BCFSA BC Financial Services Authority

Real Estate Development Marketing Act

Policy Statement 13

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

EFFECTIVE MARCH 8, 2023

Interpretation

In this Policy Statement:

Act means the Real Estate Development Marketing Act;
issuer has the meaning given to that term in the Securities Act;
real estate security or real estate securities means a development unit that is also a "security" as defined in section 1(1) of the Securities Act (RSBC 1996 c. 418), and includes a development unit comprised of a direct interest in real estate together with an ancillary agreement, usually with a 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; or an offering of shares or units in the developer's capital that the purchaser can convert into a direct interest in real estate.
Securities Act means the Securities Act, R.S.B.C. 1996, c. 418.
Securities Commission means the British Columbia Securities Commission continued under part 2 of the Securities Act;
superintendent means the person appointed as Superintendent of Real Estate under the Real Estate Services Act; and
unless the context otherwise requires, other words and expressions have the meanings given to them in the Act.

Form and Content of the Disclosure Statement

The superintendent's Policy Statements 1, 2, 3, 8, 9, 10, and 11, set out the forms and content required under section 14 of the Act for disclosure statements. This Policy Statement requires additional disclosure content for offerings of real estate securities. The additional disclosure content set out in this Policy Statement should be inserted as Part 4 of the applicable disclosure statement, entitled "Real Estate Securities Aspects of the Offering", with subsequent Parts renumbered accordingly. Sections and subsections may be added by a developer, as required, to meet the developer's obligation to plainly disclose all material facts.

Securities Act Offering Memorandum and other Exemptions

If a developer of real estate securities is relying on the offering memorandum exemption under the Securities Act and any applicable multilateral or national instrument, the developer must file an offering memorandum with the Securities Commission in the form required by the Securities Commission from time to time. That developer must also file a disclosure statement with the superintendent containing the information required and set out in the order required by section 5 below. The superintendent's Policy

Statements also apply to a developer who is relying on any other exemption from the Securities Act prospectus requirement.

Securities Act Prospectus

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 the Securities 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 that case, the developer is not required to file a disclosure statement with the superintendent.

Additional Disclosure Requirements – Real Estate Securities Aspects of the Offering

For an offering of real estate securities, Forms 1, 2, 3, 8A, 8B, 9, 10, and 11 are amended to require the following additional disclosure:

Cover Page Disclosure:

State in bold print on the face page of the disclosure statement:

No securities commission or similar regulatory authority has passed on the merits of the securities offered nor has it reviewed this disclosure statement and any representation to the contrary is an offence.

State in bold print on the face page of the disclosure statement whether there are any restrictions on resale and provide a description of those restrictions in the body of the disclosure statement. The cover page should provide a cross-reference to the discussion in the main body of the disclosure statement.

Where no market exists or will exist for the real estate securities after the distribution, the following statement must appear in bold print on the face page:

There is no assurance that there will be a market for resale of these real estate securities.

NOTE: *Whether or not there is a market for the real estate securities will depend on whether the actual interest in the real estate can be sold without requiring the purchaser to enter into an ancillary agreement such as a rental pool agreement, and whether there are any resale restrictions imposed under the securities exemption or order relied on for the distribution of the real estate securities. It is unlikely that real estate securities can be readily sold where the purchaser is required to enter into an ancillary agreement or there are resale restrictions imposed under the exemption or order relied on.*

Main Body Disclosure:

4 Real Estate Securities Aspects of the Offering

4.1 Description of the Offering

(1) Briefly describe the nature of the investment offered and include any material attributes such as voting rights, rights of occupancy, and other similar entitlements.

(2) If a minimum amount of funds is required to be raised through the offering, disclose the date by which the minimum amount must be met and the consequences to the purchaser of the failure to raise that amount, including the return of funds to the purchaser and any

deduction or penalty imposed. State the name and address of any person who will hold subscription funds until the minimum amount is raised.

(3) If there are any arrangements under which any part of the net proceeds will be held in trust or will only become available to the issuer, developer, or manager if certain conditions are fulfilled, describe those conditions and the procedure for the return of funds to the purchaser if the conditions are not met and any deduction or penalty imposed.

(4) Describe the means by which the real estate securities will be distributed and the subscription procedure. State the name of any person selling the real estate securities on behalf of the issuer, developer or manager, and any relationship between such person and the issuer, developer or manager, particulars of any agency or similar agreement and the remuneration, if any, to be paid to such person of the sale of the real estate securities.

NOTE: *The disclosure required under this item need not be included under the section entitled Real Estate Securities Aspects of the Offering if the disclosure is provided elsewhere in the disclosure statement.*

4.2 Exemptions

Disclose the specific statutory exemption from the registration and prospectus requirements under the Securities Act or describe the discretionary exemption order, as the case may be, that will be relied on in distributing the real estate securities.

4.3 Nature of the Business

If the real estate securities provide holders with a means to participate financially in a business such as a hotel, motel, resort, apartment hotel, or other commercial enterprise, describe the business carried on or to be carried on.

NOTE: *Where the offering of real estate securities requires the real estate to be used as part of a business such as a hotel and prohibits or materially restricts the holder of the real estate securities from occupying or otherwise using the real estate as the holder deems fit, in substance the offering is an investment in a business enterprise, the return from which will be substantially dependent on the efforts of the persons managing the business. In these cases, a description of the business is required*.

4.4 Rental and/or Expense Pool Arrangements

(1) Attach a copy of any rental and/or expense pool agreement as an exhibit to the disclosure statement.

(2) Summarize, in plain language, the key sections of any rental and/or expense pool agreement, including those provisions dealing with whether the agreement is mandatory or optional, the term of the agreement, opting out of the agreement, termination of the agreement, the sharing of revenues and losses, the payment of expenses, and the share of the revenues and losses, and any fees assessed against holders of the real estate

securities that the person who manages the rental and/or expense pool or any affiliated company of that person, will be entitled to.

(3) Where there is a rental and/or expense pool agreement, disclose the experience in managing rental pools of the person that will manage the rental and/or expense pool, including the success or failure of each pool.

(4) Where there is a rental and/or expense pool agreement, disclose the nature, verification (whether audited or subject to an independent review), timing and frequency of, as well as access to, the financial and other information concerning the operation of the rental and/or expense pool that will be provided to holders of the real estate securities.

NOTE: *For greater certainty, the reference to expense pool is not intended to refer to the sharing of common expenses generally required for strata corporations, but rather the expenses of the rental management.*

4.5 Guarantees or Other Similar Financial Commitments

(1) Attach a copy of any guarantee or other similar financial commitment agreement provided in connection with the offering by any person involved in the offering as an exhibit to the disclosure statement.

NOTE: *For greater certainty, this would not include guarantees offered by financial institutions in connection with interest rates offered on mortgages.*

(2) Summarize, in plain language, the key terms of any guarantee or other financial commitment, including whether the guarantee or commitment is based on gross or net revenues, and whether the return guaranteed is inclusive or exclusive of strata maintenance fees, reserves, property, income and other taxes, any debt financing costs, etc. Provide an illustration of how the guarantee or commitment works.

(3) Where there is a guarantee or other financial commitment, disclose the business experience of the person providing such guarantee or other financial commitment.

(4) Where there is a guarantee or other financial commitment, attach as an exhibit to the disclosure statement a copy of the audited financial statements of the person providing the guarantee or commitment and indicate whether holders of the real estate securities will be entitled to ongoing disclosure of the financial position of that person during the period of the guarantee or commitment, and if so, the nature, verification (whether audited or subject to an independent review), timing and frequency of, as well as access to, the disclosure that will be provided to holders.

(5) Where there is a guarantee or other financial commitment, disclose whether it is supported by a letter of credit from a financial institution and whether any provision has been made for a sinking fund.

4.6 Risk Factors

(1) State:

A real estate investment is, by its nature, speculative. If a purchaser is purchasing the real estate as an investment, the purchaser should be aware that this investment has not only

the usual risks when purchasing real estate, but also those risks that are inherent to the nature of real estate securities.

(2) Disclose the risk factors that make the offering a risk or speculation.

NOTE: *Risk factors may include but are not limited to such matters as risks associated with real estate investments generally, reliance on the developer's/manager's efforts, ability and experience, inexperience of management, lack of financial expertise, reliance on the financial strength of the person offering the guarantee or financial commitment, cash flow and liquidity risks, financing risk, potential liability to make additional contributions beyond initial investments, restricted rights of a holder in the management and control of the strata corporation or business, inability to change the manager, restrictions on resale of the real estate securities, developer/manager conflicts of interests, and where the offering provides holders with a means to participate financially in a business such as a hotel, motel, resort or apartment hotel or other commercial enterprise, the general risk of the business, absence of an operating history of the business, and competition.*

(3) If the real estate securities include a rental pool, state:

The success or failure of the rental pool will depend in part on the abilities of the manager of the rental pool.

(4) If the owner will be responsible for paying a portion of the costs of the operation of the rental pool, state:

If the revenue generated from the rental pool is less than the costs of operating the rental pool, then the purchaser must make additional contributions over and above the purchaser's initial investment and financing costs.

(5) If the real estate securities include a guarantee or other financial commitment, state:

The ability of [the person providing the guarantee] to perform under the [guarantee or other financial commitment] will depend on the financial strength of [the person]. See [the persons] financial statements on page [*]. There is no assurance that [the person] will have the financial ability to be able to satisfy its obligations under the [guarantee or other financial commitment] and therefore you may not receive any return from your investment.

4.7 Income Tax Consequences

If income tax consequences to the purchaser are a material aspect of the offering, then:

(a) Provide a summary of the significant income tax consequences to individuals who are residents of Canada, and

(b) state:

Prospective purchasers should consult with their professional advisers regarding tax consequences applicable to them. The stated tax consequences may not apply uniformly to all purchasers.

4.8 Organization of Developer and Manager

State the laws under which the developer is organized and the developer's date of formation. If the manager is different from the developer, state the laws under which the manager is organized and the manager's date of formation.

4.9 Developer, Manager, Promoter, Directors, Officers and Principals

(1) Where the real estate securities provide holders with a means to participate financially in a business such as a hotel, motel, resort or apartment hotel or other commercial enterprise, provide the name, municipality of residence and principal occupation for the last 5 years of the person managing the business where that person is an individual, or of the directors and officers of that person where the person is not an individual.

NOTE: *See Section 4.3 for a discussion of the meaning of participate financially in a business.*

(2) Disclose, to the best of the developer's knowledge, whether:

(a) the developer, manager, or promoter,

(b) any persons holding directly or indirectly more than 10% of any class of voting securities of the developer or manager (principal holders), or

(c) any director or officer of the developer, manager, 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, real estate regulatory authority, or securities regulatory authority relating to the sale, lease, promotion, or management of real estate or securities, 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, manager, promoter, any director, officer, or principal holder of the developer or manager, or any director or officer of the 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 manager, 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 or manger that, while that person was acting in that capacity, that other developer or manager:

(a) was subject to any penalties or sanctions imposed by a court, real estate regulatory authority or securities regulatory authority relating to the sale, lease, promotion, or management of real estate or securities 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.

4.10 Conflicts of Interest

Describe any existing or potential conflicts of interest among the developer, manager, promoter, 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 real estate securities in connection with the real estate securities which could reasonably be expected to affect the purchaser's investment decision.

4.11 Financial Information

Where the real estate securities provide holders with a means to participate financially in a business such as a hotel, motel, resort or apartment hotel or other commercial enterprise, the following financial statements must be included in the disclosure statement or prospectus:

(a) where the business has not completed one financial year, unaudited financial statements of the business as at a date not more than 90 days prior to the date of the developer's declaration attached to the disclosure statement or prospectus;

(b) where the business has completed one or more financial years:

(i) audited financial statements of the business for the most recent financial year, and

(ii) if the effective date of such statement is more than 120 days before the date of the developer's declaration attached to the disclosure statement or prospectus, unaudited financial statements for a stub period ending not more than 90 days prior to the date of the developer's declaration attached to the disclosure statement or prospectus.

NOTE: *See Section 4.3 for a discussion of the meaning of participate financially in a business.*

Where the date of the disclosure statement is within 90 days of the most recent financial year end of the business, the financial year end for the prior year end may be used.

4.12 Financial Forecasts or Projections

Any financial forecasts or projections used in the disclosure statement must be prepared and audited in accordance with all applicable requirements of *Chartered Professional Accountants Canada*.

4.13 Continuous Reporting Obligations to Investors

If the issuer is not a reporting issuer, describe the nature, verification (whether audited or subject to an independent review), timing and frequency of, as well as access to, the financial and other information concerning the affairs of the project or business, that will be provided to holders of the real estate securities.

4.14 Material Contracts

Give particulars of every material contract relating to the offering of real estate securities entered into or to be entered into by the issuer, the developer or manager or, if applicable, any of the issuer, developer or the manager's affiliates, within the last two years of the date of the developer's declaration attached to the disclosure statement or prospectus and, where the material contracts are not attached to the disclosure statement, state a time and place at which those contracts or copies thereof may be inspected during distribution of the real estate securities.

4.15 Purchaser's Rights

The disclosure statement must include a description of the purchaser's rights under securities law provisions including, if applicable, the rights set out in Item 11 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*.

4.16 Certification

Unless a developer's declaration as required under the Real Estate Development Marketing Act is attached to the disclosure statement, include a certificate in the following form:

The foregoing contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made.

NOTE: *The certificate is required to be signed by the president or chief executive officer and by the chief financial officer of the issuer or developer. If no chief financial officer has been designated, then a director of the issuer or developer other than the president or chief executive officer, must sign the certificate.*

Where a certificate is provided in lieu of the developer's declaration, all reference to the developer's declaration in this Form should be read as a certificate.