

Office of the Superintendent of Real Estate

Materials for the CBA BC Real Property Section (Vancouver)

Presented at the Meeting of the Real Property Section (Vancouver)
of the Canadian Bar Association (British Columbia Branch)
on June 10, 2008 at the Four Seasons Hotel in Vancouver

Prepared and presented by
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Office of the Superintendent of Real Estate



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REDMA Disclosure Statements, Superintendent's Policy Statements, and Superintendent's Staff

- Disclosure Statements are required under the *Real Estate Development Marketing Act* (“REDMA”) for real estate developments marketed in BC
- Superintendent of Real Estate's Policy Statements explain REDMA requirements
- Superintendent's staff refer lawyers to relevant provisions in REDMA and the Policy Statements

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Amended Policy Statement 5 (Development Approval) and Amended Policy Statement 6 (Financing)

- Since 2005, Policy Statements 5 and 6 have allowed for up to 9 months of marketing under a filed Disclosure Statement prior to obtaining a building permit and satisfactory financing commitment
- Policy Statements 5 and 6 provide that marketing must cease 9 months after the Disclosure Statement is filed, unless an Amendment (the “BP/Financing Amendment”) has been filed to disclose a building permit and satisfactory financing commitment

Amended Policy Statement 5 (Development Approval) and Amended Policy Statement 6 (Financing) (continued)

- Policy Statements 5 and 6 were amended effective Jan. 30, 2008
- If no BP/Financing Amendment is filed during the 9 month marketing period, the developer must then provide an immediate written Undertaking to the Superintendent that marketing has ceased and will not resume until after a BP/Financing Amendment or a new Disclosure Statement has been filed
- An acceptable form of Undertaking is available on the website at www.fic.gov.bc.ca/responsibilities/realestate/bulletins.htm

Amended Policy Statement 5 (Development Approval) and Amended Policy Statement 6 (Financing) (continued)

- If no BP/Financing Amendment or written Undertaking is submitted, the Superintendent may issue a cease marketing Order without further notice
- Amended Policy Statements 5 and 6 also require a developer to notify the Superintendent in writing if, during the 9 month marketing period, all units are sold or the developer decides not to proceed with the development

Amended Policy Statement 5 (Development Approval) and Amended Policy Statement 6 (Financing) (continued)

- If a developer is unable to obtain a building permit and satisfactory financing commitment after 9 months of marketing, the Superintendent may allow the developer to file a new Disclosure Statement that again relies on Amended Policy Statements 5 and 6
- It is not necessary to terminate existing purchase agreements and return deposits in order to be allowed to file a new Disclosure Statement
- A new Disclosure Statement provides a 7-day rescission right under section 21 of REDMA

Amended Policy Statement 5 (Development Approval) and Amended Policy Statement 6 (Financing) (continued)

- Amended Policy Statements 5 and 6 and related Information Bulletin REDMA-07-04 are available on the website at www.fic.gov.bc.ca

Policy Statement 14 (“Pre-Sale” Units)

- Since Nov. 1, 2007, Policy Statement 14 has required additional disclosure for “pre-sale” units
- Include the additional disclosure in a new Disclosure Statement or in the next Amendment filed for an existing Disclosure Statement

Policy Statement 14 (“Pre-Sale” Units) (continued)

- Disclose provisions for terminating, extending or assigning the purchase agreement
- Disclose provisions governing interest on deposits

Policy Statement 14 (“Pre-Sale” Units) (continued)

- Purchaser initials the cover page of the Disclosure Statement or Amendment to confirm the disclosure of purchase agreement provisions
- Disclosure Statement includes a copy of the form of purchase agreement as an exhibit

Policy Statement 14 (“Pre-Sale” Units) (continued)

- Policy Statement 14 and related Information Bulletin REDMA-07-03 are available on the website at www.fic.gov.bc.ca

Policy Statement 15 (Developer's Background and Conflicts of Interest)

- Since Nov. 1, 2007, Policy Statement 15 has required additional disclosure for property marketed under REDMA, whether completed or not, with respect to the developer's background and any conflicts of interest
- Include the additional disclosure in a new Disclosure Statement or in the next Amendment filed for an existing Disclosure Statement

Policy Statement 15 (Developer's Background and Conflicts of Interest) (continued)

- The developer and its directors must disclose their experience in the development industry
- The developer, directors, officers and “principal holders” must disclose whether they have been bankrupt within the past five years, or been disciplined within the past ten years for matters relating to real estate, mortgages of land, securities, theft or fraud

Policy Statement 15 (Developer's Background and Conflicts of Interest) (continued)

- The developer, directors, officers, and “principal holders”, and the manager and any person providing goods or services to the developer, manager or purchasers, must also disclose any conflicts of interest that could reasonably be expected to affect a purchaser's purchase decision.

Policy Statement 15 (Developer's Background and Conflicts of Interest) (continued)

- Policy Statement 15 and related Information Bulletin REDMA-07-03 are available on the website at www.fic.gov.bc.ca

Practice Points

- Superintendent may require a substantial change to be disclosed in a new Disclosure Statement rather than in an Amendment
- A new Disclosure Statement provides a 7-day rescission right under section 21 of REDMA

Practice Points (continued)

- File a *Strata Property Act* Rental Disclosure Statement (Form “J”) with the Superintendent to set out rental rights
- Include a copy of the signed and filed Rental Disclosure Statement as an exhibit to the REDMA Disclosure Statement
- The fee for submitting a Rental Disclosure Statement is \$150 payable to the Minister of Finance

Practice Points (continued)

- Ensure that the proposed unit entitlements and voting rights for strata lots are accurately disclosed
- The Schedule of Unit Entitlement (Form “V”) for every development that has both residential and non-residential strata lots requires the Superintendent’s approval (*Strata Property Act*, section 246(5))

Practice Points (continued)

- File in paper format by mailing or delivering one signed original copy and payment of the filing fee
- When submitting a filing, please include full contact information, including e-mail address
- Do not submit filings by fax or e-mail

REFERENCE MATERIALS

The Financial Institution Commission's website at www.fic.gov.bc.ca contains, or provides links to, the following materials

- the *Real Estate Development Marketing Act*
- the Real Estate Development Marketing Regulation
- the Superintendent of Real Estate's 15 Policy Statements
- Information Bulletins

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CONTACT INFORMATION

The offices of the Financial Institutions Commission and the Superintendent of Real Estate are located at Central City in Surrey. They may be contacted at

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Disclaimer and Errors and Omissions Excepted

- Staff at the Office of the Superintendent of Real Estate provide comments that are intended to accurately explain the Superintendent's technical interpretations and positions in respect of the *Real Estate Development Marketing Act* and Regulations. While staff comments may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. Staff comments should be considered in light of the relevant provisions of the law in force at the time, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made.
- Errors and omissions are excepted.

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