

IN THE MATTER OF THE REAL ESTATE DEVELOPMENT MARKETING ACT
SBC 2004, Chapter 41

-AND-

TDF DEVELOPMENTS INC.

And

TERRY KERELIUK, DAVID McDONALD, DONALD MYROON, 962001 ALBERTA
LTD., MID COAST CONSULTING AND INSPECTION LTD., and ONYX VENTURES
CORP.

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

Upon reviewing the submissions and the supporting documents submitted by staff, I am of the opinion that:

1. 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.
2. 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;

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

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

(b) a bare land strata lot

(c) a 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;

...

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].

...

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.

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.*
- ...
- (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.*

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.*

...

3. TDF Developments Inc. ("TDF") was registered as an extraprovincial company in British Columbia on January 7, 2005. The registered and records office is located at 5007-48th Avenue, Redwater, Alberta. The Directors of TDF are Terry Kereliuk ("Kereliuk"), David McDonald ("McDonald") and Donald Myroon ("Myroon")
4. The Voting Shareholders of TDF are 962001 Alberta Ltd. ("962001"), Mid Coast Consulting and Inspection Ltd. (Mid Coast") and Onyx Ventures Corp. ("Onyx"). All three voting shareholders have 33.33 of the voting shares.
5. McDonald is the sole director and shareholder of 962001. Kereliuk is the sole director and officer of Mid Coast. Myroon is the sole director and holds 51 percent of the voting shares of Onyx.
6. On October 4, 2007, the Superintendent of Real Estate ("the Superintendent") received a disclosure statement from TDF ("the Disclosure Statement") for a development located at 4717 Laguna Way, Nanaimo, British Columbia having a Parcel Identifier of 002-389-118 and a Legal Description of Lot 1, DL 55, Wellington District, Plan 42937 ("the Development"). The Development consists of 25 residential townhouse strata lots.
7. According to the Disclosure Statement, TDF has engaged Re/Max Ocean Pointe Chemainus ("Re/Max") located at 9728 Chemainus Road in Chemainus, British Columbia to market the Development. Debbie Simmonds ("Simmonds") is the real estate agent with Remax who is marketing the Development.
8. The staff of the Superintendent ("the Staff") notified TDF on October 29, 2007 that the Disclosure Statement received by the Superintendent on October 4, 2007 was deficient. The deficiencies were significant and included inadequate disclosure of common property, insurance, building permits and unit entitlements. TDF was advised to correct these deficiencies by November 12, 2007. TDF was asked to cease marketing the Development if the Disclosure Statement was not corrected by that date.
9. On November 12, 2007, TDF requested an extension to correct the Disclosure Statement and was given until November 29, 2007.
10. On November 30, 2007, TDF advised the Staff that an amendment to the Disclosure Statement had not yet been completed. TDF advised that there had not been any marketing of the Development and that it would not market the Development until the amendment to the Disclosure Statement had been filed.
11. A search of the Re/Max website located at www.remaxocean.bc.ca ("Re/Max Website") on January 15, 2008 revealed that six of the 25 strata lots making up the Development were listed for sale. TDF had not filed an amendment to the Disclosure Statement as of that date.

12. A search of the Re/Max Website on January 21, 2008 revealed the following: The Listings page provided a list of all real estate offerings for Re/Max. On page 50 of the Listings page was a listing for Lots 1-6, 4717 Laguna Way in Nanaimo. The Development is called "Horizons at Hammond Bay" in the listing. The listing stated:

**Lots 1 – 6 4717 Laguna Way, Nanaimo, BC
OCEAN VIEW LUXURY 3 BEDROOM UNITS, FIRST 2 SELLING
AT PROMOTIONAL PRICE...ACT FAST!!!**

Introducing the exclusive Horizons at Hammond Bay! Absolutely stunning ocean views from these luxury 1900+ sqft 3 bedroom, 3 bathroom strata units. Huge open great room areas with large open kitchen featuring large island. Fridge, stove & built-in dishwasher, stone countertops included. Gorgeous 3+ acre treed park with trails included in the common property. Ideal for those 40+ looking for quality West Coast lifestyle. Maximum 2 pets. This is a promotional price for the first two units!

\$399,900

Contact:

Debbie Simmonds

Re/Max Ocean Pointe

Phone: (250) 246-3700

Fax: (250) 246-1282

Email: sales@debbiesimmonds.com

13. On January 22, 2008, a search was conducted on the website for the Multiple Listing Service ("MLS") found at www.mls.ca. This website contained listings for six properties in the Development. The MLS listing numbers associated with those properties were 244346, 244345, 244351, 244350, 244348, and 244347. The six listings were advertised by Simmonds.
14. The properties associated with MLS listing numbers 244346 and 244345 were advertised for sale for \$399,900.
15. The properties associated with MLS listing numbers 244351, 244350, 244348 and 244347 were advertised for sale for \$429,000.
16. A follow up search was conducted on the MLS website on February 6, 2008. At that time, the website listed only four of the six properties previously advertised in the Development. The MLS listing numbers for the four properties in the Development still listed were 244351, 244350, 244348, and 244347, the four properties which were advertised for sale for \$429,000.

17. A search was conducted on Simmonds' website located at www.debbiesimmonds.com on February 6, 2008. The home page contains links to 15 sites. The site described as Debbie's Listings page contains four pages of listings. Included in the listings are the six properties advertised on both the Re/Max website and the MLS website. The six properties are advertised as follows:
 - (a) 4717 C3 Laguna Way – \$429,000
 - (b) 4717 C4 Laguna Way – \$429,000
 - (c) 4717 C5 Laguna Way – \$429,000
 - (d) 4717 C6 Laguna Way – \$429,000
 - (e) 4717 C1 Laguna Way – SOLD
 - (f) 4717 C2 Laguna Way – SOLD
18. Another site connected to the home page on Simmonds' website is entitled Development Projects. This site advertises three development projects: Seaside Woods Estates; Horizons at Hammond Bay (the Development); and Quail's Gate.
19. The Horizons at Hammond Bay page links to another website found at www.horizonsbc.com. Simmonds is named as the contact person for the Development on this site. On this page the following is noted about the Development:

YOUR VIEW. YOUR PARK. YOUR HOME.

Horizons at Hammond Bay is the Vancouver Island ocean view town home you've been waiting for.

A special community of just 25 homes, Horizons combines all the elements of the classic "West Coast" lifestyle package. Breathtaking views of ocean, islands and snow-capped peaks. Expansive open-plan living in a selection of luxury three-bedroom strata units. More than three acres of lush, wooded park set aside for the exclusive use of Horizons' homeowners.

Nestled on a gently sloping hillside above one of Nanaimo, BC's, most exclusive neighbourhoods, Horizons is just minutes away from the city's vibrant downtown, harbour and restaurants. For more athletic pursuits, Horizons' owners have easy access to all the recreational activities that Vancouver Island is famous for, including golfing, hiking, kayaking, sport fishing and more.

Within easy reach of Comox International Airport and minutes away from B.C. Ferries to the Mainland, Horizon is the perfect home for over 40's looking for the definitive West Coast experience and a healthy lifestyle. A home at Horizons can be yours starting at just \$429,000.

20. The Development is being marketed in contravention of the *Act*. TDF has not filed an amendment to the Disclosure Statement correcting the deficiencies identified by the Staff. Although TDF assured the staff it would not market the Development until an amendment was filed, it clearly has been marketing the Development.
21. The marketing of the Development exposes potential buyers to marketing of development units without the disclosure required pursuant to legislation. The legislative requirements are enacted in the public interest so that members of the public are able to make an informed decision when purchasing development units.
22. It is apparent that at least two units in the Development have been sold without a proper disclosure statement being filed with the Superintendent. Purchasers of those units have not been provided with the disclosure that TDF is required to give them.
23. I agree with staff that scheduling of witnesses, counsel and the hearing officer would likely result in a three to four month delay in the ability to hold a hearing into this matter.
24. The length of time required to hold a hearing will likely result in the continued non-compliance of the *Act* by TDF, Kereliuk, McDonald, Myroon, 962001, Mid Coast and/or Onyx which I find to be detrimental to the public interest.
25. I find that it is in the public interest to issue a summary cease marketing order under section 32 of the *Act* so that the public is protected against further non-compliance with the *Act*.

AND WHEREAS I am satisfied that by TDF, Kereliuk, McDonald, Myroon, 962001, Mid Coast and Onyx have marketed development units in the Development without filing with the Superintendent the required amendment to the Disclosure Statement.

I AM THEREFORE OF THE OPINION that TDF, Kereliuk, McDonald, Myroon, 962001, Mid Coast and Onyx 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. It is in the public interest to make a summary cease marketing order under section 32 of the *Act* so that the public is protected against further non-compliance with the *Act*.

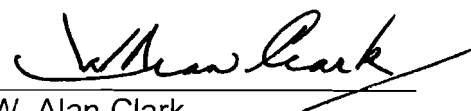
I CONSIDER it in the public interest to make the following Order pursuant to sections 30(1) (a) and 32(1) of the *Act*.

I THEREFORE MAKE the following Order:

That TDF Developments Inc., Terry Kereliuk, David McDonald, Donald Myroon, 962001 Alberta Ltd., Mid Coast Consulting and Inspection Ltd. and Onyx Ventures Corp. shall cease and refrain from marketing any and all development units in the Development known as Horizons at Hammond Bay located at 4717 Laguna Way in Nanaimo, British Columbia.

TAKE NOTICE that TDF Developments Inc., Terry Kereliuk, David McDonald, Donald Myroon, 962001 Alberta Ltd., Mid Coast Consulting and Inspection Ltd. and Onyx Ventures Corp. may, pursuant to section 37(1) (f) of the Act, appeal the Order 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,
in the Province of British Columbia
this 19th day of February, 2008.



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

TO: TDF Developments Inc.
5007 48 Avenue
Redwater, AB T0A 2W0

Terry Kereliuk



David McDonald



Donald Myroon



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228 – 11033 127 Street
Edmonton, AB T5M 0T3

Mid Coast Consulting and Inspection Ltd.
5702 Carrington Road
Nanaimo, BC V9T 6C2

Onyx Ventures Corp
1600, 10025 – 102A Avenue
Edmonton, AB T5J 2Z2

Re/Max Ocean Pointe Chemainus
9728 Chemainus Road
Chemainus, BC V0R 1K0

Real Estate Council of British Columbia
900 – 750 West Pender Street
Vancouver, BC V6C 2T8