



IN THE MATTER OF THE REAL ESTATE DEVELOPMENT MARKETING ACT,
S.B.C. 2004, c.41

LOCAL 1661 BUILDING INC.

-AND-

JEFFREY KARL WIEGEL

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 Legislation

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;

(d) 2 or more cooperative interests in a cooperative association;

...

"**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.

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.

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. The Superintendent's Policy Statement 1 sets out the form and content required by the Superintendent for disclosure statements filed in respect of development property consisting of five or more strata lots contained in a strata plan.
- 4. The Superintendent's Policy Statements 5 and 6 allow a developer who has 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.

The Development

- 5. Local 1661 Building Inc. ("Local 1661") was incorporated in British Columbia on August 21, 2007. Local 1661's registered and records office is located at 200 – 5611 Cooney Road, Richmond. Jeffrey K. Wiegel ("Wiegel") is the sole director and officer of Local 1661.
- 6. Streamline Properties Inc. ("Streamline") was incorporated in British Columbia on June 22, 2001. Streamline's registered and records office is located at 200 – 5611 Cooney Road, Richmond. Wiegel is the sole director and officer of Streamline.
- 7. Local 1661 is the named developer of a development located at 1661 East 2nd Avenue, Vancouver, British Columbia known as The Local (the "Development").

8. On June 2, 2010, Local 1661 filed a disclosure statement in respect of the Development (the "Disclosure Statement"). The Disclosure Statement, which was filed pursuant to the Superintendent's Policy Statements 5 and 6, includes the following information:
 - (a) The Development will consist of 22 strata lots.
 - (b) The Developer's real estate agent is Key Marketing Inc.
 - (c) Local 1661 anticipated that construction of the Development would commence on or before June 10, 2010 and would be substantially complete by March 31, 2011, but Local 1661 reserved the right to extend the estimated completion to September 30, 2011.
 - (d) Local 1661 had applied to the City of Vancouver for the required permits to proceed with development as proposed under Permit Number DE413786 on March 30, 2010.
 - (e) Local 1661 "had been provided with an offer of construction financing, for sufficient funds to complete the construction of the Development, by G&F Financial Group. The offer of construction financing sets out certain customary conditions to be met by [Local 1661], and [Local 1661] is currently working to meet them."
9. Neither a new disclosure statement, nor any amendment to the Disclosure Statement, has ever been filed with the Superintendent.
10. As the Disclosure Statement was filed on June 2, 2010, and in the absence of an amendment disclosing the existence of a building permit and satisfactory financing commitment, all marketing of the Development should have ceased as of March 2, 2011. Staff advised Local 1661 and Wiegel of the aforementioned cease marketing date in a letter dated June 15, 2010 acknowledging receipt of the Disclosure Statement
11. On February 25, 2011 and March 8, 2011, staff of the Superintendent ("Staff") wrote to Wiegel advising him that in the absence of an amendment to the Disclosure Statement, all marketing of the Development must cease as of March 2, 2011. Staff further requested a written undertaking confirming that marketing had ceased. No response was ever received and no undertaking was ever provided.
12. Streamline is described on its website (www.streamlinegroup.ca) as "a Vancouver based developer specializing in the creation of boutique, environmentally friendly buildings using structured private investments." The Development is advertised as one of Streamline's current projects.

13. On March 30, 2011 Scott Wallace ("Wallace"), a member of the Superintendent's staff ("Staff"), reviewed Streamline's website at www.streamlinegroup.ca, which describes ██████ K█████ ("K█████") as Streamline's general manager. Through Streamline's website, Wallace, under pretext, requested additional information about the Development.
14. On April 27, 2011, K█████ contacted Wallace by telephone about the Development, advising as follows:
 - (a) "...what we in essence do is allow people to lend the development company for that project money for the purpose of securing an option to receive a discount on the, on the purchase price of a unit. So what is, what's different is with a real estate transaction you would be basically making a deposit where those funds are placed in a real estate company's trust account for a year and a bit, whereas this is participating with the developer. So it's actually it is a loan to the company basically, and it's secured by an option on a unit at a reduced price..."
15. On May 18, 2011, Wallace, under pretext, met with K█████ at Streamline's offices to discuss the Development. At that time, K█████ advised as follows:
 - (a) Local 1661's sole shareholder is Wiegell.
 - (b) Rather than undertake presales, which banks typically require before agreeing to a construction loan, they had decided to borrow 50% of the money required to develop the property from private investors. This allows them to sell the units without the pressure of having to satisfy the bank that a certain number of sales have been made.
 - (c) There are two types of sales: "pure sales", where you actually contract to buy a unit for a set price, and sale by way of "promissory note".
 - (d) Units in the Development could not be sold as "pure sales" at that time as the disclosure statement was in the process of being updated.
 - (e) Sale by "promissory note" was possible, however. In this type of sale, an investor lends money to the developer for development of the property. In exchange, the investor gets the right to a specific unit at a pre-set wholesale cost. A "founder's agreement" is signed, explaining the purpose of the loan, and the loan is secured by the promissory note and the investor's right to acquire the unit. Additionally, a contract of purchase and sale for the unit is signed. If the investor wants to keep the unit they can. However, if they want to take their money out of the project, they can enter into an assignment which allows Local 1661 to sell the unit.

- (f) As of May 2011, a number of units had been sold to investors in this manner.
- (g) K█████ provided Wallace with an information package which included the following:
 - (i) Promissory Note.
 - (ii) Local 1661 "Founders Agreement", to be signed by the lender/purchaser.

This agreement includes the following term:

"I will be entering into a purchase agreement for a specific unit in the development as offered by the project's Disclosure Statement dated May 28, 2010. I will also execute and [sic] Assignment Agreement in respect of this unit for the Development company to enter into third party sales to the public, at a price not less than stipulated. The Assignment amount will be paid to the Lender upon the completion of the sale of the unit."

- (iii) Offer to Purchase and Agreement of Purchase and Sale, which is different from the Agreement of Purchase and Sale attached to the Disclosure Statement. The terms of the former include the following:

"I/WE THE ABOVE PURCHASER(S) HEREBY OFFER(S) to purchase Strata Lot ____ (the "Strata Lot") as more specifically described in the draft strata plan (the "Draft Plan") attached as an exhibit to the Disclosure Statement...and also described as Suite _____, 1661 East Second Avenue, Vancouver BC at the purchase price and on the terms and conditions set out in this Purchase Agreement..."

....

The Purchaser will make payment directly to Local 1661 Building Inc. (the "Vendor"), being a partial payment of the Purchase Price.;

\$150,000

..."

- (iv) Assignment of Agreement of Purchase and Sale which includes the following terms:

"I/WE HEREBY ASSIGN our Agreement of Purchase and Sale for purchase of Strata Lot _____ (the "Strata Lot") also described as Suite _____ 1661 East Second Avenue, Vancouver, BC, to the Vendor [Local 1661] on the terms and conditions set out in this Assignment Agreement."

16. On both March 4, 2011 and May 18, 2011, Wallace attended 1661 East 2nd Avenue and took pictures of the Development. On each occasion he observed a sign reading "We are now selling our 22 homes!"
17. I agree with Staff that scheduling of witnesses, counsel and the hearing officer would likely result in a delay of at least three months 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 Local 1661 and Wiegel, 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 Local 1661, and its director and officer Wiegel:

- (a) have, as recently as May 2011, marketed units in the Development by offering investors an "Offer to Purchase and Agreement of Purchase and Sale" for a specific unit in exchange for a loan;
- (b) have marketed units in the Development 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 the Disclosure Statement, disclosing the receipt of a building permit and the existence of a satisfactory financing commitment;
- (c) continue to advertise units in the Development as being "for sale", both on Streamline's website and at the Development itself well past the 9-month early marketing period contemplated by the Superintendent's Policy Statements 5 and 6; and
- (d) have refused to provide an undertaking to cease marketing when requested to do so by Staff.

I AM THEREFORE of the opinion that Local 1661 and its director 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 Local 1661 and Wiegel shall cease and refrain from marketing any and all development units in the Development located at 1661 East 2nd Avenue, Vancouver, BC.

Issued this 3rd day of August
at Surrey, British Columbia



Carolyn Rogers Superintendent of Real Estate
Province of British Columbia

TO: Local 1661 Building Inc.
200-- 5611 Cooney Road
Richmond, BC V6X 3J6

Jeffrey Karl Wiegel

