

# Information Bulletin

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**Bulletin Number:** REDMA 07-04

**Topic:** SUPERINTENDENT'S ORDERS TO ENFORCE NINE MONTH MARKETING PERIOD UNDER POLICY STATEMENT 5 (DEVELOPMENT APPROVAL) AND POLICY STATEMENT 6 (FINANCING)

**Issue Date:** December 17, 2007

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On January 1, 2005, the Superintendent of Real Estate implemented Policy Statement 5 (Development Approval) and Policy Statement 6 (Financing) under the *Real Estate Development Marketing Act*. These Policy Statements, which continue to be in force, allow for up to nine months of marketing under a filed Disclosure Statement prior to obtaining a building permit or prior to obtaining a satisfactory financing commitment, as the case may be. Policy Statements 5 and 6 provide that marketing must cease nine months after the Disclosure Statement is filed, unless an Amendment is filed during that period to disclose that a building permit and/or satisfactory financing commitment have been obtained.

In the past, if the nine month marketing period elapsed without the necessary Amendment to the Disclosure Statement being filed, the Superintendent wrote to the developer to remind it of the expiry of the nine month period and requested that they file the appropriate Amendment or confirm that all marketing had ceased and that marketing would not resume until the appropriate Amendment had been filed.

Amended Policy Statements 5 and 6 make it clear that the Superintendent may issue an Order without further notice in the event that the developer does not immediately confirm in a written undertaking to the Superintendent that marketing ceased upon the expiry of the nine month period, or file an Amendment prior to the expiry of that nine month period. An acceptable form of undertaking is available on our website at [http://www.fic.gov.bc.ca/?p=real\\_estate/bulletins](http://www.fic.gov.bc.ca/?p=real_estate/bulletins). Such an Order may be premised on the presumption that, since the requirements have not been met, it is likely that marketing continues.

After issuing an Order, the Superintendent may also seek the recovery of enforcement expenses and an administrative penalty of up to \$25,000 in the case of an individual and up to \$50,000 in the case of a corporation. Additionally, a Superintendent's Order may be filed with the Supreme Court of British Columbia and enforced as if it were an order of that court.

The developer may request a Hearing by the Superintendent in respect of an Order, or may appeal an Order to the Financial Services Tribunal.

Amended Policy Statements 5 and 6 also require that the developer promptly notify the Superintendent if, during the nine month period, all units in the development property being marketed under those Policy Statements are sold (i.e., the developer has entered into binding agreements of purchase and sale for all units) or if the developer has decided not to proceed with the development.

Amended Policy Statements 5 and 6 will be effective on January 30, 2008, and are available on our website at [http://www.fic.gov.bc.ca/?p=real\\_estate/bulletins](http://www.fic.gov.bc.ca/?p=real_estate/bulletins).

Further information about disclosure requirements under the *Real Estate Development Marketing Act* is available on our website at [www.fic.gov.bc.ca](http://www.fic.gov.bc.ca).

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