



Complexities of Strata-Title Properties



Strata living attracts many people looking for features like affordability, freedom from yard work and security, and it is increasingly popular across the province.

However, issues such as leaky condos, phased construction and restrictive bylaws make selling strata-title properties a complex business. REALTORS involved in the sale of strata properties need to understand and employ the many tools available to help their clients make fully informed decisions.

Mike Mangan, cpe instructor, professor, lawyer and author says the Real Estate Council of British Columbia and the courts expect REALTORS to help their clients discover essential information about a property. "If a REALTOR fails to do what's reasonably expected of a competent licensee, the REALTOR may be liable."

For example, in the cpe semi-

nar *CONDO 202: Advanced Strata Law for REALTORS*, Mangan discusses a case where the Commercial Appeals Commission found a listing salesperson guilty of misconduct for failing to disclose significant water and structural damage, and the existence of an engineer's report.

The buyer's agent in this case gave the minutes to her clients without reading them and did not ask questions about the condition of the property before subjects were removed. The Commission found her negligent for failing to ascertain damage to the building or review the minutes. (Click on Leaky Condos, under Library on BCREA's REALTOR Link™ homepage to read an excerpt of this case from the *CONDO 202* participant's guide.)

A June 2003 Canada Mortgage and Housing Corporation (CMHC) report, *Re-Sale of Leaky Condos: Did the Buyer Know?*, written by Nancy Bain, highlights the need to discuss the complexities of strata-title properties.

For the study, Bain sought buyers of resale condominiums who bought between 1996 and 2002, and had leakage problems within one year of completion. She ended up with a sample of 40 transactions. To determine why the buyers were not aware of the condition of the buildings at the time of pur-

chase, the report examined the Property Disclosure Statement (PDS), strata corporation minutes, Form B Information Certificate, property inspections and engineering reports, although not all tools were used in each purchase. Bain concluded these investigate tools have shortcomings that did not give buyers a "clear understanding of the risk."

BCREA President David Herman disagrees.

"If the representations made in the PDS, Form B and strata minutes are accurate, and the client reviews the information carefully, there should not be any surprises once a property has been conveyed to a buyer," says Herman. "REALTORS don't want to make any misrepresentations and we, as a profession, continually take steps to educate ourselves and the public."

While the CMHC report only considered 40 specific cases of leaky condos, during a period when REALTORS were adjusting to new forms and procedures, it does highlight the care that must be taken when selling any strata property.

Additional Resources

- *Licensee Practice Manual, on the Real Estate Council of British Columbia's REALTOR Link™ homepage under Publications*

- *cpe seminars—CONDO 101: Strata Law for REALTORS and CONDO 202: Advanced Strata Law for REALTORS, check with your board for availability*
- Provincial government's Strata Property Act webpage: www.fic.gov.bc.ca/strata/index.html
- CREA Standards of Business Practice: www.crea.ca/public/realtor/standards_of_business.htm
- *Re-Sale of Leaky Condos: Did the Buyer Know?* www.cmhcschl.gc.ca/publications/en/rh-pr/tech/03-108-e.pdf

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President's Report



President David Herman

Disclosure— Is Mum the Word?

Depending what side you're on in a transaction—buyer or seller—disclosure of certain information can be positive or negative. We deal with this every day. So, what do we do?

Let's consider grow houses. If you're the seller's agent, disclosing that the home has been used to grow marijuana might seriously devalue the property. Isn't it your duty to act in the best interest of your client?

Certainly! But that isn't always as simple as the bottom line. In addition to your client's best interest, you must consider your own welfare. There can be potential liability on a REALTOR or broker involved, whether that involvement happened during the acquisition or the disposal of the grow house.

We have a professional responsibility to discover and disclose the facts about every property we are involved in helping a client buy or sell, lease or rent. The CREA Code of Ethics, Article Four, states REALTORS are required to fulfill this obligation to avoid error, misrepresentation or concealment of pertinent facts. In the case of grow houses, the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* may also apply.

Even if your customer does not want you to disclose the criminal history of the prop-

erty, you are obligated to when at least one of these conditions is present:

- There is an actual material latent defect of which the seller knows or ought to know.
- The buyer asks a specific question or expresses a specific concern.
- The Contract of Purchase and Sale contains representations that the property was not used as a grow house or for criminal activities.
- There is some statutory requirement that this disclosure be made.

That's one sticky situation down. Unfortunately, there are many more to consider. "When in doubt, disclose" is a good motto. When in doubt, getting legal advice is a good idea, too.

David Herman
President

Market Confidence High

When the 2002 housing market outperformed expectations, many analysts predicted that 2003 could not keep up the pace. But the right mix of positive factors have kept consumers excited about buying homes.

"With five-year mortgage rates at their lowest level in 47 years and an economy in the beginning of a growth cycle, BC households are exhibiting confidence in housing markets all across the province," said

Cameron Muir, Canada Mortgage and Housing Corporation senior market analyst.

This is evident in June MLS® statistics where both dollar volume and units sales increased in all 12 board areas. June also marked the fourth consecutive month of BC residential sales totaling more than \$2 billion—something that has never been seen before—and saw unit sales top 9,000, which has not happened since 1994.

"Highlights from the first half

of the year prove that real estate is the bright light in the province's economy," says BCREA President David Herman. "Sales are on pace to break the \$19 billion record set in 2002."

The market will remain strong for the rest of the year and into 2004, according to the Central Credit Union of BC. "Residential real estate and the construction sector in general will continue to be the main drivers of BC's economic growth in 2004," said Helmut Pastrick, chief economist.

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Important Year for Council



Barry Clark, of Royal LePage Nanaimo Realty, was elected Chair of the Real Estate Council of British Columbia at its July meeting. With a new *Real Estate Act* on the horizon, this will be an important year for Council.

What are your goals as Council Chair?

My main goal is to continue to work with the Ministry of Finance on creating a modern *Real Estate Act* that will maintain consumer confidence in the real estate profession. I would also like to see the implementation of the Special Compensation Fund to replace bonding. While these initiatives progress, the Council will



Real Estate Council of British Columbia

continue to work with government on legislative and policy matters.

Why should Council become self regulating?

Since the Council was established in 1958, different governments have delegated increasing responsibilities. For example, in 1985 the Council was given full responsibility for licensing and, in 1986, decision-making ability regarding disciplinary hearings. I believe having government make the Council a fully self-regulating organization is a natural progression.

If that happened, the Council could also adapt rules in a timely fashion to meet industry changes, in order to ensure consumer confidence.

Why did you become involved with Council?

I have been licensed for 38 years, and have a long history of volunteering. I served as the president of the Vancouver Island Real Estate Board, BCREA and a director of the Real Estate Errors and Omissions Insurance Corporation. I was first elected to the Council in 1998, which has been extremely rewarding. I am very pleased to have the opportunity to work with experienced licensees in maintaining public confidence in the profession.

What do you wish every REALTOR knew about Council?

Because most licensees don't interact with the Council on a regular basis, there may be some misun-

derstanding about its role.

The Council is a regulatory body established by the provincial government, consisting of 19 members, including 17 agents and salespeople elected to represent all areas of the province. The government also appoints two public members.

The Council's mandate is to protect the public by administering and enforcing the *Real Estate Act*. It is responsible for licensing real estate agents and salespersons, and for investigating complaints against licensees and imposing disciplinary sanctions under the Act.

The Council assists licensees by publishing the *Licensee Practice Manual*, the *Office Practice Manual*, *Report from Council* and a very informative site on REALTOR Link™.

I would also like licensees to know that Rosemary Barnes, also a BCREA past president, has been elected Vice-Chair this year.

Test Your Knowledge

Six major provincial real estate organizations have statutory mandates under the *Real Estate Act*. Do you know what they do? BCREA has developed a guide, *Who's Who in BC Real Estate*, to help clear up any confusion. Go to BCREA's REALTOR Link™ homepage (www.realtorlink.ca) and look under About BCREA.

Take this quick quiz to find out if you know who's who. Match each organization to a statement that best describes its purpose.

1. BCREA
 2. Real Estate Council of British Columbia
 3. The Real Estate Foundation
 4. Real Estate Errors and Omissions Insurance Corporation
 5. Superintendent of Real Estate
 6. Real Estate Division, Sauder School of Business at UBC
- a) Provides grants for charitable activities related to real estate and land use using interest from unassigned trust deposits.
 - b) Helps REALTORS maintain high standards of professionalism through education and timely communications, and conducts government relations to ensure a positive political climate.
 - c) Administers the mandatory Sales, Agents and Property Management Pre-Licensing Course.
 - d) Administers 11 statutes, including the *Real Estate Act*.
 - e) Issues licenses to agents, nominees and salespersons, enforces the *Real Estate Act* and carries out disciplinary procedures when the Act is breached.
 - f) Pools assessments paid by licensees in a fund used to pay the cost of defending and indemnifying licensees against liability claims.

Answers:

1 b), 2 e), 3 a), 4 f), 5 d), 6 c)

Lead Your Office to Success



In this busy market, effective management is key to staying ahead of the competition. The Management Course Series is comprised of three one-day seminars designed to help managers, and those interested in management, make their offices more profitable, competitive and less likely to suffer from lawsuits.

The Office

This seminar helps new and experienced managers make their offices more successful and use their time effective-

ly. Learn how to use market studies and capture positive media coverage to build a professional public image of your office. Find out where to get the answers to your questions quickly, and develop skills to motivate and maintain top producers while building trust among consumers.

Developing and Retaining Successful Salespeople

A productive and educated sales force is integral to every successful office. This

seminar focuses on how managers can motivate, develop and retain successful salespeople.

Effective managers have to meet the needs of many different personalities, skill levels and working styles. Learn how to get the best out of each and every one of your salespeople. This seminar will help you master techniques to continuously inspire salespeople to improve their skills and expand their knowledge.

You will also learn to identify potential management problems and employ effective solutions, design and implement an effective business plan and hold effective sales meetings.

Risk Management: Staying Out of Trouble

The best way to prevent lawsuits is to understand basic risk management techniques and the importance of creating profitable companies through the development of ethical and skilled salespeople. This seminar will give you the tools to manage your office with this in mind, ensuring your office's clients receive the best possible service from your salespeople.

These three seminars can be taken in any order and, when completed along with *Professionalism - It Pays! The Manager's Course*, you will receive a cpe certificate acknowledging your level of skill and accomplishment.

cpe Seminar Schedule

Help position yourself for success – enroll in a cpe seminar today!

CONDO 202: Advanced Strata Law for REALTORS

Instructor: Mike Mangan

August 27, REBGV – Vancouver

September 10, CADREB – Chilliwack

September 18, PRSCREB – Powell River

Professionalism It Pays! Be Safe or Be Sued

Instructor: Mike Mangan

August 21, REBGV – Vancouver

Legal Update 2003/2004

Instructor: Mike Mangan

September 27, KREB – Creston

Check with your local board office for last-minute changes. Look for more cpe seminars on BCREA's REALTOR Link™ homepage, under Education.

Real Estate Act Sizzles

It may not be on your reading list, but the Real Estate Act Checklist is a summer sizzler with the provincial government.

Developed last month in consultation with member boards and REALTORS, the checklist notes the 22 changes and clarifications BCREA recommends government capture in a new *Real Estate Act*. It also indicates which changes are of highest priority.

Government considers the document extremely helpful, given the limited time and resources available for legislative drafting.

“Government has responded positively to our submissions to date,” says BCREA President David Herman. “We’ve been asked for our ongoing participation as bureaucrats prepare legislation for the 2004 spring sitting of the legislature,” he adds.

In support of this ongoing



work, BCREA has submitted a grant proposal to The Real Estate Foundation of British Columbia. If approved, funds will support legal research on priority issues and subsequent redrafting of some provisions in the draft Act submitted to government in April 2003. As part of this process, the Real Estate Council of British Columbia will also be invited to comment.

The Real Estate Act Checklist is posted on BCREA's REALTOR Link™ homepage (www.realtorlink.ca). For more information, contact Steve Olmstead, Manager of Government Relations, solmstead@bcrea.bc.ca or 604.742.2793.

Notice: This fall, BCREA will begin producing its newsletters every two months. The next issues of the Bulletin and Legally Speaking will be published in October 2003.