BCFSA BC Financial Services Authority

Real Estate Development Marketing Act

Policy Statement 6

ADEQUATE ARRANGEMENTS – UTILITIES AND SERVICES

EFFECTIVE MARCH 8, 2023

1. Interpretation

   In this Policy Statement:

   (a) Act means the Real Estate Development Marketing Act;
   (b) Satisfactory financing commitment means
      (i) A commitment of funds from a lender:
         (A) That is not conditional on the developer entering into a certain number of purchase agreements with purchasers and is not conditional on the developer achieving a certain value of sales; or
         (B) That has one or both of the conditions referred to in (A) above, but all of those conditions have been and remain satisfied;
      (ii) The availability of the developer's own funds; or
      (iii) A combination of (i) and (ii)

      that is sufficient to finance the construction and completion of the development property including the installation of all utilities and other services associated with the development units; and

   (c) Unless the context otherwise requires, other words and expressions have the meanings given to them in the Act.

2. Under Section 12 of the Act, a developer must not market a development unit unless the developer has made adequate arrangements to ensure payment of the cost of utilities and other services associated with the development unit.

3. This Policy Statement sets out circumstances in which arrangements made under Section 12(2)(c) are deemed adequate for the purpose of payment of the cost of installing utilities and other services. If the developer is marketing development units that consist of cooperative interests, time share interests, shared interests in land, or leasehold units, further arrangements may be necessary in relation to ensuring payment of the developer's portion of ongoing utility and servicing costs.

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.

4. If the developer has obtained a satisfactory financing commitment, the developer is deemed to have made adequate arrangements for the purpose of installing utilities and services associated with the development units. In this case, no further terms and conditions are applicable to the marketing of the development units

5. If the developer has not obtained a satisfactory financing commitment, the developer may market the development units, but only on complying with the following terms and conditions:

   (a) The estimated date for obtaining a satisfactory financing commitment, as disclosed in the disclosure statement, 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 a satisfactory financing commitment 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 a satisfactory financing commitment; 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 a satisfactory financing commitment, contains the following terms:
      (i) If an amendment to the disclosure statement that sets out particulars of a satisfactory financing commitment 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;
      (ii) 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 a satisfactory financing commitment is no more than 10% of the purchase price; and
      (iii) 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.

6. 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.