

Buyers look to 40-year-old federal law to revoke contracts

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By James Kelly

Hundreds of condo buyers in new developments in Manhattan, Brooklyn and Queens are awaiting settlements or court decisions that could result in the refund of all or part of their down payments. The actions being taken by the buyers are the result of a recent focus on a consumer protection law that for decades has been invoked by buyers around the country looking to revoke their purchase agreements, but has only now entered the limelight in New York City.



With an onslaught of apartments closing two-plus years after signing at prices far below their current value, buyers are looking to extricate themselves from deals, with such cases making their way to federal courts.

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Attorney Robert Chasnow of Holland & Knight in Washington, D.C., and other attorneys The Real Deal spoke with, agree that the law, called the United States Department of Housing and Urban Development's Interstate Land Sales Full Disclosure Act, didn't get that much attention in New York City before because the market had always been so strong that buyers did not look to get out of contracts.

"But the difficulties in the marketplace have caused purchasers to look wherever they can for relief," Chasnow said. "And that looking wherever they can has led them to where many others outside New York have found it."

Under the act, passed in 1968 and amended in 1979, developers of condo projects with over 99 units are required to file a project report with HUD, present a copy of the document to each apartment buyer prior to his or her signing of a purchase agreement and promise to deliver the unit within two years. If the developer fails to fulfill his obligations, the buyer has two years to back out of the contract and potentially walk away from the deal with her entire down payment.

It's difficult to determine the total number of complaints since there is no central office for the filings, but attorney **Adam Leitman Bailey** said he is representing between 150 and 200 buyers looking to get out of contracts at approximately 20 projects in the city, claiming that developers did not comply with the full disclosure act.

As previously reported by the New York Times, Lawrence Weiner, attorney at Wilentz, Goldman & Spitzer, is representing approximately 20 buyers at seven or eight condo projects in Brooklyn,

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Queens and Manhattan, and in the last six weeks, has filed suits against Hakimian Organization's 75 Wall Street, Simone Development's One Hunters Point, and RAL Companies & Affiliates' One Brooklyn Bridge Park, among others. Only RAL responded to requests for comment saying, "the claim is being investigated."

Weiner was behind the December launch of the Web site No-Condo.com, a law firm referral service that helps buyers get out of contracts in buildings where the developer violated HUD regulations.

Weiner has filed each of these cases in federal court as did attorney David Wrobel, partner at Wrobel & Schatz, who went to the Southern District of New York with buyers' complaints against the Laurel in early February. He also filed a complaint against the Chelsea Stratus with the attorney general's office. Jonathan Canter of Kramer, Levin, Naftalis & Frankel, who is representing the Laurel and the Chelsea Stratus, did not respond to a request for comment.

Hundreds of buyers are awaiting decisions about whether they are eligible to revoke their contracts.

Wrobel said that he knew of three instances in the last month where developers simply agreed to the revocation of the purchase agreement and gave buyers' their deposits back, without going to court. But the issue is complicated, and as D.C. attorney Chasnow notes, there are around 20 exceptions to the rule, which allow developers who failed to present HUD-approved property reports to maintain a contract. The most prominent loophole is that if the developer promised to deliver the property within two years of signing -- and fulfills the promise -- the buyer cannot revoke his or her purchase agreement.