

Understanding Pre-Sale Purchases

Many British Columbians are making the decision to purchase a unit in a development that is not yet constructed. This decision is usually the largest purchase a person will make in their lifetime and is often both an exhilarating but also nerve-wracking experience. And while there are advantages to “purchasing pre-sale” there are also some risks and other issues that should be considered before signing any contract.

UNDERSTAND WHAT IS BEING SOLD BEFORE YOU CONSIDER BUYING

Developers in British Columbia commonly “pre-sell” residential units such as strata-titled apartments and townhouses (often referred to as condominiums or condos) prior to constructing the units. Typically, developers enter into contracts that provide for units to be built within two years at a fixed price (although construction completion can take longer) and require deposits to be paid by the prospective purchasers. The deposits are held in trust by a lawyer, notary public or real estate brokerage, unless deposit protection insurance is obtained, in which case the deposits may be released to the developer.

Purchasing a pre-sale is not the purchase of an existing physical property, but rather a contract for the right to receive, and an obligation to pay for, a finished unit at a point in the future. Consumers should be aware of this difference in order to make an informed decision about purchasing a unit in a new development. Most people enter into a pre-sale contract with a developer directly while some may do so through an “assignment”.

WHAT IS AN ‘ASSIGNMENT OF A PRE-SALE CONTRACT’?

A contract assignment occurs when a buyer transfers the contract to buy property to someone else before the completion date. The original purchaser can transfer the contract for any price, even for a higher price than they paid for the property. Some purchasers assign or “flip” the units to other buyers before construction has even started.

MAKING AN INFORMED DECISION

It is important that prospective purchasers thinking about entering into pre-sale contracts appreciate the risks associated with them. BC Financial Services Authority has received complaints from consumers who have encountered some of the issues outlined in this brochure after signing a pre-sale contract. It is important to consider these issues before signing a pre-sale contract and to be aware of them while your unit is being constructed.



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THE IMPORTANCE OF A DISCLOSURE STATEMENT

Prior to selling a pre-sale development unit, developers are required by law to provide interested purchasers with a disclosure statement. The disclosure statement explains what the developer is selling and describes the purchaser's right under the *Real Estate Development Marketing Act* to cancel the pre-sale contract within seven days of signing it.

A purchaser should carefully review the developer's disclosure statement. The *Real Estate Development Marketing Act* provides that a developer must not enter into a contract to sell a development unit unless a copy of the disclosure statement has been provided to the purchaser and the purchaser has been given a reasonable opportunity to read it.

THE IMPORTANCE OF INDEPENDENT ADVICE

Purchasers should always obtain advice from a lawyer and/or a licensed real estate agent before entering into a pre-sale contract. This brochure is by no means an exhaustive list of all possible risks that exist for those considering entering into a pre-sale contract or an assignment of a pre-sale contract. Remember that lawyers and real estate agents have a duty to put the interests of their client first – so it is important to seek out their independent advice.

SOME THINGS TO CONSIDER WITH A PRE-SALE CONTRACT

- **A development may be delayed for many months, or may not proceed at all.** This can occur for a variety of reasons including: inadequate sales; delays in obtaining financing or building permits; higher than expected costs for construction materials; and an inability to hire skilled construction workers due to labour shortages.
 - If a development is delayed beyond the completion date set out in the pre-sale contract, the contract may provide that it is terminated unless both the purchaser and developer have agreed to an extension. If market prices have increased during a delay in construction, a purchaser may be asked to pay a higher purchase price in order to extend the original contract or obtain a new contract. Keep in mind that the developer may not agree to an extension or new contract and instead sell the unit to another purchaser.
 - If a development does not proceed and the purchase contract is terminated, purchasers are usually entitled to have their deposit money repaid. Unless the pre-sale contract requires interest to be paid to the purchaser, the purchaser may not receive interest on that deposit. This is something that a purchaser will want to clarify at the time that they enter into a contract.
 - Substitutions and adjustments are often made during construction. A pre-sale contract may allow the developer to substitute equivalent materials or make adjustments to the layout of the unit or the development.

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- **Timing the sale of your existing home in the event of a development delay.**

Delays in development may require prospective purchasers to arrange temporary accommodation or delay moving from their existing homes. As delays that occur in a rising or falling market may also be accompanied by price increases or decreases, prospective purchasers should consider when best to sell their existing home and prepare for the possibility of a development delay.

- **Real estate prices may decline in the future.** If the developer completes a pre-sale contract within the time set out in the contract, the purchaser may be obligated to complete the purchase at the agreed price,

even though the market value of the unit purchased may have declined.

- **Restrictions on Contract Assignments.**

Depending on the specific terms of a pre-sale contract, it may not be assignable at all or may only be assignable with the developer's consent. The contract may also require a substantial assignment fee to be paid to the developer. The risks associated with pre-sales also apply to a new purchaser who is assigned a pre-sale contract. Depending on the specific terms of an assignment, if the assigned contract is not completed the new purchaser may not be able to recover any payments made to the initial purchaser and the initial purchaser may not be able to recover any assignment fee paid to the developer.

EXTRA THINGS TO CONSIDER WITH ASSIGNMENTS OF PRE-SALE CONTRACTS

- **Is an assignment permitted under the purchase contract?** Some contracts do not permit assignments. Others may require the developer's consent and a substantial assignment fee.
- **Have you confirmed in the assignment agreement** how the assignor will meet all of the requirements for a valid assignment, and set out what will happen if there is any breach of the assignment agreement or the pre-sale contract?
- **Have you obtained advice from a lawyer** and/ or a licensed real estate agent prior to entering into an assignment contract?

ABOUT BC FINANCIAL SERVICES AUTHORITY

BC Financial Services Authority ("BCFSA") is a regulatory body that includes the Superintendent of Real Estate ("Superintendent"). The Superintendent regulates real estate development marketing in British Columbia to protect consumers. Under the *Real Estate Development Marketing Act*, the Superintendent exercises statutory jurisdiction and receives development disclosure statements that developers file with the Superintendent and distribute to consumers. Additionally, the Superintendent takes enforcement action against developer misconduct.

