

IN THE MATTER OF THE REAL ESTATE DEVELOPMENT MARKETING ACT

-AND-

MICHAEL ORVILLE

-and-

CENTURY POINT RESIDENCES LTD.

**ORDER UNDER SECTIONS 30(1)(a) and 32(1)
REAL ESTATE DEVELOPMENT MARKETING ACT**

Upon reviewing the results of Corporate Registry company searches for Century Point Residences Ltd. ("Century Point"); the results of Land Title Office searches of the registered titles of the properties being developed by Century Point; excerpts of the disclosure statement and subsequent amendment filed by or on behalf of Century Point; Supreme Court of British Columbia documents and records; and other supporting documents submitted by the staff of the Superintendent of Real Estate ("the Staff"), I am of the opinion that:

1. Century Point was registered as a company in the Province of British Columbia on July 3, 2003. Its previous company name was 672676 B.C. Ltd., which was changed on September 25, 2003. The registered and records office is 2010 – 1055 West Georgia Street, Vancouver, British Columbia. The directors are Michael and Bozena Orville. Michael Orville ("Orville") is the president of Century Point.
2. The *Real Estate Development Marketing Act* ("the Act") requires a developer who markets or intends to market a development to file with the Superintendent of Real Estate ("the Superintendent") a disclosure statement in the required form and with the required contents before the developer commences marketing the development. The disclosure statement must, without misrepresentation, plainly disclose all material facts. The developer must not enter into a purchase agreement with a purchaser unless a copy of the disclosure statement has been provided to the purchaser. If a developer becomes aware that a disclosure statement contains a misrepresentation, the developer must immediately file with the Superintendent a new disclosure statement or an amendment that clearly identifies and corrects the misrepresentation.

3. The applicable sections of the *Act* are reproduced below:

Definitions

1 In this Act:

"developer" means a person who, directly or indirectly, owns, leases or has a right to acquire or dispose of development property;

"development property" means any of the following:

...

(c) 5 or more strata lots in a stratified building;

...

"development unit" means any of the following in a development property:

...

(c) a strata lot;

...

"market" means

(a) to sell or lease,

(b) to offer to sell or lease, and

(c) to engage in any transaction or other activity that will or is likely to lead to a sale or lease;

"material fact" means, in relation to a development unit or development property, any of the following:

(a) a fact, or a proposal to do something, that affects, or could reasonably be expected to affect, the value, price, or use of the development unit or development property;

(b) the identity of the developer;

(c) the appointment, in respect of the developer, of a receiver, liquidator or trustee in bankruptcy, or other similar person acting under the authority of a court;

(d) any other prescribed matter;

"misrepresentation" means

(a) a false or misleading statement of a material fact, or

(b) an omission to state a material fact;

"purchase agreement" means a contract of purchase and sale or a contract to lease;

"purchaser" means

- (a) a purchaser, from a developer, of a development unit,
- (b) a lessee, from a developer, of a development unit, and
- (c) a prospective purchaser or lessee, from a developer, of a development unit;

Marketing of development property

3 (1) A developer who markets or intends to market a development unit must

...

(c) file and provide a disclosure statement in accordance with Division 4 [*Disclosure Statements*].

Assurance of title

11 (1) A developer must not market a development unit unless the developer has made adequate arrangements to ensure that a purchaser of the development unit will have assurance of title or of the other interest for which the purchaser has contracted.

(2) For the purpose of subsection (1), a developer has made adequate arrangements to ensure that a purchaser of a development unit will have assurance of title or of the other interest for which the purchaser has contracted if

- (a) arrangements have been made for title to the development unit to be held in trust by a lawyer, notary public or another person, or class of persons, specified by the superintendent until title or the other interest for which the purchaser has contracted is assured,
- (b) the developer provides a bond to the superintendent or other person specified by the superintendent for the benefit and protection of purchasers, with surety in the amount and subject to the terms required by the superintendent, or
- (c) the developer has made other arrangements that are satisfactory to the superintendent.

(3) Without limiting subsection (1) or (2), if a development unit may be affected by a mortgage, lien or other

encumbrance that secures or evidences the payment of money,

(a) the mortgage, lien or other encumbrance must provide, without condition, that a purchaser who complies with the terms and conditions of the purchaser's purchase agreement obtains title, or the other interest for which the purchaser has contracted, free and clear of the mortgage, lien or other encumbrance, or

(b) the developer must make other arrangements, satisfactory to the superintendent, to assure title or the other interest for which the purchaser has contracted.

Deemed adequate arrangements

13 (1) The superintendent may publish, in accordance with the regulations, a policy statement setting out circumstances in which arrangements made under section 11(2)(c) and (3)(b) [*assurance of title*] or 12(2)(c) [*utilities and services*] are deemed adequate for the purpose of those sections.

(2) If the superintendent publishes a policy statement under subsection (1), a developer who has made the arrangements set out in the policy statement

(a) is deemed to have made adequate arrangements to ensure

(i) that a purchaser of a development unit will have assurance of title or the other interest for which the purchaser has contracted, or

(ii) payment of the cost of utilities and other services associated with a development unit,

as applicable, and

(b) must comply with the terms and conditions, if any, that are stated in the policy statement.

Filing disclosure statements

14 (1) A developer must not market a development unit unless the developer has

(a) prepared a disclosure statement respecting the development property in which the development unit is located, and

(b) filed with the superintendent

(i) the disclosure statement described under paragraph (a), and

- (ii) any records required by the superintendent under subsection (3).
- (2) A disclosure statement must
 - (a) be in the form and include the content required by the superintendent,
 - (b) without misrepresentation, plainly disclose all material facts,
 - (c) set out the substance of a purchaser's rights to rescission as provided under section 21 [*rights of rescission*], and
 - (d) be signed as required by the regulations.
- (3) A developer must provide to the superintendent any records the superintendent requires to support any statement contained in the disclosure statement filed under subsection (1).
- (4) Without limiting section 16 [*non-compliant disclosure statements*], if a developer markets development units in phases, the developer, before marketing each successive phase, must file with the superintendent an amendment to a disclosure statement submitted in respect of the previous phase.
- (5) On a person's payment of the prescribed fee, the superintendent must
 - (a) permit the person to inspect, at the superintendent's office and during regular business hours, a disclosure statement filed under this section, and
 - (b) provide a copy of a disclosure statement filed under this section, or a copy of part of it, to a person who requests it.

Providing disclosure statements to purchasers

- 15** (1) A developer must not enter into a purchase agreement with a purchaser for the sale or lease of a development unit unless
- (a) a copy of the disclosure statement prepared in respect of the development property in which the development unit is located has been provided to the purchaser,
 - (b) the purchaser has been afforded reasonable opportunity to read the disclosure statement, and
 - (c) the developer has obtained a written statement from the purchaser acknowledging that the purchaser had an opportunity to read the disclosure statement.

(2) A developer must

(a) retain a written statement obtained under subsection (1)(c) for a period of 3 years or a longer period prescribed by regulation, and

(b) produce the written statement for inspection by the superintendent on the superintendent's request.

Non-compliant disclosure statements

16 (1) If a developer becomes aware that a disclosure statement does not comply with the Act or regulations, or contains a misrepresentation, the developer must immediately

(a) file with the superintendent, as applicable under subsection (2) or (3),

(i) a new disclosure statement, or

(ii) an amendment to the disclosure statement that clearly identifies and corrects the failure to comply or the misrepresentation, and

(b) within a reasonable time after filing a new disclosure statement or an amendment under paragraph (a), provide a copy of the disclosure statement or amendment to each purchaser

(i) who is entitled, at any time, under section 15 [*providing disclosure statements to purchasers*] to receive the disclosure statement, and

(ii) who has not yet received title, or the other interest for which the purchaser has contracted, to the development unit in the development property that is the subject of the disclosure statement.

(2) A developer must file a new disclosure statement under subsection (1)(a)(i) if the failure to comply or misrepresentation referred to in that subsection

(a) is respecting a matter set out in paragraph (b) or (c) of the definition of "material fact" in section 1 [*definitions*],

(b) is respecting a matter set out in paragraph (d) of the definition of "material fact" in section 1, and the regulation prescribing the matter specifies that a new disclosure statement must be filed if subsection (1) of this section applies, or

(c) is of such a substantial nature that the superintendent gives notice to the developer that a new disclosure statement must be filed.

(3) A developer must file an amendment to the disclosure statement under subsection (1)(a)(ii) in any case to which subsection (2) does not apply.

(4) A developer who is required to file a new disclosure statement or an amendment under subsection (1) must not market a development unit in the development property that is the subject of the new disclosure statement or amendment

(a) until the developer has complied with subsection (1)(a),
or

(b) unless permitted by the superintendent.

4. A disclosure statement was filed with the Superintendent by Century Point on January 30, 2004 ("the Disclosure Statement"). An amendment to the Disclosure Statement was filed with the Superintendent on July 31, 2004. No new disclosure statements or amendments to the Disclosure Statement have been filed with the Superintendent subsequent to that date.

5. Century Point is the named developer of a development property marketed under the name Amadeo located at 306 Sixth Street, New Westminster, British Columbia ("the Development"). The legal description of the Development as disclosed in the Disclosure Statement is as follows:

PID 024-093-424	Parcel 1	Suburban Block 6
New Westminster District		Plan LMP37380

6. The real estate representative for the Development is Keith Cornies ("Cornies") of Re/Max Advantage Realty, #102-321 6th Street, New Westminster, British Columbia.

7. On February 4, 2004, [REDACTED] and [REDACTED] entered into purchase and sale contracts to purchase two development units in the Development. They were advised by Century Point that the anticipated completion date of the development units was May 31, 2005. In a letter dated August 30, 2004, Cornies advised purchasers, including [REDACTED] and [REDACTED], of a delay in construction but assured them that the Developer was still on schedule to complete the Development in June 2005. It also informed them of architectural changes in the construction of the building and the requirement of Century Point to file an amended disclosure statement. Purchasers were asked to sign and date an addendum attached to the letter.

8. The construction of the Development was actually delayed from September 2004 until March 2006. [REDACTED] and [REDACTED] were thereafter advised by Orville that the new completion date was June 2006.
9. The Disclosure Statement as amended states that the anticipated date of commencement of construction is June 1, 2004 and that the estimated date of completion is June 30, 2005.
10. Pursuant to section 16 of the *Act* and the Superintendent's Policy Statement 1, Century Point was required to file an amendment to the Disclosure Statement to disclose the delay in construction and the new completion date. No such amendment has been filed.
11. On July 13, 2006, Orville gave notice to [REDACTED] and [REDACTED] pursuant to a clause in their contracts of purchase and sale that because the Development was not completed by May 31, 2005, their contracts were terminated. [REDACTED] and [REDACTED] were advised by Orville that their deposits would be returned to them when a release form was signed and returned to Century Point.
12. On February 23, 2007, [REDACTED] and [REDACTED] filed a lawsuit against Century Point and Orville alleging breach of contract. One of the remedies sought is specific performance of the two purchase and sale contracts.
13. On February 26, 2007, [REDACTED] and [REDACTED] filed a Certificate of Pending Litigation against the Development. On March 7, 2007, the Certificate of Pending Litigation was cancelled after Century Point posted \$150,000 security with the Supreme Court of British Columbia. On March 28, 2007, Century Point filed a Statement of Defence to the action commenced by [REDACTED] and [REDACTED].
14. On September 6, 2006, purchasers [REDACTED], [REDACTED] and [REDACTED] filed a similar court action against Century Point and Orville. A Certificate of Pending Litigation was filed against title. On September 27, 2006, [REDACTED] and [REDACTED] through their lawyer, cancelled the registration of the Certificate of Pending Litigation. The court action is still pending.
15. The Disclosure Statement as amended states that Century Point "is unaware of any outstanding or contingent litigation or liabilities affecting the Development." Pursuant to Section 16 of the *Act* and the Superintendent's Policy Statement #1, Century Point is required to file an amendment to the Disclosure Statement to disclose the outstanding or contingent litigation or liabilities. No such amendment has been filed.
16. On June 28, 2007, [REDACTED], [REDACTED], legal counsel to Century Point, confirmed that construction of the Development was halted in 2004 due to financing problems. [REDACTED] further advised that Westminster Savings Credit Union had provided a six million dollar commitment to the Development, but at

the time construction was halted, the estimated cost to complete the Development was ten million dollars.

17. The Disclosure Statement as amended states that Century Point "has obtained financing from Imor Capital Corp. and a commitment to financing from Westminster Savings Credit Union, which financing is considered adequate, together with separate monies of the developer, to complete construction of the Development." Pursuant to Section 16 of the *Act* and the Superintendent's Policy Statement #1, Century Point is required to file an amendment to the Disclosure Statement to disclose the financing it has arranged to complete the construction of the Development. No such amendment has been filed.
18. Records from the Land Titles Office confirm that a mortgage in favour of 36 private investors in the amount of \$1,100,000.00 was registered against title to the Development on June 22, 2005. Records from the Land Titles Office confirm that a mortgage in favour of Coast Capital Savings Credit Union was registered against title to the Development on May 5, 2006. It is believed that mortgage is security for a ten million dollar line of credit. Records from the Land Titles Office confirm that a builder's lien in favour of [REDACTED] was registered against title to the Development on June 27, 2007. Pursuant to Section 16 of the *Act* and the Superintendent's Policy Statement #1, Century Point is required to file an amendment to the Disclosure Statement to disclose all encumbrances and legal notations registered against title to the Development and to explain the arrangements by which financial encumbrances will be removed from title. No such amendment has been filed.
19. [REDACTED] has informed the Staff that construction has recommenced and the Development is anticipated to complete by December 2007. Cornies informed the Staff that in 2004, 32 of 41 residential development units were sold. All 32 purchasers who entered into contracts for the purchase and sale of a development unit in the Development had their contracts terminated pursuant to an identical clause in the contracts which stipulated that the contracts could be terminated if construction was not completed by May 31, 2005, which was later changed by amendment to June 30, 2005.
20. Cornies further informed the Staff that 25 of the 32 purchasers had accepted their deposits back, while five of the purchasers had negotiated or were negotiating to have their contracts honoured by Century Point.

AND WHEREAS I am satisfied that:

1. Century Point and Orville failed to file an amendment to the Disclosure Statement to disclose a revised completion date.

2. Century Point and Orville failed to file an amendment to the Disclosure Statement to disclose that construction of the Development was delayed due to insufficient financing.
3. Century Point and Orville failed to file an amendment to the Disclosure Statement to disclose the financing it arranged to complete the construction of the Development.
4. Century Point and Orville failed to file an amendment to the Disclosure Statement to disclose the fact that two purchasers had filed a law suit against Century Point and Orville relating to the marketing of the Development.
5. Century Point and Orville failed to file an amendment to the Disclosure Statement to disclose two new mortgages and a builder's lien filed against title to the Development.
6. Century Point and Orville are marketing some of the development units in the Development by renegotiating contracts which were cancelled and are likely to commence remarketing of the other development units in the Development by offering them for sale to the public.

I AM THEREFORE OF THE OPINION that Century Point and Orville are, or have been, non-compliant with the *Act*.

I AM FURTHER OF THE OPINION that the length of time that would be required to complete an investigation or hold a hearing, or both, would be detrimental to the public interest. I am informed by the Staff that a hearing of this matter would require at least four days and that scheduling of the parties and the hearing officer would mean that the hearing would not take place for at least two or three months. I find that such a delay would be detrimental to the public interest since the property may be marketed before an accurate disclosure statement is provided to potential purchasers. The Development is now scheduled to complete in December of 2007. Century Point is renegotiating existing contracts of purchase and sale and is undoubtedly preparing to market the development units in the Development where the original contracts of purchase and sale were cancelled. Century Point and Orville have not amended the Disclosure Statement to provide accurate disclosure which the purchasers are entitled to receive and which Century Point and Orville are required to provide. The fact that lawsuits have been filed against the developers seeking specific performance of purchase and sale contracts for development units which will likely be remarketed could very well have an impact on the value or price of the development units and on the decision by the potential purchaser on whether to purchase the unit.

I CONSIDER IT in the public interest to make the following Orders pursuant to sections 30(1)(a) and 32(1) of the *Act*.

I THEREFORE MAKE the following Orders:

1. That Century Point Residences Ltd. and Michael Orville shall cease from marketing any and all development units in the development property named Amadeo located at 306 Sixth Street, New Westminster, British Columbia.

TAKE NOTICE that Century Point Residences Ltd. and Michael Orville may, pursuant to section 37(1)(f) of the *Act*, appeal the Orders pertaining to each to the Financial Services Tribunal, or require a hearing before the Superintendent pursuant to section 32(4) of the *Act*.

Dated at the City of Surrey,
Province of British Columbia
this 18th day of July, 2007.



W. Alan Clark
Superintendent of Real Estate
Province of British Columbia

TO: Michael Orville

[Redacted address]

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