BCFSA BC Financial Services Authority

Real Estate Development Marketing Act

Policy Statement 15
(Amending Policy Statements 1, 2, 3, 8, 9, 10 and 11)

DISCLOSURE STATEMENT REQUIREMENTS TO EXPLAIN THE DEVELOPER'S BACKGROUND AND CONFLICTS OF INTEREST

EFFECTIVE NOVEMBER 1, 2007

1. Interpretation

In this Policy Statement:

(a) Act means the Real Estate Development Marketing Act;
(b) principal holder means any person holding directly or indirectly more than 10% of any class of voting securities of the issuer of those securities;
(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. Disclose Background and Conflicts of Interest

for Developer, Directors, Officers and Principal Holders

The superintendent's Policy Statements 1, 2, 3, 8, 9, 10 and 11, which include Forms 1, 2, 3, 8A, 8B, 9, 10 and 11, set out the forms and content required under section 14 of the Act for disclosure statements filed in relation to development property. This Policy Statement 15 amends each of those Policy Statements, in order to include the following as new sections 1.5 and 1.6 in each of Forms 1, 2, 3, 8A, 8B, 9, 10 and 11:

"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."

3. Real Estate Securities

Despite section 2 above, a disclosure statement filed for development units that are real estate securities as described in the superintendent's Policy Statement 13, and which discloses in another part of the disclosure statement the background and conflicts of interest information described above in sections 1.5 and 1.6 of Forms 1, 2, 3, 8A, 8B, 9, 10 and 11, is not required to disclose that information again in sections 1.5 and 1.6.

4. Transitional Provisions – Filings Prior to November 1, 2007

Despite section 2 above, a disclosure statement filed under the Act prior to November 1, 2007, including any prospectus or disclosure statement 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 following circumstances apply:

(a) the substantive content of the prospectus or disclosure statement filed prior to November 1, 2007 does not otherwise contain a misrepresentation; and
(b) the only reason that the developer's prospectus or disclosure statement does not comply with the Act and the superintendent's Policy Statements is that it does not disclose the background and conflicts of interest information described above in sections 1.5 and 1.6 of Forms 1, 2, 3, 8A, 8B, 9, 10 and 11.

5. Filings On or After November 1, 2007

If an amendment or new disclosure statement is filed on or after November 1, 2007, to correct a non-compliant disclosure statement in accordance with section 16 of the Act or to otherwise revise the developer's disclosure,

the amendment or new disclosure statement must also disclose the background and conflicts of interest information described above in sections 1.5 and 1.6 of Forms 1, 2, 3, 8A, 8B, 9, 10 and 11.

If a disclosure statement is filed on or after November 1, 2007, in respect of a development property for which there was no previous filing, the disclosure statement must also disclose the background and conflicts of interest information described above in sections 1.5 and 1.6 of Forms 1, 2, 3, 8A, 8B, 9, 10 and 11.