

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

18 ON 18 DEVELOPMENTS LTD.

-AND-

SOARING PEAKS DEVELOPMENTS LTD.

-AND-

LEONARD GREIG BARRIE

-AND-

PHILIP LESEUR

-AND-

FRASER MCCOLL

**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].

...

Early marketing with permission

10 (1) Despite sections 4 to 9 [subdivision lots and bare land strata lots to shared interests in land outside B.C.], a developer may market a development unit if the developer has obtained both

(a) approval in principle to construct or otherwise create the development unit from the appropriate municipal or other government authority, and

(b) the superintendent's permission to begin marketing.

(2) In relation to a permission given under subsection (1) (b), the superintendent may

(a) attach conditions to the permission, and

(b) at any time, revoke the permission.

(3) The superintendent may publish, in accordance with the regulations, a policy statement setting out circumstances in which permission will be deemed to be granted under subsection (1) (b) to developers who are described by the circumstances set out in the notice.

(4) If the superintendent publishes a policy statement under subsection (3), a developer who is described by the circumstances set out in the policy statement

(a) is deemed to have the superintendent's permission under subsection (1) (b), 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.

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.*

3. 18 On 18 Developments Ltd. ("18/18") was incorporated in British Columbia on March 1, 2006. The registered and records office for 18/18 is located at #208 – 2800 Bryn Maur Road in Victoria, British Columbia. Leonard Greig Barrie ("Barrie"), Philip LeSeur ("LeSeur") and Fraser McColl ("McColl") are the sole directors and officers of 18/18.
4. Soaring Peaks Developments Ltd. ("SPDL") was incorporated in British Columbia on November 21, 2006. The registered and records office for SPDL is #1212 – 1175 Douglas Street in Victoria, British Columbia. LeSeur is the sole director and officer of SPDL.
5. 18/18 is the named developer in a development known as The Highlander located at 2000 Hannington Road, Langford, British Columbia (the "Highlander").
6. 18/18 filed a disclosure statement for Highlander with the Superintendent on November 10, 2006 (the "Highlander Disclosure Statement"). The Highlander Disclosure Statement discloses that:
 - The legal description for the parent property on which Highlander would be located is PID 025-827-898, Lot 9, Section 82, Highland District, Plan VIP76197
 - Highlander would be located on 0.554 acres to be created from the subdivision of the parent property (the "Highlander Lands")
 - 18/18 had entered into a Contract of Purchase and Sale with the owner of the parent property for the Highlander Lands, the closing of which was December 15, 2006

- Highlander will consist of 213 individual strata lots
 - The City of Langford has not yet issued a building permit for Highlander
 - The developer's real estate agent is Home Team Realty Ltd.
7. The current legal description for Highlander is PID 027-024-644 Lot 1 Section 82 Highland District Plan VIP82851. The Highlander Disclosure Statement has never been amended to reflect the change in legal description.
 8. SPDL is the named developer in a development known as Soaring Peaks located at 2089 Champions Court, Langford, British Columbia ("Soaring Peaks").
 9. SPDL filed a disclosure statement for Soaring Peaks with the Superintendent on February 5, 2007, which was then amended on February 14, 2007 (collectively, the "Soaring Peaks Disclosure Statement"). The Soaring Peaks Disclosure Statement discloses that:
 - Soaring Peaks is legally described as PID 026-867-494, Lot A, Section 82, Highland District Plan VIP 81958
 - Soaring Peaks will consist of 151 individual strata lots
 - The City of Langford has not yet issued a building permit for Soaring Peaks
 - The developer's real estate agent is Home Team Realty Ltd.
 10. Highlander and Soaring Peaks are all located at the Bear Mountain Golf Resort Properties project ("Bear Mountain").
 11. The Superintendent has published policy statements pursuant to section 10 of the *Act* setting out the circumstances in which developers can begin early marketing of a development. Policy Statements 5 and 6, which applied to Highlander and Soaring Peaks, allowed a developer, who had not yet obtained a building permit or a satisfactory financing commitment for its development, to market the proposed development for a period of no more than nine months from the date the disclosure statement was filed with the Superintendent, unless an amendment to the disclosure statement that sets out particulars of the issued building permit and satisfactory financing commitment is filed with the Superintendent during that period.
 12. On August 13, 2007, the Superintendent's staff ("the Staff") wrote to LeSeur in respect of Highlander, confirming that the 9-month period following the filing of the Highlander Disclosure Statement had ended on August 10, 2007, and that no amendments to the disclosure statement had been filed. As such, all marketing of Highlander should have ceased on August 10, 2007.

13. On August 27, 2007, Staff received a letter from LeSeur advising that all marketing of Highlander had ceased as of August 27, 2007.
14. On February 13, 2007, Staff wrote LeSeur in respect of Soaring Peaks, confirming that the Soaring Peaks Disclosure Statement had been filed with the Superintendent on February 5, 2007. LeSeur was advised in that letter that an amendment to the Soaring Peaks Disclosure Statement must be filed by November 5, 2007, indicating receipt of a building permit and a satisfactory financing commitment for the Soaring Peaks, or all marketing must cease as of that date.
15. On November 6, 2007, LeSeur wrote the Staff confirming that all marketing of Soaring Peaks had ceased as of that date.
16. On April 10, 2008 Staff wrote LeSeur in respect of Highlander, requesting the following information:
 - Whether the development was proceeding
 - If the development was not proceeding, confirmation that any deposits had been returned to purchasers
 - If the development was proceeding, confirmation that any deposits were being held in trust, that no marketing has occurred since August 27, 2007, and that marketing will not resume under after a new or an amended disclosure statement is filed
17. On April 10, 2008, LeSeur wrote the Staff two letters, confirming the following in respect of Highlander:
 - All deposits were being held in trust by the developer's solicitors;
 - No marketing had occurred since August 27, 2007
 - Marketing would not resume until after an amended disclosure statement, or new disclosure statement, was filed with the Superintendent
18. On April 11, 2008, a member of the Staff attended a sales office at Bear Mountain, and spoke with a salesperson who identified himself as Bob Eisfeld ("Eisfeld") who advised as follows:
 - Units in Soaring Peaks were for sale, and that some people had put 5% down, and would then pay an additional 5% later
 - Highlander was still only "a hole in the ground"

19. Eisfeld gave the Staff member a sales brochure which included the following:
 - A map of Bear Mountain identifying Soaring Peaks and Highlander
 - A pamphlet advertising Highlander and Soaring Peaks, which states that they units are "priced from \$349,000 to \$1.2 million. Registrations closing soon – call now!"
20. Staff conducted a check of the British Columbia Real Estate Council database and determined that Eisfeld is not a licensed realtor in British Columbia.
21. On April 14, 2008, Staff spoke with Donna Rogers ("Rogers"), another salesperson at Bear Mountain. Rogers is the managing broker of Home Team Realty Ltd.
22. When asked about Soaring Peaks and Highlander, Rogers advised as follows:
 - Soaring Peaks and Highlander will not complete until 2010, although they are presently for sale at a fixed price, with 10% down, and the balance payable in 2010
 - The prices for units in Highlander are as follows:
 - i. 10th floor two bedroom: \$640,000
 - ii. 10th floor: \$895,000
 - Interested purchasers must complete a purchase agreement with 10% down
 - The purchaser is then given a copy of the disclosure statement for a week to review: if satisfied, they are sent a package of documents for completion of the purchase.
23. On April 15, 2008, Staff reviewed the Bear Mountain website and noted that units in Highlander were advertised for sale.
24. As of April 28, 2008, no new or amended disclosure statements have been filed in respect of either Highlander or Soaring Peaks to disclose whether building permits and satisfactory financing commitments have been obtained.
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 required to hold a hearing will likely result in the continued non-compliance of the Act by 18/18 and SPDL and their respective directors which I find to be detrimental to the public interest.

27. 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 18 ON 18 DEVELOPMENTS LTD. and its directors LEONARD GREIG BARRIE, PHILIP LESEUR and FRASER MCCOLL have marketed development units in Highlander after the expiry of the nine month period allowed under section 10 of the *Act* and the Superintendent's Policy Statements 5 and 6 without filing the required amendment to disclose receipt of a building permit and satisfactory financing commitment.

AND WHEREAS 18 ON 18 DEVELOPMENTS LTD., and its directors LEONARD GREIG BARRIE, PHILIP LESEUR and FRASER MCCOLL, have marketed development units in Highlander without filing an amendment to the Highlander Disclosure Statement as required under section 16 of the *Act*, to correct the non-compliance or misrepresentations contained therein.

AND WHEREAS I am satisfied that SOARING PEAKS DEVELOPMENTS LTD. and its director PHILIP LESEUR have marketed development units in Soaring Peaks after the expiry of the nine month period allowed under section 10 of the *Act* and the Superintendent's Policy Statements 5 and 6 without filing the required amendment to disclose receipt of a building permit and satisfactory financing commitment.

AND WHEREAS SOARING PEAKS DEVELOPMENTS LTD. and its director PHILIP JOHN LESEUR, have marketed development units in Soaring Peaks without filing an amendment to the Soaring Peaks Disclosure Statement as required under section 16 of the *Act*, to correct the non-compliance or misrepresentations contained therein.

I AM THEREFORE OF THE OPINION that 18 ON 18 DEVELOPMENTS LTD., SOARING PEAKS DEVELOPMENTS LTD., LEONARD GREIG BARRIE, PHILIP LESEUR and FRASER MCCOLL 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 18 ON 18 DEVELOPMENTS LTD., LEONARD GREIG BARRIE, PHILIP LESEUR and FRASER MCCOLL shall cease and refrain from marketing any and all development units in the development known as The Highlander located in Langford, British Columbia.

2. That SOARING PEAKS DEVELOPMENTS LTD. and its director PHILIP LESEUR shall cease and refrain from marketing any and all development units in the development known as Soaring Peaks located in Langford, British Columbia.

TAKE NOTICE that 18 ON 18 DEVELOPMENTS LTD., SOARING PEAKS DEVELOPMENTS LTD., LEONARD GREIG BARRIE, PHILIP LESEUR and FRASER MCCOLL 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 28th day of April, 2008.


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

TO: 18 On 18 Developments Ltd.
#208 – 2800 Bryn Maur Road
Victoria, BC
V8B 3T4

Soaring Peaks Developments Ltd.
#1212 – 1175 Douglas Street
Victoria, BC
V8W 2E1

Leonard Greig Barrie
2264 Aldeane Avenue
Victoria, BC
V9A 2C7

Philip John LeSeur
#208 – 2800 Bryn Maur Road
Victoria, BC
V9B 3T4

Fraser McColl
St. Andrews Square II
#230 – 730 View Street
Victoria, BC
V8W 2Y7

Home Team Realty Ltd.
2050 Country Club Way
Victoria, BC