

Bulletin Number: REDMA 07-01

Topic: DEVELOPMENT PROPERTIES LOCATED OUTSIDE BRITISH COLUMBIA

Issue Date: April 30, 2007

The Real Estate Development Marketing Act

The *Real Estate Development Marketing Act* governs the marketing in British Columbia of development properties located anywhere in the world. Under the Act, local and foreign developments must meet similar requirements in order to be marketable in British Columbia. The developer must file a Disclosure Statement with the Superintendent of Real Estate before marketing begins. The Disclosure Statement must explain the offering and must be provided to a purchaser before he or she enters into a purchase agreement. The same form of Disclosure Statement with similar information must be used for each development property of the same type, whether the property is located inside or outside of British Columbia. The Superintendent's Policy Statements set out the required forms of Disclosure Statement and are available on the following website: www.fic.gov.bc.ca.

Foreign property regimes may be different from British Columbia's property regime and may not be familiar to purchasers here. Therefore, the required disclosure of development approvals, land title, and land use restrictions is especially important for foreign developments. The required disclosure of deposit protections is also especially important for foreign developments. All deposits received from British Columbian purchasers must be held in trust in British Columbia by a lawyer, notary public or real estate brokerage, unless deposit insurance has been obtained here.

Additionally, the Solicitor's Certificate required for a Disclosure Statement must be provided by an insured British Columbian lawyer, who may rely on a foreign legal opinion or title. This allows purchasers in British Columbia to more easily obtain a remedy here for any improperly certified information.

The *Real Estate Development Marketing Act* provides the same remedies for all British Columbian purchasers. Notably, a purchase agreement is not enforceable against a purchaser by a developer who has breached the Act. Each purchaser also has a right to pursue a civil claim against a developer and its directors for any misrepresentation. Additionally, any failure to comply with the Act may result in a cease marketing order, administrative penalty or other regulatory action by the Superintendent of Real Estate.

Further information about meeting the above requirements in respect of any specific development property may be obtained from staff at the Superintendent of Real Estate's office: realestate@ficombc.ca.

Staff at the Financial Institutions Commission periodically issue information bulletins to provide technical interpretations and positions regarding certain provisions contained in the *Real Estate Development Marketing Act and Regulations*. While the comments in a particular part of an information bulletin 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 an information bulletin generally applies as of the date on which it was published, unless otherwise specified.