

**IN THE MATTER OF THE REAL ESTATE DEVELOPMENT MARKETING ACT  
SBC 2004, Chapter 241**

**-AND-**

**VASTU GARDENS PROJECT LTD.**

**and**

**PAUL COLVER**

**and**

**RAYMOND FEARON HARRIS**

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

Upon reviewing the submissions and the supporting documents submitted by staff, I am of the opinion that:

1. 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.
2. 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;

...

### **Marketing of development property**

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

(a) meet the applicable requirements of Division 2 [Preliminary Requirements or Approvals],

(b) ensure that arrangements have been made in accordance with Division 3 [Title Assurance and Utility Payments]

(i) to assure the purchaser's title or other interest for which the purchaser has contracted, and

(ii) to pay the cost of utilities and other services, and

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

*(2) A developer who receives a deposit must deal with the deposit in accordance with Division 5 [Deposits].*

...

***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. Policy Statement 1 issued by the Superintendent effective January 1, 2005, states:

*Unless exempted by the regulations, section 14 of the real Estate Development Marketing Act requires developers to file a disclosure statement with the superintendent before marketing a development unit in a development property. The 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 rescission rights, and*

*(d) be signed as required by the regulations.*

4. Also in Policy Statement 1 there is a note that states:

*Marketing includes engaging in any transaction or other activity that will or is likely to lead to a sale or lease. It is the superintendent's view that marketing includes the use of letters of intent, priority lists, reservation agreements, conversion rights, rights of first refusal, or any similar agreement that carries with it the right to acquire a strata lot. Accordingly developers should file a disclosure statement before using any such agreement or receiving any deposit or other consideration.*

5. On December 6, 2007, staff received a complaint concerning Vastu Gardens Project Ltd. ("Vastu Gardens") and Paul Colver ("Colver"). The complainant provided copies of the Subscription Agreement for Class "A" shareholders of Vastu Gardens and a Shareholders Agreement for all shareholders of Vastu Gardens.

6. Vastu Gardens is a registered British Columbia corporation, Registration No.: B.C. 0802608. It was incorporated on September 14, 2007. It's registered and records office is 30 Front Street, P.O. Box 190, Nanaimo, British Columbia V9R 5K1. It has two registered directors: Paul Colver of Qualicum Beach, British Columbia and Ray Harris of Richmond, British Columbia. Staff discovered that the full name for Harris is Raymond Fearon Harris.

7. Section "K" of the preamble to the Shareholders Agreement states:

Each Shareholder acknowledges and agrees that their eligibility to enter into a contract of Purchase and Sale with the Builder for purchase of Unit in the Building will be based on the priority of the number of their share certificate and further that one or more Shareholders of the Company may not be eligible to purchase a Unit if there are no further available Units in the Building in which event the Company shall exercise its option to repurchase the Class A share of the Shareholder at the full Subscription Price of \$2,000.00.

8. Section "L" of the preamble to the Shareholders Agreement states:

Each Shareholder acknowledges and agrees that they must, as individuals, enter into Contracts of Purchase and Sale with the Builder for purchase of a defined Unit in the building and that in doing so they will become a member of the Strata Corporation once the Building strata plan has been registered at the Victoria Land Title office.

9. The terms of the Shareholders Agreement state that only Class B shareholders may elect directors of Vastu Gardens. Class A shares may not be sold, assigned, or otherwise disposed of without written consent of the directors.

10. As of December 6, 2007 there has been no disclosure statement filed for this development, and no building had commenced on a development site under the name of Vastu Gardens in the Parksville, British Columbia area.

11. On the homepage of the Vastu Gardens website at <http://vastugardens.ca> it states, among other things:

WELCOME TO VASTU GARDENS WEBSITE

...

This website will provide you with information on our project of a multi unit apartment-condominium building constructed in accordance with Maharishi Sthapatya Veda, in or near Parksville, Vancouver Island, BC Canada.

12. The homepage of Vastu Gardens also has links to Home, Newsletters, Parksville Info, Pictures, FAQ's, and Contact.
13. In the FAQ's section of the Vastu Gardens website there are several questions and answers. Of relevance are:

#### **Agreement Forms Questions**

##### **I can't understand what the Subscription Agreement and the Shareholders Agreement mean. Can you clarify please?**

We think the final draft is about as clear as it is going to get. (You should have seen the first draft!) There is a clause in the documents that encourages you to see your solicitor if you need to do so. Forward the documents to your solicitor and discuss your security if you are to become a shareholder.

##### **How long do I have to sign these documents and send them to the lawyer along with the required funds?**

We are in stage two of building Vastu Gardens. We are interviewing builders. The key lever we have going for us in our negotiations (in the relative anyway) is the number of potential buyers with money in our lawyers trust. We appreciate that many of you have waited quite a long time for the documentation but every further day we wait is one day further down the road this project is from being built. Act as quickly as you possibly can. There will be a cut off day. I can't imagine this date being as far away as November.

##### **Why is the share price for this project \$2000, while Vancouver is asking for \$5000?**

Originally the thought was that \$2000.00 would be sufficient to show builders that there was serious intent. We have since been advised by several knowledgeable parties that \$5000.00 would be a more appropriate sum. We originally set the sum at \$2000.00 and unless there is a

pressing need we hope to keep the sum at that amount. (This is what we agree to in the Shareholders Agreement and the Subscription Agreement.)

...

### **Cost?**

#### **What will it cost to purchase a condo?**

For initial costing purposes it is assumed that Vastu Gardens construction costs--if being built today-- would be similar in cost to Bayview Gardens (<http://www.bayviewgardens.ca>) - plus the Global Country of World Peace Sthapatya Veda consultation fees (SV fees). We will be referring to Bayview Gardens in this letter as a standard to measure estimated costs for our Vastu Gardens project. Refer to their web site for a unit size that will suit your needs.

Bayview Garden units, currently for sale and nearly sold out as construction is taking place, **cost 290 to 325k**. This is a very state of the art development with top of the line construction, finishing, and landscaping.

It appears likely that Vastu Gardens could be constructed for a similar cost. Vastu Gardens will be constructed in 2008, and probably not at today's costs. If the cost of Vastu Gardens increases prior to us signing a contract with a builder it is likely the value of our current residences will also increase. We won't know exact units cost until just prior to signing a contract with a builder.

Batchelor and 1 bedroom suites might be added to our development. If there is demand we could build these smaller units possibly as low as **210k to 250k** plus SV fees. We need to know if there is demand.

### **Land?**

#### **Do we have the land?**

99.9% of the time the first question asked is "Do you have land?" Ray and I may eventually purchase land but our strategy has been to find out the number of people committed to buying.

Twentyseven or 32 or 36 units would house enough siddhas to make a good contribution towards the super radiance requirements for Vancouver Island. We are building in order to live in vastu with a group of sidhas and to create Invincibility for Canada.

We are not interested in building this project and selling off half of it to non meditators.

## **Limited Liability Company**

### **Why go to the trouble and expense of a limited liability company?**

After surveying all the various options of ways for us to come together in a group, an incorporate company stands head and shoulders above the alternates in terms of ease of decision making, and security.

The directors may need to make decisions quickly. The company and shareholder agreement, as set up, allows for that. The shareholders are secure. The cost of purchasing the shares is refundable. In other words a shareholder could vote with her/his feet, i.e. by leaving the group. The directors (Ray and Paul) don't want anyone leaving -- they want as many people living in Vastu and flying together as possible -- and hence will make decisions that will satisfy all, or as many of the group as possible.

...

### **When Will We Move In?**

To move in around the fall of 2008 will require a great deal of coherence and attention. Let's focus on that!

14. Under the Contact link it provides a box for a person to input their name, email, and comments, and a button to submit their query.
15. Under the Newsletters link it provides an archive of all Vastu Gardens newsletters, and provides the links to the newsletters ranging from #1 beginning June 29, 2007, through #10 dated November 22, 2007.
16. Also on this page is a link for Affluent Affordable Vastu Housing #1 dated November 22, 2007, in which the second project is described. Another link is entitled "20 More Please, Affluent affordable Vastu Housing #2 dated November 28, 2007, in which it states, "we need another 20 positive responses". At the bottom of the page there is a link entitled "How to Participate, Subscribe Here" or "Unsubscribe Here".
17. In Newsletter #1 dated June 29, 2007 under the section "Business Structure" it states:

Doing business as an incorporated company Ray and Paul are assembling parties interested in purchasing units, and then securing bids from builders to construct the project start to finish.

The number of units purchased will determine the number of units constructed. Other than the possibility of a resale becoming available, no units will be available for sale after the final number of units has been spoken for...

18. In Newsletter #4 dated July 24, 2007, under the Section "Securing a Builder" it states:

The deposit is a sign of our good intent and indicates that we may agree to purchase a unit on the condition that the parameters of the development, as outlined at the time of the agreement, are met. If some aspect of the development does not meet your approval, you will have the opportunity, at that time to withdraw from the project.

19. In Newsletter #5 dated July 30, 2007, under the section "How to Commit But not Fully Commit" it states:

The question has been asked, when will the deposit become non-refundable? Typically the deposit will be non refundable when you enter into an agreement with a developer/builder to purchase a unit. The deposit may then be used as part of the purchase price.

20. In Newsletter #7 dated October 9, 2007, under the section "Celebration!" it states:

With the documentation and the trust account prepared we will soon begin the second phase of securing the builder to build Vastu Gardens. Over the next few weeks the prospective purchasers will have signed the Subscription Agreement, and Shareholders Agreement, and place a refundable deposit in trust. With the number of participants known, Ray and I will then be able to select 3 top builders to provide us with costing. It is time for celebration."

21. In Newsletter #8 dated October 26, 2007, under the section "Anyone Else?" it states:

Is there anyone who has not come forward who would like to now come forward and purchase a unit?

Two weeks ago Ray and I sent out Newsletter #7 announcing that the long awaited documentation had been forwarded to 20 individuals who expressed interest in purchasing (by way of a refundable deposit) a share in an incorporated company, the purpose being to negotiate with builders and to secure the best pricing of apartment units for each of the shareholders.

22. In Newsletter #10 dated November 22, 2007, under the section "Project Status" it states:

Currently there are 27 parties who have requested documentation in order to enable them to purchase a unit in Vastu Gardens. Of these 27 possibly 12 to 15 have the financial capability to participate. We have encouraged the remaining parties to submit their refundable deposit and let things unfold.

23. I find that Vastu Gardens and its directors, Paul Colver and Raymond Fearon Harris, are marketing the Vastu Gardens development without a disclosure statement.



24. Vastu Gardens is a development property since it is marketed as a stratified building and the developer is selling more than 5 strata lots in the building.
25. Persons who execute a Subscription Agreement become a Class A shareholder with Vastu Gardens for a payment of \$2,000.00 in trust. This payment is held in trust as a deposit on the shareholder's right to purchase a development unit. The shareholder agrees that their eligibility to enter into a Contract of Purchase and Sale with the builder for purchase of units in the building will be based on the priority of the number of their share certificate.
26. Subsequently, the shareholder agrees that he/she must enter into a Contract of Purchase and Sale with the builder for purchase of a defined unit in the building, thereby becoming a member of the strata corporation.
27. I agree with staff that scheduling of witnesses, counsel and the hearing officer would likely result in a three to four month delay in the ability to hold a hearing into this matter. I am also of the opinion that more investigation may be required however the time to complete the investigation would also result in further delay.
28. Vastu Gardens and its principals continue to market the development units which exposes potential buyers to marketing of development units without the disclosure required pursuant to legislation. The legislative requirements are enacted in the public interest so that members of the public are able to make an informed decision when purchasing development units.
29. The length of time, three to four months, to hold a hearing and complete an investigation will likely result in continued non-compliance which I find to be detrimental to the public interest.
30. I find that it is in the public interest to make a summary cease marketing order under Section 32 of the Act so that the public is protected against further non-compliance with the Act.

AND WHEREAS I am satisfied that VASTU GARDENS PROJECT LTD., and PAUL COLVER, and RAYMOND FEARON HARRIS, have marketed development units in the Vastu Gardens development and VASTU GARDENS PROJECT LTD., and PAUL COLVER, and RAYMOND FEARON HARRIS failed to file a disclosure statement with the Office of the Superintendent prior to the marketing of development units as required pursuant to the *Act*;

I AM THEREFORE OF THE OPINION that VASTU GARDENS PROJECT LTD., and PAUL COLVER, and RAYMOND FEARON HARRIS 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. It is in the public interest to make a summary cease from marketing order under section 32 of the *Act* so that the public is protected against further non-compliance with the *Act*.

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

I THEREFORE MAKE the following Order:

1. That International VASTU GARDENS PROJECT LTD., and PAUL COLVER, and RAYMOND FEARON HARRIS shall cease marketing any and all development units in the development property known as Vastu Gardens to be located in the Parksville area of British Columbia prior to the filing of a disclosure statement in accordance with the *Act*.

TAKE NOTICE that VASTU GARDENS PROJECT LTD., and PAUL COLVER, and RAYMOND FEARON HARRIS 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 13<sup>th</sup> day of December, 2007.

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

TO: Vastu Gardens Project Ltd.  
30 Front Street  
P.O. Box 190  
Nanaimo, British Columbia V9R 5K9

Paul Colver  
[REDACTED]  
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Raymond Fearon Harris  
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[REDACTED]