf.* statutes cited in note 206 *supra*. These acts give effect to the notion that states are best able to regulate pollution and mining because of their localized nature. *See* 42 U.S.C.A. § 7401(a)(3) (West Supp. 1980).

208. *Cf.* Tarlock, *supra* note 165, at 179 (ideas applied to shopping center location as a response to controlling market conditions).

209. *See* P. SIMKO, *supra* note 1, at 310.

210. *Id.* at 9.

with its dissemination, promoters will get richer at the hands of gullible but innocent buyers.[211] Legislators, however, consistent with the American political tradition, are not inclined to promulgate laws which impede consumer choice in the absence of fraud.[212]

Fairness should govern a national or state land use policy designed to protect investors in land just as some state Blue Sky laws already offer standards to insulate unsophisticated security investors from harm. The free enterprise system will not collapse under paternalistic regulations; they have worked well in several states already. To the contrary, preservation of an economic system depends on the protection it offers against abuse.[213]

211. *Cf.* Douglas, *Protecting the Investor*, 23 YALE REV. 521 (1934) (Investors in securities do not receive protection through full disclosure laws alone. Speculative profits are so enticing that rational decisions based on information cannot be guaranteed.) (The late Justice Douglas had been Director of the S.E.C.).

212. *See* note 7 *supra* concerning the philosophical basis of our political tradition.

213. *See* M. PAULSON, *supra* note 4, at introduction.