

Real Estate Development Marketing Act

Policy Statement 12

FORM AND CONTENT – TRANSITIONAL

EFFECTIVE JANUARY 1, 2005

1. Interpretation

In this Policy Statement:

- (a) former Act means the Real Estate Act, R.S.B.C. 1996, c. 397;
- (b) new Act means the Real Estate Development Marketing Act, S.B.C. 2004, c.41;
- (c) new purchaser means a purchaser who has not accrued a right to rescind; and
- (d) unless the context otherwise requires, other words and expressions have the meanings given to them in the new Act.

2. Section 47 of the new Act deems a prospectus or disclosure statement that was accepted for filing by the superintendent under the former Act before its repeal to be a disclosure statement filed under the new Act. Under subsection 47(2) of the new Act, the statutory rescission right that accrued to a person under section 78 of the former Act continues to apply to that person despite the repeal of the former Act.

3. Section 14 of the new 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.

4. The form and content required by the superintendent under the new Act for a prospectus or disclosure statement accepted for filing under the former Act are set out in this Policy Statement.

5. The form and content of a prospectus or disclosure statement accepted for filing under the former Act satisfies the form and content requirements for a disclosure statement filed under the new Act if the following circumstances apply:

- (a) the developer has entered into a purchase agreement with a purchaser in respect of each development unit in the development property;
- (b) the substantive content of the prospectus or disclosure statement accepted for filing under the former Act does not contain a misrepresentation; and
- (c) the developer does not market a development unit to a new 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.

6. If a developer intends to market a development unit to a new purchaser after the new Act comes into force on January 1, 2005, the form and content of a prospectus or disclosure statement accepted for filing under the former Act satisfies the form and content requirements for a disclosure statement filed under the new Act if the following circumstances apply:
 - (a) the substantive content of the prospectus or disclosure statement filed under the former Act does not contain a misrepresentation;
 - (b) the only reason that the developer's prospectus or disclosure statement does not comply with the new Act is that the substance of a new purchaser's statutory rescission right under the new Act is not correctly set out;
 - (c) the developer gives each new purchaser, at the same time the developer provides that purchaser with a copy of the applicable prospectus or disclosure statement, separate written notice that
 - (i) informs the new purchaser that the substance of the purchaser's statutory rescission right set out in the prospectus or disclosure statement is not correct, and
 - (ii) sets out the substance of the new purchaser's rescission right under section 21 of the new Act; and
 - (d) the developer promptly submits to the superintendent a sample copy of the written notice it intends to give to new purchasers.

NOTE: *A reference to the former Act in a disclosure statement filed under the former Act is not considered to be a substantive misrepresentation under the new Act unless the reference affects, or could reasonably be expected to affect, the value, price or use of the development unit or development property.*

7. If a developer becomes aware that its prospectus or disclosure statement accepted for filing under the former Act does not, without misrepresentation, disclose plainly all material facts, the developer must file a new disclosure statement or an amendment to the disclosure statement as required by section 16(1)(a) of the new Act. In addition, if the developer intends to market a development unit in a new phase, the developer must first file an amendment to its disclosure statement as required by section 14(4) of the new Act.
8. If a developer is filing a new disclosure statement in the circumstances set out in section 16(2) of the new Act, the disclosure statement must be reformatted to be in the form and to include the content required by the Policy Statement that applies to the type of development unit being marketed.
9. If a developer is filing an amendment to its prospectus or disclosure statement accepted for filing under the former Act, the form and content required by the superintendent in respect of the amendment is a reformatted disclosure statement, as amended, that
 - (a) is in the form and includes the content required by the Policy Statement that applies to the type of development unit being marketed,
 - (b) clearly identifies only the substantive changes in content by red-lining, highlighting, underlining or other method of identification, and
 - (c) sets out at the top of the second page of the amendment, before the right of rescission information, the following notice:

"The right of rescission information set out below, in relation to section 21 of the Real Estate Development Marketing Act, applies **ONLY** to new purchasers who have not previously received a disclosure statement in respect of this development property. Purchasers who have previously received a prospectus or disclosure statement in respect of this development property accrued a right to rescind at that time and, pursuant to section 21(1)(b) of the Real Estate Development Marketing Act, do **NOT** have a further right to rescind. This notice does not affect any rights a purchaser may have under the purchaser's purchase agreement or at common law."

NOTE: *Reformatting changes, such as re-ordering paragraphs or amending references from the former Act to the new Act, are not considered to be substantive changes in content unless a reformatting change affects, or could reasonably be expected to affect, the value, price or use of the development unit or development property.*

10. The reformatted disclosure statement, as described in paragraph 9 of this Policy Statement, is an **amendment** to a disclosure statement and **not** a new disclosure statement. Consequently, the filing fee is \$200 and the developer must provide the reformatted disclosure statement, as described in paragraph 9 of this Policy Statement, to each purchaser who has entered into, but not completed, a purchase agreement.
11. If a developer is providing the reformatted disclosure statement, as amended, to a new purchaser, the developer may provide the new purchaser with either a clean copy of the reformatted disclosure statement that does not identify the substantive changes in content by red-lining, highlighting, underlining or other method, or with a copy that does identify those changes in that manner.