

**Real Estate**

## B.C.'s move to bring in cooling-off period 'remarkable consumer protection,' lawyer says

By **Ian Burns**

(April 6, 2022, 12:55 PM EDT) -- British Columbia will soon become the first province to have a mandatory "cooling off" period for newly constructed homes and resale properties, and legal observers are calling the move a substantial change but one with several questions yet to be answered.

Recently announced amendments to the province's *Property Law Act*, known as Bill 12, will enable the creation of a new homebuyer protection period aimed at protecting people buying a home in the province. The homebuyer protection period, sometimes called a "right of rescission," gives people buying a home more time to consider their offers, ensure financing and obtain a home inspection, instead of feeling like they need to waive these conditions.

"People need to have protection as they make one of the biggest financial decisions of their lives," said Minister of Finance Selina Robinson. "In our overheated housing market, we have seen buyers feeling pressure to waive conditions just to be considered, and new homeowners discovering costly problems only after a deal has closed. We want to make sure people buying a home have time to get the information they need to make a sound decision within limits that still give sellers the certainty they need to close sales."

Seven-day cooling-off periods for pre-construction sales of multiunit development properties such as condominiums are already in place under the *Real Estate Development and Marketing Act*. The government said regulations will be introduced in the summer to define the specific time homebuyers will have to exercise this right, as well as the financial costs of retracting an offer.

But the province's move was not met with unanimous support. The B.C. Real Estate Association (BCREA) said it supported the intent of homebuyer protections, but a cooling-off period fails to meet the needs of British Columbians. A recent BCREA report recommended the creation of a pre-offer period of a minimum of five business days from listing, during which prospective buyers could hire home inspectors of their choice, review important documents and complete any other due diligence prior to making an offer.

"Policy should equally protect all parties involved in real estate transactions while also contributing to a smooth functioning market and improved housing affordability. But the province's plan to amend the *Property Law Act* to create a cooling-off period in real estate transactions leaves B.C. consumers with more questions than answers," said BCREA chief executive officer Darlene Hyde. "A cooling-off period will likely increase competition for any given property, has the potential to increase prices and does not clearly take risks to sellers into account."

Michael Drouillard of Drouillard Lawyers said he was surprised that the government would go so far as to change contract law in real estate, something it had not done before. He noted when there were problems in the past with things such as "shadow flipping," where a real estate buyer sells a contract to another buyer before the deal with the original seller closes, was dealt with through the regulatory process for brokers.



Michael Drouillard, Drouillard Lawyers

"There is a lot of uncertainty about what exactly is this going to look like, but they have introduced the ability to create these rescission periods which would relate to everyone. I had real doubts it would have the teeth necessary to work, because otherwise it would incentivize going around the realtors to make a subject-free offer that doesn't have a rescission period," he said. "This change is really in its infancy, but I think it is remarkable consumer protection and I hope that there is deep consultation with stakeholders on this issue to make sure it makes sense for the industry."

Ryan Klassen of Richards Buell Sutton LLP agreed that the legislation still had a lot of questions yet to be answered, such as the duration of the rescission period and who it applies to. He said the system is "likely going to be extremely difficult to implement."

"It is trying to solve this problem of high prices, but it may just cause more problems by implementing it. We don't know what kind of reaction it is going to have in the real estate market and whether people are going to be able to exempt themselves from it, so it may just be that nobody is going to be willing to accept an offer if they can't waive this condition," he said. "So, if that is an ability under the contract it may make no difference at all."

And Klassen's colleague Jeevan Ahuja said other provinces are going to look to B.C. to see how the homebuyer protection period works to see if it is effective "or it is just a Band-Aid solution."

"It is the million-dollar question, and they haven't been able to figure out how to solve the issue of rising prices in the province," he said. "Buying a property is one of the most significant dealings in a person's life, specially in the Metro Vancouver area. But we just don't have all the answers yet."

Bill 12 is before committee in the British Columbia legislature.

*If you have any information, story ideas or news tips for The Lawyer's Daily please contact Ian Burns at [Ian.Burns@lexisnexis.ca](mailto:Ian.Burns@lexisnexis.ca) or call 905-415-5906.*