

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

-AND-

BALCOM FINANCIAL CORP., MADDEN HOLDINGS LTD., BFC DEVELOPMENT  
CORP., ASHER STRATA HOMES, EAST VIEW RIDGE DEVELOPMENTS, RALPH  
BALCOM and KATHY BALCOM

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.*

***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.*
- ...
- (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.*

### ***Handling deposits***

**18** (1) *A developer who receives a deposit from a purchaser in relation to a development unit must promptly place the deposit with a brokerage, lawyer, notary public or prescribed person who must hold the deposit as trustee in a trust account in a savings institution in British Columbia.*

...

- 3. Balcom Financial Corp. ("BFC") was incorporated in British Columbia on January 11, 1995. The registered and records office is located at 1533-8<sup>th</sup> Avenue, Prince George, British Columbia. Ralph Balcom ("Balcom") is the president and sole

director of BFC. Kathy Balcom ("K. Balcom") is the secretary of BFC. K. Balcom is Balcom's wife.

4. Madden Holdings Ltd. ("MHL") was incorporated in British Columbia on March 20, 2003. The registered and records office is located at 700-625 Howe Street, Vancouver, British Columbia. Balcom is the president and a director of MHL. K. Balcom is the secretary and only other director of MHL.
5. BFC Development Corp. ("BFCDC") is advertised as being part of the BFC Group, which purportedly consists of a number of companies including BFCDC, MHL, Asher Strata Homes ("Asher") and East View Ridge Developments ("EVRD"). A search of the B.C. Company Register indicates that none of BFCDC, Asher or EVRD is a registered company.
6. Asher is the name of a development located at or near 2904 Hopkins Road, Prince George, British Columbia ("the Development"). The owner of the Development is MHL. The legal address is as follows:

PID - 025-913-921                      Legal Description - Parcel 1, Plan BCP10250, District  
Lot 1433, Cariboo Land District
7. Asher is advertised on website [www.balcom.ca](http://www.balcom.ca) as being a nine unit condominium project with a projected completion date of December 2007. It is also advertised that the developer of the Development has received a development permit to construct an additional 19 units in the Development. Apparently, construction of eight of those units commenced in August of 2007 and occupancy of those units is expected to occur in the late spring of 2008.
8. The website, as at January 29, 2008, discloses that the developer has received deposits on nine of the strata units. The website also identifies Balcom as the president of BFC.
9. The investigative staff of the Superintendent of Real Estate ("the Superintendent") called the Asher Place Seniors Residence which is located on the site of the Development. The staff spoke to a woman who identified herself as "Kathy", presumed to be K. Balcom. "Kathy" provided the staff with the following information:
  - a. Asher Place consists of three buildings numbered one, two and three.
  - b. These three buildings are rental units for senior citizens.
  - c. On this same site two buildings, identified as buildings four and five, are presently being constructed for purchase by individuals.
  - d. Building four has nine condominium units which have been sold out, but are not yet ready for occupancy.
  - e. Construction is underway for the eight strata units in building five.

- f. Building six is tentative and no construction has been started as yet.
  - g. The price for units in building five has not yet been determined, but is thought to be around \$280,000.
  - h. Contact Ralph Balcom to obtain further information with regard to purchase of these units.
  - i. Ralph Balcom's office is located at 108 – 2904 Hopkins Road, Prince George, BC V2N 1L5 which is the same address as Asher Place Seniors Residence.
10. On January 29, 2008, the staff contacted [REDACTED] a realtor. [REDACTED] advised the staff of the following:
- a. He had been approached by one of the purchasers of a unit in building four of Asher Place, which is part of the Development.
  - b. She wanted to flip her unit.
  - c. When asked for documentation, such as a Contract of Purchase and Sale, the only document that was provided to her by the developer was an Asher Strata Home flyer ("the Flyer").
  - d. She did not have any other documents, such as a Contract of Purchase and Sale, to provide proof of purchase.
11. The Flyer is entitled "Asher Strata Homes". The Flyer advertises the price of the strata units for sale. It also indicates that "any buyer that wants to secure a Strata Home in advance of completion of construction will be required to make an earnest money deposit of \$5,000.00."
12. On February 8, 2008, the staff contacted Dan Milburn, ("Milburn") Manager of Current Planning and Development for the City of Prince George. Milburn provided the following information with regard to building permits issued for the BFC Group of Companies:
- a. 2904, 2912, and 2908 Hopkins Road have been issued building permits and the buildings have been completed.
  - b. 2911 and 2889 Ferry Road have been issued building permits BP032479 and BP033425 respectively. Both buildings are in the final stages of completion.
  - c. 2877 Ferry Road has no building permit issued.
13. Under section 14 of the *Act*, a developer must not market a development unit unless the developer has prepared and filed with the Superintendent a disclosure statement. 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 of the *Act*; and
  - d. be signed as required by the regulations.
14. None of BFC, MHL, BFCDC, Asher or EVRD has filed a disclosure statement with the Superintendent for the Development.
  15. The Development is being marketed in contravention of the *Act*. As a disclosure statement has not been filed with the Superintendent, it is unclear who the named developer of the Development would be. The marketing of the Development 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.
  16. It is apparent that deposits have been taken from purchasers who are buying strata units in the Development. Those deposits are purportedly being held in the developer's trust account. Section 18 of the *Act* requires a developer who receives a deposit from a purchaser in relation to a development unit to promptly place the deposit with a brokerage, lawyer, notary public or prescribed person who must hold the deposit as trustee in a trust account in a savings institution in British Columbia. The developer is not a prescribed person.
  17. 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.
  18. The length of time required to hold a hearing will likely result in the continued non-compliance of the *Act* by BFC, MHL, BFCDC, Asher, EVRD, Balcom and/or K. Balcom which I find to be detrimental to the public interest.
  19. I find that it is in the public interest to issue 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 by BFC, MHL, BFCDC, Asher, EVRD, Ralph Balcom and Kathy Balcom have marketed development units in the Development without filing with the Superintendent a prescribed disclosure statement.

I AM THEREFORE OF THE OPINION that by BFC, MHL, BFCDC, Asher, EVRD, Ralph Balcom and Kathy Balcom 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 marketing order under section 32 of the *Act* so that the public is protected against further non-compliance with the *Act*.

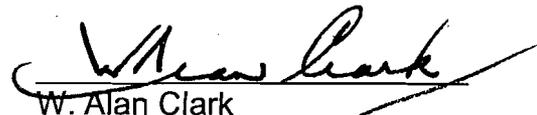
I CONSIDER it in the public interest to make the following Order pursuant to sections 30(1) (a) and 32(1) of the *Act*.

I THEREFORE MAKE the following Order:

1. That Balcom Financial Corp., Madden Holdings Ltd., BFC Development Corp., Asher Strata Homes, East View Ridge Developments, Ralph Balcom and Kathy Balcom shall cease marketing any and all development units in the Development legally described as PID - 025-913-921 Legal Description - Parcel 1, Plan BCP10250, District Lot 1433, Cariboo Land District.

TAKE NOTICE that Balcom Financial Corp., Madden Holdings Ltd., BFC Development Corp., Asher Strata Homes, East View Ridge Developments, Ralph Balcom and Kathy Balcom may, pursuant to section 37(1)(f) of the *Act*, appeal the Order 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,  
in the Province of British Columbia  
this 8th day of February, 2008.

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

TO: Balcom Financial Corp.  
1533 – 8<sup>th</sup> Avenue  
Prince George, BC V2L 3R3

Madden Holdings Ltd.  
700 – 625 Howe Street  
Vancouver, BC V6C 2T6

BFC Development Corp.  
c/o 108 – 2904 Hopkins Road  
Prince George, BC V2N 1L5

Asher Strata Homes  
c/o 108 – 2904 Hopkins Road  
Prince George, BC V2N 1L5

East View Ridge Developments  
c/o 108 – 2904 Hopkins Road  
Prince George, BC V2N 1L5

Ralph Balcom  
c/o 108 – 2904 Hopkins Road  
Prince George, BC V2N 1L5

Kathy Balcom  
c/o 108 – 2904 Hopkins Road  
Prince George, BC V2N 1L5