

Real Estate Development Marketing Act

Policy Statement 13

DISCLOSURE STATEMENT REQUIREMENTS FOR DEVELOPMENT PROPERTY CONSISTING OF DEVELOPMENT UNITS THAT ARE REAL ESTATE SECURITIES

EFFECTIVE JANUARY 1, 2005

1. Interpretation

In this Policy Statement:

- (a) "Securities Act" means the *Securities Act*, R.S.B.C. 1996, c.418;
- (b) "Securities Commission" means the British Columbia Securities Commission continued under Part 2 of the *Securities Act*;
- (c) "superintendent" means the person appointed as Superintendent of Real Estate under the *Real Estate Development Marketing Act*; and
- (d) unless the context otherwise requires, other words and expressions have the meanings given to them in the *Real Estate Development Marketing Act*.

2. Real Estate Securities

In some cases, the marketing of real estate development units may constitute the offering of investment contracts and, consequently, securities as defined in section 1(1) of the *Securities Act*. Generally, real estate development units will be considered as securities where they are comprised of a direct interest in real estate, typically a strata lot, together with an ancillary agreement, usually with the promoter, developer or manager, for project management combined with rental or cash flow guarantees or other financial commitments; or revenue or expense pooling; or both; where the purchaser relies significantly on the skill or expertise of another person to realize an economic return from the investment. Any offering of real estate securities by a developer must be in compliance with the *Real Estate Development Marketing Act* and the *Securities Act*. Further information on the marketing of the real estate securities is contained in this Policy Statement and BCN 45-702, Exemptive Relief for Certain Real Estate Securities, issued by the Securities Commission.

3. Exemption from the Act

If a developer of real estate securities has filed a prospectus under section 61(1) [prospectus required] of the *Securities Act* and complies with the requirements of that Act relevant to the marketing of the development unit, the developer is exempt from Part 2 [Marketing and Holding Deposits] of the *Real Estate Development Marketing Act*. In this case, the developer is not required to file a disclosure statement with the superintendent.

4. Multilateral Instrument 45-103 [Capital Raising Exemptions]

If a developer of real estate securities is relying on the offering memorandum exemption under the *Securities Act* and Part 4 of Multilateral Instrument 45-103, the form of offering memorandum required under that Instrument is the disclosure statement required under the *Real Estate Development Marketing Act* that includes the

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.

information set out in BC Form 45-906F issued by the Securities Commission. The securities information should be inserted as Part 4 of the disclosure statement, entitled Real Estate Securities Aspect of the Offering, with subsequent Parts renumbered accordingly. In this case, the offering memorandum, in the form of a disclosure statement required under the *Real Estate Development Marketing Act*, must be filed with the Securities Commission and the superintendent.

5. BC Instrument 45-512 [*Real Estate Securities*]

If a developer of real estate securities complies with the terms of BC Instrument 45-512 issued by the Securities Commission, the developer is exempt from the registration and filing requirements under sections 34(1)(a) and 61 of the *Securities Act*. In accordance with section 3(a) of the Instrument, the developer must file with the superintendent the disclosure statement required under the *Real Estate Development Marketing Act* that includes the information set out in BC Form 45-906F, excluding items 8, 9(5) and 18. The securities information should be inserted as a Part 4 of the disclosure statement, entitled Real Estate Securities Aspect of the Offering, with subsequent Parts renumbered accordingly. There is no requirement under BC Instrument 45-512 to file the disclosure statement with the Securities Commission.

6. Other Circumstances

If a developer of real estate securities intends to market development units in circumstances other than those set out in paragraphs 3, 4 and 5 of this Policy Statement, the developer must file a disclosure statement with the superintendent under the *Real Estate Development Marketing Act* that discloses all material facts in relation to the real estate aspects of the offering. In the context of real estate securities, material facts in relation to the real estate aspects of the offering will generally include the information described in items 3, 4, 5, 7, 8, 9, 11, 13 and 17 of BC Form 45-906F. The developer may disclose the information described in those items by incorporating the information into existing sections or subsections of its disclosure statement, or by adding a new Part or sections or subsections, as required to fulfil the developer's obligation to disclose plainly all material facts. If the developer chooses to include information on financial forecasts or projections in its disclosure statement, that information must be prepared in the manner described in item 15 of BC Form 45-906F. Part 3 of BCN 45-702 contains information generally applicable to the marketing of real estate securities.