



BARRISTERS SOLICITORS

Reynolds
Mirth
Richards
& Farmer LLP

WRITER'S E-MAIL smcnaughtan@rmrf.com
YOUR FILE

WRITER'S DIRECT PHONE (780) 497-3362
OUR FILE 73037-209-SCM

March 11, 2009

Email

Attention: Dougal Forteath

Banff Housing Corporation
P.O. Box 1260, 110 Bear Street
Banff, AB T1L 1A1

Dear Sir:

Re: Motions by the Shareholder of Banff Housing Corporation

This letter is in response to the advice which has been requested by Banff Housing Corporation with regard to the recent motions made by the Shareholder of Banff Housing Corporation. We are pleased to provide the following opinion.

- 1. Can the Banff Housing Corporation amend the existing Banff Housing Corporation's Subleases to provide existing homeowners with certainty that the Subleases will not be subject to price restrictions in the future?**

The Banff Housing Corporation cannot unilaterally amend the Subleases.

The Sublease is a contract between the Banff Housing Corporation and each Sublessee. The terms of the Sublease document that applies to Riverview Court and Middle Springs 2 does not contain any provision by which Banff Housing Corporation could require a price restriction on the resale of the properties. Unless a Sublessee agreed to an amendment to the Sublease to provide for price restriction as a term of the Sublease, such a concept would not apply and could not be made applicable to the existing Subleases.

If Banff Housing Corporation exercised its right of first refusal to acquire a particular Sublease, Banff Housing Corporation would have the right as the owner of the Headlease to provide for price restriction or such other provisions as it, as the owner of the Headlease, found appropriate in a new Sublease which sold to a new purchaser.

Neither the existing Town Council nor any future Town Council can unilaterally provide for price restrictions in existing Subleases.

In our opinion, it is not legally necessary to amend the Subleases which exist for Riverview Court and Middle Springs 2 as the terms of those Subleases do not contain any provision which would allow for price restriction upon a sale of the Sublease by a current Sublease owner to a new owner.

- 2. If the parties to a Sublease, being the Banff Housing Corporation and the current Sublessee agree to an amendment or to entering into a new Sublease which contains a specific prohibition of price restriction, does this provide greater certainty?**

In our opinion, entering into an amendment of the Sublease or signing a new Sublease agreement would not be useful. While it might emphasize the result that already presently exists, the same result could be achieved by just writing to Sublessees and telling them what is the present operation of their Sublease. The Sublease is a contract and the rights of the parties are determined by the provisions which are contained in that document. As the existing Sublease documents for Riverview Court and Middle Springs 2 do not contain any provision providing for or allowing for price restriction on a resale by the Sublessee of the Sublease, entering into an amendment or entering into a new Sublease agreement would not put the Sublessee in any position of greater certainty.

To undertake amending all of the existing Subleases for the projects in question or entering into new Subleases would put the Banff Housing Corporation to some significant expense and in our opinion would not create any more certainty or improved position for Sublessees than exists at this time under the existing document. The amendments would also have to involve participation of lenders already in place with sub-mortgages.

- 3. Is there a better way to provide homeowners certainty that their properties will not be subject to price restriction than entering into a Sublease amendment or signing a new Sublease?**

As we stated above, we are of the opinion that a Sublease amendment or a new Sublease agreement is not necessary. A letter confirming the position would suffice.

A Bylaw passed by the Town would not affect contract rights and is, in any event, open to revision by this or a future Council.

It is not possible for a covenant to be registered on title to the Sublease unless there is an agreement between the owner of the Sublease and the Banff Housing Corporation. That has the same problem as the solution discussed in question 2 above. It might be possible to draft such an agreement to contain such a covenant, but in our opinion such a covenant is unnecessary given the provisions in the Lease document at this point in time.

If Parks Canada took steps to amend the Headlease to provide that the lands subject to the Headlease will not be made subject to any form of price restriction upon transfer of an interest in the lands, Banff Housing Corporation would be required to incorporate that concept into its Subleases. Such action by Parks Canada, subject to any future Headlease amendment by Parks Canada, would achieve the certainty addressed in Motion 1 passed by the Shareholder of Banff Housing Corporation.

In summary, it would be possible, with the agreement of the owners of the Sublease to amend the existing Subleases to specifically include a provision prohibiting any form of price restriction on transfers of the properties in question. However, in our opinion, such an amendment is not necessary as the lease document does not contain any such provision now and the Banff Housing Corporation cannot unilaterally impose such a condition.

The avenue open to the Banff Housing Corporation if it wishes to have price restriction apply to properties, is for the Banff Housing Corporation to exercise its right of first refusal contained in the Sublease. The opportunity to exercise a right of first refusal only arises if there is a *bona fide* Offer to Purchase or Offer of Sale which triggers the right to exercise the right of first refusal. Upon exercise of the right of first refusal the Banff Housing Corporation would become owner of the Sublease. If the Banff Housing Corporation then sold a new Sublease, that new Sublease could contain provisions which differ from the Sublease that was acquired under the right of first refusal. This would be the case each time the Banff Housing Corporation acquires a Sublease under the right of first refusal and then sells a new Sublease; upon such a sale the Sublease terms may change.

We note that Motion 1 made by the Shareholder of the Banff Housing Corporation indicates that the Shareholder will not consider any form of price restriction model for Middle Springs 2 or Riverview Court “now or in the future”. Banff Housing Corporation and Sublessess should be aware that a resolution by the Shareholder can be rescinded or varied by the Shareholder at any time. This highlights that what is of prime importance are the terms of the particular Sublease. If a purchaser of a Sublease buys a Sublease from either the Town or from an existing Sublease owner, and if that agreement does not contain a provision providing for price restriction upon resale, the Sublease is not subject to such price restriction, regardless of what motions the Shareholder of Banff Housing Corporation may have passed or rescinded.

We would be pleased to discuss this with you at your convenience.

Yours truly,

REYNOLDS, MIRTH, RICHARDS & FARMER LLP

PER:

SHEILA C. MCNAUGHTAN
SCM/mln