

Court orders developer to reveal condo-flipper info



Sandra Jackson

cell 416-579-7862
SJ@SandraJackson.biz

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A Federal Court judge has approved at least one court order that will require a British Columbia developer to turn over information to tax officials about people who bought and flipped condo units before or during construction.

And several similar applications are under way, reflecting the federal government's efforts to crack down on potential tax cheating in the presale market.

A July 25 Federal Court order requires the developers of the Residences at West, a Vancouver condo project at 1738 Manitoba St., to provide the Canada Revenue Agency (CRA) with documents related to presale flips, also known as assignments, in the building, including proof of payments and correspondence between the developers and people who buy the assignments.

That order followed a June 29 application from the federal government.

In September, the Minister of National Revenue applied for court orders related to One Pacific, a Concord Pacific project, and Telus Gardens, a downtown project developed by Westbank Corp.

Both developers said they would comply with the request for documents.

"Customer information is protected by privacy laws and is not at the developer's liberty to disclose unless ordered by the Court," Matt Meehan, senior vice-president of planning at Concord Pacific Developments Inc., said in an e-mail.

"To protect our customers' information and ensure any release will be compliant with the law, we have asked CRA to obtain a court order, which we will adhere to."

In an e-mailed statement, Westbank said it would comply with the minister's application.

The CRA is investigating potential tax cheating in the presale market.

Developers presell units in projects to obtain bank financing. Those sales agreements can be "assigned," or flipped, to somebody else before the building is finished.

A unit may be flipped several times before a project is completed. But only the transfer of legal title from the developer to the final purchaser is registered with the B.C. land title office.

That means the CRA does not know the identities of any buyer but the final one, and has no way to check whether the others have paid applicable taxes on those transactions.

The provincial government last May announced new regulations designed to limit assigning: Sellers have to consent to the transfer of the contracts, and any resulting profit must go to the original seller. But those new rules apply to single-family homes, not condo presales.

As the CRA heads to court to obtain data on presale buyers and sellers, some observers say the provincial government could cool speculation in the presale market – and support federal tax-enforcement efforts – by changing reporting requirements.

Presale purchasers may include people who are not Canadian residents and whose profit from flipping a presale contract would be subject to a federal withholding tax, said Richard Kurland, a Vancouver immigration lawyer.

He used the example of a person from Iran who buys a presale contract for \$100,000 and sells it for \$125,000 a month later. Under the Income Tax Act, that profit – because it went to someone who is not a tax resident of Canada – would likely be subject to a 25 per cent withholding tax, he said.

"If nobody knows that you're from Iran and not a tax resident, and nobody withholds the money, you just walked off with \$6,000 tax-free," he said.

If information on buyers' identities were routinely provided, the agency could more readily check to determine if, for example, anyone was claiming the principal-residence exemption on more than one property, Mr. Kurland said.

Asked if the CRA would like the province to make changes such as requiring routine disclosure of the identities of presale buyers, agency spokesman Bradley Alvarez said in an e-mail that, "any additional information, including that obtained from other governments and third parties, enhances the CRA's ability to detect non-compliance."

The CRA has found some flips are reported incorrectly or not at all and "the CRA welcomes any endeavours to obtain any information that can assist the Agency in detecting non-compliance."

Developers support the CRA's goals, but have to take privacy regulations into account, said Anne McMullin, president of the Urban Development Institute.

"It's not the developers not wanting to hand over information, it's, 'Let's do this safely,' because of privacy laws," Ms. McMullin said.

The NDP, which came to power after the May election, had said while in opposition that the Liberals were not doing enough to curb speculation in B.C. real estate.

In its election campaign platform, the NDP promised to set up a multi-agency task force to fight tax fraud and money laundering in the B.C. real estate marketplace.

Finance Minister Carole James was not available for an interview.

In a statement, her office said the province is monitoring the federal government's court action, and tax fraud is "something that is taken very seriously."

The B.C. government is working on a comprehensive housing strategy, and any policy or legislative changes will be made public once that strategy is developed, the statement added.

ROYAL LEPAGE

Sandra Jackson

cell 416-579-7862
SJ@SandraJackson.biz