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Real Estate Development Marketing Act: Frequently Asked Questions

Questions from Developers	3
Q. What legislation governs the marketing of development property?	3
Q. What types of development property are subject to the Act?	3
Q. What types of marketing activities are subject to the Act?	3
Q. In order to comply with the Act, what must a developer do before it can market a unit in a development property?	3
Q. Where can a developer obtain further information about the preliminary approval requirements that must be met?	3
Q. Where can a developer obtain further information about what would adequately assure title, utilities and services?	3
Q. Where can a developer obtain further information about the required form and content for a Disclosure Statement?	3
Q. Where can a developer obtain further information about the transitional provisions with respect to the Act replacing the <i>Real Estate Act</i> on January 1, 2005?	4
Q. When must a developer amend its Disclosure Statement?	4
Q. When must a developer file a new Disclosure Statement rather than amend the existing Disclosure Statement?	4
Q. What is the fee for filing a Disclosure Statement or an Amendment to a Disclosure Statement?	4
Q. Who must be given a copy of a Disclosure Statement and any Amendments to the Disclosure Statement?	4
Q. Must all deposits received by a developer be placed in trust?	4
Q. Are there any exemptions under which a developer may market a development unit without complying with Part 2 of the Act (e.g.: without preliminary approvals; without assuring title, utilities and services; without holding deposits in trust; and without filing a Disclosure Statement)?	4
Q. What pre-marketing activities are allowed before a developer files a required Disclosure Statement?	5
Q. How soon after filing a Disclosure Statement can a developer begin marketing?	5
Q. Does our office review Disclosure Statements?	5
Q. What happens if our office finds deficiencies in a Disclosure Statement?	5
Q. Who can a developer use to market its development units?	5
Q. Must a developer of new homes offer a construction warranty provided by an insurance company?	5
Questions from Purchasers.....	5
Q. What information must a developer provide to a purchaser?	5
Q. After a purchaser has signed a purchase agreement, can the purchaser cancel that agreement?	6
Q. How can a purchaser serve written notice on the developer that the purchaser is canceling the purchase agreement?	6
Q. Can a purchaser obtain a copy of the Disclosure Statement and any Amendment from our office?	6
Q. Can a developer change the Disclosure Statement without a purchaser's approval?	6

Q. What remedies does a purchaser have if the Disclosure Statement contains an omission or misrepresentation, or is amended after the purchase agreement was signed? 6

Q. Can our office enforce a purchaser’s rights? 6

Q. What can be done if a purchaser believes a developer’s Disclosure Statement is deficient and the developer is still marketing? 6

Q. How can a purchaser make a complaint about a realtor? 7

Q. Can a developer use my deposit to construct and market the development units? 7

Contact Information: 7

Questions from Developers

Q. What legislation governs the marketing of development property?

A. The Real Estate Development Marketing Act (the "Act"). [The Act](#) and the Real Estate Development Marketing Regulation (the "[Regulation](#)") are available on the Queen's Printer's website at www.qplegaleze.ca. The Superintendent of Real Estate's 15 [Policy Statements](#), which explain the Act, are available on our website at <http://www.fic.gov.bc.ca>.

Q. What types of development property are subject to the Act?

A. The Act applies to "development property", which is defined as: 5 or more subdivision lots (unless each lot is 64.7 hectares or larger); 5 or more bare land strata lots; 5 or more strata lots in a stratified building; 2 or more cooperative interests; 5 or more time share interests; 2 or more shared interests in land; or 5 or more residential leasehold units. Each type of development property is defined in section 1 of the [Act](#).

Q. What types of marketing activities are subject to the Act?

A. The Act applies to selling, leasing, offering for sale or lease, and any activity that is likely to lead to a sale or lease. See the definition of "market" in section 1 of the [Act](#).

Q. In order to comply with the Act, what must a developer do before it can market a unit in a development property?

A. Before a developer can market a development unit, it must: meet preliminary approval requirements (see sections 4 to 10 of the [Act](#)); adequately assure title, utilities and services (see sections 11 to 13 of the [Act](#)); and file a Disclosure Statement with our office (see sections 14 to 17 of the [Act](#), and the Superintendent of Real Estate's [Policy Statements](#)).

Q. Where can a developer obtain further information about the preliminary approval requirements that must be met?

A. See sections 4 to 10 of the [Act](#); and [Policy Statement 5](#) "Early Marketing – Development Approval".

Q. Where can a developer obtain further information about what would adequately assure title, utilities and services?

A. See sections 11 to 13 of the [Act](#); [Policy Statement 4](#) "Adequate Arrangements – Title"; and [Policy Statement 6](#) "Adequate Arrangements – Utilities and Services".

Q. Where can a developer obtain further information about the required form and content for a Disclosure Statement?

A. The following Policy Statements explain the Disclosure Statement requirements for each type of development property: [Policy Statement 1](#) "Five or More Strata Lots"; [Policy Statement 2](#) "Five or More Bare Land Strata Lots"; [Policy Statement 3](#) "Five or More Subdivision Lots"; [Policy Statement 8](#) "Five or More Time Share Interests"; [Policy Statement 9](#) "Five or More Leasehold Units"; [Policy Statement 10](#) "Two or More Cooperative Interests"; [Policy Statement 11](#) "Two or More Shared Interests in Land"; and [Policy Statement 13](#) "Real Estate Securities"; [Policy Statement 14](#) "Development Property that is not yet

Completed”; and [Policy Statement 15](#) “Developer’s Background and Conflicts of Interest”. See also [Policy Statement 7](#) “Signing Disclosure Statements”.

Q. Where can a developer obtain further information about the transitional provisions with respect to the Act replacing the *Real Estate Act* on January 1, 2005?

A. See Policy [Statement 12](#) "Form and Content - Transitional".

Q. When must a developer amend its Disclosure Statement?

A. A developer must file an Amendment to its Disclosure Statement if it becomes aware that the Disclosure Statement does not comply with the Act or Regulation, or contains a misrepresentation. See section 16 of the [Act](#). For example, an amendment would be required if a developer realizes that a material fact has been omitted, changed, or misrepresented.

Q. When must a developer file a new Disclosure Statement rather than amend the existing Disclosure Statement?

A. A new Disclosure Statement must be filed if the developer’s identity changes, or if a receiver, bankruptcy trustee or similar person is appointed for the developer. See section 16 of the [Act](#).

Q. What is the fee for filing a Disclosure Statement or an Amendment to a Disclosure Statement?

A. The fee for filing a Disclosure Statement is based on the total number of development units in the development property. The Disclosure Statement fee is: \$300 for up to 9 units; \$600 for 10 to 49 units; \$1,200 for 50 to 99 units; and \$1,800 for 100 or more units. The fee for filing an Amendment to a Disclosure Statement is \$200 regardless of the number of development units. Cheques should be made payable to the Minister of Finance. See section 13 of the [Regulation](#).

Q. Who must be given a copy of a Disclosure Statement and any Amendments to the Disclosure Statement?

A. A developer must give a purchaser a copy of the filed Disclosure Statement, and a copy of any filed Amendment to the Disclosure Statement, before entering into an agreement for sale or lease with that purchaser. See section 15 of the [Act](#).

Q. Must all deposits received by a developer be placed in trust?

A. Yes. A developer who receives a deposit from a purchaser or a lessee must place the deposit with a real estate brokerage, lawyer, or notary public, who must hold the deposit in a trust account in British Columbia. See section 18 of the [Act](#). If authorized deposit insurance has been obtained, the trustee may release a deposit to the developer. See section 19 of the [Act](#).

Q. Are there any exemptions under which a developer may market a development unit without complying with Part 2 of the Act (e.g.: without preliminary approvals; without assuring title, utilities and services; without holding deposits in trust; and without filing a Disclosure Statement)?

A. Yes. Sections 2 to 8 of the Regulation set out specific exemptions from Part 2 of the Act. Additionally, in an appropriate situation, the Superintendent may grant further exemptions. See section 20 of the [Act](#).

Q. What pre-marketing activities are allowed before a developer files a required Disclosure Statement?

A. Section 2 in each of [Policy Statements 1 to 3](#) and [8 to 11](#) explains our view of the pre-marketing activities that are allowed before a developer files a required Disclosure Statement.

Q. How soon after filing a Disclosure Statement can a developer begin marketing?

A. A developer can begin marketing as soon as its Disclosure Statement has been filed (e.g., delivered to our office by courier or in the mail). Thus, a developer may begin marketing even before the Disclosure Statement has been reviewed by our office.

Q. Does our office review Disclosure Statements?

A. Yes.

Q. What happens if our office finds deficiencies in a Disclosure Statement?

A. If a Disclosure Statement is found to be deficient, and the developer has already begun marketing, an Amendment must be filed to correct the Disclosure Statement. Alternatively, if no marketing has occurred, a developer may correct a Disclosure Statement by submitting replacement pages for that document. There is no fee for submitting replacement pages.

Q. Who can a developer use to market its development units?

A. A developer can use either a licensed realtor, or a person who is exempt from the licensing requirement, to market its development units. The licensing requirement and licensing exemptions are set out in the Real Estate Services Act and the Real Estate Services Regulation, which are available on the Queen's Printer's website at www.qplegaleze.ca. Further information about licensing is available from the Real Estate Council of British Columbia. See its website at www.recbc.ca.

Q. Must a developer of new homes offer a construction warranty provided by an insurance company?

A. The *Homeowner Protection Act* generally requires a developer of new homes to offer a construction warranty. The warranty must be provided by an authorized insurance company. The developer's Disclosure Statement must briefly explain the warranty. Further information about the *Homeowner Protection Act* and warranty coverage is available from the Homeowner Protection Office. See its website at www.hpo.bc.ca.

Questions from Purchasers

Q. What information must a developer provide to a purchaser?

A. A developer must give each purchaser a copy of the filed Disclosure Statement, and a copy of any filed Amendment to the Disclosure Statement, before entering into an agreement for sale or lease with that purchaser. See section 15 of the [Act](#). The required form and contents for a Disclosure Statement are explained in our [Policy Statements 1 to 3 and 8 to 11, 14 and 15](#).

Q. After a purchaser has signed a purchase agreement, can the purchaser cancel that agreement?

A. Yes, but only during the 7 day rescission period. Thus, a purchaser or lessee may rescind a purchase agreement by serving written notice of that rescission on the developer within 7 days after the later of: the date that the purchase agreement was made; and the date that the developer obtained a receipt from the purchaser for the Disclosure Statement. See section 21 of the [Act](#).

Q. How can a purchaser serve written notice on the developer that the purchaser is canceling the purchase agreement?

A. See [Section 11](#) of the Regulation, which explains how a purchaser or lessee may serve written notice of rescission on a developer.

Q. Can a purchaser obtain a copy of the Disclosure Statement and any Amendment from our office?

A. Yes. Our fee is \$38 for each file retrieved plus 50 cents for each copied page. See [Section 14](#) of the Regulation.

Q. Can a developer change the Disclosure Statement without a purchaser's approval?

A. Yes. A developer is required to file an Amendment to its Disclosure Statement if a material fact has been omitted, changed, or misrepresented. Each purchaser who has not completed his or her purchase must be given a copy of the Amendment. See section 16 of the [Act](#).

Q. What remedies does a purchaser have if the Disclosure Statement contains an omission or misrepresentation, or is amended after the purchase agreement was signed?

A. A purchaser's rights are governed by contract law and the purchase agreement. Under contract law, a purchaser may ask a court to order compensation, or may ask a court to rescind the purchase agreement, as a remedy for any breach of contract.

Additionally, under the [Act](#) a purchaser is deemed to have relied on the Disclosure Statement, whether or not he or she received it. A purchaser may ask a court to order compensation from a developer and its directors for any false or misleading statement of a material fact, or any omission of a material fact. See section 22 of the [Act](#).

A purchase agreement may not be enforceable against a purchaser by a developer who has breached any provision in sections 3 to 20 of the [Act](#). See section 23 of the [Act](#).

Q. Can our office enforce a purchaser's rights?

A. No. A purchaser would have to ask a court to determine what rights he or she has, and ask for a court order to enforce those rights.

Q. What can be done if a purchaser believes a developer's Disclosure Statement is deficient and the developer is still marketing?

A. A purchaser can provide our office with any evidence that suggests a developer's Disclosure Statement is deficient. We will evaluate that evidence and, if necessary, investigate further. Our office can ask a developer to file an Amendment to a deficient Disclosure Statement. We can also ask or order a developer to cease marketing if its Disclosure Statement is deficient.

Q. How can a purchaser make a complaint about a realtor?

A. A complaint about a realtor should be directed to the Real Estate Council of British Columbia. See its website at www.recbc.ca or phone 604 683-9664. If the Council should determine that a realtor is not licensed, it can forward the complaint to our Investigations Department.

Q. Can a developer use my deposit to construct and market the development units?

A. Deposits must be held in trust in British Columbia by a real estate brokerage, lawyer, or notary public, and so generally cannot be used to construct and market the development units. See section 18 of the [Act](#). However, if authorized deposit insurance has been obtained, the trustee may release a deposit to the developer for the developer's own purposes. See section 19 of the [Act](#).

Contact Information:

For further information, a developer or purchaser may be referred to:

- A. A lawyer. If the caller does not have a lawyer, a Lawyer Referral Service is offered by the British Columbia Branch of the Canadian Bar Association (Phone 604-687-3221 in the Lower Mainland, or toll free in B.C. at 1-800-663-1919); and
- B. our Real Estate Department - please refer to the [contact](#) section of the website.

Staff at the Office of the Superintendent of Real Estate periodically issue Frequently Asked Questions (FAQs) to provide technical interpretations and positions regarding certain provisions contained in the Real Estate Development Marketing Act and Regulations. While the comments in particular FAQs may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. The reader should consider the comments 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. Subject to the above, an interpretation or position contained in FAQs generally applies as of the date on which it was published, unless otherwise specified.