

May 2008

Consumer Alert: Risks Associated with the Assignment of “Pre-Sale” Contracts of Purchase and Sale

The office of the Superintendent of Real Estate has received inquiries regarding the assignment of “pre-sale” contracts. This alert is provided to consumers for information purposes only. It is important for purchasers to obtain appropriate professional real estate and legal advice prior to entering into an assignment agreement.

What is an Assignment of a Pre-sale Contract?

Developers commonly enter into contracts to pre-sell residential units such as condominiums and townhouses. These “pre-sale” contracts are entered into prior to the commencement or completion of construction.

In a market where the value of property is rising, pre-sale purchasers (“assignors”) may wish to assign or transfer their rights under the pre-sale contract to other buyers (“assignees”) at a higher price. Some purchasers assign or “flip” the units to other buyers before construction has even commenced. The transfer of the pre-sale contract is described as an assignment and the amount paid by the new buyer to acquire the pre-sale contract is described as the “lift”.

Risks Associated with Assignments

Assignment contracts have potential risks, particularly for the assignee. The developer may not complete the development. In such cases, the pre-sale contract may never be completed or may only be completed later and at a higher price, which the assignee may be required to pay if he or she intends to complete the purchase. If an assigned pre-sale contract is not completed, any assignment fee paid to the developer and any lift paid to the assignor may not be recoverable. Additionally, the terms of the assignment govern whether the assignor or the assignee would be entitled to recover any deposit paid to the developer under the pre-sale contract and held in trust.

Things to Consider Before Entering Into an Assignment Contract

- Consider the risks identified above, as well as the risks associated with purchasing pre-sale residential units that are explained in Information Bulletin REDMA-07-02;
- Consider whether an assignment is permitted under the purchase contract. Some developers do not permit assignments. Others may require the developer’s consent and a substantial assignment fee;

- Review the developer's Disclosure Statement and thoroughly review all documents related to the sale;
- Obtain advice from a lawyer and/or real estate professional prior to entering into an assignment contract;
- Consider all your options, such as whether the deposit and "lift" will be paid to the assignor upon signing the agreement or held in trust until some later date. Generally, it is preferable from the assignee's perspective if money is released to the assignor only after the unit is built and title is being transferred; and
- Confirm in the assignment agreement how the assignor will meet all of the requirements for a valid assignment, and set out what will happen if there is any breach of the assignment agreement or the pre-sale contract.

For further information on real estate transactions and contact information for government offices and industry associations, please visit our website at www.fic.gov.bc.ca/usefullinks/default.htm or the Homeowner Protection Office website at www.hpo.bc.ca/Media/Links.php.

Risks associated with the purchase of pre-sale residential units are explained in Information Bulletin REDMA-07-02, which is available on our website at www.fic.gov.bc.ca/responsibilites/realestate/bulletins.htm.

In addition, the Real Estate Council of British Columbia, which regulates real estate brokers, provides valuable consumer information on its website at www.recbc.ca. Various industry groups also provide information and seminars relating to the purchase and sale of real estate. First time home buyers may wish to take advantage of these educational events to increase their knowledge in this area.