

REAL ESTATE DEVELOPMENT MARKETING AMENDMENT ACT, 2018

CHAPTER 25

Assented to May 31, 2018

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

- 1** *Section 11 (3) of the Real Estate Development Marketing Act, S.B.C. 2004, c. 41, is amended*
 - (a) by adding “the developer must” after “evidences the payment of money,”*
 - (b) in paragraph (a) by striking out “the mortgage, lien or other encumbrance must provide,” and substituting “ensure that the mortgage, lien or other encumbrance provides,” and*
 - (c) in paragraph (b) by striking out “the developer must”.*
- 2** *Section 15.1 (2) is amended by striking out “A phase disclosure statement must comply” and substituting “A developer must ensure that a phase disclosure statement complies”.*
- 3** *Section 15.2 (2) is amended by striking out “A consolidated disclosure statement must contain the following:” and substituting “A developer must ensure that a consolidated disclosure statement contains the following:”.*
- 4** *The following Part is added:*

PART 2.1 – ASSIGNMENT REPORTING REQUIREMENTS

Definitions

20.1 In this Part:

- “**administrator**” means the administrator designated under the *Property Transfer Tax Act*;
- “**assignment**” means a transfer of some or all of the rights, obligations and benefits under a purchase agreement made in respect of a strata lot in a development property, whether the transfer is made by the purchaser under the purchase agreement to another person or is a subsequent transfer.

Application of Part

- 20.2** This Part applies in respect of purchase agreements, entered into by developers, for the sale or lease of strata lots in development properties located in British Columbia.

Requirements respecting assignments

- 20.3** (1) Unless the developer does not permit the assignment of the purchase agreement, a developer who enters into a purchase agreement for the sale or lease of a strata lot must include in the purchase agreement, in the prescribed form, all of the following:
- (a) a term prohibiting any assignment of the purchase agreement without the prior consent of the developer;
 - (b) a notice that, before the developer consents to an assignment of the purchase agreement, the developer will be required to collect from the proposed parties to the assignment agreement the information and records referred to in subsection (2);
 - (c) a term requiring all proposed parties to an assignment agreement to give to the developer the information and records referred to in subsection (2).
- (2) A developer must not consent to any assignment of a purchase agreement unless the developer first collects, from each proposed party to the assignment agreement, all prescribed information and records, including personal information,
- (a) respecting the identity of the party,
 - (b) respecting contact and business information of the party,
 - (c) respecting the terms of the assignment agreement, and
 - (d) required for the purposes of section 20.5 [*confidentiality*].
- (3) A developer who has consented to an assignment of a purchase agreement must
- (a) collect from the parties to the assignment a copy of the written and signed assignment agreement, and
 - (b) keep a copy of the assignment agreement in the prescribed manner for the prescribed period.

Filing information respecting assignments

- 20.4** (1) A developer must file with the administrator, in the form and manner required by the administrator and as required by the regulations, the following:
- (a) for each assignment to which the developer consents, the information and records collected under section 20.3 (2) [*requirements respecting assignments*];
 - (b) if paragraph (a) does not apply, a statement that no information or records were collected under section 20.3 (2).

- (2) The administrator may require a developer to file additional information or records for the purpose of verifying the information and records filed under subsection (1).
- (3) A developer must comply with a requirement made under subsection (2) within the period set by the administrator.

Confidentiality

- 20.5** (1) Subject to subsection (2), the administrator or another person having custody or control of information or records collected under this Part must not use or disclose the information or records except
- (a) for the purposes of administering or enforcing this Act, a taxation Act, the *Home Owner Grant Act* or the *Land Tax Deferment Act*,
 - (b) in court proceedings related to this Act or an Act referred to in paragraph (a),
 - (c) under an agreement that
 - (i) is between the government and another government,
 - (ii) relates to the administration or enforcement of tax enactments, and
 - (iii) provides for the disclosure of information and records to and the exchange of similar information and records with that other government,
 - (d) for the purpose of the compilation of statistical information by the government or the government of Canada, or
 - (e) to the British Columbia Assessment Authority.
- (2) If the superintendent has custody or control of information or records collected under this Part, the superintendent must not use or disclose the information or records except for a purpose set out in subsection (1) (a) or (b).
- (3) Except in respect of a proceeding under an Act referred to in subsection (1) (a), the administrator or another person to whom subsection (1) applies may not be compelled in a civil proceeding to disclose or give evidence respecting any information or records obtained by the administrator or person in the course of exercising powers or performing duties under this Act.

Lieutenant Governor in Council's exemptions

- 20.6** The Lieutenant Governor in Council may exempt, by order, from all or part of a provision of this Part, with or without conditions,
- (a) a person,
 - (b) land that is, or will be, the subject of development, or
 - (c) a transaction.

Section 5

5 ***Section 24 is amended in paragraph (d) (ii) of the definition of “non-compliant” by adding “, in information or a record filed under section 20.4 [filing information respecting assignments]” after “section 18 [handling deposits]”.***

6 ***Section 25 is amended***

(a) by repealing subsection (1) and substituting the following:

(1) The superintendent may, by order, appoint investigators for the purposes of this section by doing one or both of the following:

- (a) naming a specific person as an investigator;
- (b) providing that a person who holds a specified title or position is an investigator.

(1.1) If the superintendent or an investigator has reason to believe that a developer is, or has been, non-compliant, the superintendent or investigator may conduct an investigation to determine whether the developer is, or has been, non-compliant. ,

(b) in subsection (2) by striking out “a person carrying out the investigation” and substituting “the superintendent or investigator”,

(c) in subsection (2) by adding the following paragraph:

(c) require a person who the superintendent or investigator has reason to believe has in the person’s possession or control information, records or other things relevant to the investigation to produce the information, records or things. ,

(d) in subsection (3) by striking out “subsection (2) (a) must not withhold or destroy, conceal or refuse to provide any information or thing” and substituting “subsection (2) must not withhold or destroy, conceal or refuse to provide any information, record or thing”, and

(e) in subsection (4) by striking out “appointed under subsection (1) (b)” and substituting “who conducts an investigation under subsection (1.1)”.

7 ***Section 30 (1) is amended by adding the following paragraph:***

(b.1) order the developer to comply, or to carry out a specified activity for the purpose of complying, with a prohibition or requirement of

- (i) Part 2.1 [Assignment Reporting Requirements], or
- (ii) a regulation made for the purpose of Part 2.1; .

8 ***Section 30 (1) (d) is amended***

(a) in subparagraph (i) by striking out “\$50 000,” and substituting “\$500 000,” and

(b) in subparagraph (ii) by striking out “\$25 000,” and substituting “\$250 000,”.

9 Section 39 (1) (a) is amended by adding

section 15.1 (2) or (4) *[phase disclosure statements]*,
section 15.2 (2) or (4) *[consolidated disclosure statements]*,

after

section 15 *[providing disclosure statements to purchasers]*, .

10 Section 39 (1) (a) is amended by adding

section 20.3 *[requirements respecting assignments]*,
section 20.4 (1) or (3) *[filing information respecting assignments]*,

after

section 19 *[developer use of deposit]*, .

11 Section 40 is amended

(a) in paragraphs (a) (i) and (b) (i) by striking out “\$100 000” and substituting “\$1.25 million”, and

(b) in paragraphs (a) (ii) and (b) (ii) by striking out “\$200 000” and substituting “\$2.5 million”.

12 Section 46 (2) is amended

(a) in paragraph (a) by adding “or 2.1 [Assignment Reporting Requirements]” after “Part 2 [Marketing and Holding Deposits]”, and

(b) by adding the following paragraphs:

- (i.1) prescribing the form of the terms and notice referred to in section 20.3 (1) [requirements respecting assignments];***
- (i.2) respecting the information and records that must be collected under section 20.3 (2);***
- (i.3) respecting the keeping of assignment agreements for the purposes of section 20.3 (3);***
- (i.4) for the purposes of section 20.4 (1) [filing information respecting assignments],***
 - (i) requiring filing on a prescribed date or within a prescribed period, whether according to a schedule or with reference to the occurrence of a prescribed event, and***
 - (ii) authorizing another person to accept filing on the administrator’s behalf; .***

13 *The following sections are added:***Transition – definitions**

47.1 In sections 47.2 to 47.4:

“**administrator**” has the same meaning as in section 20.1 *[definitions]*;

“**assignment**” has the same meaning as in section 20.1;

“**assignment agreement**” means an assignment agreement referred to in section 20.3 (3) (a) *[requirements respecting assignments]*;

“**assignment information and records**” means the information and records described in section 20.3 (2);

“**pre-existing purchase agreement**” means a purchase agreement entered into before the date section 20.3 comes into force.

Transition – duties if assignment of pre-existing purchase agreement

- 47.2** (1) If a pre-existing purchase agreement provides that an assignment of the purchase agreement requires the consent of the developer, the developer may consent to the assignment only if that developer first makes a reasonable effort to collect, from each proposed party to the assignment agreement, assignment information and records.
- (2) If a developer consents to an assignment of a pre-existing purchase agreement, the developer must comply with section 20.3 (3).
- (3) If a pre-existing purchase agreement provides that an assignment of that purchase agreement does not require the consent of the developer, or is silent with respect to obtaining the consent of the developer, but the developer receives notice of an assignment, the developer must make a reasonable effort to
- (a) collect, from each party to the assignment agreement, assignment information and records, and
 - (b) collect a copy of the assignment agreement and keep it in accordance with section 20.3 (3) (b).
- (4) Part 2.1 *[Assignment Reporting Requirements]* applies to assignment information and records and an assignment agreement collected under this section as if they were collected under section 20.3 (2) and (3) *[requirements respecting assignments]*.

Transition – if no information or records collected

- 47.3** (1) If a developer does not collect assignment information and records in accordance with section 47.2 *[transition – duties if assignment of pre-existing purchase agreement]*, the developer must file a statement with the administrator and the statement

- (a) must indicate that no assignment information or records were collected under section 47.2 (1) or (3) (a), and
 - (b) must be filed in the form and manner required by the administrator and as required by the regulations.
- (2) Part 2.1 *[Assignment Reporting Requirements]* applies to a statement filed under this section as if it were a statement filed under section 20.4 (1) (b).

Transition – regulations for transition to Part 2.1

- 47.4** (1) The Lieutenant Governor in Council may make regulations for meeting or removing any difficulty arising out of the transition to Part 2.1 *[Assignment Reporting Requirements]*, and for that purpose disapplying or varying any provision of
- (a) Division 4 *[Disclosure Statements]* of Part 2 *[Marketing and Holding Deposits]*,
 - (b) Part 2.1, or
 - (c) sections 47.2 *[transition – duties if assignment of pre-existing purchase agreement]* and 47.3 *[transition – if no information or records collected]*.
- (2) The authority to make or amend a regulation under this section, but not the authority to repeal a regulation under this section, ends 3 years after the date on which this section comes into force.

Consequential Amendments

Income Tax Act

- 14** *Section 64 (5) (c) of the Income Tax Act, R.S.B.C. 1996, c. 215, is amended by adding the following subparagraph:*

- (iii.5) to an official solely for the purposes of the administration or enforcement of the *Real Estate Development Marketing Act*, .

Property Transfer Tax Act

- 15** *Section 32 (a) of the Property Transfer Tax Act, R.S.B.C. 1996, c. 378, is amended by striking out “the Home Owner Grant Act or the Land Tax Deferment Act” and substituting “the Home Owner Grant Act, the Land Tax Deferment Act or the Real Estate Development Marketing Act”.*

Section 16

Commencement

- 16** The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 4 and 5	By regulation of the Lieutenant Governor in Council
3	Section 7	By regulation of the Lieutenant Governor in Council
4	Section 10	By regulation of the Lieutenant Governor in Council
5	Sections 12 to 15	By regulation of the Lieutenant Governor in Council