

REDMA Strata Assignments FAQs (Frequently Asked Questions)

Questions from Developers

1. Q: What legislation sets out a developer's reporting obligations regarding a purchaser's assignment of a purchase and sale agreement for a strata lot marketed by a developer?

A: Part 2.1 [Assignment Reporting Requirements] of the *Real Estate Development Marketing Act* (the "Act") and Part 3.1 [Assignment Reporting] of the Real Estate Development Marketing Regulation (the "Regulation"). The Act and the Regulation are available at www.bclaws.ca.

2. Q: What is an assignment?

A: An "assignment" means a transfer of some or all of the rights, obligations and benefits under a purchase agreement made in respect of a strata lot in a development property, whether the transfer is made by the purchaser under the purchase agreement to another person or is a subsequent transfer. See section 20.1 of the Act.

3. Q: Why is a developer required to collect and report information about assignments?

A: To support compliance with tax laws and inform the development of housing policy.

4. Q: What type of development property has assignment reporting obligations?

A: Any of five or more residential strata lots in a stratified building in British Columbia that are marketed for sale or for lease with a term longer than three years.

5. Q: Do assignment reporting obligations apply to bare land strata lots or development property that does not consist of strata lots?

A: No.

6. Q: Where can a developer obtain more information about disclosure statement requirements that inform purchasers about assignment reporting?

A: Policy Statement 16 issued by the Superintendent of Real Estate. Policy Statements 1, 5, 6, 14 and 15 issued by the Superintendent also contain relevant information on the required form and content for a disclosure statement by a developer marketing residential strata lots in a stratified building. These Policy Statements are available on our website at www.gov.bc.ca/osre.

7. Q: Is a developer required to attach its form(s) of purchase agreement as an exhibit to its disclosure statement if the developer is marketing residential strata lots in a stratified building?

A: Yes. See sections 4 and 5 of Policy Statement 16 and section 4 of Policy Statement 14, which set out this disclosure requirement. See also FAQ No. 6 above.

8. Q: If a developer markets residential strata lots in a stratified building but does not permit an assignment of any purchase agreement, does the developer still have to disclose information regarding whether assignments are permitted in the developer's disclosure statement?

A: Yes. See section 5 of Policy Statement 16 and section 4 of Policy Statement 14, which set out this disclosure requirement. See also FAQ No. 6 above.

9. Q: What obligations does a developer have if a developer permits an assignment of a purchase agreement?

A: A developer that permits an assignment of a purchase agreement must comply with disclosure obligations to purchasers under the Act, the Regulation and Policy Statement 16. A developer must also to collect personal information about the identity and contact information of the purchaser and assignee, a copy of the assignment agreement, and other information. The developer must then report the collected information and records. See Part 2.1 of the Act.

10. Q: To whom must a developer report the information and records it collects about assignments of purchase agreements?

A: The administrator designated under the *Property Transfer Tax Act*. For more information, see <https://www2.gov.bc.ca/gov/content/taxes/property-taxes>.

11. Q: How does a developer report the information and records it collects about assignments of purchase agreements?

A: The information is reported online through MyLTSA at the Land Title and Survey Authority (www.myltsa.ca), and made available to the Ministry of Finance, Property Taxation Branch (<https://www2.gov.bc.ca/gov/content/taxes/property-taxes>). See section 20.4 of the Act.

12. Q: Are there restrictions on a developer's use of the information and records it collects about assignments of purchase agreements?

A: Yes. There are privacy provisions, which prohibit the use or disclosure of the information except for permissible purposes specified in section 20.5 of the Act [Confidentiality].

13. Q: Is a developer required to collect and report information and records from parties to a second or subsequent assignment of a purchase agreement for a strata unit?

A: Yes. The Act applies to an "assignment", which includes second or subsequent assignments. See FAQ No. 2 above, and section 20.1 of the Act.

14. Q: When must a developer amend its existing disclosure statement for marketing residential strata lots in buildings in British Columbia to include the additional disclosure about strata assignments described in Policy Statement 16?

A: Promptly as of January 1, 2019. For example, an amendment may be filed on or before January 1, 2019 that provides disclosure effective as of January 1, 2019. Alternatively, if it is not possible to file an amendment on or before January 1, 2019, an amendment that provides disclosure effective as of January 1, 2019 may be filed as soon as possible after January 1, 2019.

15. Q: When must a developer include in any new disclosure statement for marketing residential strata lots in buildings in British Columbia the additional disclosure about strata assignments described in Policy Statement 16?

A: At the time of filing any new disclosure statement on or after January 1, 2019.

16. Q: Do the Act and Policy Statement 16 apply to marketable development properties?

A: Yes. The Act and Policy Statement 16 apply to a developer in order to be able to "market" a development property. The term "market" means: to sell or lease; to offer to sell or lease; and to engage in any transaction or other activity that will or is likely to lead to a sale or lease.

17. Do the Act and Policy Statement 16 apply to a development property of strata lots for which there are purchase agreements but which have not yet been conveyed to purchasers?

A: Yes. The developer still needs to market the strata lots in order to complete sales, and some initial sales might not complete in which case the affected strata lots could again be offered for sale. Purchasers who have not yet received strata lots might assign their purchase agreements and would benefit from the developer's disclosure that assignment information would be collected and reported.

18. Q: Can a developer approve a proposed assignment when the developer is no longer marketing strata lots for sale or for long term lease?

A: Developers are encouraged to seek legal advice on whether they can consent to assignments at a time when they have ceased marketing. The specific terms of the ceased marketing (e.g. a written undertaking by the developer to the Superintendent, or an order by the Superintendent), and the specific facts of any proposed assignment including the terms of the purchase agreement, would determine whether any particular assignment is legally permissible.

19. Q: How can developers prove their due diligence if they are not successful in collecting all assignment information and records regarding pre-existing purchase agreements?

A: By making reasonable efforts in accordance with section 47.2 of the Act, and by documenting their collection efforts in the event that not all assignment information and records are collectible.

20. Q: What consequences may result if a developer fails to report assignments, or fails to include in its existing or new disclosure statement information about assignment reporting?

A: The Superintendent of Real Estate has enforcement powers to require compliance and, if appropriate, require marketing to cease. Additionally, the Superintendent may hold a hearing and, if appropriate, order financial penalties for non-compliance. See Part 3 of the Act.

Questions from Purchasers

1. Q: What is an assignment?

A: An “assignment” means a transfer of some or all of the rights, obligations and benefits under a purchase agreement made in respect of a strata lot in a development property, whether the transfer is made by the purchaser under the purchase agreement to another person or is a subsequent transfer. See section 20.1 of the *Real Estate Development Marketing Act* (the “Act”). There is also a related Real Estate Development Marketing Regulation (the “Regulation”). The Act and the Regulation are available at www.bclaws.ca.

2. Q: After a purchaser has signed a purchase agreement, can the purchaser assign that agreement?

A: It depends on the specific terms of the purchase agreement that the purchaser has signed. Purchasers are encouraged to review their purchase agreement and disclosure statement and seek legal advice on whether a purchase agreement can be assigned, as well as whether any fees or other requirements apply before a developer will consent to an assignment.

3. Q: Can a purchaser assign a purchase agreement when the developer is no longer marketing strata lots for sale or for long-term lease?

A: Purchasers are encouraged to seek legal advice on whether they can assign at a time when the developer has ceased marketing. The specific terms of the ceased marketing (e.g. a written undertaking by the developer to the Superintendent, or an order by the Superintendent), and the specific facts of any proposed assignment including the terms of the purchase agreement, would determine whether any particular assignment is legally permissible.

4. Q: Can a developer ask a purchaser to pay a fee before the developer consents to a purchaser assigning its purchase agreement?

A: It depends on the terms of the purchase agreement. Purchasers are encouraged to seek legal advice on whether a developer can ask a purchaser to pay a fee for an assignment based on the terms of the purchase agreement.

5. Q: If a purchaser wants to assign a purchase agreement, what information and records is a developer required to collect from that purchaser and any assignee?

A: Personal information about the identity and contact information of the purchaser and any assignee, a copy of the assignment agreement and other information. See section 20.3 of the Act and section 10.3 of the Regulation.

6. Q: If a purchaser wants to assign a purchase agreement, is a purchaser required to provide the information described in section 20.3 of the Act to a developer?

A: Yes. A developer cannot permit an assignment of a purchase agreement unless the developer collects the required information from a purchaser and assignee beforehand. See section 20.3 of the Act.

7. Q: What does a developer do with information about assignments that it collects from purchasers and assignees?

A: A developer reports the information online through MyLTSA at the Land Title and Survey Authority (www.myltsa.ca), and the information is made available to the Ministry of Finance, Property Taxation Branch (<https://www2.gov.bc.ca/gov/content/taxes/property-taxes>). See section 20.4 of the Act.

8. Q: Are there restrictions on how a developer or the administrator under the *Property Transfer Tax Act* can use the information about assignments that is collected from purchasers and assignees?

A: Yes, there are privacy provisions with respect to how the collected information can be used. See section 20.5 of the Act.

9. Q: After a purchaser assigns a purchase agreement, is a purchaser still required to comply with the terms of that purchase agreement?

A: It depends on the terms of the purchase agreement. Purchasers are encouraged to seek legal advice on whether they retain any obligations under the purchase agreement they have assigned.

10. Q: Can the Office of the Superintendent of Real Estate provide legal advice or enforce any rights a purchaser may have to assign its purchase agreement, or provide legal advice or enforce any rights of any subsequent assignor?

A: No, the Office of the Superintendent of Real Estate (“OSRE”) is not authorized to provide legal advice or enforce any contractual rights. A purchaser and any subsequent assignor may wish to consult a lawyer, and may ask a court to determine and enforce any rights that the purchaser or assignor may have.

11. What if a developer does not fulfill its obligations to report assignment information and provide disclosure to purchasers?

A: A party (e.g. purchaser, assignee, subsequent assignor) may consult a lawyer regarding contractual or other remedies. A party may also make a complaint to OSRE at <https://www2.gov.bc.ca/gov/content/housing-tenancy/real-estate-bc/real-estate-development-marketing>.