

IN THE MATTER OF THE REAL ESTATE DEVELOPMENT MARKETING ACT

- AND -

**CB DEVELOPMENT 2000 LTD.
-And-
CRAIG WILLIAM LOCHHEAD
-And-
GRAYDEN ROLAND HAYWARD**

**ORDER UNDER SECTIONS 30(1) (a) and 32(1)
REAL ESTATE DEVELOPMENT MARKETING ACT**

Upon reviewing the results of Corporate Registry company searches for CB Development 2000 Ltd. ("CB Development"), the results of a Corporations Canada search, the results of Land Title Office searches of the registered titles of the properties being developed by CB Development, excerpts of the disclosure statement and amendments filed by or on behalf of CB Development, the press release issued by CB Development and the supporting documents submitted by staff, I am of the opinion that:

1. CB Development was registered as a company in the Province of British Columbia on May 23, 2000. The registered and records office is 1000-840 Howe Street, Vancouver, British Columbia, and the directors are Craig William Lochhead ("Lochhead") of [REDACTED] British Columbia and Grayden Roland Hayward ("Hayward") of [REDACTED] Avenue, Vancouver, British Columbia.
2. CB Development developed or is in the process of developing 128 bare land strata lots and homes marketed as the Riverbend Development Project ("Riverbend").
3. The *Real Estate Development Marketing Act* ("the Act") requires a developer who markets or intends to market a development to file with the Superintendent of Real Estate ("the Superintendent") a disclosure statement in the required form and with the required contents before the developer commences marketing the development. The disclosure statement must, without misrepresentation, plainly disclose all material facts. The developer must not enter into a purchase agreement with a purchaser unless a copy of the disclosure statement has been provided to the purchaser. If a developer becomes aware that a disclosure

statement contains a misrepresentation, the developer must immediately file with the Superintendent a new disclosure statement or an amendment that clearly identifies and corrects the misrepresentation.

4. The applicable sections of the *Act* are reproduced below:

Definitions

1 In this Act:

"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:

...

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

...

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

...

(b) a bare land strata lot;

...

"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;

"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;

Marketing of development property

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

...

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

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.

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.

5. CB Development is the named developer of a development property marketed under the name Riverbend ("the Development Property"). A disclosure statement was filed with the Superintendent by CB Development on September 23, 2003 ("the Disclosure Statement"). An amendment to that statement was subsequently filed on November 24, 2003 ("the 1st Amendment"). A final amendment to the Disclosure Statement was filed with the Superintendent on January 20, 2004 ("the Final Amendment"). No new disclosure statements or amendments to the Disclosure Statement were filed with the Superintendent subsequent to January 20, 2004.

6. The Disclosure Statement as amended states that the registered owner of the Development Property is 366565 B.C. Ltd. The disclosed civic address of the Development Property is 3000 Riverbend Drive, Coquitlam, British Columbia. The legal description of the Development Property being marketed under the name Riverbend as disclosed in the Final Amendment is as follows:

Strata Lots 25, 29, 31 and 32 District Lot 378 Group 1 New Westminster District Strata Plan BCS 136; and
PID: 025-646-460 Lot 1 District Lot 378, Group 1 New Westminster District, Strata Plan BCP 5264; and
PID: 025-646-478 Lot 2 District Lot 378, Group 1 New Westminster District, Strata Plan BCP 5264.

7. A search of the Land Titles Registry has revealed that the legal description of the Development Property is now as follows:

Strata Lots 29, 49, 50, 52, 88-119 District Lot 378 Group 1 New Westminster District Strata Plan BCS 136

8. CB Development is required to file an amendment to the Disclosure Statement to advise the Superintendent of the change in the legal description of the Development Property pursuant to Section 16 of the *Act* and the Superintendent's Policy Statement #2. No such amendment has been filed.
9. A search of the Land Titles Registry shows that the registered owner of the Development Property is now CB Development and not 366565 B.C. Ltd. CB Development is required to file an amendment to the Disclosure Statement to advise the Superintendent of the change in the ownership of the Development Property pursuant to Section 16 of the *Act* and the Superintendent's Policy Statement #2. No such amendment has been filed.
10. The Disclosure Statement as amended states that the directors of CB Development are Lochhead, Hayward and Stanley Greenfield. A search of the British Columbia Corporate Registry discloses that the current directors for CB Development are Lochhead and Hayward. CB Development is required to file an amendment to the Disclosure Statement to advise the Superintendent of the change in the directorship of CB Development pursuant to Section 16 of the *Act* and the Superintendent's Policy Statement #2. No such amendment has been filed.
11. The Disclosure Statement as amended includes an approved budget for the Riverbend Strata Corporation for the year ending October 31, 2004. Pursuant to Section 16 of the *Act* and the Superintendent's Policy Statement #2, CB Development is required to file an amendment to the Disclosure Statement to

disclose the most recent budget approved by the Strata Corporation. No such amendment has been filed.

12. On or about May 7, 2007, the office of the Superintendent was made aware of reports that CB Development was refusing to fulfill its contractual obligations to purchasers of its Riverbend development units.
13. On or about May 8, 2007, the office of the Superintendent obtained a copy of a Press Release on Riverbend issued by CB Development, and dated May 7, 2007. Among other things, the Press Release included the following:
 - a. The company is the developer of Riverbend;
 - b. It was responding to recent stories published in the media;
 - c. It was acknowledging the difficult situation that had arisen for purchasers under 32 purchase and sale agreements;
 - d. Rising construction costs, unanticipated cost overruns and construction delays had led to "significant financial challenges and have required refinancing Riverbend";
 - e. The construction lender advised they would not discharge the mortgage unless the purchase price of the properties reflected fair market value;
 - f. As a direct result of the position taken by the lender, the company was unable to deliver clear title on the closing date; and
 - g. Purchasers were advised to seek legal advice.
14. The office of the Superintendent obtained a copy of a letter from Kerr Redekop Leinburd & Boswell, Barristers and Solicitors, dated April 27, 2007, and signed by [REDACTED] Law Corporation which was to the purchaser of one of the development units in Riverbend ("the Redekop Letter"). This letter referred specifically to a Contract of Purchase and Sale dated August 17, 2005. Among other things, the letter confirmed the following:
 - a. They are the solicitors for CB Development;
 - b. They had been instructed to advise the purchasers that due to cost overruns and delays on construction, the lender was no longer prepared to discharge their mortgage for the amount of proceeds agreed under the contract;

- c. Their client would be unable to "fulfill their contractual obligation...and will not be completing the purchase and sale"; and
 - d. The purchase deposit, additional funds paid for extras on the property and accrued interest were returned to the purchaser.
15. The office of the Superintendent also obtained a letter dated April 27, 2007 from CB Development to Sutton 1st West Realty. In that letter, Hayward stated that "the construction lender, Carevest Capital Inc....is no longer prepared to grant discharges of the mortgage from the titles to the properties for the amount of the proceeds that would be achieved from the sale of the properties in accordance with the contracts. Accordingly CB Development will not be able to fulfill its contractual obligations to the purchasers as anticipated in the contracts."
16. The office of the Superintendent also obtained a letter dated April 28, 2007, signed by Marion Lochhead, Sutton 1st West Realty. Marion Lochhead ("Marion"), the wife of Lochhead and a licensed realtor, was the realtor acting for CB Development in the Riverbend transactions. Marion referred to the Redekop Letter, stating "the construction lender, Carevest Capital Inc....is no longer prepared to close on the remaining properties at the development as there is not enough proceeds to cover the existing construction mortgages". Marion further advised that independent legal advice should be sought in the matter.
17. An investigation by the staff of the Superintendent revealed that [REDACTED] ("[REDACTED]") and his fiancée, [REDACTED] ("[REDACTED]"), entered into a Purchase and Sale Agreement (the "[REDACTED] Agreement"), in August 2005, with CB Development to purchase a bare land strata lot and home in Riverbend. [REDACTED] ("[REDACTED]") entered into a Purchase and Sale Agreement (the "[REDACTED] Agreement"), in May 2005, with CB Development to purchase a bare land strata lot and home in Riverbend. [REDACTED] ("[REDACTED]") entered into a Purchase and Sale Agreement (the "[REDACTED] Agreement"), on January 2006, with CB Development to purchase a bare land strata lot and home in Riverbend.
18. On or about May 9, 2007, the Superintendent's office obtained a copy of the [REDACTED] Agreement from [REDACTED] which showed the following:
 - a. Seller: CB Development;
 - b. Buyer: [REDACTED], [REDACTED] and [REDACTED], [REDACTED] mother;
 - c. Purchase Price: [REDACTED], with a deposit of \$[REDACTED] due within 24 hours of subject removal;
 - d. Completion date: April 28, 2006;
 - e. Possession Date: April 28, 2006; and

- f. An "Addendum" dated August 17, 2005, forming part of the contract, which stated that in the event of delay, the seller could deliver written notice to the buyer to extend the completion date by 90 days, and this must be delivered to the buyer 30 days prior to the completion date. Further, if the seller required an extension of greater than 90 days, the buyer would have an option to terminate the contract.
19. ██████ was interviewed on or about May 10, 2007. During the interview, ██████ confirmed the following:
 - a. The closing date was extended four times. The original completion date was April 28, 2006. That date was subsequently extended to June 29, 2006; October 29, 2006; December 29, 2006; and finally May 31, 2007;
 - b. CB Development never gave ██████ any indication that the sale would not complete as expected, despite the continuing extensions;
 - c. CB Development never advised ██████ that there was a problem with completing the sale until he received the Redekop letter on or about April 27, 2007;
 - d. ██████ was never asked to pay more for the property;
 - e. ██████ was advised by Marion that the lenders were not prepared to grant any more money towards the development unless CB Development agreed to sever the contracts and re-list the homes at current market value; and
 - f. ██████ was not given the right of first refusal to purchase the property in the event that the property was remarketed.
20. On or about May 9, 2007, the office of the Superintendent received a complaint from ██████. ██████ outlined the nature of her contractual relationship with CB Development, and the continued extensions being sought by them during the past two years. ██████ stated her Riverbend property had been at 80% completion for the past three months, and she received the last addendum, dated April 24, 2007, confirming a revised completion date of May 31, 2007. ██████ had reason to believe that it was Lochhead's intention to place the Riverbend properties back on the market and capitalise on the market growth.
21. ██████ was interviewed on or about May 9, 2007, and confirmed the following:

22. The completion date on the [REDACTED] Agreement was October 21, 2005;
23. The completion date was repeatedly extended. Each time the completion was extended, she consulted with her realtor, [REDACTED] (" [REDACTED] ") of Royal Le Page to determine whether there were any problems which she should be aware of, and he confirmed that there were no issues, only delays in obtaining permits; and
24. She received a letter from Marion dated April 24, 2007, stating CB Development was endeavouring to complete the home for the completion date of April 30, 2007, but they would need to extend the date until May 31, 2007.
25. On or about May 9, 2007, the office of the Superintendent received information from [REDACTED] (" [REDACTED] ") of Coldwell Banker Westburn Realty in Burnaby pertaining to the [REDACTED] Agreement. Among other things, [REDACTED] provided copies of the following documentation:
 26. A letter dated April 28, 2007, from Marion to [REDACTED], [REDACTED] Real Estate Agent. The letter was the same as that described in paragraph 16, and confirmed that construction lender Carevest Capital Inc. was not prepared to close on the properties as the proceeds did not cover the existing construction mortgages;
 27. A letter dated April 27, 2007, from CB Development to Sutton Group 1st West Realty advising them that Carevest Capital Inc. was no longer prepared to grant discharges of the mortgage based on the proceeds from the sale of the properties. This is a copy of the same letter described in paragraph 15; and
 28. A copy of the Redekop letter; and
 29. A copy of a Contract of Purchase and Sale Addendum dated January 22, 2007, changing the completion and possession date to June 28, 2007.
30. The Disclosure Statement indicates that "the Developer is unaware of any outstanding or contingent litigation or liabilities affecting the Development". The 1st Amendment and the Final Amendment do not disclose any outstanding or contingent litigation or liabilities.
31. A Land Titles Registry search has disclosed Certificates of Pending Litigation filed against the Development Property which shows that there is currently outstanding or contingent litigation in respect of the Development Property and/or CB Development. The Certificates of Pending Litigation filed against the Development Property are as follows:

- a. Registration Number [REDACTED] – [REDACTED], [REDACTED] (Plaintiffs), registered May 7, 2007 with supporting Statement of Claim;
 - b. Registration Number [REDACTED] – [REDACTED] (Plaintiffs), registered May 8, 2007 and supporting Statement of Claim ;
 - c. Registration Number [REDACTED] – [REDACTED], [REDACTED] (Plaintiffs), registered May 4, 2007; and supporting Statement of Claim; and
 - d. Registration Number [REDACTED] – [REDACTED] (Plaintiffs), registered May 8, 2007 and supporting Statement of Claim.
32. Pursuant to Section 16 of the *Act* and the Superintendent's Policy Statement #2, CB Development is required to file an amendment to the Disclosure Statement to disclose the outstanding or contingent litigation or liabilities. No such amendment has been filed.
 33. A review of the land title records pertaining to the Development Property indicates the following mortgages registered against title of the Development Property which have not been disclosed in the Disclosure Statement as amended:
 34. Mortgage # BW302266 in favour of MCAP Financial Corporation registered on June 30, 2004;
 35. Mortgage # BW302268 in favour of Carevest Capital Inc. registered on June 30, 2004;
 36. Mortgage # BB158240 in favour of Carevest Capital Inc. registered on April 2, 2007; and
 37. Mortgage # CA435091 in favour of Riverbend Mortgage Investment Corporation (Registration Pending – submitted May 2, 2007).
 38. A search of Corporations Canada shows that the directors for Riverbend Mortgage Investment Corporation include Lochhead and Hayward.
 39. Pursuant to Section 16 of the *Act* and the Superintendent's Policy Statement #2, CB Development is required to file an amendment to the Disclosure Statement to disclose all encumbrances registered against title to the Development Property. No such amendment has been filed.

40. Section 11 of the *Act* requires a developer to make adequate arrangements to ensure that a purchaser of a development unit will have assurance of title. CB Development states in the Disclosure Statement that "purchase monies will be utilized to secure partial discharges of the Developer's Mortgages so that each Purchaser will receive title free and clear of financial encumbrances." A letter from CB Development to its realtor, the Redekop letter and the press release from CB Development all indicate that CB Development cannot provide clear title to the existing purchasers.
41. Even if the properties were remarketed and sold at current market prices, the claims of existing purchasers would impair the ability of CB Development to provide clear title to any new purchasers.

AND WHEREAS I am satisfied based on a review of the Disclosure Statement as amended and land title search documents and other documents provided by my staff that CB Development failed to file an amendment to the Disclosure Statement to explain changes in the ownership and legal description of the Development Property as required.

AND WHEREAS I am satisfied based on a review of the Disclosure Statement as amended, Corporate Registry search documents and other documents provided by my staff that CB Development failed to file an amendment to the Disclosure Statement to explain changes in the directorship of CB Development as required.

AND WHEREAS I am satisfied based on a review of the Disclosure Statement as amended, the above-noted Certificates of Pending Litigation and other documents provided by my staff that CB Development is subject to a number of lawsuits filed by existing purchasers and that CB Development has not filed a new or amended disclosure statement disclosing that fact.

AND WHEREAS I am satisfied based on a review of the above-noted Certificates of Pending Litigation that even if the Development Property was remarketed and sold at current market prices, the claims of existing purchasers would impair the ability of CB Development to provide clear title to any new purchasers.

AND WHEREAS I am satisfied based on a review of the Disclosure Statement as amended, the title search documents and other documents provided by my staff that the property being developed by CB Development has been encumbered by various mortgages which were not disclosed in the Disclosure Statement as amended and that CB Development has not filed a new or amended disclosure statement disclosing those encumbrances.

AND WHEREAS the information contained in the evidence of [REDACTED] and [REDACTED] along with the materials provided to me by my staff raises a serious concern and a

likelihood that CB Development will attempt to remarket development units for which there are already purchase and sale agreements.

I AM THEREFORE OF THE OPINION that CB Development, Lochhead and Hayward are, or have been, non-compliant with the Act.

I AM FURTHER OF THE OPINION 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. There is a substantial likelihood that CB Development intends to remarket development units in the Development Property to potential purchasers without providing accurate disclosure which the purchasers are entitled to receive and which CB Development is required to provide. The fact that lawsuits have been filed against CB Development could very well impact on the value or price of the development units and on the decision by the potential purchaser on whether to purchase the unit.

IN ADDITION, I am of the opinion that CB Development has not made adequate arrangements to ensure that any new purchaser of a development unit will receive clear title. If CB Development is successful in remarketing development units which are subject to an existing purchase and sale agreement, any new purchasers will likely become embroiled in litigation and ultimately may not receive title to the units they have purportedly purchased. The deposits of any new purchasers may ultimately be held until the litigation is resolved.

I CONSIDER IT in the public interest to make the following Orders pursuant to sections 30(1) (a) and 32(1) of the Act.

I THEREFORE MAKE the following Orders:

1. CB Development 2000 Ltd. shall cease and refrain from marketing any and all development units under the name Riverbend, and more particularly any development units in the development property legally described as follows or any derivation thereof:

Strata Lots 29, 49, 50, 52, 88-119 District Lot 378 Group 1 New
Westminster District Strata Plan BCS 136
2. Craig Lochhead and Grayden Hayward shall cease and refrain from marketing any and all development units in the development property being developed by CB Development 2000 Ltd.

TAKE NOTICE that CB Development 2000 Ltd., Craig Lochhead and/or Grayden Hayward may, pursuant to section 37(1) (f) of the Act, appeal the Orders pertaining to each to the Financial Services Tribunal, or require a hearing before the Superintendent pursuant to section 32(4) of the Act.

Dated at the City of Surrey,
Province of British Columbia
this 14th day of May, 2007.



W. Alan Clark
Superintendent of Real Estate
Province of British Columbia

TO: CB Development 2000 Ltd.
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