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## NEW REPORTING OBLIGATIONS FOR ASSIGNMENT OF PRE-SALE CONTRACTS

By: **Benjamin Hagen**

In February 2018, the BC government announced its intention to track pre-sale assignments. The stated purpose of this change in policy is to ensure everyone pays their “fair share of taxes” and to help inform future housing and tax policies.

### LEGISLATIVE AND POLICY STATEMENT CLAIMS

On May 31, 2018, the government passed Bill 25, *Real Estate Development Marketing Amendment Act*, 2018 (“REDMA Amendment”) to amend the *Real Estate Development Marketing Act* (“REDMA”).

On November 5, 2018, by Order in Council, the government brought the balance of the REDMA Amendment into force and amended the *Real Estate Development Marketing Regulation* (“REDMR”). These changes are effective on January 1, 2019.

A new registry is also created – the Condo and Strata Assignment Integrity Registry (the “CSAIR”). The CSAIR will be administrated by the Property Transfer Tax Branch and operated by the Land Title and Survey Authority.

### A. CHANGE TO REDMA

A new Part 2.1 of REDMA creates assignment reporting requirements for “strata lots” in development properties located in BC.

Bare land strata lots and disclosure statements for projects located outside BC are not affected.

### B. CHANGE TO REDMR

A new Part 3.1 of REDMR outlines the assignment reporting requirements. The requirement to report is triggered when a developer enters into the first purchase contract for a project subject to Part 2.1 of REDMA.

Prior to the date the strata plan is filed, the developer is required to track assignments and file a report with CSAIR within 30 days of the end of each quarter. Once the strata plan is filed, the reporting periods are



reduced and eventually become annual periods by calendar year (section 10.6 of REDMR).

Importantly, all developers must have a myLTSA Enterprise account by March 31, 2019.

#### **DEVELOPERS MUST CHOOSE**

Developers must now decide whether to forbid or allow assignment of contracts. If assignments are allowed they must comply with the terms and conditions imposed by Part 2.1

#### **A. IF ASSIGNMENTS WILL BE ALLOWED**

If a developer permits assignments then it must amend its purchase contract(s) to include new prescribed language and a new prescribed notice to purchasers. In addition, all contracts must be amended and attached to disclosure statements.

As a result, section 7.2 of the corresponding disclosure statements must be amended to describe the new restrictions on assignments.

REDMR sets out the specific language that a developer must include as a term of, and as a notice in, the developer's contract.

The new terms state that without the developer's prior consent any assignment of the purchase contract is prohibited, and that each proposed party to an assignment must provide the developer with the information and records required under REDMA.

The new notice advises purchasers that before the developer can consent to an assignment the developer must collect personal information about the assignment parties' identity, contact and business information and the terms of the assignment. The notice also confirms the information can be shared with the Canada Revenue Agency

#### **B. INFORMATION MUST BE COLLECTED**

Developers will be statutorily prohibited from consenting to the assignment of a contract entered into on or after January 1, 2019, unless the developer first collects information for all parties to the assignment. For individuals, information that must be collected and provided includes:

- full legal name;
- date of birth;
- citizenship;



- social insurance number (if available);
- jurisdiction of tax residency; and
- post address, principal residence address, phone number and email address.

For corporations, information to be collected and provided includes:

- full legal name;
- business number for federal income tax purposes;
- head office address; and
- name, postal address, phone number and email address of an individual who may be contacted to answer questions about the assignment agreement, prescribed information and records.

Regardless of the nature of the entity, there is certain information that must be collected for all assignments.

Developers must also collect and provide the following information:

- the date of the purchase agreement, the purchase price, and the address or legal description of the strata lot;
- the date that consent was given;
- the assignment fee that is payable to the developer; and
- the assignment fee payable to the assignor plus the amount of any deposit reimbursement.

For contracts entered into prior to January 1, 2019 that are being assigned after that date the developer must make “a reasonable effort to collect, from each proposed party to the assignment agreement, assignment information and records.” If no assignment information or records are collected, then the developer must file a statement with CSAIR confirming the same.

The developer must retain the information collected for six calendar years after the strata plan has been filed.

#### **CHANGES TO FEES PAYABLE UNDER REDMA**

Also effective as of January 1, 2019 all fees payable under REDMA will triple for the stated purpose of covering increased regulatory and enforcement costs, including those associated with the CSAIR. The new fees are set out below.

For filing an application for an exemption, or filing a disclosure statement for:



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- 9 or fewer units: \$900
- 10 to 49 units: \$1,800
- 50 to 99 units: \$3,600
- 100 or more units: \$5,400

Fee to file an amendment to a disclosure statement: \$600

Fee to request a retrieval of a filing: \$38

Fee for a copy of a public filing: \$1 per page

**If you have any questions please feel free to contact Benjamin Hagen (604-661-9264, [bhagen@rbs.ca](mailto:bhagen@rbs.ca))**



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