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## DEPOSIT PROTECTION INSURANCE Information for Developers and Construction Lenders (British Columbia)

The Real Estate Development Marketing Act (REDMA) was brought into force on January 1, 2005. Section 19 of REDMA permits developers to have access to the purchasers' deposits monies for the payment of project costs, subject to the following:

- The developer must enter into a "Deposit Protection Contract", as defined in the Insurance Act and provide notice of the deposit protection contract to the purchaser in accordance with the regulations. A "Deposit Protection Contract" indemnifies the purchaser against the loss of its deposit (plus interest, if the purchase agreement provides that interest goes to the purchaser) which results from the developer failing to ensure that the subdivision plan or strata plan is deposited in the land title office, an occupancy approval is obtained and a transfer of the property is delivered to or registered by the purchaser, all within the time set out in the purchase agreement. A developer who enters into a Deposit Protection Contract is responsible for payment of the premiums for the contract and may not charge the purchaser for that cost as a separate item. The contract is enforceable by the purchaser whether or not the premium is paid.
- Pursuant to receipt of the issued Deposit Protection Contract, and upon certification by the developer in writing, that the purchasers who paid the deposit have no right to rescission under section 21 of REDMA, the lawyer, notary public or agent holding the deposit must release deposits as instructed by the insurer.
- The developer may only use the deposit funds for the "developer's own purposes". This is defined in REDMA as purposes related to the development itself, which includes the property in respect of which the deposit was paid, and the construction and marketing of that development. This prevents the developer from using the purchasers' deposits to fund another project or for its own general corporate or personal purposes.

### The Likely Candidate

Travelers Canada reviews each application for Deposit Protection Insurance on its own merit. There are some fundamental components of an application that assist our stringent underwriting process. As the Deposit Protection Insurance facility is based on a healthy level of deposits and pre-sales, we look to see that a developer is collecting deposits of at least 15% of contracted sales, and that a pre-sale level of at least 70% has been reached. A typical application would have a maximum loan value of 75%, a minimum equity contribution of 15%, and deposits as a source of funds up to 10%. Alternatively, a lender may allow the developer to use the insured and released deposits as part of the equity component, or they could stipulate that the deposits be used to reduce the loan on a dollar for dollar basis.

### Release of Deposits

Once the Construction Lender has advanced a pre-determined amount of its Construction Loan, Travelers will insure the release of purchaser deposits up to the facility limit on a pro-rata basis as the Construction Lender further funds approved project costs. The ratio of Construction Lender advances to deposits being released ranges from 3 to 1 (75% Lender: 25% Travelers) up to 1 to 1 (50% Lender: 50% Travelers) depending on the size of the facility, the outstanding loan balance and the cost to complete. Typically the last release of deposits would coincide with the last construction draw.

### Security Requirements

The security required for issuance of a Deposit Protection Contract may include joint & several Corporate and Personal Indemnities and any or all of the following:

- A) A collateral mortgage on subject property, second only to construction financing.
- B) A collateral mortgage on a separate property, preferably a revenue producing property, second only to financing.
- C) A Deposit Trust Agreement with deposits to be held by an approved escrow agent.

### Premium & Fee Structure

In most cases, the annualized premium rate will vary from 1.00% to 2.00% of the insured deposits, paid when the deposits are released from trust. The rates depend, as above, on the size of the facility, security being offered, the duration of construction and financial viability of the developer.

Travelers Canada will require a commitment fee which varies depending on the size of the project. The commitment fee range is from \$5,000 to \$25,000.

Besides the premium and the fees, the only other costs should be the legal costs associated with the registration of a collateral mortgage, including but not limited to title searches, registration of the mortgage and legal opinion as to corporate and title matters.

### Contacts for Deposit Protection Insurance

Travelers Canada has staff with numerous years of experience in lending, insurance, warranty and construction. We have successfully participated with many different Construction Lenders in the financing of developments in B.C. since REDMA was enacted.

If you require further information, please contact any of the following people:

Name	Title	Phone Number	E-mail Address
<b>Vancouver Office:</b>			
Kerry Nagy	AVP - Underwriting	(604) 696-8550	<a href="mailto:kerry.nagy@travelers.com">kerry.nagy@travelers.com</a>
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