BCFSA BC Financial Services Authority

Real Estate Development Marketing Act

Policy Statement 5

EARLY MARKETING – DEVELOPMENT APPROVAL

EFFECTIVE MARCH 8, 2023

1. Interpretation

   In this Policy Statement:

   (a) Act means the Real Estate Development Marketing Act;
   (b) building permit includes one of multiple or staged building permits issued by an approving authority, where required, that authorizes excavation or construction of the development property, provided that each of the further required building permits to complete construction of the development property is promptly applied for, and promptly paid for; and
   (c) unless the context otherwise requires, other words and expressions have the meanings given to them in the Act.

2. Under sections 4 to 9 of the Act, a developer must not market a development unit unless in relation to the development units the developer has met certain preliminary requirements or obtained certain approvals. The necessary type of preliminary requirement or approval depends on the type of development unit being marketed. Developers should review sections 4 to 9 of the Act, which are referenced in section 7 of this Policy Statement, to determine what form of preliminary requirement or approval applies to the type of development unit they intend to market.

3. Under section 10 of the Act, a developer may market a development unit before meeting the preliminary requirements or approvals set out in sections 4 to 9 of the Act, if the developer has obtained both:

   (a) approval in principle to construct or otherwise create the development unit from the appropriate municipal or other government authority; and
   (b) the superintendent's permission to begin marketing.

4. This Policy Statement sets out the circumstances, including the applicable terms and conditions, in which the superintendent's permission to begin marketing is deemed to be granted.

5. The superintendent considers that a developer has obtained approval in principle to construct or otherwise create the development units from the appropriate municipal or other government authority when that appropriate municipal or other government authority has given third reading to a bylaw to zone or rezone the specific site on which the developer's proposed development will be located to a zoning that permits the developer's proposed development, or, in areas that do not require third reading, has taken an equivalent step to proceed with such zoning.

6. If a developer has obtained approval in principle, as described in paragraph 5 of this Policy Statement, to construct or otherwise create the development units from the appropriate municipal or other government

authority, the superintendent will permit the developer to begin marketing on complying with the following terms and conditions:

(a) the estimated date, as disclosed in the disclosure statement, for the issuance of a building permit, is 12 months or less from the date the developer filed the disclosure statement with the superintendent;
(b) the developer markets the proposed development units under the disclosure statement for a period of no more than 12 months from the date the disclosure statement was filed with the superintendent, unless an amendment to the disclosure statement that sets out particulars of the issued building permit is filed with the superintendent during that period. The developer must also either:
    (i) prior to the expiry of the 12-month period, file with the superintendent an amendment to the disclosure statement that sets out particulars of the issued building permit; or
    (ii) upon the expiry of the 12-month period, immediately cease marketing the development and confirm in a written undertaking to the superintendent that all marketing of the development has ceased and will not resume until after the necessary amendment has been filed, failing which a cease marketing or other order may be issued by the superintendent to the developer without further notice.

Additionally, the developer must provide written notice without delay to the superintendent if, during the 12-month period, all units in the development property being marketed under this Policy Statement are sold or the developer has decided not to proceed with the development;

(c) any purchase agreement used by the developer, with respect to any development unit offered for sale or lease before the purchaser's receipt of an amendment to the disclosure statement that sets out particulars of the issued building permit, contains the following provisions:
    (i) the purchaser may cancel the purchase agreement for a period of seven days after receipt of an amendment to the disclosure statement that sets out particulars of the issued building permit if the layout or size of the applicable development unit, the construction of a major common facility, including a recreation centre or clubhouse, or the general layout of the development, is materially changed by the issuance of the building permit;
    (ii) if an amendment to the disclosure statement that sets out particulars of an issued building permit is not received by the purchaser within 12 months after the initial disclosure statement was filed, the purchaser may at his or her option cancel the purchase agreement at any time after the end of that 12-month period until the required amendment is received by the purchaser, at which time the purchaser may cancel the purchase agreement for a period of seven days after receipt of that amendment only if the layout or size of the applicable development unit, the construction of a major common facility, including a recreation centre or clubhouse, or the general layout of the development, is materially changed by the issuance of the building permit;
    (iii) the amount of the deposit to be paid by a purchaser who has not yet received an amendment to the disclosure statement that sets out particulars of an issued building permit is no more than 10% of the purchase price; and
    (iv) all deposits paid by a purchaser, including interest earned if applicable, will be returned promptly to the purchaser upon notice of cancellation from the purchaser;
(d) the disclosure statement includes, as an exhibit, a copy of the developer's purchase agreement used under this Policy Statement; and
(e) provisions (a), (b) and (c) above, must be set out **in bold print** in the disclosure statement immediately after the statutory right of rescission.

7. If a developer proposes to market a development unit that requires the developer to obtain a form of approval other than a building permit from the appropriate municipal or other government authority, the

developer may market the development unit if the developer has obtained approval in principle, as described in paragraph 5 of this Policy Statement, and the developer complies with the terms and conditions set out in paragraph 6 of this Policy Statement. In this case, the developer must modify the terms and conditions set out in paragraph 6 by deleting the references to building permit and substituting preliminary layout approval (or preliminary layout review or its equivalent), or other applicable approval set out in sections 4 to 9 of the Act. For example, the forms of approval that apply to some types of development units under the Act are:

Type of Development Unit	Preliminary Requirement or Approval
Bare land strata lots or subdivided lots	Preliminary layout approval or plan deposit
Strata lots and leasehold units	Building permit or plan deposit

8. The requirements of this Policy Statement apply to each individual phase of a development property that is or is proposed to be a "phased strata plan" as defined in the Strata Property Act; or to each part of a multi-part strata plan in areas governed by other strata legislation.

9. Transitional Provisions – Filings Prior to March 8, 2023

A disclosure statement or prospectus filed under the Act prior to March 8, 2023, continues to satisfy the circumstances, applicable terms and conditions, under which the superintendent's permission to begin marketing is deemed to be granted in accordance with this Policy Statement, if that disclosure statement or prospectus complied with this Policy Statement immediately prior to March 8, 2023.