BCFSA BC Financial Services Authority

Real Estate Development Marketing Act

Policy Statement 3

DISCLOSURE STATEMENT REQUIREMENTS FOR DEVELOPMENT PROPERTY CONSISTING OF FIVE OR MORE SUBDIVISION LOTS (Non-Stratified Building Lots)

EFFECTIVE OCTOBER 1, 2014

1. Interpretation

In this Policy Statement:

(a) Act means the Real Estate Development Marketing Act; and
(b) unless the context otherwise requires, other words and expressions have the meanings given to them in the Act.

2. Disclosure Statement Filing and Distribution

Unless exempted by the regulations, section 14 of the Act requires developers to file a disclosure statement with the superintendent before marketing a development unit in development property. The 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 rescission rights; and
(d) be signed as required by the regulations.

The form and content required by the superintendent for disclosure statements filed in relation to development property consisting of five or more subdivision lots are set out in this Policy Statement. The onus is strictly on the developer to disclose plainly all material facts, including a fact or proposal that could reasonably be expected to affect the value, price, or use of the development property or a development unit.

Developers may market a development unit immediately after filing a disclosure statement that is prepared in accordance with section 14(2) of the Act. However, before entering into a purchase agreement, the developer must provide a copy of the disclosure statement to the purchaser, give the purchaser a reasonable opportunity to read the disclosure statement and obtain a written statement from the purchaser acknowledging that the purchaser had an opportunity to read it.

In accordance with section 15(3) of the Act, and the Electronic Transactions Act, a developer may provide a copy of a disclosure statement by electronic means but only with the written consent of the purchaser.

The Superintendent of Real Estate issued this Policy Statement pursuant to the Real Estate Development Marketing Act. Effective August 1, 2021, the Superintendent of Real Estate operates within the BC Financial Services Authority.

NOTE: *Marketing includes engaging in any transaction or other activity that will or is likely to lead to a sale or lease. It is the superintendent's view that marketing includes the use of "letters of intent", "priority lists", "reservation agreements", "conversion rights", "rights of first refusal", or any similar agreement that carries with it the right to acquire a subdivision lot. Accordingly, developers should file a disclosure statement before using any such agreement or receiving any deposit or other consideration.*

Developers may advertise a proposed development and communicate with potential purchasers so long as potential purchasers ***do not*** *gain the impression that they have a right to acquire a subdivision lot. To avoid confusion, it is recommended that every advertisement contain the developers' name and address, the telephone number of at least one representative from whom information and a copy of the disclosure statement (when available) may be obtained, and a* ***prominent disclaimer*** *stating that the advertisement is* ***not*** *an offering for sale and that such an offering can only be made after filing a disclosure statement.*

3. Form and Content of the Disclosure Statement

Form 3 sets out the form and content required under section 14 of the Act for disclosure statements filed in relation to subdivision lots contained in a subdivision plan. **The information contained in each disclosure statement must be set out in the order contained in Form 3. If a section does not apply to a particular development property, the section must state "not applicable".** Sections and subsections may be added by a developer, as required, to meet the developer's obligation to disclose plainly all material facts.

NOTE: *If a change occurs that would have the effect of rendering a statement false or misleading or that brings into being a fact or proposal which should have been disclosed if the fact or proposal had existed at the time of filing, section 16 of the Act requires developers to file an amendment to the disclosure statement. If the change is in respect of the identity of the developer or the appointment of a receiver, liquidator, trustee in bankruptcy or other person, in respect of the original developer, then the new developer, who has the right to acquire or dispose of the development property, must file its own new disclosure statement.*

4. Enforcement

The superintendent's staff will review disclosure statements to determine whether they are in the form and include the contents required by this Policy Statement. In addition, the superintendent's staff will conduct audits of selected disclosure statements to determine whether they contain any misrepresentations, or otherwise fail to comply with the requirements of the Act.

Where it is found that a disclosure statement contains a misrepresentation, or otherwise fails to comply with the requirements of the Act, a recommendation may be made to the superintendent to issue a cease marketing order. Before issuing a cease marketing order, the superintendent will provide a developer with an opportunity to be heard, unless the length of time required to complete an investigation or to hold a hearing is detrimental to the public interest, in which case an urgent order may be made.

After a hearing, if a developer is found to have filed a disclosure statement containing a misrepresentation, or to have otherwise failed to comply with the requirements of the Act, the superintendent may order the developer, and its directors, to pay an administrative penalty in the amount of, in the case of a corporation, not more than $500,000 or, in the case of an individual, not more than $250,000. The superintendent may also order the developer to pay enforcement expenses or choose to recommend prosecution under section 39 of the Act.

5. Transitional Provisions – Filings Prior to October 1, 2014

Despite section 2 above, a disclosure statement or prospectus filed under the Act prior to October 1, 2014, including any disclosure statement or prospectus submitted under the now repealed Real Estate Act and deemed filed under the Act by virtue of section 47 of the Act, continues to satisfy the form and content requirements for a disclosure statement filed under the Act if the substantive content of the disclosure statement or prospectus filed prior to October 1, 2014 complies with the superintendent's applicable Policy Statements effective immediately prior to October 1, 2014 and does not otherwise contain a misrepresentation.

6. Filings On or After October 1, 2014

Despite section 5 above, if an amendment or new disclosure statement is filed on or after October 1, 2014, to correct a non-compliant disclosure statement in accordance with section 16 of the Act or to otherwise revise the developer's disclosure, the amended or new disclosure statement must be in the form and include the content set out in Form 3.

FORM 3

NOTE: *If an offering relates to a development property that has not yet been completed, please also include the additional disclosure required under the Superintendent of Real Estate's Policy Statement 14 (Development Property Not Yet Completed).*

If an offering relates to real estate securities, please also include the additional disclosure required under the Superintendent of Real Estate's Policy Statement 13 (Real Estate Securities).

COVER PAGE DISCLOSURE

The following information must be included on the cover page of the disclosure statement:

- State the full legal name, address for service in British Columbia, and business address of the developer.
- State the name and business address in British Columbia of the real estate brokerage, if any, acting on behalf of the developer or describe whom the developer will use to market the subdivision lots. If the developer intends to use its own employees to market the subdivision lots, disclose that the employees are not licensed under the Real Estate Services Act and are not acting on behalf of the purchaser.
- Specify the date of the disclosure statement.
- Display the following disclaimer **in conspicuous type**:

  "This Disclosure Statement has been filed with the Superintendent of Real Estate, but neither the Superintendent, nor any other authority of the government of the Province of British Columbia, has determined the merits of any statement contained in the Disclosure Statement, or whether the Disclosure Statement contains a misrepresentation or otherwise fails to comply with the requirements of the Real Estate Development Marketing Act. It is the responsibility of the developer to disclose plainly all material facts, without misrepresentation."

- In the case of a consolidated disclosure statement, note **in conspicuous type**:

  "This is a Consolidated Disclosure Statement filed pursuant to the Real Estate Development Marketing Act."

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SECOND PAGE DISCLOSURE (CANCELLATION RIGHTS)

Display the following information about a purchaser's right to terminate a contract, **in conspicuous type**, on the second page of the disclosure statement:

RIGHT OF RESCISSION

Under section 21 of the Real Estate Development Marketing Act, the purchaser or lessee of a development unit may rescind (cancel) the contract of purchase and sale or contract to lease by serving written notice on the developer or the developer's brokerage, within 7 days after the later of the date the contract was entered into or the date the purchaser or lessee received a copy of this Disclosure Statement.

The rescission notice may be served by delivering or sending by registered mail, a signed copy of the notice to

(a) the developer at the address shown in the disclosure statement received by the purchaser,
(b) the developer at the address shown in the purchaser's purchase agreement,
(c) the developer's brokerage, if any, at the address shown in the disclosure statement received by the purchaser, or
(d) the developer's brokerage, if any, at the address shown in the purchaser's purchase agreement.

The developer must promptly place purchasers' deposits with a brokerage, lawyer or notary public who must place the deposits in a trust account in a savings institution in British Columbia. If a purchaser rescinds their purchase agreement in accordance with the Act and regulations, the developer or the developer's trustee must promptly return the deposit to the purchaser.

If the developer is offering the subdivision lots pursuant to Policy Statement 5 or 6, **insert the rescission rights contained in those Policy Statements immediately after the statutory right of rescission.**

Describe any additional rescission rights applicable to the offering.

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- Insert a table listing the contents of the disclosure statement.

1 The Developer

1.1 State the jurisdiction, date of incorporation, and incorporation number of the developer.

1.2 State whether the developer was incorporated specifically for the purpose of developing the subdivision lots and whether the developer has any assets other than the development property itself.

1.3 State the address of the developer's registered and records office.

1.4 List the names of all directors required by section 14 of the Act and section 9 of the regulations to sign the disclosure statement.

NOTE: *If the developer is not incorporated, amend this item, as required, to disclose plainly all material facts about the developer. If the identity of the developer marketing the subdivision lots changes, the new developer must file its own disclosure statement.*

1.5 (1) Disclose, to the best of the developer's knowledge, the nature and extent of the experience that the developer and its officers and directors have in the development industry. This disclosure should include the number of years of experience of the developer and its officers and directors, and the types of previous development properties.

(2) Disclose, to the best of the developer's knowledge, whether the developer, any principal holder of the developer, or any director or officer of the developer or principal holder, within the ten years before the date of the developer's declaration attached to the disclosure statement, has been subject to any penalties or sanctions imposed by a court or regulatory authority, relating to the sale, lease, promotion, or management of real estate or securities, or to lending money secured by a mortgage of land, or to arranging, administering or dealing in mortgages of land, or to theft or fraud, and describe any penalties or sanctions imposed.

(3) Disclose, to the best of the developer's knowledge, whether the developer, any principal holder of the developer, or any director or officer of the developer or principal holder, within the five years before the date of the developer's declaration attached to the disclosure statement, was declared bankrupt or made a voluntary assignment in bankruptcy, made a proposal under any legislation relating to bankruptcy or insolvency or has been subject to or instituted any proceedings, arrangement, or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold the assets of that person.

(4) Disclose, to the best of the developer's knowledge, whether any director, officer or principal holder of the developer, or any director or officer of the principal holder, within the five years prior to the date of the developer's declaration attached to the disclosure statement, has been a director, officer or principal holder of any other developer that, while that person was acting in that capacity, that other developer

(a) was subject to any penalties or sanctions imposed by a court or regulatory authority relating to the sale, lease, promotion, or management of real estate or securities, or to lending money secured by a mortgage of land, or to arranging, administering or dealing in mortgages of land, or to theft or fraud, and describe any penalties or sanctions imposed, or

(b) was declared bankrupt or made a voluntary assignment in bankruptcy, made a proposal under any legislation relating to bankruptcy or insolvency or been subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets.

1.6 Describe any existing or potential conflicts of interest among the developer, manager, any directors, officers and principal holders of the developer and manager, any directors and officers of the principal holders, and any person providing goods or services to the developer, manager or holders of the development units in connection with the development which could reasonably be expected to affect the purchaser's purchase decision.

2 General Description

2.1 General Description of the Development

Describe the physical and legal form of the development property, including the total number of subdivision lots in the development, the number being marketed by the developer, and the location of the development. Attach a copy of the actual or proposed plans, showing the layout of the development and the dimensions or areas of the subdivision lots, as an Exhibit.

If the subdivision lots are part of a larger development plan controlled by the developer or a related entity, describe the overall development plan and the arrangements, if any, for amalgamation or the sharing of costs or facilities.

2.2 Permitted Use

State the zoning applicable to the development property and describe the permissible uses of the development property intended by the developer. State whether any subdivision lot may be used for commercial or other purposes not ancillary to residential purposes.

State whether there may be other permissible uses of the development property beyond those intended by the developer. Developers are not required to disclose all of the potential uses, however, developers must provide purchasers with information about where to obtain further information and details about zoning requirements and permissible uses. For example, the name and contact information (e.g. address, telephone, email, or website address) of the responsible municipal department must be provided.

2.3 Building Construction

Explain who is responsible for construction of any improvements on the subdivision lots and whether a building permit is required or a building scheme exists.

3 Servicing Information

3.1 Utilities and Services

Disclose particulars of the following services, including whether they are available, the required permits, who is responsible for obtaining the permits and installing the services, whether those permits have been obtained and the expected date of completion for the servicing:

(i) Water;
(ii) Electricity;
(iii) Sewerage;
(iv) Natural gas;
(v) Fire protection;
(vi) Telephone;

(vii) Access.

4 Title and Legal Matters

4.1 Legal Description

State the legal description of the development property.

4.2 Ownership

State the name of the registered owner of the development property. If the developer is not the registered owner, describe the legal arrangements that enable the developer to market the subdivision lots.

4.3 Existing Encumbrances and Legal Notations

List and describe briefly all encumbrances and legal notations, including any building scheme, registered against title to the development property or a development unit. Explain the arrangements by which financial charges will be removed from title. Attach a copy of any encumbrance that significantly restricts use or occupation of any subdivision lot as an Exhibit.

NOTE: *Ordinarily, general encumbrances, such as easements for the supply of hydro, telephone or other services, do not significantly restrict the use and occupation of subdivision lots. Consequently, it is only necessary to provide a brief description of such encumbrances. In contrast, encumbrances such as restrictive covenants that impose building schemes or age, use or occupancy restrictions are significant. Accordingly, in addition to providing a brief description, a copy of the encumbrance should be attached as an Exhibit. It is permissible to attach of copy of the relevant pages of the encumbrance if the encumbrance is lengthy.*

4.4 Proposed Encumbrances

List and describe briefly all encumbrances that the developer proposes to register against title. Attach a copy of any encumbrance that will significantly restrict use or occupation of any subdivision lot as an Exhibit.

NOTE: *See previous NOTE.*

4.5 Outstanding or Contingent Litigation or Liabilities

Describe any outstanding or contingent litigation or liabilities in respect of the development property or against the developer that may affect the subdivision lots or the subdivision lot owners.

4.6 Environmental Matters

Disclose all material facts related to flooding, the condition of soil and subsoil, or other environmental matters affecting the development property.

5 Construction and Warranties

5.1 Construction Dates

For the purposes of this section:

commencement of construction means the date of commencement of excavation in respect of construction of an improvement that will become part of a development unit within the development property, and where there is no excavation it means the date of commencement of construction of an improvement that will become part of a development unit within the development property;

completion of construction means the date the subdivision plan is deposited in a land title office; and

estimated date range means a date range, not exceeding three months, for the commencement of construction or the completion of construction.

State either the actual date of commencement of construction if it has already occurred or an estimated date range of commencement of construction if it has not already occurred.

State either the actual date of completion of construction if it has already occurred or an estimated date range of completion of construction if it has not already occurred.

5.2 Warranties

Describe any construction or other warranties.

6 Approvals and Finances

6.1 Development Approval

State the facts which establish that the developer has met the preliminary requirements or approvals in Division 2 of Part 2 of the Act.

NOTE: *Under section 4 of the Act, a developer must not market a subdivision lot unless a subdivision plan has been deposited in a land title office or an approving officer has given preliminary layout approval in relation to the subdivision plan. Section 10 of the Act permits developers to market a development unit before complying with section 4 if the appropriate municipal or other government authority has approved in principle creation of the subdivision plan and the superintendent has given permission to the early marketing. Policy Statement 5 sets out the circumstances, including the applicable terms and conditions, in which the superintendent's permission is deemed to be granted. Developers who have not yet deposited a subdivision plan or obtained preliminary layout approval should review Policy Statement 5 before completing this section.*

6.2 Construction Financing

Describe the financing the developer has arranged or proposes to arrange to create and service the subdivision lots.

NOTE: *Under section 12 of the Act, a developer must not market a subdivision lot unless the developer has made adequate arrangements to ensure payment of the cost of utilities and other services associated with the development unit. Policy Statement 6 sets out the circumstances in which arrangements made under section 12 are deemed adequate for the purpose of installing utilities and services. Developers should review Policy Statement 6 before completing this section.*

7 Miscellaneous

7.1 Deposits

State the name of the trustee who will be holding purchasers' deposits and that all money received from a purchaser will be held in trust by that person in the manner required by the Real Estate Development Marketing Act. If the developer has entered into a deposit protection contract, describe the subject matter and terms of the insurance, explain that the developer may use the deposit money to construct and market the development and state the aggregate and per claim limits of the insurance. In accordance with section 10 of the regulations, state the name and business address of the insurer, the name of the developer who entered into the deposit protection contract and the date on which the insurance takes effect.

NOTE: *Under section 18 of the Act, deposits must be held in trust by a real estate brokerage, lawyer or notary public, unless the developer has entered into a deposit protection contract. Ordinarily, deposits are held in trust or the deposit insurance contract remains in effect until the subdivision plan is deposited in a land title office, any premises purchased or leased are capable of being lawfully occupied and an instrument evidencing the interest of the purchaser or lessee in the subdivision lot has been registered in the appropriate land title office.*

7.2 Purchase Agreement

State whether the developer intends to use a particular form of purchase agreement.

NOTE: *Under Policy Statements 5 and 6, the developer must attach a copy of its purchase agreement that contains the terms set out in the Policy Statements as an Exhibit.*

7.3 Developer's Commitments

Describe any commitment made by the developer that will be met after completion of the sale or lease and explain whether the developer has posted any security to meet the commitment. In **conspicuous type**, explain any risks associated with the developer's commitment.

7.4 Other Material Facts

Disclose any other fact that affects, or could reasonably be expected to affect, the market price, value or use of a subdivision lot or the development property.

NOTE: *Material facts include material contracts entered into or proposed to be entered into by the developer, or a person associated with the developer, that impose obligations or restrictions on purchasers. Key terms of material contracts should be summarized in the disclosure statement with the contract attached as an Exhibit.*

Signatures

- Deemed Reliance

  State the following **in conspicuous type**:

  Section 22 of the Real Estate Development Marketing Act provides that every purchaser who is entitled to receive this Disclosure Statement is deemed to have relied on any false or misleading statement of a material fact contained in this Disclosure Statement, if any, and any omission to state a material fact. The developer, its directors and any person who has signed or authorized the filing of this Disclosure Statement are liable to compensate the purchaser for any misrepresentation, subject to any defences available under section 22 of the Act.

- Declaration

  State the following declaration, **in conspicuous type**, before the signatures of all persons who are required to sign the disclosure statement by section 14(2)(d) of the Act and section 9 of the regulations:

  The foregoing statements disclose, without misrepresentation, all material facts relating to the Development referred to above, as required by the Real Estate Development Marketing Act of British Columbia, as of _____.

NOTE: *Disclosure statements must be signed by the developer(s). Additionally, if the developer is a corporation(s), all directors of the developer(s) must sign the disclosure statement, unless exempted by the superintendent. At least one director of each corporate developer will have to sign twice, once as the authorized signatory of the corporation and once in his or her personal capacity. Policy Statement 7 sets out additional information on signing disclosure statements.*

- Solicitor's Certificate

  The Disclosure Statement must be accompanied by a certificate from a solicitor certifying that the contents of items 4.1, 4.2 and 4.3 are correct.

NOTE: *It is not necessary to attach the solicitor's certificate to the disclosure statement.*

Exhibits

- Attach a copy of all Exhibits to the disclosure statement.