

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

PACIFIC LAND SALES OF COSTA RICA LLC

-AND-

MITCHELL FRED COHEN

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.

Applicable legislative provisions

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;

"subdivision" means land that is divided into lots or parcels, other than under the Strata Property Act;

"subdivision lot" means a lot or parcel in a subdivision;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.

...

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."

Complaint and Investigation

5. On June 8, 2009, staff of the Superintendent (the "Staff") received a copy of a flyer, being distributed by ██████████ in British Columbia, advertising "20 buildable estate home sites" in Costa Rica. On the flyer was ██████████ contact information and reference to a website at www.therealestateenthusiast.blogspot.com ("█████████ Blog").
6. On June 9, 2009, Staff member Larry Beryar reviewed ██████████ Blog and noted the following:
 - a. Under "About Me", ██████████ indicates that he is located in Vancouver, British Columbia.
 - b. Under the heading "Costa Rican Dreaming" he invites those interested in owning a vacation home in Costa Rica to contact him by email at scottsdblog@gmail.com.
7. ██████████ is not licensed to provide real estate services in British Columbia, as required under the *Real Estate Services Act*, SBC 2004, c.42.
8. On June 9, 2009, Beryar, using an alias, sent a pretext email to ██████████ at scottsdblog@gmail.com, requesting information about the property in Costa Rica, and asking him to call to discuss further.
9. On June 9, 2009, ██████████ telephoned Beryar and advised him as follows:
 - a. The development company for the property in Costa Rica is Pacific Land Sales of Costa Rica ("PLSCR") and is based in Florida.
 - b. The lots in Costa Rica cost between \$50,000 and \$60,000.
 - c. He would provide additional information by email.
10. On June 10, 2009, ██████████ wrote Beryar's alias an email and provided him with a website address for PLSCR, being www.pacificlandsales.com.
11. PLSCR is an active Florida limited liability company with a principal and mailing address at 4613 N. University Drive, Suite 456, Coral Springs, Florida. PLSCR's registered agent is Filings, Inc., and is located at 3732 N.W. 16th Street, Fort Lauderdale, Florida.

12. On June 10, 2009, Beryar reviewed PLSCR's website at www.pacificlandsales.com and noted the following:
 - a. The website's home page features "Rancho Pacifico Estates – Puntarenas, Costa Rica", which is described as a "private gated community of only 20 buildable estate home sites ranging sizes [sic] of 2-4 acres each. Rancho Pacifico Estates is an exclusive community situated on sixty lush acres in the rolling hills of Las Colinas, in the town of Chomes."
 - b. Under the heading "About Us", PLSCR is described as "a Florida based land development company that specializes in acquiring Ocean view titled properties in Costa Rica at wholesale prices..." The principals of PLSCR are described as "Licensed Realtors in the United States."
 - c. Under the heading "Links", there was a link to the following website:
www.cohengrouprealtors.com.
13. On June 10, 2009, Beryar reviewed the contents of the website at www.cohengrouprealtors.com and noted the following:
 - a. The top right-hand corner of the home page contains the following contact information:

H.W.P. Realty
2881 E. Oakland Park Blvd, #222
Email: mcohenrealtor_367@yahoo.com
Office: 954-202-7373
 - b. The home page provides information about Mitchell Cohen ("Cohen") including the following:

"...I'm a Licensed Realtor with HWP Realty in Ft. Lauderdale Fl. I specialize in the Costa Rican real estate market...

I have formed a development company in Costa Rica called Pacific Land Sales of Costa Rica S.A. which is presently developing my property, PACIFIC LAND SALES..."
 - c. The words "PACIFIC LAND SALES" allow the reader to hyperlink back to PLSCR's website and, more particularly, that portion of it which relates to Rancho Pacifico Estates.
14. Staff has confirmed that no disclosure statement has been filed in British Columbia in respect of Rancho Pacifico Estates, located in Chomes, Costa Rica ("RPE" or the "Development").

15. On June 10, 2009, Beryar, using his alias, completed a contact form found on PLSCR's website, requesting that he be contacted by a PLSCR property specialist for more information. In completing the contact form, Beryar indicated that he was located in British Columbia.
16. On June 11, 2009, Beryar, using his alias, met with [REDACTED] to discuss the Development. At that meeting, [REDACTED] advised that he was a marketing representative for the Development. [REDACTED] then provided Beryar with documents relating to the Development, including the following:
 - a. A copy of the Agreement for Deed for purchase of a lot in the Development, which consists of the subdivision of agricultural parcels of over five thousand square meters each. The seller is described as "Rancho Vistas Nicoya Sociedad Anonima, Costa Rican corporation number 3-101-471689, represented by Mitchell Fred Cohen ("Seller"), c/o: Pacific Land Sales of Costa Rica, LLC, with an address of 4613 N. University Dr. #456, Coral Springs, FL 33067."
 - b. In the Agreement for Deed, under the heading "Reservation Deposit and Down Payment" it provides that the purchaser is under no obligation unless and until he/she has signed the Agreement for Deed and returned it to the Seller, together with the deposit. The deposit is to be made payable to PLSCR, where it shall be placed in an escrow account maintained at the Bank of America.
 - c. A chart of the Development showing the 21 lots, and a 2-page document providing a detailed description of each.
 - d. [REDACTED] also provided a list of the lots, with those still available for purchase (10) circled.
17. On June 12, 2009, Cohen responded to Beryar's pretext inquiry of June 10, 2009 by both phone call and email. In his email, Cohen advised as follows:

"My name is Mitchell Cohen, owner/developer of Rancho Pacifico Estates in Costa Rica. Please review the information that I'm sending you in this email. Our home sites start at only \$50,000 for 2-4 acres

Of [sic] land. You can finance your purchase through Stewart Title of Costa Rica. We also offer developer financing. In sixty days there will be a price increase on all the lots due to the fact that will [sic] begin The [sic] main road that will go through the entire project...."
18. On June 12, 2009, Beryar sent another pretext email to Cohen, requesting information about where a deposit should be paid, and whether or not a contract of purchase and sale would need to be signed in Costa Rica.
19. On June 12, 2009, [REDACTED] responded to Beryar's June 12, 2009 email to Cohen, advising as follows:
 - a. A contract for purchase of land in Costa Rica can be signed in British Columbia.
 - b. The deposit must be made payable to PLSCR, whose escrow account is maintained at the Bank of America.

20. On June 18, 2009, Beryar called both Cohen and [REDACTED] to advise that he was a member of the Staff and that the Development was being marketed without a disclosure statement, contrary to the provisions of the *Act*.
21. On June 24, 2009, Cohen wrote Beryar an email asking what was involved in the filing of a disclosure statement. Beryar referred Cohen to Staff member Peter Grimmert, Manager, Real Estate ("Grimmett").
22. On June 25, 2009, Grimmert spoke with Cohen and referred him to the Superintendent's website and explained the requirements of the *Act* to him.
23. On June 27, 2009, Beryar called Cohen, asking that he cease marketing the Development in British Columbia. That call has not been returned.
24. On July 3, 2009, Beryar wrote Cohen asking whether he would be prepared to enter an undertaking not to market the Development in British Columbia. To date, that email has gone unanswered.
25. On July 12, 2009, Beryar's alias (which he had used to make pretext inquiries in respect of the Development) received an email from mcohen@pacificlandsales.com. That email reads, in part, as follows:

"You're receiving this email because of your relationship with Pacific Land Sales of Costa Rica, LLC...Own a Piece of Paradise and Be Happy! Buildable Homesites Starting at Only \$50,000."

The email directs the reader to the following websites: www.PacificLandSales.com and www.CostaRica.PacificLandSales.com.
26. On July 13, 2009, Beryar's alias received yet another email from mcohen@pacificlandsales.com. The email advertised the Development and invited the reader to watch an informative video. The email also provided a link to PLSCR's website.
27. On August 14, 2009 Staff confirmed with the BC Securities Commission that no prospectus has been filed by PLSCR, or Cohen, or anyone else, in respect of the Development.
28. I agree with Staff that scheduling of witnesses, counsel and the hearing officer would likely result in a six month delay in the ability to hold a hearing into this matter.
29. The length of time required to hold a hearing will likely result in the continued non-compliance of the *Act* by PLSCR and Cohen which I find to be detrimental to the public interest.
30. 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 PACIFIC LAND SALES OF COSTA RICA LLC, and MITCHELL FRED COHEN have marketed development units in Rancho Pacifico Estates in British Columbia without filing a disclosure statement as required by sections 2, 3 and 14 of the *Act*.

AND WHEREAS information provided to Staff indicates that any deposits received by PACIFIC LAND SALES OF COSTA RICA LLC, and MITCHELL FRED COHEN in respect of Rancho Pacifico Estates are not being placed in a trust account within British Columbia as required by section 18 of the *Act*.

AND WHEREAS PACIFIC LAND SALES OF COSTA RICA LLC, and MITCHELL FRED COHEN 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 PACIFIC LAND SALES OF COSTA RICA LLC, and MITCHELL FRED COHEN 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. Of particular concern is the ongoing effort to market development units in the Development, to a British Columbia resident, even after being advised that such marketing is in contravention of the *Act*. Of further concern is the unwillingness of Pacific Land Sales of Costa Rica LLC and Mitchell Fred Cohen to enter into an undertaking not to market, despite being asked to do so. 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*.

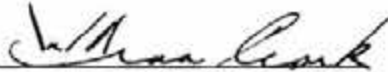
I CONSIDER it in the public interest to make the following Order pursuant to sections 30(1) (a) and 32(1) of the *Act*.

I THEREFORE MAKE the following Order:

1. That PACIFIC LAND SALES OF COSTA RICA LLC, and MITCHELL FRED COHEN shall cease and refrain from marketing in British Columbia any and all development units in the development known as Rancho Pacifico Estates, located in the Costa Rica.

TAKE NOTICE that PACIFIC LAND SALES OF COSTA RICA LLC, and MITCHELL FRED COHEN 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 21st day of August, 2009.


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

TO: Mitchell Fred Cohen
[REDACTED]
[REDACTED]
Florida [REDACTED]

Pacific Land Sales of Costa Rica LLC
c/o Filings Inc.
3732 N.W. 16th Street
Fort Lauderdale, Florida 33311-4132

4613 N. University Drive, #456
Coral Springs, Florida 33067