

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

PARAISO TROPICAL S.A.

-AND-

RICARDO MIRANDA

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:

- (a) 5 or more subdivision lots in a subdivision, unless each lot is 64.7 ha or more in size;

- (b) 5 or more bare land strata lots in a bare land strata plan;
- (c) 5 or more strata lots in a stratified building;
- (d) 2 or more cooperative interests in a cooperative association;
- (e) 5 or more time share interests in a time share plan;
- (f) 2 or more shared interests in land in the same parcel or parcels of land;
- (g) 5 or more leasehold units in a residential leasehold complex;

"development unit" means any of the following in a development property:

- (a) a subdivision lot;
- (b) a bare land strata lot;
- (c) a strata lot;
- (d) a cooperative interest;
- (e) a time share interest;
- (f) a shared interest in land;
- (g) a leasehold unit.

"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;

"strata lot" means

- (a) a strata lot as defined in the Strata Property Act in a stratified building, and

(b) *in relation to land located outside of British Columbia, a similar interest;*

“strata plan” means

(a) *any strata plan as referred to in the Strata Property Act, and*

(b) *in relation to land located outside British Columbia, a similar plan;*

Application

2(1) *This Act applies to a developer who markets, in British Columbia, a development unit.*

(2) *This Act applies regardless of whether*

(a) *the development unit being marketed is located in British Columbia or not,*

...

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.*

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.

...

Developer use of deposit

19(1) In this section:

“deposit protection contract” has the same meaning as in section 189.2 of the *Insurance Act*;

“developer’s own purposes” means purposes related to the development property that includes the development unit in relation to which the deposit under section 18(1) [handling deposits] was paid, including without limitation, the construction and marketing of that development property.

(2) A developer who desires to use for the developer’s own purposes a deposit the developer has placed with a trustee under section 18(1), must enter into a deposit protection contract in relation to that deposit and provide notice of the deposit protection contract to the purchaser in accordance with the regulations.

- (3) *A trustee must pay a deposit held under section 18(1) to a developer who has entered into a deposit protection contract in relation to the deposit on receiving*
- (a) *from an insurer the original or a true copy of the deposit protection contract, and*
 - (b) *from the developer a certification, in writing, that the purchaser who paid the deposit has no right to rescission under section 21 [rights of rescission].*

3. Section 5 of the *Real Estate Development Marketing Regulation* (the "Regulation") reads as follows:

Sale or lease subject to the Securities Act

5. *A developer who markets a development unit is exempt from Part 2 [Marketing and Holding Deposits] of the Act in respect of that marketing if the developer*
- (a) *files a prospectus under section 61(1) [prospectus required] of the Securities Act, and*
 - (b) *complies with all requirements of the Securities Act relevant to the marketing of the development unit.*
4. The form and content of a disclosure statement for a development property consisting of five or more strata lots must comply with the Superintendent's Policy Statement 1, entitled "Disclosure Statement Requirements for Development Property Consisting of Five or More Strata Lots."
5. On March 26, 2008, staff of the Superintendent (the "Staff") received a complaint from [REDACTED], a compliance officer with the Real Estate Council of British Columbia regarding a development located in the Dominican Republic called Punta Perla ("Punta Perla" or the "Development").
6. [REDACTED] noted that a real estate licensee, Stan Stanchev ("Stanchev") was listed on the Development's website as a sales team member with an address in North Vancouver, British Columbia.
7. Stanchev has been licensed to provide trading services and rental property management with Re/Max Crest from February 14, 1997 to the present.
8. Staff confirmed that no disclosure statement has ever been filed for Punta Perla.
9. Staff investigated two different websites relating specifically to Punta Perla: www.puntaperlasales.com and www.punta-perlasales.com.

10. A review of www.puntaperlasales.com yielded the following information:

- Punta Perla is advertised as a luxury resort in the Dominican Republic.
- Punta Perla is located upon 2,700 acres of beachfront land in the Punta Cana region on the Eastern tip of the Dominican Republic, on the island of Hispaniola.
- Financial benefits of investing in Punta Perla include the following: no capital gains tax, no property purchase tax and no rental income tax.
- The developer guarantees an 8% per annum rental return for 5 years, renewable for a further 5 years.
- The developer guarantees a 70% mortgage upon completion.
- Those interested in more information were asked to contact Stan Stanchev as follows:

Stan Stanchev

[REDACTED]

North Vancouver, BC, Canada

V7G 1Y6

Tel: 00+1+604-202-1412

Fax: 00+1+604-988-3882

Email: stanstanchev@shaw.ca

www.puntaperla-sales.com

11. A review of www.puntaperla-sales.com yielded the following information:

- Pre-launch prices for Punta Perla properties start at \$260,000.
- Over 8,000 properties are available, ranging from apartments, to bungalows, townhouses, villas, penthouses and founders plots.
- There is an 8% guaranteed rental yield for 5+5 years (net of management fees).
- Purchasers must make a 30% deposit, with 70% financing guaranteed on completion.
- Purchasers would have freehold ownership of the land.
- For further information, interested parties were asked to complete a form including their name, address, and contact information, and submit it.

- The contact name for more information was Stan Stanchev, and the address, telephone and fax numbers given were the same as those provided on the www.puntaperlasales.com website.
12. Staff submitted a request for more information and, on April 23, 2008, Mr. Stanchev provided an email in response to Staff with the additional information, and a number of attachments, including the following:
- Frequently Asked Questions
 - History of Paraiso Tropical
 - Ricardo Miranda Biography
 - Master Declaration of Project Regulations
 - Promissory Contract for Sale in the "Punta Perla Caribbean Golf Marina and Spa Resort" Project
 - Environment Licence Translation (unsigned)
 - Law 158 Tax Exemptions
 - Punta Perla Availability and Price List
13. The Frequently Asked Questions appended to Stanchev's April 23, 2008 email include the following information:
- All properties on Punta Perla are freehold.
 - Punta Perla is being developed and project managed by Paraiso Tropical S.A. ("Paraiso Tropical"), a Dominican Republic company headed by Spanish developer, Ricardo Miranda ("Miranda").
 - The developer has full legal title to the land which comprises Punta Perla.
 - Payment of \$10,000, 6,000 pounds or 8,000 Euros reserves the property, and on contract, 30% of the purchase price (minus the reservation fee) is payable.
 - The contract will be provided within 14 days of reservation, and interested parties will then have 21 days to sign the contract and pay the deposit before the reservation is cancelled and the property re-marketed.
 - The developer will make a mortgage available, for 70% of the purchase price, upon completion.

- Every purchaser at Punta Perla will be offered a fixed annual rental return equating to 8% of the purchase price (less the \$10,000 resort membership fee) for a period of 5 years, renewable for an additional 5.
 - A second option is available, whereby a variable return will be available where 70% of all income in the rental pool will be split amongst the owners equally, with the remaining 30% being used for services associated with running the rental pool.
 - Owners at Punta Perla will have personal use of the property they buy, subject to availability and the rental pool agreement.
 - Each property is subject to a monthly maintenance fee in the amount of \$250-\$350.
14. The Master Declaration of Project Regulations appended to Stanchev's April 23, 2008 email provided the following address for Paraiso Tropical:
- Paraiso Tropical, S.A.
Avenue Abraham Lincoln 403
La Julia, Santo Domingo
Dominican Republic
15. The Promissory Contract for Sale in the "Punta Perla Caribbean Golf, Marina and Spa Resort" Project which was appended to Stanchev's April 23, 2008 email provided the following address for Paraiso Tropical:
- Paraiso Tropical, S.A.
Avenue Abraham Lincoln 403
Santo Domingo, National District
Dominican Republic
16. On April 24, 2008, Staff spoke with Stanchev by telephone, at which time Stanchev advised as follows:
- The Development is not registered in British Columbia.
 - Deposits on units in Punta Perla are not placed with an escrow agent.
 - Deposits are held by the Developer's lawyer, likely in the Dominican Republic, and may not be held in trust.
 - There is no disclosure statement provided in respect of Punta Perla.

- Money from the deposits received is used to fund the project, so that the developer does not have to borrow money which would, in turn, increase the cost of the units.

17. On April 28, 2008, Stanchev wrote Staff another email, providing contact information for the sales office and the sales manager for Punta Perla as follows:

Jane Althorpe – Sales Manager
Emerging Earth Ltd.
1 Arlington Court
Whittle Way
Arlington Business Park
Stevenage, UK
SG1 2FS

www.emergingearth.com

18. A review of the www.emergingearth.com website yielded the following information:

- A link to the www.puntaperlasales.com website.
- A link to www.paraisotropical.com website.
- A list of all properties available for purchase at Punta Perla, as at April 29, 2008.

19. On May 1, 2008, Staff met with Stanchev and obtained the following information from him:

- Stanchev became aware of Punta Perla through a mass email, sent by [REDACTED] of Dream Villas Global in the United Kingdom, directing viewers to visit the Punta Perla website.
- Stanchev contacted the Emerging Earth Ltd. (“Emerging Earth”) office requesting more information in respect of the Development.
- Stanchev bought two units at Punta Perla himself.
- During the sales process, he informed a representative at Emerging Earth that he was a realtor.
- He was asked to become an “introducer”, meaning that he would provide interested parties with basic information about the Development, gauge a

potential purchaser's interest and have him/her fill out an online registration form which would then be sent to Emerging Earth. Stanchev did not accept deposits, negotiate prices or assist a purchaser in completing the forms.

- If Stanchev refers someone to Emerging Earth, and that person ends up purchasing in Punta Perla, he is to be paid a referral fee.
 - To date, Stanchev has referred six or seven people to Emerging Earth, none of whom, as far as he is aware, have purchased units in the Development.
 - The only person Stanchev is aware of in British Columbia who has purchased in Punta Perla is himself.
 - When Stanchev purchased his two units, he paid a reservation fee (USD\$10,000) and a 30% deposit (USD\$75,535.04). His money was not paid into escrow or into a lawyer's trust account.
 - The only protection Stanchev indicated he had for his deposit was a lien on the property he had purchased.
20. While Stanchev agreed to discontinue providing any further services in respect of the Development, or on behalf of the Developer and/or Emerging Earth, a search of www.puntaperla-sales.com conducted on May 12, 2008 shows that Stanchev is continuing to market the Development on that website. His name has, however, been removed as a contact on www.puntaperlasales.com.
21. On April 24, 2008, Staff confirmed with the BC Securities Commission that no prospectus has been filed by Paraiso Tropical, Ricardo Miranda or anyone else in respect of Punta Perla.
22. 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.
23. The length of time required to hold a hearing will likely result in the continued non-compliance of the *Act* by Paraiso Tropical and Miranda which I find to be detrimental to the public interest.
24. 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 PARAISO TROPICAL S.A., and its principal RICARDO MIRANDA have marketed development units in Punta Perla in British Columbia without filing a disclosure statement as required by sections 2, 3 and 14 of the *Act*.

AND WHEREAS PARAISO TROPICAL S.A. and its principal RICARDO MIRANDA have accepted deposits from one or more purchasers in British Columbia without placing those deposits in trust with a prescribed person, contrary to section 18 of the *Act*.

AND WHEREAS PARAISO TROPICAL S.A. and its principal RICARDO MIRANDA have used, or intend to use funds from purchasers in British Columbia for purposes related to the Development without entering a deposit protection contract, contrary to section 19 of the *Act*.

AND WHEREAS PARAISO TROPICAL S.A. and RICARDO MIRANDA have not filed a prospectus with the BC Securities Commission, and hence are not exempt from the marketing and holding deposit requirements as set out in *Act*.

I AM THEREFORE OF THE OPINION that PARAISO TROPICAL S.A. and RICARDO MIRANDA 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*.

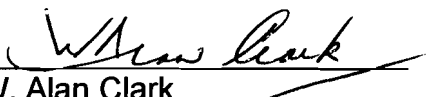
I CONSIDER it in the public interest to make the following Order pursuant to sections 30(1) (a) and 32(1) of the *Act*.

I THEREFORE MAKE the following Order:

1. That PARAISO TROPICAL S.A. and RICARDO MIRANDA shall cease and refrain from marketing in British Columbia any and all development units in the development known as Punta Perla, located in the Dominican Republic.

TAKE NOTICE that PARAISO TROPICAL S.A. and RICARDO MIRANDA 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 14th day of May, 2008.


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

TO: Paraiso Tropical, S.A.
Avenue Abraham Lincoln 403
National District
Santo Domingo, Dominican Republic

Paraiso Tropical, S.A.
Avenue Abraham Lincoln 403
La Julia, Santo Domingo
Dominican Republic

Ricardo Miranda
Avenue Abraham Lincoln 403
National District
Santo Domingo, Dominican Republic

Stan Stanchev

North Vancouver, BC
V7G 1Y6

Emerging Earth Ltd.
1 Arlington Court
Whittle Way
Arlington Business Park
Stevenage, UK
SG1 2FS