

Superintendent Of Real Estate's Office Seminar Materials

Presented at the Seminar Held by the
Urban Development Institute - Pacific Region
on British Columbia's New Real Estate Legislation
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Financial Institutions
Commission of BC

Real Estate Development Marketing in British Columbia

Understanding the *Real Estate Development Marketing Act* and the Superintendent of Real Estate's Policy Statements



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I. Overview – REDMA (New Legislation)

- *Real Estate Development Marketing Act* (“REDMA”) brought into force on January 1, 2005
- REDMA replaces Part 2 of the *Real Estate Act*
- REDMA governs marketing, sales, and long-term leases of development units
- Real Estate Development Marketing Regulation (“REDMA Regulation”) sets out REDMA exemptions
- REDMA requirements are explained in the Superintendent of Real Estate’s 13 Policy Statements (“Policy Statements”)

I. Overview – REDMA (Improvements for Developers)

- REDMA modernizes and streamlines previous requirements
- REDMA allows marketing to begin earlier and continue for a longer period before building permits and financing are obtained
- REDMA allows developers to use deposits for purposes related to that development if deposit insurance has been obtained
- Simpler standard formats for Disclosure Statements, with each category of development property having its own format
- No more Prospectuses, only Disclosure Statements



I. Overview - REDMA (Improvements for Purchasers)

- REDMA maintains existing protections for purchasers
- Deposits must be held by a real estate brokerage, lawyer, or notary public
- Standard seven day rescission period for all purchasers
- REDMA provides more effective powers for the Superintendent to help ensure compliance

I. Overview - RESA (New Legislation)

- Real Estate Services Act (“RESA”) brought into force on January 1, 2005
- RESA replaces Part 1 of the *Real Estate Act*
- RESA governs the licensing and conduct of real estate brokers and property managers (and strata managers, as of Jan. 1, 2006)
- RESA authorizes the Real Estate Council to administer that Act and sets out the Council’s powers and responsibilities
- RESA establishes the new Real Estate Special Compensation Fund to protect against losses from theft or fraud by a licensee
- Exemptions from the licensing requirement are set out in section 3 of RESA and in the Real Estate Services Regulation



I. Overview - RESA

(Improvements for Developers and Purchasers)

- RESA makes the Real Estate Council a self-regulating organization with direct authority over licensees
- As of January 1, 2006, RESA will regulate the conduct of strata managers and protect trust monies
- RESA's new Real Estate Special Compensation Fund replaces bonding and provides better protection against losses from theft or fraud by a licensee
- Exemptions from the licensing requirement have been clarified and expanded (e.g., employees of developers)
- RESA provides more effective powers for the Real Estate Council to help ensure compliance

II. REDMA and the Policy Statements (Governed Activity)

- REDMA applies to a “developer” who “markets” in British Columbia a “development unit” located in BC or elsewhere (REDMA, s. 2)
- A “developer” includes a person who directly or indirectly has rights to dispose of a “development property”
- A “development property” means a property with: 5 or more subdivision lots, bare land strata lots, strata lots, time share interests, or residential leasehold units; or 2 or more cooperative interests or shared interests in land
- A “development unit” means one lot, interest or unit in a “development property”
- "Market" means to sell or lease, to offer to sell or lease, and to engage in any transaction or other activity that will or is likely to lead to a sale or lease

II. REDMA and the Policy Statements (Exempt Activity)

- REDMA exemptions are similar to previous exemptions and are set out in sections 2 to 8 of the REDMA Regulation
- Marketing between developers
- Development units used for industrial or commercial purposes and zoned industrial, commercial *or comprehensive*
- Leases of development units for 3 years or less

II. REDMA and the Policy Statements (Exempt Activity, Cont.)

- Development units under a *Securities Act* prospectus
- Subdivision lots within a BC municipality if the developer has met the municipal servicing requirements
- New exemption for low equity cooperative interests (i.e., purchaser's acquisition cost is \$5,000 or less)

II. REDMA and the Policy Statements (Pre-Marketing: Permitted Activities)

- Prior to meeting REDMA and Policy Statement requirements in order to market, only limited pre-marketing activity is permitted
- Scope of permitted pre-marketing activity is essentially unchanged and is explained in section 2 of Policy Statements 1 to 3 and 8 to 11
- Developers may advertise a proposed development and communicate with potential purchasers
- Superintendent of Real Estate recommends that every advertisement contain: the developer's name and address; the telephone number of someone from whom information and a copy of the Disclosure Statement may be obtained when available; and a prominent disclaimer stating that the advertisement is not an offering for sale and that such an offering can only be made after filing a Disclosure Statement

II. REDMA and the Policy Statements (Pre-Marketing: Prohibited Activities)

- A purchaser should not gain the impression that he or she has a right to acquire a development unit
- A developer should not use any letter of intent, priority list, reservation agreement, conversion right, right of first refusal, or similar agreement that carries with it the right to acquire a development unit
- No deposit or other consideration should be sought or received
- The above activities should only occur after a developer has met the REDMA and Policy Statement requirements in order to market

II. REDMA and the Policy Statements (Before Marketing Begins - Overview)

- A developer must not market a development unit unless it has:
 - development approval (REDMA, ss. 4 to 9), or approval in principle and permission for early marketing under Policy Statement 5 or otherwise (REDMA, s. 10);
 - made adequate arrangements to ensure the purchaser's title (REDMA, s. 11);
 - made adequate arrangements to pay for utilities and services (REDMA, s. 12), or has permission for early marketing under Policy Statement 6 or otherwise (REDMA, s. 12); and
 - filed a Disclosure Statement (REDMA, s. 14)

II. REDMA and the Policy Statements

(Before Marketing Begins – Development Approval)

- A developer must not market a development unit unless it has obtained development approval (REDMA, ss. 4 to 9), or obtained approval in principle and the Superintendent's permission for early marketing under Policy Statement 5 or otherwise (REDMA, s. 10)
- Development approvals (REDMA, ss. 4 to 9) are:
 - a registered subdivision plan or strata plan; or
 - preliminary layout approval, if applicable; or
 - a building permit, if applicable

II. REDMA and the Policy Statements

(Before Marketing Begins – Development Approval, Cont.)

- Policy Statement 5 approvals in principle are:
 - a Development Permit; or
 - written confirmation that a Development Permit will be issued upon conditions within the developer's control; or
 - if the Development Permit process does not apply, confirmation that the developer's drawings and documents conform with the zoning and development bylaws and official community plan

II. REDMA and the Policy Statements

(Before Marketing Begins – Development Approval, Cont.)

- Policy Statement 5 deems permission to have been given by the Superintendent for early marketing if approval in principle has been obtained and all of the following conditions are met:
 - a building permit or other REDMA ss. 4 to 9 development approval is expected within 9 months
 - the developer markets for only 9 months unless it files a Disclosure Statement Amendment confirming that a building permit or other REDMA ss. 4 to 9 development approval has been obtained, and
 - purchase agreements: provide a seven day rescission period if there is any material change in unit layout or size, development layout, or any major common facility; provide a seven day rescission period after 12 months unless the purchaser receives the Disclosure Statement Amendment; limit deposits to 10%; and require deposits to be returned promptly upon any rescission

II. REDMA and the Policy Statements

(Before Marketing Begins - Financing)

- Developer must have made adequate arrangements to pay for utilities and services, or obtained the Superintendent's permission for early marketing under Policy Statement 6 or otherwise (REDMA, s. 12)
- It is not possible to have adequate financing for utilities and services unless there is also adequate financing to acquire the development land and construct the improvements
- Adequate arrangements include unconditional financing to acquire the development land, construct the improvements, and pay for utilities and services
- If a developer has only a conditional financing commitment (or no financing commitment) it may market under Policy Statement 6 terms, which are similar to the Policy Statement 5 terms explained above

II. REDMA and the Policy Statements

(Before Marketing Begins - Ensure Purchaser's Title)

(Before Marketing Begins - File a Disclosure Statement)

- Adequate arrangements to ensure purchaser will get title include standard undertakings given by lawyers (Policy Statement 4)
- Title may be held in trust by a lawyer or notary public for time share offerings or other offerings where purchaser does not acquire title (REDMA, s.11)

- Developer must file a Disclosure Statement before marketing (REDMA, s. 14)
- Simpler standard formats for Disclosure Statements, with each category of development property having its own format (Policy Statements 1 to 3 and 8 to 11)

II. REDMA and the Policy Statements (Requirements During Marketing – Distribute Disclosure Statement)

- A developer must not enter into a purchase agreement unless:
 - a copy of the Disclosure Statement has been provided to the purchaser;
 - the purchaser has been afforded a reasonable opportunity to review the Disclosure Statement; and
 - the developer has obtained a written acknowledgment from the purchaser that he or she had a reasonable opportunity to review the Disclosure Statement (REDMA, s. 15)
- Purchasers' acknowledgments must be kept 3 years (REDMA, s. 15)

II. REDMA and the Policy Statements (Requirements During Marketing – Amend or Re-file Disclosure Statement)

- Developer must file an Amendment to its Disclosure Statement, or must file a new Disclosure Statement, if it becomes aware that its Disclosure Statement does not comply with REDMA or REDMA Regulations, or contains a misrepresentation of a material fact (REDMA, s. 16)
- A “misrepresentation” is a false or misleading statement, or an omission, in respect of a material fact
- A “material fact” is:
 - something that affects, or reasonably could affect, the value, price or use of the development unit;
 - the identity of the developer; or
 - the bankruptcy or insolvency of the developer

II. REDMA and the Policy Statements (Requirements During Marketing – Amend or Re-file Disclosure Statement, Cont.)

- File an Amendment to correct a misrepresentation that relates to the value, price or use of a development unit
- File a new Disclosure Statement if the developer changes, or becomes bankrupt or insolvent
- An Amendment or new Disclosure Statement must be provided, within a reasonable time after it is filed, to all purchasers who have not completed their purchases and to all new purchasers (REDMA, s.16)

II. REDMA and the Policy Statements

(Requirements During Marketing – Treatment of Deposits)

- All deposits must be held in trust in BC by a real estate brokerage, lawyer, or notary public (REDMA, s. 18)
- Trustee must only release the deposit to the developer or purchaser if specific conditions are met (REDMA, s. 18). For example:
 - deposit is released to developer if seven day rescission period has passed and purchase has been completed; or
 - deposit is released to developer if seven day rescission period has passed, purchaser failed to pay a required subsequent deposit, and purchase agreement allows developer to cancel it and keep the forfeited deposit; or
 - deposit is released to purchaser if he or she exercises the seven day rescission right

II. REDMA and the Policy Statements

(Requirements During Marketing – Treatment of Deposits, Cont.)

- Alternatively, a deposit can be released by the trustee to the developer for use in respect of that development if
 - the developer obtains a “deposit protection contract” (i.e., deposit insurance - see *Insurance Act*, s. 189.3); and
 - the deposit protection contract is explained in the Disclosure Statement (REDMA, s. 19)



II. REDMA and the Policy Statements (Purchaser's Remedies)

- No fault statutory seven day rescission period under REDMA. Rescission period runs from the later of: the date that the purchase agreement was entered into; and the date that the developer obtains a written acknowledgment for the Disclosure Statement (REDMA, s. 21)
- Additional contractual seven day rescission period under purchase agreement if
 - marketed under Policy Statement 5 (Development Approval) or Policy Statement 6 (Financing); and
 - developer does not fulfill the terms of those Policy Statements

II. REDMA and the Policy Statements (Purchaser's Remedies, Cont.)

- Purchase agreement is not enforceable against a purchaser by a developer who has breached any of sections 3 to 20 of REDMA (e.g., development approval, purchaser's title, financing, Disclosure Statement and deposits (REDMA, s. 23))
- Purchaser has a right of action in civil court for damages if the Disclosure Statement contains a misrepresentation (REDMA, s. 22)
 - Purchaser may claim against the developer, directors, and others who authorized or signed the Disclosure Statement

II. REDMA and the Policy Statements (Superintendent's Remedies)

- Request correction of a Disclosure Statement by way of replacement pages, an Amendment, or new Disclosure Statement
- Request that marketing cease
- Request an undertaking from the developer, which binds the developer and all of its directors (REDMA, s. 36)
- Conduct an investigation (REDMA, s. 25)

II. REDMA and the Policy Statements (Superintendent's Remedies, Cont.)

- Issue a cease marketing order (REDMA, ss. 30 and 32)
- Hold a Hearing (REDMA, s. 29)
- Issue orders with or without the consent of the parties (REDMA, ss. 28, 30 and 32)
- Order an administrative penalty of up to \$25,000 for an individual and up to \$50,000 for a corporation (REDMA, ss. 30)
- Recommend prosecution for an offence, with fines of up to \$200,000 and 2 years in jail (REDMA, ss. 39 and 40)



II. REDMA and the Policy Statements (Transitional Provisions)

- A Disclosure Statement or Prospectus filed under the now repealed *Real Estate Act* is deemed to be a Disclosure Statement under REDMA (REDMA, s. 47)
- A Disclosure Statement or Prospectus filed under the *Real Estate Act* may still be used to market development units if
 - that document contains no misrepresentation; and
 - the developer also provides the Superintendent and purchasers with a written notice of the REDMA seven day rescission period (Policy Statement 12)

II. REDMA and the Policy Statements (Transitional Provisions, Cont.)

- If a Disclosure Statement or Prospectus filed under the *Real Estate Act* must be amended to prevent a misrepresentation (e.g., false statement, or omission of new information), the Amendment must reformat the entire filing in REDMA format and underline or highlight the substantive changes (Policy Statement 12)
- An Amendment to reformat a previous filing does not provide a second statutory rescission period of seven days
- A purchaser's rescission rights that accrued under the *Real Estate Act* are preserved under REDMA (REDMA, s. 47)

III. REFERENCE MATERIALS

- The Financial Institution Commission's website at www.fic.gov.bc.ca contains, or provides links to, the following materials:
 - the *Real Estate Development Marketing Act*,
 - the *Real Estate Development Marketing Regulation*; and
 - the Superintendent of Real Estate's 13 Policy Statements

- The Real Estate Council of British Columbia's website at www.recbc.ca contains, or provides links to, the following materials:
 - the *Real Estate Services Act*; and
 - the *Real Estate Services Regulation*



III. REFERENCE MATERIALS (Continued)

- The office of the Financial Institutions Commission is moving to Central City in Surrey. As of April 4, 2005, the new address and contact numbers for the Financial Institutions Commission and the Superintendent of Real Estate's Office will be:

**1200 - 13450 102nd Avenue
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