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Presale Transaction Cross Reference List (For Multifamily Residential)





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The Facts About Multifamily Residential Presales

Over the years, thousands of British Columbians have entered into contracts to buy new homes before the construction of their homes had begun or during the construction period. This type of real estate transaction is commonly referred to as a presale transaction. It most often involves the buyer of a new home and the developer entering into a purchase agreement to complete the transaction at a future date when the home is completed and ready for occupancy.

This is usually a win-win transaction for both the homebuyer and the developer. Buyers are able to select the homes they want to buy and developers know, with some certainty, their ability to successfully market and finance the projects they are offering to the market.

Rewards Usually Outweigh Risks

Buying a home is likely the largest personal financial transaction a consumer will make, and there are many complex decisions involved. Building a new home is also a complex process that stretches over a relatively long period of time and has inherent risks for the developer. These risks are typically associated with a free market for materials and skilled trades, and changing interest rates.

Even though there are certain risks associated with presales, there have been very few instances where the purchase agreement was not honoured by the developer. When a developer is unable to complete the transaction, the purchase agreement will usually specify how the intended transaction is unwound. A deposit made by a buyer must be held in trust by a lawyer, notary or REALTOR® and the full deposit is returned to the buyer if the home builder/developer is unable to meet their commitment to deliver the home. The only exception to this is described in NOTE 5 on page three of this information brochure.

Do Your Homework

Before deciding to buy a new home in a presale transaction, a buyer should do their homework and feel totally comfortable with the builder/developer and with the terms of the purchase agreement. Start by researching the business history and reputation of the home builder. Ask for references from past homebuyers who have bought from the developer. Seek the advice of your REALTOR®, lawyer, mortgage broker, banker or other professionals and determine whether they know the history of the developer.

Read the purchase agreement and the disclosure statement in their entirety. Hire your own lawyer who has experience in residential real estate transactions. Ask them to review the purchase agreement. Make sure you ask them about wording in the purchase agreement that you do not understand. Clarify all of the relevant dates, including dates on which the developer has opportunities to terminate the purchase agreement.

Finally, there is a seven-day rescission period during which a buyer may rescind their purchase offer.

Cross Reference List for Presales of Multifamily Residential Development Properties

The following is a list of important information for buyers of multifamily units under development. Buyers unfamiliar with such projects may require extensive consultation with knowledgeable REALTORS®, accountants, lawyers or notaries familiar with presale investments. This list is intended as a starting point for buyers to determine whether enquiries, advice or clarification is needed.

Use the following table to locate and understand important information in the disclosure statement and the purchase agreement. These two documents are central to a presale transaction and outline the specific terms being agreed to. The far right-hand column in the table provides a cross reference to the notes section on pages 3 and 4 of this presale cross reference document. The notes explain the key information items in more detail. Once completed, keep the table for future reference to quickly find important information about your transaction.

Disclosure Statement				
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Project completion date				4
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Seven-day buyer rescission period				13
Developer rights to extend the completion date				4
Contractual developer rights to terminate the purchase agreement				8
Impact to buyer of increase in costs or market value during construction				9
Restrictions on assignments				10
Developer substitution of equivalent materials or adjustments to the layout of the unit or the development				11
Handling of the interest on the deposit				5
Disclosure Statement AND Purchase Agreement				
Key Information	Page #	Section #	Comments	Note see next pg.
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Purchase agreement: latest possible date of completion of construction				4
Homeowner Protection Office				
Key Information	Page #	Section #	Comments	Note see next pg.
Contractor licensed with the Homeowner Protection Office (Check online registry of builders for number, status and next expiry date)				12

Superintendent of Real Estate

The marketing of presale units is governed by the *Real Estate Development Marketing Act (REDMA)* and the Superintendent of Real Estate. The Superintendent of Real Estate has issued several Policy Statements that govern the basis upon which a developer can market a project before it is built. Information is available online at www.fic.gov.bc.ca. This website also includes the Superintendent's August, 2007 Information Bulletin on Risks Associated with Purchasing Presale Residential Units.

1. Obtaining a building permit

A developer may wish to market their project before the local government has issued the required building permits, to ensure there is a demand for their project and to assist in obtaining financing for the project. Policy Statement 5 allows a developer to market a project before obtaining development permits, but the developer must provide all buyers with a disclosure statement amendment once they have the necessary permits. The developer has nine months from the original filing of the disclosure statement to file the disclosure statement amendment. If the amendment is not filed within the nine-month period, all marketing of the development must then cease. If the developer does not file the amendment within 12 months of filing the original disclosure statement, the buyer can then rescind their purchase agreement at the buyer's option.

2. Developer's and Affiliates': development experience; regulatory record; bankruptcy or insolvency; and conflicts of interest

Many developers establish new, single-purpose corporate entities for each project, thus the "developer" may appear not to have experience, but the parent company does. Policy Statement 15 requires the developer disclose the nature and extent of the experience of the developer and its officers and directors in the development industry, including the number of years of experience and the types of previous development properties. Policy Statement 15 also requires the developer to disclose the regulatory record, any bankruptcy or insolvency, and any conflicts of interest of the developer and its officers and directors.

3. Financing for the project

Most developers' lenders require that the developer market their project and obtain a certain level of presales before the lender will commit to finance the project. Policy Statement 6 allows a developer to market a project before obtaining a financing commitment from a lender, but the developer must provide all buyers with a disclosure statement amendment once they have the necessary financing in place. The developer has nine months from the original filing of the disclosure statement to file the disclosure statement amendment. If the amendment is not filed within the nine-month period, all marketing of the development must then cease. If the developer does not file the amendment within 12 months of filing the original disclosure statement, the buyer can then rescind their purchase agreement at the buyer's option.

4. Project completion date and developer rights to extend the completion date

A proposed development may be delayed, or may not proceed at all, for a variety of reasons. The disclosure statement and the purchase agreement will generally specify the date by which the developer expects the home to be completed, as well as an "outside date" being latest potential completion date by which, if the home is not completed, the purchase agreement is either automatically terminated or the buyer can rescind their purchase agreement. Purchase agreements also often include a clause that allows the developer to extend the completion date—even the outside date—due to forces beyond their control that are specified in the contract.

5. Handling of deposit money and any interest earned

REDMA requires that a deposit paid pursuant to a presale contract be placed in trust and held by lawyer, notary or real estate brokerage. Generally, the money must be held in trust until title is transferred to the buyer, unless the developer enters into a deposit protection contract with an authorized insurance company. A developer may have access to the deposit if a deposit protection contract is put in place. Such contracts allow the developer access to the deposits prior to completion to help fund construction of the project and, if the developer fails to complete the project, the insurance company either provides funds equal to the deposit paid by the buyer back to the buyer, or funds the completion of the project.

In the purchase agreement, the parties generally agree whether the interest that accrues on the deposit is paid to the buyer or the developer.

6. Handling and protection of payments for upgrades

Developers often agree to install upgrades to the home at the buyer's request. The developer may require that a payment equal to the amount of the upgrades be placed in trust and held by a lawyer, notary or real estate brokerage and released on closing. The developer wants the payment in trust so they can be assured before they order and install the upgrades that they will receive payment for the upgrades on closing.

7. Leased equipment in the strata lot or on the common property

Some developers lease equipment, such as geothermal heating, domestic water and entry phone systems, from third parties. Such equipment is owned by third parties, not the strata corporation or the strata lot owners. There will typically be lease payments due to the third party, with such payments to be included in the strata corporation budget.

8. Contractual developer rights to terminate the purchase agreement

Developers will often include the right to terminate the purchase agreement, including situations where:

- they do not obtain a certain level of presales;
- they are not able to enter into contracts with construction companies to build the project on terms satisfactory to the developer; or
- they are not able to obtain financing on terms satisfactory to the developer.

9. Impacts to buyer of increase in costs or market value during construction

Occasionally, but rarely, a developer will insert a provision into their purchase agreement that allows them to require the buyer to pay a higher purchase price on closing because of the increase in costs or market value of the home. This practice is not endorsed by development industry organizations.

10. Restrictions on assignments

A developer may prohibit or restrict the ability of a buyer to assign the purchase agreement to another buyer before the completion date and/or often charges a fee for considering any assignment request. The purchase agreement outlines the details for assignments. Risks associated with assignments of presale purchase agreements are discussed in the May, 2008 Consumer Alert, available on the website at www.fic.gov.bc.ca.

11. Developer substitution of equivalent materials or adjustments to the layout of the unit or the development

As construction of the project proceeds, the developer may find it necessary to substitute equivalent materials or make adjustments to the layout of the home or the development. The purchase agreement will include information on how these substitutions are handled.

12. Contractor licensed with the Homeowner Protection Office

The *Homeowner Protection Act* requires all residential builders be registered with the Homeowner Protection Office, ensuring high-quality projects and improving consumer protection. For further information on the Act, go to the HPO address at www.hpo.bc.ca.

13. Buyer rescission rights

Section 21 of *REDMA* allows a buyer to rescind their purchase agreement within seven days of the purchase agreement and the provision of the disclosure statement, or the later of these dates.