

SEPTEMBER 2022

Amendments to REDMA Policy Statements 5 & 6

Discussion Paper

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Introduction

BC Financial Services Authority (“BCFSA”) protects the rights of British Columbians by promoting high standards of market conduct within the financial services sectors we regulate, including real estate development marketing. As a modern, effective, and efficient regulator, we’re committed to providing oversight that ensures fair, transparent processes that benefit the public. We provide the information and guidance necessary to enable industry participants to comply with legislative requirements and best practices.

Multi-unit development properties, such as condos and townhouses, are a popular option when buying a home in British Columbia. BCFSA’s Superintendent of Real Estate is responsible for ensuring that developers comply with the *Real Estate Development Marketing Act* (“REDMA”), including meeting certain preliminary requirements and approvals before marketing, providing purchasers with disclosure statements before entering into purchase agreements, and keeping deposits in trust separate from the developer’s own funds.

BCFSA also helps purchasers understand their rights and takes enforcement action if developers do not meet legislated requirements.

BACKGROUND

Division 2 of REDMA sets out the requirements that a developer must usually meet prior to commencing marketing of a development. For example, a developer marketing an apartment-style strata development requires a building permit, or a strata plan deposited with the land title office, before that developer can commence marketing. Additionally, a developer must have sufficient financing before it commences marketing.

Policy Statement 5 permits early marketing (e.g., prior to obtaining the building permit) for 12 months prior to meeting the preliminary requirements or approvals set out in sections 4 to 9 of REDMA if a developer first obtains approval in principle from the appropriate government authority. Policy Statement 6 allows early marketing for 12 months prior to obtaining a satisfactory financing commitment for the development.

Approval in principle is generally obtained when a developer is issued a development permit for the development or written confirmation from the appropriate government authority that a development permit will be issued if certain conditions within the control of the developer are met. Because the approval of zoning or rezoning is at the discretion of the appropriate local government authority, it is not a condition within the control of the developer. Currently, developers are only able to obtain approval in principle, as described in Policy Statement 5, after a local government authority has completed final adoption of a zoning or rezoning bylaw for the development lands to allow the proposed development.

The process of enacting zoning bylaws or applying for rezoning of a development property, including the receipt of third reading of a zoning or rezoning bylaw (or equivalent) by a developer, represents a major development milestone that a developer achieves after extensive engagement with local governments and the local community.

Local government development approval and rezoning processes are varied (e.g., some municipalities do not have a development permit process). The proposed amendments to Policy Statement 5 would allow marketing to begin after meeting uniform and earlier milestones in relation to development and rezoning approval (e.g., third reading of a rezoning bylaw, or an equivalent step).

PURPOSE

The purpose of this discussion paper is to provide context and explain the changes to facilitate consultation with industry stakeholders and interested parties on the proposed amendments to the Superintendent of Real Estate's Policy Statement 5 and Policy Statement 6. As part of its consultation, BCFSA is seeking feedback on the following documents:

1. [Policy Statement 5 Redline and Clean](#)
2. [Policy Statement 6 Redline and Clean](#)

Please review the following three questions on page 3 of this discussion paper identifying the areas where BCFSA is seeking specific input from the real estate development industry and interested parties. Please submit written feedback using the [consultation feedback form](#). The consultation period will close on October 20, 2022.

Amendments to Policy Statement 5 - Approval in Principle

BCFSA is proposing to amend Policy Statement 5 to provide that approval in principle is obtained when the appropriate municipal or other local government authority has given at least third reading of a bylaw to zone or rezone the development property to a zoning that permits the developer's proposed form of development. For a municipal or other local government authority that does not require third reading, approval in principle would be deemed to be provided if that authority has taken an equivalent step to proceed with such zoning or rezoning. By linking the commencement of early marketing of development units to standardized, robust and well understood development approval and rezoning milestones, developers, purchasers and local governments will benefit from increased regulatory certainty at all stages of a development.

The proposed amendment maintains strong consumer protection, may promote development units coming to market sooner, and enables developers to obtain financing at an earlier date where that financing is contingent on achieving minimum numbers of pre-sales.

Amendments to Policy Statements 5 and 6 – Building Permits, and the Application of Each Policy Statement to Phased Developments

Policy Statement 5 currently defines "building permit" to include one of multiple or staged building permits but does not currently specify what sub-types of building permit may meet that definition. BCFSA proposes to amend the definition of "building permit" to specify that the permit must be one that authorizes excavation or construction of the development property. This amendment would codify existing regulatory practice.

Neither Policy Statement 5 nor Policy Statement 6 specify whether their early marketing provisions apply on a phase-by-phase basis to a phased strata development. BCFSA also proposes to amend Policy Statement 5 and Policy Statement 6 to clarify that the early marketing requirements in each Policy Statement apply on a phase-by-phase basis to each individual phase of a strata development. This proposed amendment would codify existing regulatory practice. It also reflects the reality that generally each phase requires its own building permit and financing.

Discussion Questions

To assist BCFSA in developing its consideration of amendments to Policy Statement 5 and Policy Statement 6, please provide your comments on the following consultation questions:

1. Does amending Policy Statement 5 to state that:

“approval in principle is obtained when a municipal or other government authority has given third reading to a bylaw to zone or rezone the development land to allow the developer’s proposed development, or, in areas that do not require third reading, has taken an equivalent step to proceed with such zoning”

result in any issues or concerns for purchasers, developers, or other parties?

2. Does amending Policy Statement 5 to clarify that:

“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...”

result in any issues or concerns for purchasers, developers, or other parties?

3. Does amending Policy Statement 5 and Policy Statement 6 to clarify that the early marketing requirements apply on a phase-by-phase basis result in any issues or concerns for purchasers, developers, or other parties?

Comments and feedback on the discussion questions must be **submitted no later than October 20, 2022** using the [consultation feedback form](#). If you wish to submit comments on behalf of the organization you represent, please ensure to include the name of the organization in your submission.

BCFSA appreciates the time and effort you have put in to contributing to the consultation process. We look forward to receiving your feedback. Once the consultation period concludes, staff will collate input and consider revisions to both documents, as required. A Consultation Feedback Summary Report will be posted on BCFSA’s website following the consultation process.



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