

REGULATION # 505/2004

Effective: Jan. 1/05

PROVINCE OF BRITISH COLUMBIA

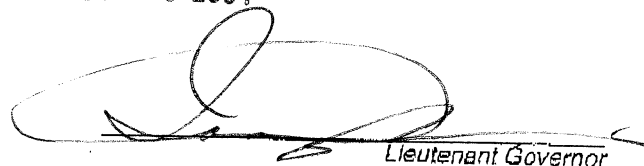
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No.

1108

, Approved and Ordered

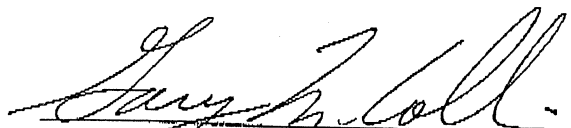
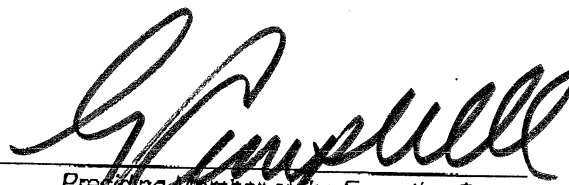
NOV 18 2004


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective January 1, 2005,

- (a) the Real Estate Development Marketing Act, S.B.C. 2004, c. 41, is brought into force, and
- (b) the attached Real Estate Development Marketing Regulation is made.


Minister of Finance
Presiding Member of the Executive Council

Authority under which Order is made:

(This part is for administrative purposes only and is not part of the Order.)

Act and section:-

Real Estate Development Marketing Act, S.B.C. 2004, c. 41, section 46

Other (specify):-

November 5, 2004

REAL ESTATE DEVELOPMENT MARKETING REGULATION

Contents

PART 1 – DEFINITIONS

- 1 Definitions

PART 2 – EXEMPTIONS

- 2 Marketing between developers
- 3 Marketing of development units used for industrial or commercial purposes
- 4 Leases of 3 years or less
- 5 Sale or lease subject to the *Securities Act*
- 6 Marketing of subdivision lots in a municipality
- 7 Continuing exemptions
- 8 Low equity cooperative interests

PART 3 – MARKETING AND HOLDING DEPOSITS

- 9 Signing disclosure statements
- 10 Notice of deposit protection contract

PART 4 – REMEDIES AND ENFORCEMENT

- 11 Service of notice of rescission
- 12 Recovery of enforcement expense

PART 5 – FEES

- 13 Fees – disclosure statement
- 14 Other fees

PART 6 – GENERAL

- 15 Publication

PART 7 – TRANSITION

- 16 Adequate arrangements

PART 1 – DEFINITIONS

Definitions

- 1 In this regulation:
 - “**Act**” means the *Real Estate Development Marketing Act*;
 - “**former Act**” means the *Real Estate Act*, R.S.B.C. 1996, c. 397.

PART 2 – EXEMPTIONS

Marketing between developers

- 2 A developer who markets a development property in a single transaction is exempt from Part 2 [*Marketing and Holding Deposits*] of the Act in respect of that marketing.

Marketing of development units used for industrial or commercial purposes

- 3 (1) A developer who markets a development unit is exempt from Part 2 [*Marketing and Holding Deposits*] of the Act in respect of that marketing if the development property in which the development unit is located is
- (a) within an area that has been zoned by an approving authority for industrial or commercial use only,
 - (b) used only for industrial or commercial purposes, and
 - (c) advertised and marketed only in respect of industrial or commercial uses.
- (2) A developer who markets a development unit is exempt from Part 2 of the Act in respect of that marketing if
- (a) the development property in which the development unit is located is
 - (i) within an area that has been zoned by an approving authority for comprehensive development, including residential use,
 - (ii) used only for industrial or commercial purposes, and
 - (iii) advertised and marketed only in respect of industrial or commercial uses, and
 - (b) the developer delivers to the purchaser of the development unit, before entering into a purchase agreement with the purchaser, written notice that
 - (i) Part 2 of the Act does not apply to the marketing of the development unit,
 - (ii) the rights and protections of the Act are not available to the purchaser, and
 - (iii) the developer is not required to provide to the purchaser a disclosure statement regarding the development property in which the development unit is located.

Leases of 3 years or less

- 4 (1) A developer who markets a development unit is exempt from Part 2 [*Marketing and Holding Deposits*] of the Act in respect of that marketing if the development unit is marketed only for the purpose of leasing the development unit for a term of 3 years or less.
- (2) For the purpose of subsection (1), the term of a lease includes any period by which the lease may be extended by way of an option or covenant for extension or renewal of the lease.

Sale or lease subject to the *Securities Act*

- 5 A developer who markets a development unit is exempt from Part 2 [*Marketing and Holding Deposits*] of the Act in respect of that marketing if the developer
- (a) files a prospectus under section 18 (1) [*offering of securities*] of the *Securities Act*, and
 - (b) complies with all requirements of the *Securities Act* relevant to the marketing of the development unit.

Marketing of subdivision lots in a municipality

- 6 (1) In this section, “**municipality**” means a municipality incorporated under the *Local Government Act* or the *Vancouver Charter*, but does not include a regional district or an improvement district.
- (2) A developer who markets a subdivision lot is exempt from Part 2 [*Marketing and Holding Deposits*] of the Act in respect of that marketing if
- (a) the subdivision lot is located in a municipality, and
 - (b) the developer has, in relation to the development property,
 - (i) complied with all requirements set out in a bylaw enacted by the municipality under section 938 [*subdivision servicing requirements*] of the *Local Government Act* or section 292 [*subdivision control*] of the *Vancouver Charter*, as applicable, or
 - (ii) deposited with the municipality any security required by the municipality under section 940 (2) of the *Local Government Act*.

Continuing exemptions

- 7 (1) If a developer was exempted from Part 2 of the former Act in respect of the marketing of a development unit, the developer is exempt from Part 2 [*Marketing and Holding Deposits*] of the Act in respect of that marketing.
- (2) Section 20 (2) of the Act applies to an exemption under subsection (1) as if the exemption had been made in accordance with section 20 (1) of the Act.
- (3) A developer who markets a development unit is exempt from Part 2 of the Act in respect of that marketing if the development unit is
- (a) a strata lot that was created by a strata plan deposited and registered in a land title office on or before February 17, 1977, or
 - (b) a cooperative interest in land located in British Columbia if
 - (i) the cooperative association was established on or before October 1, 1974, and
 - (ii) the cooperative interest has been marketed continuously since the date the cooperative association was established.
- (4) Section 8 (3) to (6) [*shared interests in land in B.C.*] of the Act does not apply to a shared interest in land that is part of a parcel in which at least one shared interest in land has, before April 26, 1995, been sold by a developer under an enforceable purchase agreement to a person dealing at arm’s length from the developer.

Low equity cooperative interests

- 8 (1) In this section, “**acquisition cost**” means the total cost, direct or indirect, to the purchaser of acquiring a cooperative interest.
- (2) For greater certainty, the acquisition cost includes the cost of acquiring shares, ownership, membership or partnership in the cooperative association, and includes the cost of acquiring a right of use or occupation, but does not include operating costs in respect of the cooperative association or the land being used or occupied.

- (3) A developer who markets a cooperative interest is exempt from Part 2 [*Marketing and Holding Deposits*] of the Act in respect of that marketing if the acquisition cost to a purchaser of the cooperative interest is \$5 000 or less.

PART 3 – MARKETING AND HOLDING DEPOSITS

Signing disclosure statements

- 9 (1) Subject to subsection (2), a disclosure statement must be signed by
- (a) every developer of the development property to which the disclosure statement relates, and
 - (b) if a developer is a corporation, every director of the developer.
- (2) The superintendent may do one or both of the following:
- (a) exempt a person from the requirement to sign a disclosure statement under subsection (1), with or without conditions;
 - (b) require a person other than, or in addition to, a person described in subsection (1) to sign a disclosure statement.

Notice of deposit protection contract

- 10 If a developer enters into a deposit protection contract under section 19 [*developer use of deposit*] of the Act, the developer must provide notice of the deposit protection contract to a purchaser by including the following information in the disclosure statement filed under section 14 [*filing disclosure statements*] of the Act:
- (a) the name and business address of the insurer;
 - (b) the name of the developer who entered into the deposit protection contract;
 - (c) the date on which the insurance takes effect.

PART 4 – REMEDIES AND ENFORCEMENT

Service of notice of rescission

- 11 A purchaser may serve a notice of rescission under section 21 [*rights of rescission*] of the Act by delivering a signed copy of the notice in person or by registered mail
- (a) to the developer,
 - (i) at the address shown in the disclosure statement received by the purchaser, or
 - (ii) at the address shown in the purchaser's purchase agreement, or
 - (b) to a brokerage of the developer, if any,
 - (i) at the address shown in the disclosure statement received by the purchaser, or
 - (ii) at the address shown in the purchaser's purchase agreement.

Recovery of enforcement expenses

- 12** (1) The expenses that the superintendent may require a developer or former developer to pay under section 31 [*recovery of enforcement expenses*] or 36 [*undertakings*] of the Act are as follows:
- (a) investigation expenses, to a maximum of \$100 for each hour for each investigator;
 - (b) for each day or partial day of a hearing, administrative expenses of \$2 000;
 - (c) for reasonably necessary legal services,
 - (i) \$150 for each hour for a lawyer regularly employed by, or on behalf of, the government, and
 - (ii) in any other case, up to \$400 for each hour;
 - (d) disbursements properly incurred in the provision of legal services to the superintendent;
 - (e) for each day or partial day that a witness, other than an expert witness, attends at a hearing at the request of the superintendent, \$50;
 - (f) for an expert witness who attends at a hearing at the request of the superintendent, up to \$400 for each hour;
 - (g) reasonable travel and living expenses for a witness or expert witness who attends at a hearing at the request of the superintendent;
 - (h) other disbursements, reasonably incurred, arising out of a hearing or an investigation leading up to a hearing.
- (2) The superintendent must not make an order respecting expenses under subsection (1) for an amount greater than the expenses actually incurred by the superintendent.

PART 5 – FEES

Fees – disclosure statement

- 13** (1) A developer who files a disclosure statement must pay, at the time of filing, a fee as follows:
- (a) for a development property containing fewer than 10 development units, \$300;
 - (b) for a development property containing at least 10 but fewer than 50 development units, \$600;
 - (c) for a development property containing at least 50 but fewer than 100 development units, \$1 200;
 - (d) for a development property containing 100 or more development units, \$1 800.
- (2) A developer who makes a request under section 20 [*superintendent's exemptions*] of the Act to be exempted from a provision of Part 2 [*Marketing and Holding Deposits*] of the Act must pay, at the time of making the request, a fee as follows:

- (a) for a development property containing fewer than 10 development units, \$300;
 - (b) for a development property containing at least 10 but fewer than 50 development units, \$600;
 - (c) for a development property containing at least 50 but fewer than 100 development units, \$1 200;
 - (d) for a development property containing 100 or more development units, \$1 800.
- (3) For the purposes of subsections (1) and (2), the number of development units in a phased strata plan or a phased bare land strata plan is calculated by
- (a) ascertaining the maximum number of development units in each of the phases of the applicable phased strata plan or phased bare land strata plan, by reference to the applicable Phased Strata Plan Declaration under section 222 of the *Strata Property Act*, and
 - (b) adding those maximums to obtain the total number of development units.
- (4) A developer who files an amendment to a disclosure statement must pay, at the time of filing, a fee of \$200.

Other fees

- 14**
- (1) A person who requests a copy of an order under section 33 (b) [*publication of orders*] of the Act must pay, at the time of making the request, a fee of \$0.50 for each copied page.
 - (2) A person who requests the retrieval of a file held by the superintendent in relation to a developer or a development property, other than an order described under subsection (1), must pay, at the time of making the request, a fee of \$38.
 - (3) A person who requests a copy of a file described in subsection (2), or a copy of any other information held by the superintendent, must pay, at the time of making the request, a fee of \$0.50 for each copied page.

PART 6 – GENERAL

Publication

- 15**
- (1) If the superintendent is required under the Act to publish a policy statement, a matter respecting an exemption, or an order, the superintendent
 - (a) must publish the statement, matter or order on a website maintained by the superintendent for this purpose, and
 - (b) may publish the statement, matter or order in any other form.
 - (2) The website referred to in subsection (1) must be freely accessible to the public.

PART 7 – TRANSITION

Adequate arrangements

- 16** For the purpose of sections 11 [*assurance of title*] and 12 [*utilities and services*] of the Act, a developer is deemed to have made adequate arrangements in respect of a development unit if
- (a) the developer provided a bond under section 73 (2) [*reasons for refusal to accept prospectus by superintendent*] of the former Act in respect of the development unit, and
 - (b) the bond continues to be held by the superintendent.