



BULLETIN NUMBER: REDMA-07-04

TITLE: SUPERINTENDENT'S ORDERS TO ENFORCE
NINE MONTH MARKETING PERIOD UNDER
POLICY STATEMENT 5 (DEVELOPMENT APPROVAL)
and POLICY STATEMENT 6 (FINANCING)

LEGISLATION: *REAL ESTATE DEVELOPMENT MARKETING
ACT*

DATE: DECEMBER 17, 2007

On January 1, 2005, the Superintendent of Real Estate implemented Policy Statement 5 (Development Approval) and Policy Statement 6 (Financing) under the *Real Estate Development Marketing Act*. These Policy Statements, which continue to be in force, allow for up to nine months of marketing under a filed Disclosure Statement prior to obtaining a building permit or prior to obtaining a satisfactory financing commitment, as the case may be. Policy Statements 5 and 6 provide that marketing must cease nine months after the Disclosure Statement is filed, unless an Amendment is filed during that period to disclose that a building permit and/or satisfactory financing commitment have been obtained.

In the past, if the nine month marketing period elapsed without the necessary Amendment to the Disclosure Statement being filed, the Superintendent wrote to the developer to remind it of the expiry of the nine month period and requested that they file the appropriate Amendment or confirm that all marketing had ceased and that marketing would not resume until the appropriate Amendment had been filed.

Amended Policy Statements 5 and 6 make it clear that the Superintendent may issue an Order without further notice in the event that the developer does not immediately confirm in a written undertaking to the Superintendent that marketing ceased upon the expiry of the nine month period, or file an Amendment prior to the expiry of that nine month period. An acceptable form of undertaking is available on our website at www.fic.gov.bc.ca/responsibilities/realestate/bulletins.htm. Such an Order may be premised on the presumption that since the requirements have not been met, it is likely that marketing continues.

After issuing an Order, the Superintendent may also seek the recovery of enforcement expenses and an administrative penalty of up to \$25,000 in the case of an individual and up to \$50,000 in the case of a corporation. Additionally, a Superintendent's Order may be filed with the Supreme Court of British Columbia and enforced as if it were an order of that court.

The developer may request a Hearing by the Superintendent in respect of an Order, or may appeal an Order to the Financial Services Tribunal.

Amended Policy Statements 5 and 6 also require that the developer promptly notify the Superintendent if, during the nine month period, all units in the development property being marketed under those Policy Statements are sold (i.e., the developer has entered into binding agreements of purchase and sale for all units) or if the developer has decided not to proceed with the development.

Amended Policy Statements 5 and 6 will be effective on January 30, 2008, and are available on our website at www.fic.gov.bc.ca/responsibilities/realestate/bulletins.htm.

Further information about disclosure requirements under the *Real Estate Development Marketing Act* is available on our website at www.fic.gov.bc.ca.

At the Financial Institutions Commission, we issue information bulletins to provide technical interpretations and positions regarding certain provisions contained in the *Real Estate Development Marketing Act* and Regulations. While the comments in a particular part of an information bulletin may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. The reader should consider the comments in light of the relevant provisions of the law in force at the time, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made. Subject to the above, an interpretation or position contained in an information bulletin generally applies as of the date on which it was published, unless otherwise specified.