

## **Government reviewing changes to real estate contract language**

### **Coquitlam's Riverbend development sparks debate over consumer protection**

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Coquitlam's oft-quoted Riverbend development and its resulting lawsuits are likely to change the legal contracts British Columbians sign when they buy housing yet to be built.

Finance Minister Carole Taylor hinted to Business in Vancouver that she might require future contracts' termination clauses to be in bold text at the top of agreements.

"Some changes are likely. I don't know if you call it a regulation if we require that contracts have a different look to them," Taylor said. "There's some consumer education and protection issues that we should be able to have a look at, even if it is to put it in bold at the top of the contract what the deal is [if construction costs spiral out of control and the developer wants to terminate the agreement]."

Canadian Bar Association real estate subsection chair Peter Tolensky has never seen a real estate purchase agreement that included clear language outlining that if construction costs rise significantly, the developer is free to either cancel the contract or charge the buyer a higher price, he said.

"Contracts should be very clear, and when people go to see their lawyer about a contract, that lawyer's job is to explain the contract to them," the Clark Wilson LLP partner said.

Coquitlam's Riverbend project, which hit the skids in May, is fuelling calls for change from consumers, developers and politicians.

Developer CB Developments 2000 Ltd. pointed to rising construction costs when it cancelled 32 pre-sale contracts that buyers signed to purchase strata-titled detached homes for between \$329,000 and \$379,000.

The Riverbend homes' retail prices had reportedly risen more than \$80,000 each during the two-year construction period.

CB's lender, Calgary-based CareVest Capital Inc., won a court order to put CB into receivership when it became clear that the project would struggle to make money.

Receiver David Bowra then tried to get B.C. Supreme Court judge Ian Pitfield to nullify the 32 buyers' contracts. Pitfield instead struck a balance on June 14, allowing Bowra to borrow the \$3.8 million needed to finish building the houses in the Coquitlam River-abutting project's third phase.

Pitfield did not dissolve the buyers' claims to the finished homes.

Instead, he ruled that Bowra should set aside the difference between the pre-sale contract prices and the final sale prices in a trust account. The buyers could then later attempt to get some of the proceeds from that account.

B.C.'s Real Estate Services Act allows developers to sell houses before they are built. B.C.'s superintendent of real estate, Alan Clark, governs pre-sales and placed a stop-marketing order on the Riverbend project.

In July, Clark sent Taylor summaries of six cases where, he said, construction costs had changed after pre-sale contracts had been signed. Taylor said she is reviewing these cases:

- UBC's Galleria One;
- Kelowna's Martin Place;
- Fernie's Silver Rock Condominiums;
- New Westminster's Amadeo;
- Oyama's Crystal Waters; and
- Penticton's Lakeview Terraces.

"I know that some of the builders are concerned that it's going to affect all of their pre-sales if people start to be concerned about this. So, we're going to have to do some work," Taylor said.

If the Riverbend fiasco prompts most buyers to only consider purchasing already-built homes, "that would drive up prices at least 15%," said Rennie Marketing Systems principal Bob Rennie.

But, Rennie stressed that he hasn't seen a dampening of the pre-sale real estate market yet.

On June 21, Rennie said that he expected to sell half of the 230 suites at the Wall Centre Richmond project, which he is marketing, within one week of the suites' June 23 sales launch.

That is in part because the project is backed by the experienced and well-regarded developer Wall Financial Corp.

Still, Rennie likes Taylor's consideration that real estate contract termination clauses be in bold text at the top of contracts.

"Anything that puts the consumer at risk should be in the simplest language and bold, absolutely. There shouldn't be anything to hide. Without the consumer, I'm out of business," Rennie said. •

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