

IN THE MATTER OF THE REAL ESTATE DEVELOPMENT MARKETING ACT  
SBC 2004, Chapter 41

-AND-

TIMBERSTONE LODGE PROPERTIES LTD., FRED MEHL, TRENT KOEHLER,  
LLOYD JOHNSON, LAVERN ARNDT, and IRENE BARNES

ORDER UNDER SECTIONS 30(1)(a) 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. Timberstone Lodge Properties Ltd. ("Timberstone") was registered on December 22, 2000 as an extraprovincial company in British Columbia. The address for the head office is 600, 105 – 21<sup>st</sup> Street East, Saskatoon, Saskatchewan, S7K 0B3. The registered attorney for this company in British Columbia is Kelle M. Maag, of 20, 11<sup>th</sup> Avenue South, Cranbrook, British Columbia, V1C 2P1.
4. Timberstone was registered as a company in Saskatchewan on September 15, 2000. The directors are: Fred Mehl, Trent Koehler, Lloyd Johnson, and Laverne Arndt.
5. A disclosure statement was filed by Timberstone as a developer on January 18, 2007, with the Superintendent (the "Disclosure Statement"). The name of the development is Timberstone Lodge Spa Resort (the "Development"), located at 1301 Gerry Sorenson Way, Kimberley, British Columbia. The Disclosure Statement in addition to other information states that:

The Development is legally described as: Lot 1, District Lots 5585 and 7324, Kootenay Land District, Plan NEP64817.

The Development consists of: 121 strata lots, 11 buildings, and nine separate phases.

For this Disclosure Statement the Developer is marketing: 37 strata lots, four phases numbered consecutively from 1 to 4, and 1 building in each phase.

The Developer has not obtained building permits for Phases 3 and 4 of the Development, and has obtained approval in principle to construct and create the strata lots in phases 3 through 9 of the Development from the City of Kimberly.

This Disclosure Statement has been filed pursuant to the Superintendent's Policy Statement 5 which allows early marketing for Phases 3 and 4 of the Development. In accordance with this policy the Developer must file an amendment within nine months or by October 18, 2007, indicating receipt of a building permit for Phases 3 and 4 from the City of Kimberly.

6. Furthermore, the Disclosure Statement's proposed strata plan identifies each building by numbers 1 through 11, which buildings are then linked to the phases. These links are as follows:

Building 1 – Phase 1.

Building 2 – Phase 3.

Building 3 – Phase 2.

Building 4 – Phase 4.

Building 5 – Phase 5.

Building 6 – Phase 6.

Buildings 7 and 8 – Phase 7.

Buildings 9 and 10 – Phase 8.

Building 11 – Phase 9.

7. Timberstone is the registered owner of the following property:

Lot 1, District Lots 5585 and 7324, Kootenay Land District, Plan NEP64817 except Strata Plan NES 3332 (Phase 1).

8. On January 25, 2007, the Superintendent's staff wrote to Timberstone's legal counsel confirming that the Disclosure Statement had been filed with the Superintendent. Timberstone was also reminded that an amendment must be filed by October 18, 2007, indicating receipt of a building permit for Phases 3 and 4, or all marketing must cease as of that date.

9. As of November 16, 2007, no amended disclosure statement had been filed with the Superintendent. The 9 months of marketing allowed under the Disclosure Statement and Policy Statement 5 expired on October 18, 2007.
10. Irene Barnes ("Barnes") maintains a website at [www.irenebarnes.ca](http://www.irenebarnes.ca), which states that she is an employee of the Developer. On November 16, 2007 the website represented that 6 of the 11 buildings were being marketed and 85% of those units are sold. The website represented that there were 55 strata lots being marketed. However, the Disclosure Statement was filed with respect to the 37 strata lots in buildings 1 to 4.
11. The Barnes website disclosed the following sales information:
  - Building 1 – eight of nine units had been sold.
  - Building 2 – four of eight units had been sold.
  - Building 3 – all eight units had been sold.
  - Building 4 – nine of 12 units had been sold.
  - Building 5 – eight of nine units had been sold.
  - Building 6 – eight of nine units had been sold.
12. On November 16, 2007, staff member Henderson wrote to Timberstone's legal counsel to request that all marketing of the Development, except Phases 1 and 2, cease immediately, and that the developer provide the Superintendent with a written undertaking confirming that marketing of the Development had ceased and would not resume until after the Disclosure Statement had been amended or a new disclosure statement is filed.
13. On November 22, 2007 Timberstone's legal counsel provided the Superintendent with an undertaking dated November 19, 2007, pursuant to Section 36 of the Act.
14. Timberstone confirmed that as of that date Timberstone would cease and refrain from marketing any and all development units in the Development, save and except those contained in Phases 1 and 2, until the Developer had filed an amendment or new disclosure statement which sets out the details of the building permit that has been obtained. Additionally Timberstone agreed to give a copy of the undertaking to anyone who is marketing the Development on behalf of Timberstone.
15. On or about November 21, 2007, Investigator Wayne McMillan ("McMillan") visited the developer's sales office in Kimberley, British Columbia and received a brochure which included prices for units in buildings 5 and 6, which buildings are not included in the Disclosure Statement.

16. On November 26, 2007, McMillan spoke to Barnes who confirmed that a disclosure statement had not yet been filed for buildings 5 and 6 but that an individual could reserve a unit if they paid a \$1,000 deposit.
17. Based on the information from the Barnes website, there are 16 units for which a \$1,000 deposit may have been received by Timberstone.
18. Pursuant to section 16 of the Act and Superintendent's Policy Statement 1, Timberstone is required to file an amendment to the Disclosure Statement or a new disclosure statement to disclose the additional strata lots being marketed.
19. As of November 28, 2007, no such amendment or new disclosure statement has been filed with the Superintendent.
20. On November 28, 2007, staff member Peter Grimmatt, Manager of Real Estate, spoke to Barnes and she confirmed that she was still marketing the project and that Timberstone had not made her aware of the undertaking it gave to the Superintendent regarding cease marketing.
21. The Barnes website shows that Timberstone continues to market units in buildings 4, 5, and 6, since the website had not changed by December 14, 2007.
22. Timberstone continues to market the Development, including two phases for which no disclosure statement has been filed with the Superintendent. This conduct 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.
23. A section 36 undertaking is binding on the developer and each and every director of the developer (see section 36(3)).
24. I find that Timberstone and its directors are in breach of their undertaking provided November 22, 2007 pursuant to section 36 of the *Act*.
25. I agree with staff that scheduling of witnesses, counsel and the hearing officer would likely result in a two to three month delay in the ability to hold a hearing into this matter.
26. The length of time, two to three months, to hold a hearing will likely result in continued non-compliance which I find to be detrimental to the public interest.
27. 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 TIMBERSTONE LODGE PROPERTIES LTD. and its directors FRED MEHL, TRENT KOEHLER, LLOYD JOHNSON, LAVERN ARNDT, and its employee IRENE BARNES have marketed development units in the Timberstone Lodge Spa Resort development and TIMBERSTONE LODGE PROPERTIES LTD., FRED MEHL, TRENT KOEHLER, LLOYD JOHNSON, LAVERN ARNDT, and IRENE BARNES 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*;

AND TIMBERSTONE LODGE PROPERTIES LTD. and its directors FRED MEHL, TRENT KOEHLER, LLOYD JOHNSON, LAVERN ARNDT, and its employee IRENE BARNES have marketed development units in the Timberstone Lodge Spa Resort development after the expiry of the nine month period allowed under the Superintendent's Policy Statement 5 without filing the required Amendment to disclose receipt of a building permit ;

AND TIMBERSTONE LODGE PROPERTIES LTD. and its directors FRED MEHL, TRENT KOEHLER, LLOYD JOHNSON, LAVERN ARNDT have breached their undertaking provided November 22, 2007 pursuant to section 36 of the *Act*;

I AM THEREFORE OF THE OPINION that TIMBERSTONE LODGE PROPERTIES LTD. and its directors FRED MEHL, TRENT KOEHLER, LLOYD JOHNSON, LAVERN ARNDT, and its employee IRENE BARNES 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) and 32(1) of the *Act*.

I THEREFORE MAKE the following Order:

1. That TIMBERSTONE LODGE PROPERTIES LTD. and its directors FRED MEHL, TRENT KOEHLER, LLOYD JOHNSON, LAVERN ARNDT, and its employee IRENE BARNES shall cease marketing any and all development units in the development property known as Timberstone Lodge Spa Resort in Kimberley, British Columbia.

TAKE NOTICE that TIMBERSTONE LODGE PROPERTIES LTD., FRED MEHL, TRENT KOEHLER, LLOYD JOHNSON, LAVERN ARNDT, and IRENE BARNES 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 18<sup>th</sup> day of December, 2007.

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

TO: Lavern Arndt



Lloyd Johnson



Trent Koehler



Fred Mehl



Irene Barnes

