REAL ESTATE BROKER LAW — LEGAL UPDATE: CHANGE IN THE LAW ON MARKETING NEW CONSTRUCTION CONDOMINIUMS IN CHICAGO

November 18, 2015 | Alert

If your clients include developers of condominiums in Chicago (both new construction and rehabbing) please read this article carefully.

On November 4, 2015, the Illinois Supreme Court in *Henderson Square Condominium Association v. LAB Townhomes, LLC*, 2015 IL 118139 (the "***Henderson* Case**") turned long-held legal precedent on its head by ruling that developers/sellers of new construction condominiums are liable under Section 13-72-030 of the Chicago Municipal Code for stating in a "sales brochure" that the developer was "committed to quality construction and detail" and "consistently delivers":

- Quality buildings reflecting a flair for the original, not the exotic
- Innovative ideas backed by proven management and construction expertise
- Successful developments that enhance neighborhood living styles
- Developments that succeed – architecturally, aesthetically and economically

[A copy of the "sales brochure" can be found at the end of this update.]

Prior to this decision, such subjective statements did not support a lawsuit because they constituted opinions or "puffery," which Illinois courts have long held that, even if they turn out to be false, are not statements that are legally actionable. Now, however, the above statements, if they turn out to be false, can violate Section 13-72-030 of the Chicago Municipal Code, which states that:

RELATED PROFESSIONALS

Aaron H. Stanton

RELATED PRACTICE & INDUSTRIES

Litigation

Real Estate

Real Estate Brokerage

> No person shall with the intent that a prospective purchaser rely on such act or omission, advertise, sell or offer for sale any condominium unit by (a) employing **any statement or pictorial representation which is false** or (b) **omitting any material statement or pictorial representation**.

Accordingly, because a developer/seller violating Section 13-72-030 is liable for actual damages and attorneys fees, it is very important to be cognizant of this recent change in the law for your developer clients.

While the *Henderson* Case did not involve a real estate broker, because Section 13-72-030 states that "no **person** shall," it is very likely that future lawsuits under Section 13-72-030 will include real estate brokers. Indeed, it is generally the real estate broker that disseminates the marketing brochures that contain the language at issue, *i.e.*, the developer has a history of quality development.

To protect yourself and your broker, while, at the same time, best serving your clients by marketing their projects, you should take the following steps:

- E-mail this legal update to your developer clients that currently have or are contemplating projects in Chicago.
- Strongly advise your clients to discuss the *Henderson* Case with their counsel and the impact it could have on your clients.
- Carefully review all marketing materials with your clients to make sure that all statements therein are 100% true and accurate.
- Have your client confirm, in an e-mail, that representations in sales brochures are truthful and not in anyway misleading.
- If your developer client has a history of litigation on prior project, you should not disseminate marketing materials that paint your client as a "quality" developer or with a history of "quality" projects.
- If you are unsure or have any questions, contact your managing broker immediately.

For more information, please contact Aaron H. Stanton at astanton@burkelaw.com or (312) 840-7078.