

Legislators say new ISLA bill offers developers “stability”

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By Sarah Trefethen



Rep. Carolyn Maloney says the bill forces developers to file redundant paperwork that is unnecessary and out of keeping with modern condominium development

New York’s representatives to the United States Senate and House of Representatives early last month introduced a pair of bills intended to exempt condominiums from the Interstate Land Sales Full Disclosure Act, or ILSA.

After the market crash of 2008, federal courts ruled that the 1969 law protected purchasers who had signed contracts to purchase condominiums prior to their construction, only to see both their own financing and the funding for the construction project dry up.

Supporters say the change will protect developers from buyer’s remorse. But some question if the outdated consumer protections should be removed without any new rules to take their place.

“It was intended to protect out-of-state buyers who were sold land that was not what was advertised and provides a right of action to rescind the contract and walk away from the deal,” Rep. Carolyn Maloney (D-NY) said on the House floor when introducing the bill. “However, Courts have ruled over the years that ISLA applies to condominiums, and developers are required to file redundant paperwork that is unnecessary and out of keeping with modern condominium development.”

If condos were exempted from the federal regulation consumers would still be protected by state laws, according to Jay A. Neveloff, a partner at Kramer Levin Naftalis and Frankel who consulted on the drafting of the bill.

“It’ll bring stability back to the lenders, stability back to the developers,” Neveloff said.

But not everyone is convinced that the state rules, which leave much to the discretion on the Attorney General, are enough to protect consumers from shoddy building practices.

“This is a fantastic opportunity for our congress, instead of helping extremely wealthy people, to actually help the consumers that really need it,” said **Adam Leitman Bailey**, who successfully represented condo buyers in a number of the post-crash ILSA cases. “It disgusts me to see a bill like this put through instead of one that’s going to help consumers buy property that’s built well.”



JAY NEVELOFF

Bailey agrees that ILSA should be modified, but “after seeing hundreds of buildings built badly and built corruptly” he would like to see developers required to present buyers with engineering reports and set aside a reserve fund for two years after construction to address inevitable new-building hiccups.



ADAM BAILEY

“Every building has problem when it’s first built,” **Bailey** said. “The good builders come back and fix those problems but some do not, which has increased litigation immensely.”

But Neveloff and the bill’s supporters are more interested in what it would do than in what it wouldn’t. Under the current outdated law, Neveloff said, a contract could easily be broken on a bureaucratic technicality, regardless of a developer’s disclosure practices.

For example, he said, a contract can be voided if the property’s tax lot and block numbers are not provided at the time of signing, but those numbers are not issued until a property is built.

The bill is sponsored by Senators Charles Schumer (D-NY) and Kirsten Gillibrand (D-NY) in the Senate and in the House by Maloney along with Reps. Patrick McHenry (R-NC), Jerrold Nadler (D-NY), and Michael Grimm (R-NY).

“I fully support the consumer protections that were enacted through ILSA, and this proposed legislation does nothing to affect those protections,” Maloney said when introducing the bill. “But I also believe that we need to make distinctions for condominiums in order to allow the condominium development industry to rebound from the recession.”