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REAL ESTATE DEVELOPMENT MARKETING ACT

[SBC 2004] CHAPTER 41

Assented to May 13, 2004

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Part 1 — Definitions and Application

Definitions

1 In this Act:

"approving authority" means whichever of the following applies:

- (a) for land located in a municipality, the municipal council;
- (b) for land located in a regional district, excluding municipalities, treaty lands and Nisga'a Lands, the regional district board;
- (b.1) for treaty lands, the governing body of the treaty first nation;
- (c) for land located in Nisga'a Village Lands, the Nisga'a Village Government;
- (d) for land located in Nisga'a Lands, excluding Nisga'a Village Lands, the Nisga'a Lisims Government;
- (e) in relation to land located outside British Columbia, the local government body that has similar authority in relation to that land;

"approving officer" means

- (a) an approving officer as defined in the *Land Title Act*, and
- (b) in relation to land located outside British Columbia, a person who performs a similar function;

"bare land strata lot" means

- (a) a strata lot in a bare land strata plan, and
- (b) in relation to land located outside British Columbia, a similar lot;

"bare land strata plan" means

- (a) a bare land strata plan as defined in the *Strata Property Act*, and
- (b) in relation to land located outside British Columbia, a similar plan;

"brokerage" means a person licensed as a brokerage under the *Real Estate Services Act*;

"cooperative association" means

- (a) a corporation, as defined in the *Business Corporations Act*,
- (b) a limited liability company, as defined in the *Business Corporations Act*,
- (c) a partnership, and
- (d) an entity incorporated or otherwise created outside British Columbia that is similar to one described in paragraphs (a) to (c)

that owns, leases or has a right to acquire land;

"cooperative interest" means an interest that includes both

- (a) a right
 - (i) of ownership, directly or indirectly, of one or more shares in the cooperative association, or

(ii) to be a partner or member, directly or indirectly, in the cooperative association, and

(b) as a result of the right described in paragraph (a), a right to use or occupy a part of the land in which a cooperative association has an interest;

"deposit" means money paid by a purchaser to a developer in relation to a development unit before the purchaser acquires title or any other interest in the development unit;

"developer" means a person who, directly or indirectly, owns, leases or has a right to acquire or dispose of development property;

"development property" means any of the following:

(a) 5 or more subdivision lots in a subdivision, unless each lot is 64.7 ha or more in size;

(b) 5 or more bare land strata lots in a bare land strata plan;

(c) 5 or more strata lots in a stratified building;

(d) 2 or more cooperative interests in a cooperative association;

(e) 5 or more time share interests in a time share plan;

(f) 2 or more shared interests in land in the same parcel or parcels of land;

(g) 5 or more leasehold units in a residential leasehold complex;

"development unit" means any of the following in a development property:

(a) a subdivision lot;

(b) a bare land strata lot;

(c) a strata lot;

(d) a cooperative interest;

(e) a time share interest;

(f) a shared interest in land;

(g) a leasehold unit;

"director" means

(a) in the case of a corporation as defined in the *Business Corporations Act*, a director as defined in that Act, and

(b) in the case of a partnership or other entity,

(i) a person who holds the title of director, and

(ii) a person who, by whatever name designated, performs the

functions of a director of a corporation;

"disclosure statement" means a statement that discloses material facts about a development property, prepared in accordance with section 14 (2) [*filing disclosure statements*], and includes any amendment made to a disclosure statement;

"financial services tribunal" means the financial services tribunal under the *Financial Institutions Act*;

"land title office" means

- (a) a land title office under the *Land Title Act*, and
- (b) in relation to land located outside of British Columbia, an office that performs a similar function;

"leasehold unit" means a unit in a residential leasehold complex;

"market" means

- (a) to sell or lease,
- (b) to offer to sell or lease, and
- (c) to engage in any transaction or other activity that will or is likely to lead to a sale or lease;

"material fact" means, in relation to a development unit or development property, any of the following:

- (a) a fact, or a proposal to do something, that affects, or could reasonably be expected to affect, the value, price, or use of the development unit or development property;
- (b) the identity of the developer;
- (c) the appointment, in respect of the developer, of a receiver, liquidator or trustee in bankruptcy, or other similar person acting under the authority of a court;
- (d) any other prescribed matter;

"misrepresentation" means

- (a) a false or misleading statement of a material fact, or
- (b) an omission to state a material fact;

"previously occupied building" means a building that has been occupied at any time in its past for any purpose, including residential, commercial, institutional, recreational or industrial use;

"purchase agreement" means a contract of purchase and sale or a contract to lease;

"purchaser" means

- (a) a purchaser, from a developer, of a development unit,
- (b) a lessee, from a developer, of a development unit, and
- (c) a prospective purchaser or lessee, from a developer, of a development unit;

"residential leasehold complex" means a complex containing one or more buildings capable of being used, in whole or in part, for leasehold residential purposes, other than buildings comprised of strata lots, cooperative interests or shared interests in land;

"shared interest in land" means a person's interest in one or more parcels of land if

- (a) the parcel or parcels are owned or leased, directly or indirectly, by the person and at least one other person, and
- (b) as part of any arrangement relating to the acquisition of the person's interest, that person's right of use or occupation of the land is limited to a part of the land;

"sketch plan" means

- (a) a sketch plan as defined in the *Land Title Act*, and
- (b) in relation to land located outside British Columbia, a similar plan;

"strata lot" means

- (a) a strata lot as defined in the *Strata Property Act* in a stratified building, and
- (b) in relation to land located outside of British Columbia, a similar interest;

"strata plan" means

- (a) any strata plan as referred to in the *Strata Property Act*, and
- (b) in relation to land located outside British Columbia, a similar plan;

"stratified building" means a building subject to a strata plan that is not a bare land strata plan;

"subdivision" means land that is divided into lots or parcels, other than under the *Strata Property Act*;

"subdivision lot" means a lot or parcel in a subdivision;

"superintendent" means the person appointed as Superintendent of Real Estate by order of the Lieutenant Governor in Council;

"time share interest" means a person's interest in a time share plan;

"time share plan" means a plan in respect of land in which persons participating in the plan

(a) each have a right of recurring use, occupation or possession of all or part of the land, including any accommodations or facilities located on it, on a periodic basis, and

(b) may or may not acquire an ownership interest in the land that is the subject of the plan.

Application

2 (1) This Act applies to a developer who markets, in British Columbia, a development unit.

(2) This Act applies regardless of whether

(a) the development unit being marketed is located in British Columbia or not,

(b) the land that a developer owns, leases or has a right to acquire or dispose of

(i) has not yet been divided into development units, or

(ii) is divided once or in successive stages, if, in the opinion of the superintendent, the successive divisions occur reasonably close in time, or

(c) a developer

(i) markets development units relating to the same development property simultaneously or at different times, or

(ii) does not intend to market one or more development units within a development property.

Part 2 — Marketing and Holding Deposits

Division 1 — Marketing Requirements Generally

Marketing of development property

3 (1) A developer who markets or intends to market a development unit must

(a) meet the applicable requirements of Division 2 [*Preliminary Requirements or Approvals*],

(b) ensure that arrangements have been made in accordance with Division 3 [*Title Assurance and Utility Payments*]

(i) to assure the purchaser's title or other interest for which the purchaser has contracted, and

(ii) to pay the cost of utilities and other services, and

(c) file and provide a disclosure statement in accordance with Division 4 *[Disclosure Statements]*.

(2) A developer who receives a deposit must deal with the deposit in accordance with Division 5 *[Deposits]*.

Division 2 — Preliminary Requirements or Approvals

Subdivision lots and bare land strata lots

- 4** A developer must not market a subdivision lot or a bare land strata lot unless, in relation to the subdivision lot or bare land strata lot,
- (a) a subdivision plan or bare land strata plan, as applicable, has been deposited in a land title office, or
 - (b) an approving officer has given preliminary layout approval.

Strata lots and leasehold units

- 5** (1) A developer must not market a strata lot or a leasehold unit unless, in relation to the strata lot or leasehold unit,
- (a) a strata plan or sketch plan, as applicable, has been deposited in a land title office, or
 - (b) the appropriate municipal or other government authority has issued a building permit in relation to the strata lot or leasehold unit.
- (2) In addition to the requirement under subsection (1), a developer must not market a strata lot that is created or intended to be created by the conversion of a previously occupied building in British Columbia, unless, in relation to the strata lot, the requirements of section 242 *[approval for conversion of previously occupied buildings]* of the *Strata Property Act* have been met.

Cooperative interests

- 6** (1) A developer must not market a cooperative interest that includes a right of use or occupation of a building unless the appropriate municipal or other government authority has issued a building permit in relation to the land that is to be subject to the cooperative interest.
- (2) In addition to the requirement under subsection (1), a developer must not market a cooperative interest that is created or intended to be created by the conversion of a previously occupied building in British Columbia, unless, in relation to the cooperative interest, an approving authority has given approval for the conversion.
- (3) A developer must not market a cooperative interest that does not include a right of use or occupation of a building unless the appropriate municipal or

other government authority has given development approval in relation to the land that is to be subject to the cooperative interest.

Time share interests

- 7** A developer must not market a time share interest unless
- (a) the land, accommodations and facilities that are subject to the time share plan can be lawfully used or occupied by a purchaser, or
 - (b) the appropriate municipal or other government authority has, in relation to the land that is to be subject to the time share interest,
 - (i) if the time share interest includes a right of use, occupation or possession of a building, issued a building permit, or
 - (ii) in any other case, given development approval.

Shared interests in land in B.C.

- 8** (1) Despite section 2 (2) (a) [*application*], this section does not apply to a shared interest in land that is located outside British Columbia.
- (2) A developer must not market a shared interest in land that includes a right of use or occupation of a building unless the appropriate municipal or other government authority has issued a building permit in relation to the land that is to be subject to the shared interest in land.
- (3) In addition to the requirement under subsection (2), a developer must not market a shared interest in land that includes a right of use or occupation of a previously occupied building unless an approving authority has given approval, in accordance with subsection (5), to market the shared interest in land.
- (4) A developer must not market a shared interest in land that does not include a right of use or occupation of a building unless an approving officer has given approval, in accordance with subsection (6), to market the shared interest in land.
- (5) For the purpose of subsection (3),
- (a) section 242 (1) to (6) and (11) [*approval for conversion of previously occupied buildings*] of the *Strata Property Act* applies in respect of the intended marketing as if it were an intended conversion into strata lots under that Act, and
 - (b) the approving authority must deal with the matter as if the intended marketing were an intended conversion into strata lots under that Act.
- (6) For the purpose of subsection (4), an approving officer, within 2 months of receiving an application for approval, or within a longer period prescribed by the Lieutenant Governor in Council, must

- (a) consider
 - (i) the public interest,
 - (ii) any criteria prescribed by the Lieutenant Governor in Council, and
 - (iii) any other matter that the approving officer considers to be relevant, and
- (b) notify the developer, in writing, that
 - (i) the approval is granted,
 - (ii) the approval is refused until conditions specified in the notice are met, or
 - (iii) the approval is refused, in which case, the notice must set out the reasons for the refusal.

Shared interest in land outside B.C.

9 A developer must not market a shared interest in land that is located outside British Columbia unless

- (a) the shared interest in land can be lawfully used or occupied by a purchaser, or
- (b) the appropriate municipal or other government authority has, in relation to the land that is to be subject to the shared interest in land,
 - (i) if the shared interest in land includes a right of use or occupation of a building, issued a building permit, or
 - (ii) in any other case, given development approval.

Early marketing with permission

10 (1) Despite sections 4 to 9 [*subdivision lots and bare land strata lots to shared interests in land outside B.C.*], a developer may market a development unit if the developer has obtained both

- (a) approval in principle to construct or otherwise create the development unit from the appropriate municipal or other government authority, and
- (b) the superintendent's permission to begin marketing.

(2) In relation to a permission given under subsection (1) (b), the superintendent may

- (a) attach conditions to the permission, and
- (b) at any time, revoke the permission.

(3) The superintendent may publish, in accordance with the regulations, a

policy statement setting out circumstances in which permission will be deemed to be granted under subsection (1) (b) to developers who are described by the circumstances set out in the notice.

(4) If the superintendent publishes a policy statement under subsection (3), a developer who is described by the circumstances set out in the policy statement

(a) is deemed to have the superintendent's permission under subsection (1) (b), and

(b) must comply with the terms and conditions, if any, that are stated in the policy statement.

Division 3 — Title Assurance and Utility Payments

Assurance of title

11 (1) A developer must not market a development unit unless the developer has made adequate arrangements to ensure that a purchaser of the development unit will have assurance of title or of the other interest for which the purchaser has contracted.

(2) For the purpose of subsection (1), a developer has made adequate arrangements to ensure that a purchaser of a development unit will have assurance of title or of the other interest for which the purchaser has contracted if

(a) arrangements have been made for title to the development unit to be held in trust by a lawyer, notary public or another person, or class of persons, specified by the superintendent until title or the other interest for which the purchaser has contracted is assured,

(b) the developer provides a bond to the superintendent or other person specified by the superintendent for the benefit and protection of purchasers, with surety in the amount and subject to the terms required by the superintendent, or

(c) the developer has made other arrangements that are satisfactory to the superintendent.

(3) Without limiting subsection (1) or (2), if a development unit may be affected by a mortgage, lien or other encumbrance that secures or evidences the payment of money,

(a) the mortgage, lien or other encumbrance must provide, without condition, that a purchaser who complies with the terms and conditions of the purchaser's purchase agreement obtains title, or the other interest for which the purchaser has contracted, free and clear of the mortgage, lien or other encumbrance, or

(b) the developer must make other arrangements, satisfactory to the superintendent, to assure title or the other interest for which the purchaser has contracted.

Utilities and services

12 (1) 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.

(2) For the purpose of subsection (1), a developer has made adequate arrangements to ensure payment of the cost of utilities and other services associated with the development unit if

(a) arrangements have been made for title to the development unit to be held in trust by a lawyer, notary public or another person, or class of persons, specified by the superintendent until the cost of utilities and other services associated with the development unit has been paid,

(b) the developer provides a bond to the superintendent or other person specified by the superintendent for the benefit and protection of purchasers, with surety in the amount and subject to the terms required by the superintendent, or

(c) the developer has made other arrangements that are satisfactory to the superintendent.

Deemed adequate arrangements

13 (1) The superintendent may publish, in accordance with the regulations, a policy statement setting out circumstances in which arrangements made under section 11 (2) (c) and (3) (b) [*assurance of title*] or 12 (2) (c) [*utilities and services*] are deemed adequate for the purpose of those sections.

(2) If the superintendent publishes a policy statement under subsection (1), a developer who has made the arrangements set out in the policy statement

(a) is deemed to have made adequate arrangements to ensure

(i) that a purchaser of a development unit will have assurance of title or the other interest for which the purchaser has contracted, or

(ii) payment of the cost of utilities and other services associated with a development unit,

as applicable, and

(b) must comply with the terms and conditions, if any, that are stated in the policy statement.

Division 4 — Disclosure Statements

Filing disclosure statements

- 14** (1) A developer must not market a development unit unless the developer has
- (a) prepared a disclosure statement respecting the development property in which the development unit is located, and
 - (b) filed with the superintendent
 - (i) the disclosure statement described under paragraph (a), and
 - (ii) any records required by the superintendent under subsection (3).
- (2) A disclosure statement must
- (a) be in the form and include the content required by the superintendent,
 - (b) without misrepresentation, plainly disclose all material facts,
 - (c) set out the substance of a purchaser's rights to rescission as provided under section 21 [*rights of rescission*], and
 - (d) be signed as required by the regulations.
- (3) A developer must provide to the superintendent any records the superintendent requires to support any statement contained in the disclosure statement filed under subsection (1).
- (4) Without limiting section 16 [*non-compliant disclosure statements*], if a developer markets development units in phases, the developer, before marketing each successive phase, must file with the superintendent an amendment to a disclosure statement submitted in respect of the previous phase.
- (5) On a person's payment of the prescribed fee, the superintendent must
- (a) permit the person to inspect, at the superintendent's office and during regular business hours, a disclosure statement filed under this section, and
 - (b) provide a copy of a disclosure statement filed under this section, or a copy of part of it, to a person who requests it.

Providing disclosure statements to purchasers

- 15** (1) A developer must not enter into a purchase agreement with a purchaser for the sale or lease of a development unit unless
- (a) a copy of the disclosure statement prepared in respect of the

development property in which the development unit is located has been provided to the purchaser,

(b) the purchaser has been afforded reasonable opportunity to read the disclosure statement, and

(c) the developer has obtained a written statement from the purchaser acknowledging that the purchaser had an opportunity to read the disclosure statement.

(2) A developer must

(a) retain a written statement obtained under subsection (1) (c) for a period of 3 years or a longer period prescribed by regulation, and

(b) produce the written statement for inspection by the superintendent on the superintendent's request.

Non-compliant disclosure statements

16 (1) If a developer becomes aware that a disclosure statement does not comply with the Act or regulations, or contains a misrepresentation, the developer must immediately

(a) file with the superintendent, as applicable under subsection (2) or (3),

(i) a new disclosure statement, or

(ii) an amendment to the disclosure statement that clearly identifies and corrects the failure to comply or the misrepresentation, and

(b) within a reasonable time after filing a new disclosure statement or an amendment under paragraph (a), provide a copy of the disclosure statement or amendment to each purchaser

(i) who is entitled, at any time, under section 15 [*providing disclosure statements to purchasers*] to receive the disclosure statement, and

(ii) who has not yet received title, or the other interest for which the purchaser has contracted, to the development unit in the development property that is the subject of the disclosure statement.

(2) A developer must file a new disclosure statement under subsection (1) (a)

(i) if the failure to comply or misrepresentation referred to in that subsection

(a) is respecting a matter set out in paragraph (b) or (c) of the definition of "material fact" in section 1 [*definitions*],

(b) is respecting a matter set out in paragraph (d) of the definition of "material fact" in section 1, and the regulation prescribing the matter

specifies that a new disclosure statement must be filed if subsection (1) of this section applies, or

(c) is of such a substantial nature that the superintendent gives notice to the developer that a new disclosure statement must be filed.

(3) A developer must file an amendment to the disclosure statement under subsection (1) (a) (ii) in any case to which subsection (2) does not apply.

(4) A developer who is required to file a new disclosure statement or an amendment under subsection (1) must not market a development unit in the development property that is the subject of the new disclosure statement or amendment

(a) until the developer has complied with subsection (1) (a), or

(b) unless permitted by the superintendent.

Superintendent under no duty

17 The superintendent is not under any duty to determine any of the following:

(a) the merits of any statement contained in a disclosure statement;

(b) whether a disclosure statement contains a misrepresentation;

(c) whether a disclosure statement filed with the superintendent, or the information contained in it, meets the requirements of this Act and the regulations.

Division 5 — Deposits

Handling deposits

18 (1) A developer who receives a deposit from a purchaser in relation to a development unit must promptly place the deposit with a brokerage, lawyer, notary public or prescribed person who must hold the deposit as trustee in a trust account in a savings institution in British Columbia.

(2) A trustee under subsection (1) holds the deposit for the developer and the purchaser and not as an agent for either of them and must not release the deposit from trust except as follows:

(a) if the money was paid into the trust account in error;

(b) to the purchaser with the written consent of the purchaser and the developer;

(c) in accordance with subsection (3) or (4);

(d) in accordance with section 19 [*developer use of deposit*] of this Act;

(e) in accordance with section 21 [*rights of rescission*] of this Act;

(f) in accordance with section 32 [*unclaimed money held in trust*] of the *Real Estate Services Act*;

(g) in accordance with section 33 [*payment of trust funds into court*] of the *Real Estate Services Act*;

(h) in accordance with a court order;

(i) in accordance with the regulations under this Act.

(3) A trustee under subsection (1) must release the deposit to the developer if the developer certifies in writing that

(a) the purchaser who paid the deposit has no right to rescission under section 21 [*rights of rescission*],

(b) if required, the subdivision plan, strata plan or other plan has been deposited in the appropriate land title office,

(c) the approvals required for the lawful occupation of the development unit have been obtained, and

(d) as applicable,

(i) if all or part of the purchaser's interest in the development unit is registrable in a land title office, the interest has been registered in the appropriate land title office and an instrument evidencing the registration has been delivered to the purchaser, or

(ii) if all or part of the purchaser's interest in the development unit is not registrable in a land title office, an instrument evidencing the interest of the purchaser has been delivered to the purchaser.

(4) A trustee under subsection (1) must release the deposit to the developer if the developer certifies in writing that

(a) the purchaser who paid the deposit has no right to rescission under section 21 [*rights of rescission*],

(b) the purchaser has failed to pay a subsequent deposit when required by the purchase agreement under which the deposit held by the trustee was paid,

(c) under the terms of the purchase agreement, if the purchaser fails to pay a subsequent deposit when required, the developer may elect to cancel the purchase agreement and, if the developer elects to cancel the purchase agreement, the amount of the deposit is forfeited to the developer, and

(d) the developer has elected to cancel the purchase agreement.

(5) For the purposes of subsection (2) (f) and (g), the provisions of the *Real Estate Services Act* referred to in that subsection apply to a trustee as if the

trustee were a brokerage.

(6) Payment to a person in accordance subsection (2) (b), (c), (d) or (e) discharges the trustee from liability for the deposit in the amount paid out.

Developer use of deposit

19 (1) In this section:

"deposit protection contract" has the same meaning as in section 189.2 (1) of the *Insurance Act*;

"developer's own purposes" means purposes related to the development property that includes the development unit in relation to which the deposit under section 18 (1) [*handling deposits*] was paid, including, without limitation, the construction and marketing of that development property.

(2) A developer who desires to use for the developer's own purposes a deposit the developer has placed with a trustee under section 18 (1), must enter into a deposit protection contract in relation to that deposit and provide notice of the deposit protection contract to the purchaser in accordance with the regulations.

(3) A trustee must pay a deposit held under section 18 (1) to a developer who has entered into a deposit protection contract in relation to the deposit on receiving

(a) from an insurer the original or a true copy of the deposit protection contract, and

(b) from the developer a certification, in writing, that the purchaser who paid the deposit has no right to rescission under section 21 [*rights of rescission*].

(4) If a deposit is paid under subsection (3), the developer may use that deposit only for the developer's own purposes.

Division 6 — Exemptions

Superintendent's exemptions

20 (1) The superintendent may exempt, with or without conditions, the following from all or part of a provision of this Part:

(a) a person;

(b) land that is, or will be, the subject of development;

(c) a transaction.

(2) The superintendent may suspend or cancel an exemption made under subsection (1).

(3) If an exemption has been made in respect of a class of persons, land or

transactions under section 46 [regulations], the superintendent may suspend or cancel the exemption in relation to a particular person, land or transaction within the class, if the superintendent has reason to believe that

- (a) the person is not complying with the terms or conditions of the exemption, or
- (b) the exemption, if applied to that land or transaction, would be detrimental to the public interest.

(4) If the superintendent makes an exemption, or suspends or cancels an exemption, under this section, the superintendent must publish, in accordance with the regulations, the exemption, suspension or cancellation.

Part 3 — Remedies and Enforcement

Division 1 — Remedies

Rights of rescission

21 (1) A purchaser does not have a right of rescission under this section

- (a) if the purchaser is not entitled to receive a disclosure statement under this Act, or
- (b) as a result of receiving an amendment to a disclosure statement in respect of a development property, including an amendment described in section 16 (1) (a) (ii) [*non-compliant disclosure statements*], unless the purchaser has not previously received any disclosure statement in respect of that development property.

(2) Regardless of whether title, or the other interest for which a purchaser has contracted, to a development unit has been transferred, a purchaser of the development unit may rescind the purchase agreement by serving written notice of the rescission on the developer within 7 days after the later of

- (a) the date that the purchase agreement was made, and
- (b) the date that the developer obtained, under section 15 (1) (c) [*providing disclosure statements to purchasers*], a written statement from the purchaser acknowledging that the purchaser had an opportunity to read
 - (i) the disclosure statement provided under that section, or
 - (ii) a new disclosure statement, if any, described in section 16 (1) (a) (i) [*non-compliant disclosure statements*].

(3) Regardless of whether title, or the other interest for which a purchaser has contracted, to a development unit has been transferred, if a purchaser is entitled to a disclosure statement in respect of a development property under

this Act and does not receive the disclosure statement, the purchaser may rescind, at any time, a purchase agreement of a development unit in that development property by serving a written notice of rescission on the developer.

(4) A notice of rescission under subsection (2) or (3) must be served according to the regulations.

(5) If a developer is served with a notice of rescission that complies with the requirements of subsections (2) to (4), the developer must immediately inform the person who is holding the purchaser's deposit under section 18 [*handling deposits*].

(6) If a person who is holding a purchaser's deposit under section 18 is informed, under subsection (5), of the purchaser's rescission, the person must promptly return the deposit to the purchaser.

Liability for misrepresentation

22 (1) In this section:

"developer" means a developer that is required by the Act or regulations to

- (a) file a disclosure statement with the superintendent, or
- (b) provide a disclosure statement to a purchaser

in respect of a development property;

"director" means a director of a developer at the time that the developer

- (a) filed a disclosure statement with the superintendent, or
- (b) provided a disclosure statement to any purchaser

in respect of a development property.

(2) This section does not apply to a purchaser who is not entitled to receive a disclosure statement under this Act.

(3) If a developer files a disclosure statement respecting a development property and the disclosure statement contains a misrepresentation, a purchaser of a development unit in the development property, whether the purchaser received the disclosure statement or not,

- (a) is deemed to have relied on the misrepresentation, and
- (b) has a right of action for damages against
 - (i) the developer,
 - (ii) a director,
 - (iii) a person who consented to be named, and was named, in the disclosure statement as a developer or director,
 - (iv) a person who authorized the filing of the disclosure

statement, and

(v) a person who signed the disclosure statement.

(4) If

(a) a disclosure statement contains a misrepresentation at the time at which a purchaser and a developer enter into a purchase agreement, and

(b) the misrepresentation is removed or otherwise corrected after the purchaser and developer have entered into the purchase agreement,

subsection (3) continues to apply as if the misrepresentation had not been removed or corrected.

(5) A person is not liable to a purchaser under subsection (3) if the person proves that the purchaser had knowledge of the misrepresentation at the time at which the purchaser received the disclosure statement.

(6) An individual is not liable to a purchaser under subsection (3) if the individual proves

(a) that

(i) the disclosure statement was filed without the individual's knowledge or consent, and

(ii) on becoming aware of its filing, the individual gave written notice to the developer, the superintendent and the public that it was filed without the individual's knowledge or consent, or

(b) that, after filing the disclosure statement but before entering into a purchase agreement with the purchaser in relation to a development unit in the development property to which the disclosure statement relates, the individual

(i) became aware of a misrepresentation in the disclosure statement,

(ii) withdrew the individual's consent to the disclosure statement, and

(iii) gave written notice to the developer, the superintendent and the public of the withdrawal and the reason for it.

(7) An individual is not liable under subsection (3) with respect to any part of the disclosure statement made on the authority of an expert if the individual had no reasonable grounds to believe, and did not believe, that the opinion of the expert

(a) was based on, or contained, a misrepresentation, or

(b) was unfairly represented in the disclosure statement.

(8) An individual is not liable under subsection (3) with respect to any part of a disclosure statement not made on the authority of an expert if the individual

(a) made reasonable inquiries to determine whether the disclosure statement contained a misrepresentation, and

(b) believed that there had been no misrepresentation.

(9) An action for damages under this section may not be commenced more than 2 years after the misrepresentation on which the action is based first comes to the knowledge of the purchaser.

Agreements void for non-compliance

23 A promise or an agreement to purchase or lease a development unit is not enforceable against a purchaser by a developer who has breached any provision of Part 2 [*Marketing and Holding Deposits*].

Division 2 — Enforcement Powers

Non-compliance

24 In this Division:

"developer" includes a former developer;

"non-compliant" means, in respect of a developer,

(a) contravening a provision of this Act or the regulations,

(b) failing to comply with the terms or conditions of

(i) an order of the superintendent,

(ii) a permission given by the superintendent under section 10 [*early marketing with permission*],

(iii) a policy statement issued under section 10 (4) (b) or 13 (2) (b) [*deemed adequate arrangements*], and

(iv) an undertaking given under section 36 [*undertakings*],

(c) failing to follow any direction of the superintendent in relation to an arrangement made under section 11 (2) (c) or (3) (b) [*assurance of title*] or 12 (2) (c) [*utilities and services*], and

(d) making, or allowing to be made,

(i) a misrepresentation in any record that is required to be produced or submitted under this Act, or

(ii) a false or misleading statement in a certification under section 18 [*handling deposits*] or in an investigation under section 25 [*investigations*];

"recipient of the notice" means a person who receives a notice under section 27 (1) [*notice of hearing*] that a hearing will be held to determine whether a developer is, or has been, non-compliant.

Investigations

- 25** (1) If the superintendent has reason to believe that a developer is, or has been, non-compliant, the superintendent may
- (a) conduct an investigation to determine whether the developer is, or has been, non-compliant, or
 - (b) by order, appoint an investigator to conduct an investigation.
- (2) For the purpose of an investigation, a person carrying out the investigation may do one or more of the following:
- (a) at any time during business hours, inspect and copy records that are located on the business premises of
 - (i) a developer, or
 - (ii) an officer, director, controlling shareholder or partner of a developer;
 - (b) require a person referred to in paragraph (a) to produce information, records or other things in the person's possession or control.
- (3) A person referred to in subsection (2) (a) must not withhold or destroy, conceal or refuse to provide any information or thing reasonably required for the purposes of an investigation under this section.
- (4) An investigator appointed under subsection (1) (b) must provide the superintendent with a written report of the investigation.

Court order for search and seizure

- 26** (1) The superintendent may apply to the Supreme Court for an order authorizing the seizure of records or other evidence, wherever located, belonging to or relating to a developer from the person named in the order, if there are reasonable grounds to believe that the developer is, or has been, non-compliant.
- (2) An application under subsection (1) may be made without notice to any other person unless otherwise ordered by the court.
- (3) An application under subsection (1) must be supported by an affidavit stating
- (a) the grounds for believing that the developer is, or has been, non-compliant, and
 - (b) the grounds for believing that the seizure will produce evidence relevant to that matter.
- (4) In an order under subsection (1), the court may

- (a) designate the person who will conduct the seizure and authorize that person to conduct it,
- (b) state the time and place the seizure will occur, and
- (c) give any other directions necessary to carry out the seizure.

(5) This section does not apply to records or other evidence subject to solicitor-client privilege.

Notice of hearing

27 (1) Following an investigation under section 25 [*investigations*], the superintendent may deliver, to a person against whom an order under section 30 [*orders*] may be made, notice that the superintendent intends to hold a hearing under section 29 [*hearings*] to determine if a developer is, or has been, non-compliant.

(2) The notice must

- (a) describe the matter that is to be the subject of the hearing,
- (b) specify the time and place set for commencement of the hearing,
- (c) advise the recipient of the notice that the superintendent is entitled to proceed with the hearing in the absence of the recipient of the notice, and
- (d) be accompanied by either
 - (i) a copy of the investigator's report, if any, made under section 25 (4) [*investigations*], or
 - (ii) if no investigator's report has been made, a summary of the superintendent's investigation.

(3) The notice must be delivered at least 21 days before the time set for the hearing as follows:

- (a) in the case of delivery to a current developer, by personal service or by mailing the notice by registered mail to the address of the developer shown in that developer's disclosure statement;
- (b) in the case of delivery to a person who is not a current developer, by personal service;
- (c) in any case, in accordance with an order for substituted service under section 43 [*substituted service*].

Consent orders

28 (1) A recipient of the notice may deliver, at least 14 days or a shorter period permitted by the superintendent before the time set for the hearing, to the superintendent a written proposal that includes the person's consent to the superintendent making a specified order under section 30 [*orders*] without

conducting a hearing.

- (2) If the superintendent accepts a proposal under subsection (1),
- (a) the superintendent may make the proposed order under section 30, and
 - (b) no further proceedings may be taken under this Division with respect to the matter, other than to enforce the terms of the order as proposed.
- (3) Regardless of whether a proposal under subsection (1) has been accepted or rejected by the superintendent, the proposal may not be used
- (a) in any proceeding under this Act, other than as referred to in subsection (2) (b), or
 - (b) in any civil proceeding with respect to the matter.

Hearings

- 29** (1) If a notice of hearing has been delivered in accordance with section 27 [*notice of hearing*], the superintendent may proceed with the hearing under this section whether or not the recipient of the notice appears in person and whether or not the recipient of the notice is represented by legal counsel at the hearing.
- (2) For the purposes of a hearing under this Act, sections 34 (3) and (4) [*power to compel witnesses and order disclosure*], 48 [*maintenance of order at hearings*] and 49 [*contempt proceeding for uncooperative witness or other person*] of the *Administrative Tribunals Act* apply to the superintendent as if the superintendent were a tribunal under that Act.

Orders

- 30** (1) After a hearing, if the superintendent determines that a developer is, or has been, non-compliant, the superintendent may do one or more of the following:
- (a) order the developer to cease or refrain from marketing one or more development units;
 - (b) order the developer to carry out a specified activity related to marketing;
 - (c) order the developer to pay amounts in accordance with section 31 [*recovery of enforcement expenses*];
 - (d) order the developer to pay an administrative penalty in an amount of
 - (i) not more than \$50 000, in the case of a corporation, or
 - (ii) not more than \$25 000, in the case of an individual.

(2) If the superintendent intends to make an order under subsection (1) (c) or (d), the superintendent may make the order against

- (a) the developer,
- (b) a person who was an officer, director, controlling shareholder or partner of the developer at the time of non-compliance, if that person authorized, permitted or acquiesced in the non-compliance, or
- (c) both the developer and a person described in paragraph (b).

(3) The superintendent, by order made on the application of or with the consent of a person affected by the order, may

- (a) vary or rescind an order made under subsection (1), and
- (b) as a condition of varying or rescinding an order under paragraph (a), require an undertaking under section 36 (1) [*undertakings*].

Recovery of enforcement expenses

31 (1) The superintendent may, by an order under section 30 (1) (c) [*orders*], require a person described under section 30 (2) to pay the expenses, or part of the expenses, of either or both of the following:

- (a) an investigation under section 25 [*investigations*];
- (b) the hearing.

(2) Expenses assessed under subsection (1)

- (a) must be for the matters, and must not exceed the amounts, set out in the regulations, and
- (b) may include remuneration expenses for employees, officers or agents of the superintendent engaged in the investigation or hearing.

Orders in urgent circumstances

32 (1) The superintendent may make an order referred to in section 30 (1) (a) or (b) [*orders*] against a developer under this section if the superintendent considers

- (a) that the developer is, or has been, non-compliant,
- (b) that the length of time that would be required to complete an investigation or hold a hearing, or both, would be detrimental to the public interest, and
- (c) that it is in the public interest to make the order.

(2) Despite any other provision of this Division, an order may be made under this section

- (a) whether or not a notice of hearing has been issued under section 27 [*notice of hearing*],

(b) without giving notice to the developer, and

(c) without providing the developer an opportunity to be heard.

(3) Promptly after an order under this section is made, the superintendent must deliver, in accordance with section 27 (3), to the developer who is the subject of the order

(a) a copy of the order and written reasons for it, and

(b) written notice that a hearing may be held respecting the order.

(4) A developer who is the subject of an order under subsection (1) may require, within 14 days after receiving a copy of the order, a hearing before the superintendent by delivering written notice to the superintendent.

(5) Within a reasonable time after receiving written notice referred to in subsection (4), the superintendent must

(a) provide notice of the hearing in accordance with section 27, and

(b) hold the required hearing in accordance with section 29 [hearings].

(6) Following the hearing referred to in subsection (5) (b), the superintendent

(a) must confirm, revoke or vary the order, and

(b) may make any other order referred to in section 30 (1).

(7) Section 30 (3) applies in respect of an order made under this section.

Publication of orders

33 The superintendent must

(a) publish, in accordance with the regulations, each order of the superintendent made under section 30 [orders] or 32 [orders in urgent circumstances], and

(b) provide a copy of an order published under paragraph (a) to any person who requests it and pays the prescribed fee.

Court filing of superintendent's orders

34 (1) If the superintendent considers that a person has failed to comply with an order of the superintendent under this Division, the superintendent may file a certified copy of the order with the Supreme Court.

(2) An order filed under subsection (1) has the same force and effect, and all proceedings may be taken on it, as if it were an order of the Supreme Court.

Application for injunction

35 (1) The superintendent may apply to the Supreme Court for an injunction restraining a person from contravening, or requiring a person to comply with,

- (a) this Act or the regulations, or
- (b) an order of the superintendent under this Act.

(2) The court may grant an injunction sought under subsection (1) if the court is satisfied that there is reason to believe that there has been or will be a contravention of this Act, the regulations or an order referred to in that subsection.

(3) The court may grant an interim injunction until the outcome of an application commenced under subsection (1).

Undertakings

36 (1) If the superintendent has reason to believe that a developer is, or has been, non-compliant, the superintendent, with or without an investigation or a hearing under this Division, may

- (a) give notice to the developer of the superintendent's reason for believing that the developer is or has been non-compliant, and
- (b) accept a written undertaking from the developer to do one or more of the following:
 - (i) cease or refrain from marketing one or more development units;
 - (ii) comply with terms or conditions set by the superintendent, which may include a condition that the developer pay the expenses, or part of the expenses, incurred by the superintendent in relation to the undertaking;
 - (iii) do anything that the developer is required to do under this Act;
 - (iv) cease or refrain from doing anything that the developer is prohibited from doing under this Act.

(2) Expenses assessed under subsection (1) (b) (ii)

- (a) must be for the matters, and must not exceed the amounts, set out in the regulations, and
- (b) may include remuneration expenses for employees, officers or agents of the superintendent engaged in matters related to the undertaking.

(3) An undertaking given by a developer under this section is binding on the developer and every director of the developer.

Division 3 — Appeals

Appeals to the financial services tribunal

37 (1) A person who is the subject of an order or decision of the superintendent

made under any of the following sections may appeal the decision to the financial services tribunal:

- (a) section 11 (2) (c) and (3) (b) *[assurance of title]*;
- (b) section 12 (2) (c) *[utilities and services]*;
- (c) section 16 (2) (c) *[non-compliant disclosure statements]*;
- (d) section 20 (2) or (3) *[superintendent's exemptions]*;
- (e) section 30 *[orders]*;
- (f) section 32 *[orders in urgent circumstances]*.

(2) The superintendent is a party to an appeal under this section.

(3) Sections 242.2 *[practice and procedure]* and 242.3 *[judicial review]* of the *Financial Institutions Act* apply in relation to an appeal under this section.

Effect of filing notice of appeal

38 (1) An order made under section 30 (1) (a) *[orders]* or 32 *[orders in urgent circumstances]* is not stayed by the filing of a notice of appeal under section 37 *[appeals to the financial services tribunal]* and may not be stayed under section 242.2 (10) (a) (i) *[tribunal member hearing appeal may stay order]* of the *Financial Institutions Act*.

(2) An appealable decision, other than one referred to in subsection (1), is stayed by the filing of a notice of appeal under section 37, but the stay may be lifted under section 242.2 (10) (a) (ii) of the *Financial Institutions Act*.

Division 4 — Offences and Penalties

Offences

39 (1) A person who does any of the following commits an offence:

- (a) contravenes
 - section 4 *[subdivision lots and bare land strata lots]*,
 - section 5 *[strata lots and leasehold units]*,
 - section 6 *[cooperative interests]*,
 - section 7 *[time share interests]*,
 - section 8 *[shared interest in land in B.C.]*,
 - section 9 *[shared interests in land outside B.C.]*,
 - section 10 (4) (b) *[early marketing with permission]*,
 - section 11 *[assurance of title]*,
 - section 12 *[utilities and services]*,
 - section 13 (2) (b) *[deemed adequate arrangements]*,
 - section 14 *[filing disclosure statements]*,

section 15 [*providing disclosure statements to purchasers*],
section 16 [*non-compliant disclosure statements*],
section 18 [*handling deposits*],
section 19 [*developer use of deposit*],
section 21 (5) [*rights of rescission*], or
section 25 (3) [*investigations*];

(b) neglects or refuses to comply with an order of the superintendent under this Act;

(c) subject to subsection (2), makes a statement in a disclosure statement filed or provided under this Act that, at the time and in the light of the circumstances under which the statement is made, contains a misrepresentation;

(d) subject to subsection (2), makes a statement in a record filed, submitted, provided or delivered under this Act, other than a disclosure statement, that, at the time and in the light of the circumstances under which the statement is made, contains a false or misleading statement.

(2) A person does not commit an offence under subsection (1) (c) or (d) if, at the time of the statement, the person

(a) did not know that the statement contained a misrepresentation or was false or misleading, and

(b) in the exercise of reasonable diligence, could not have known that the statement contained a misrepresentation or was false or misleading.

(3) If a developer commits an offence under this Act, an officer, director, controlling shareholder or partner of the developer who authorizes, permits or acquiesces in the offence commits the same offence whether or not the developer is convicted of the offence.

(4) Section 5 [*offence to contravene any enactment*] of the *Offence Act* does not apply to this Act or to the regulations.

Penalties

40 A person who commits an offence under section 39 [*offences*] is liable,

(a) in the case of a corporation,

(i) on a first conviction, to a fine of not more than \$100 000, and

(ii) on each subsequent conviction, to a fine of not more than \$200 000, and,

(b) in the case of an individual,

- (i) on a first conviction, to a fine of not more than \$100 000 or to imprisonment for not more than 2 years, or to both, and
- (ii) on each subsequent conviction, to a fine of not more than \$200 000 or to imprisonment for not more than 2 years, or to both.

Limitation period

- 41** (1) The time limit for laying an information for an offence under this Act is
- (a) 2 years after the date that the facts on which the information is based arose, or
 - (b) if the superintendent issues a certificate described in subsection (2), 2 years after the date that the facts on which the information is based first came to the knowledge of the superintendent.
- (2) A record purporting to have been issued by the superintendent, certifying the date on which the facts on which the information is based first came to the knowledge of the superintendent,
- (a) is admissible without proof of the signature or official position of the person appearing to have signed the certificate, and
 - (b) is proof of the certified matters.

Remedies preserved

- 42** A proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

Part 4 — General

Substituted service

- 43** (1) In relation to any requirement or authorization established under this Act that a notice or another record be served on a person, that service may be done by substituted service in accordance with an order under subsection (2).
- (2) On application, the Supreme Court may order that a record referred to in subsection (1) may be served by substituted service in accordance with the order.

Delegation of superintendent's powers

- 44** (1) The superintendent may delegate, in writing, to a person employed under the *Public Service Act* any of the superintendent's powers or duties under this Act or the *Real Estate Services Act*.
- (2) A delegation under this section

- (a) may be made subject to any terms and conditions the superintendent considers appropriate,
- (b) is revocable, and
- (c) does not prevent the superintendent from exercising a delegated power or performing a delegated duty.

Immunity from legal action

45 (1) In this section, "**protected individual**" means an individual who is or was any of the following:

- (a) the superintendent;
- (b) an employee of or any other individual acting on behalf of, or under the direction of, the superintendent.

(2) Subject to subsection (4), no action or other legal proceedings for damages lies or may be brought against a protected individual or the government because of anything done or omitted

- (a) in the performance or intended performance of any duty, or
- (b) in the exercise or intended exercise of any power

under sections 27 [*notice of hearing*] to 32 [*orders in urgent circumstances*].

(3) Subject to subsection (4), no action or other legal proceedings for damages lies or may be brought against a protected individual because of anything done or omitted

- (a) in the performance or intended performance of any duty under this Act, other than a duty under the provisions referred to in subsection (2), or
- (b) in the exercise or intended exercise of any power under this Act, other than a power under those provisions.

(4) Subsections (2) and (3) do not apply to a protected individual in relation to anything done or omitted in bad faith.

(5) Subsection (3) does not absolve the government from vicarious liability arising out of anything done or omitted by a protected individual for which it would be vicariously liable if that subsection were not in force.

Regulations

46 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) exempting from all or part of a provision of Part 2 [*Marketing and*

Holding Deposits], with or without conditions,

- (i) a class of persons,
- (ii) a class of land that is, or will be, the subject of development, or
- (iii) a class of transactions;

(b) prescribing periods of time for the purpose of section 8 (6) *[shared interests in land in B.C.]*;

(c) respecting criteria to be considered under section 8 (6) (a) (ii);

(d) respecting the execution of disclosure statements;

(e) respecting periods of time for which a developer must retain a written statement under section 15 *[providing disclosure statements to purchasers]*;

(f) defining matters as material facts and specifying whether or not new disclosure statements must be filed in respect of them if section 16 *[non-compliant disclosure statements]* applies;

(g) prescribing persons who may hold a deposit in trust under this Act;

(h) respecting the release of deposits for the purpose of section 18 (2) (i) *[handling deposits]*;

(i) respecting the time and manner in which notice under section 19 (2) *[developer use of deposit]* must be given;

(j) respecting service of a notice of rescission under section 21 *[rights of rescission]*;

(k) prescribing the types and amounts of expenses that can be recovered for the purposes of sections 31 (2) *[recovery of enforcement expenses]* and 36 (2) *[undertakings]*;

(l) respecting fees and the calculation of fees, including requiring different fees based on the number of development units within a development property, for

- (i) filing a disclosure statement,
- (ii) requesting an exemption under section 20 *[superintendent's exemptions]*,
- (iii) providing copies of disclosure statements,
- (iv) providing copies of orders under section 33 (b) *[publication of orders]*,
- (v) retrieving files held by the superintendent, and
- (vi) other things necessary to the administration of this Act;

(m) respecting the collection and payment of a fee prescribed under

- paragraph (l) and penalties for non-payment of fees;
- (n) respecting the publication of matters as required by this Act;
- (o) defining a word or expression used but not defined in this Act;
- (p) for any other matter for which regulations are contemplated by this Act.

Transitional

- 47** (1) A prospectus or disclosure statement that was accepted for filing by the superintendent under the *Real Estate Act* before the repeal of that Act is deemed to be a disclosure statement filed under this Act.
- (2) Despite the repeal of section 78 [*rescission*] of the *Real Estate Act*, that section, as it read before its repeal, continues to apply to a person described in that section if a right of rescission accrued to the person under the *Real Estate Act* before the repeal of section 78 of that Act.
- (3) [Repealed 2004-41-61.]
- (4) The Lieutenant Governor in Council may make regulations for meeting or removing any difficulty arising out of the transition to this Act from the *Real Estate Act*, and for that purpose disapplying or varying any provision of this Act.
- (5) The authority to make or amend a regulation under subsection (4), but not the authority to repeal a regulation under subsection (4), ends 3 years after the date on which subsection (4) comes into force.

Consequential Amendments

[Note: See Table of Legislative Changes for the status of sections 48 to 61.]

Section(s)	Affected Act
48	<i>Business Practices and Consumer Protection Act</i>
49	<i>Commercial Appeals Commission Repeal Act</i>
50	<i>Community Financial Services Act</i>
51	<i>Consumer Protection Act</i>
52	<i>Credit Union Incorporation Act</i>
53–55	<i>Insurance Act</i>
56	<i>Islands Trust Act</i>
57	<i>Property Transfer Tax Act</i>
58	<i>Securities Act</i>
59	<i>Strata Property Act</i>
60	<i>University Endowment Land Act</i>

Related Amendments

Section(s)	Affected Act
61	<i>Real Estate Development Marketing Act, S.B.C. 2004, c. 41</i>

Commencement

62 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 to 60	By regulation of the Lieutenant Governor in Council

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