

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

THE SPRINGS RV RESORT AT HARRISON INC.

-AND-

DAVID D. GRANT

-AND-

WAYNE MOSER

-AND-

BEATRICE MOSER

-AND-

MARY DARLENE SMITH

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:

“approving authority” means whichever of the following applies:

- (a) for land located in a municipality, the municipal council;
- (b) for land located in a regional district, excluding a municipality and Nisga’a Lands, the regional district board;

...

“approving officer” means

- (a) an approving officer as defined in the Land Title Act, and
- (b) in relation to land located outside British Columbia, a person who performs a similar function;

“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:

... (f) 2 or more shared interests in land in the same parcel or parcels of land;...

“development unit” means any of the following in a development property:

...(f) a shared interests in land;

...

“disclosure statement” means a statement that discloses material facts about a development property, prepared in accordance with section 14(2) [filing disclosure statements], and includes any amendment made to a disclosure statement;

“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 facts, or

(b) an omission to state a material fact;

“shared interest in land” means a person’s interest in one or more parcels of land if

(a) the parcel or parcels are owned or leased, directly or indirectly, by the person and at least one other person, and

(b) as part of any arrangement relating to the acquisition of the person’s interest, that person’s right of use or occupation of the land is limited to a part of the land;

...

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].

...

Shared interests in land in B.C.

8 (1) Despite section 2(2)(a) [application], this section does not apply to a shared interest in land that is located outside British Columbia.

(2) A developer must not market a shared interest in land that includes a right of use or occupation of a building unless the appropriate municipal or other government authority has issued a building permit in relation to the land that is to be subject to the shared interest in land.

(3) In addition to the requirement under subject (2), a developer must not market a shared interest in land that includes a right of use or occupation of a previously occupied building unless an approving authority has given approval, in accordance with subsection (5), to market the shared interest in land.

(4) A developer must not market a shared interest in land that does not include a right of use or occupation of a building unless an approving officer has given approval, in accordance with subsection (6), to market the shared interest of land.

...

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.

...

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. The form and content of a disclosure statement for a shared interest in land must comply with the Superintendent's Policy Statement 11, entitled "Disclosure Statement Requirements for Development Property Consisting of Two or More Shared Interests in Land." Requirements under Policy Statement 11 include the following:

- (a) disclosure of the zoning applicable to the development property and the permitted use of all shared interests in land in the development;
- (b) disclosure of whether utilities and services (including water and sewerage) are available;
- (c) disclosure of the existence of any outstanding or contingent litigation or liabilities which may affect the development property;
- (d) disclosure of all material facts related to flooding, the condition of soil and subsoil, or other environmental matters affecting the development property;
- (e) disclosure of facts establishing that the developer has met preliminary requirements or approvals, including any approvals required pursuant to section 8 of the Act; and

- (f) any other material facts which affect, or could reasonably be expected to affect, the market price, value or use of the shared interests in land or the development property.
4. The Springs RV Resort at Harrison Inc. ("Springs Inc.") was incorporated in British Columbia on March 20, 2006. The registered and records office for Springs Inc. is located at #204 – 1548 Johnston Road, White Rock, British Columbia. David D. Grant ("Grant"), Wayne Moser ("W. Moser"), Beatrice Moser ("B. Moser") and Mary Darlene Smith ("Smith") are the directors of Springs Inc.
 5. Springs Inc. is the named developer for the development known as The Springs RV Resort at Harrison, located at 670 Hot Springs Road in Harrison, British Columbia ("Springs RV Resort" or the "Development").
 6. Springs Inc. filed a disclosure statement for Springs RV Resort with the Superintendent on February 1, 2008 (the "Disclosure Statement"). The Disclosure Statement discloses that:
 - The legal description for the Development is PID 015-251-268 Parcel One Section 12 Township 4 Range 29 West of the Sixth Meridian New Westminster District Reference Plan 83486.
 - The Development will consist of 150 recreational vehicle sites.
 - The Development will have common areas and common facilities for the use of all owners, comprised of a club house, swimming pool, hot tub, washrooms and laundry facilities.
 - The Development will be structured as a "fractional ownership" or "shared interest in land", whereby each purchaser will acquire a 1/150th interest in the land which comprises the Development.
 - The Development is zoned tourist/commercial for seasonal recreational use only.
 - Certain utilities (including water and sewerage) are already available at the Development.
 - Springs Inc. is not aware of any dangers in the condition of the soil or subsoil, nor is it aware of any flooding danger to the land in normal circumstances.
 - Springs Inc. expects the construction of the common facilities to be completed by the end of September 2008 (or sooner).

7. In March and April 2008, staff of the Superintendent (the "Staff") received a complaint regarding the Disclosure Statement, which included the following allegations:
 - Springs RV Resort consists of 150 recreational sites which is contrary to Harrison's bylaws.
 - Springs Inc. has not applied and paid for the connection to Harrison's water system which would service the proposed density of 150 recreational sites.
 - Even if Springs Inc. applied for the necessary water connection, Harrison would likely deny the request as it has placed a moratorium on all new water connections except for single-family dwellings, as the water system is currently at capacity.
 - Springs Inc. has neither applied for nor obtained any building permits for construction of the common facilities.
 - Springs RV Resort lies in a floodplain.
 - Springs RV Resort is zoned C5 (Tourist Commercial), when it likely ought to be zoned C7 (Holiday Park Zone).
 - Harrison placed a Stop Work Order on Springs RV Resort the previous week.

8. On April 21, 2008 Staff met with Gerry van der Wolf ("van der Wolf"), the Chief Administrative Officer for Harrison. In that meeting, and in subsequent discussions, van der Wolf advised as follows:
 - He believes that Springs RV Resort is currently zoned C5.
 - Springs RV Resort has not obtained any building permits. Construction of both the clubhouse and pool would require building permits.
 - He had placed a Stop Work Order on Springs RV Resort on March 31, 2008, as construction had been started without any of the required permits.
 - He had written W. Moser on March 28, 2008 instructing him to cease any development work at Springs RV Resort until a development permit, a building permit, and a demolition permit are submitted, and a drainage easement is executed with Harrison.
 - Springs RV Resort is located in a designated floodplain.
 - He believes Springs RV Resort is being marketed, as he has received an inquiry from a law firm acting for a purchaser of a shared interest in the Development.

- In order to accommodate 150 recreational vehicle sites on the property, Springs Inc. would have to apply and pay for additional connections to the water system, which it has not done. Further, even if Springs Inc. did apply for additional water connections, the request would be denied as Harrison has placed a moratorium on all new water connections, except for single-family dwellings as the system is currently operating at capacity.
9. Van der Wolf provided Staff with the following documents:
- A letter from representatives of Homelife Benchmark Realty which included marketing material for Springs RV Resort indicating that 12 lots had been sold.
 - A printout from the internet advertising Springs RV Resort for sale. The printout includes price details and identifies 9 lots as 'sold.'
10. On April 21, 2008, Staff met with two representatives of Homelife Benchmark Realty, one of whom advised as follows:
- He had been assured by W. Moser that the Stop Work Order issued by Harrison had been lifted.
 - He had been assisting in marketing Springs RV Resort, but was not involved in the sale of the shared interests.
 - He was aware that Springs RV Resort was being marketed at recreational vehicle trade shows, although he was not involved in those marketing efforts.
 - Deposits on shared interests in Springs RV Resort were being held at the law firm of Cleveland Doan.
11. On April 22, 2008, Staff contacted Shawn Smith, counsel with Cleveland Doan who confirmed the following:
- Deposits on shared interests in Springs RV Resort are being held at his law firm, but are not being used to discharge the mortgage.
 - Only proceeds from completed sales of shared interests in Springs RV Resort are being used to discharge the mortgage.
12. On April 22, 2008 van der Wolf advised Staff about a meeting he had attended with W. Moser and Smith on April 21, 2008. At that meeting, W. Moser and Smith advised van der Wolf that an amendment to the Disclosure Statement, confirming that the property was located in a floodplain, had been filed with the Superintendent, a copy of which was given to van der Wolf. The disclosure

statement van der Wolf was given on April 21, 2008 was never filed with the Superintendent.

13. It is not clear whether the disclosed zoning would permit the Development's intended use.
14. As of April 30, 2008, no new or amended disclosure statement has been filed in respect of Springs RV Resort to disclose the following:
 - the need and lack of approval for additional water connections;
 - the zoning requirements for the Development's intended use;
 - the fact that the Development lies in a floodplain;
 - that the Development is subject to a Stop Work Order; and
 - facts establishing that the developer has met the preliminary requirements or approvals in Division 2 of Part 2 of the Act (which includes s.8).
15. As of April 30, 2008, Springs Inc. has not obtained a building permit or development approval in relation to the Development. It is not known whether Springs Inc. has obtained approval in principle for construction from the appropriate municipal or other government authority. However, Springs Inc. has not obtained the Superintendent's permission for early marketing. Springs Inc. therefore does not meet the requirements of s.10 of the *Act* which would allow it to market the Development despite the lack of required permits provided the necessary approvals from both the appropriate municipal or other government authority and the Superintendent were obtained.
16. As of April 30, 2008, 10 shared interests in Springs RV Resort have been registered in the names of individuals, and another freehold transfer remains pending.
17. I agree with Staff that scheduling of witnesses, counsel and the hearing officer would likely result in a five to six 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 Springs Inc. and its respective directors 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 THE SPRINGS RV RESORT AT HARRISON INC., and its directors DAVID D. GRANT, WAYNE MOSER, BEATRICE MOSER and MARY DARLENE SMITH have marketed development units in Springs RV Resort without filing either a new disclosure statement or an amendment to the Disclosure Statement as required under section 16 of the *Act*, to correct the non-compliance or misrepresentations contained therein.

AND WHEREAS THE SPRINGS RV RESORT AT HARRISON INC., and its directors DAVID D. GRANT, WAYNE MOSER, BEATRICE MOSER and MARY DARLENE SMITH have marketed development units in Springs RV Resort without first obtaining permits and approvals required under section 8 of the *Act*.

I AM THEREFORE OF THE OPINION that THE SPRINGS RV RESORT AT HARRISON INC., and its directors DAVID D. GRANT, WAYNE MOSER, BEATRICE MOSER and MARY DARLENE SMITH 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 THE SPRINGS RV RESORT AT HARRISON INC., and its directors DAVID D. GRANT, WAYNE MOSER, BEATRICE MOSER and MARY DARLENE SMITH shall cease and refrain from marketing any and all development units in the development known as The Springs RV Resort at Harrison, in Harrison, British Columbia.

TAKE NOTICE that THE SPRINGS RV RESORT AT HARRISON INC., and its directors DAVID D. GRANT, WAYNE MOSER, BEATRICE MOSER and MARY DARLENE SMITH 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 5th day of May, 2008.


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

TO: The Springs RV Resort at Harrison Inc.
#204 – 1548 Johnston Road
White Rock, BC V4B 3Z8

David D. Grant

[REDACTED]
[REDACTED]

Wayne Moser

[REDACTED]
[REDACTED]

Beatrice Moser

[REDACTED]
[REDACTED]

Mary Darlene Smith

[REDACTED]
[REDACTED]