

## **PUBLICATION**

### Protection Against Real Estate Investment Fraud in Alberta

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Alberta has the unenviable reputation of being a centre for many allegedly fraudulent real estate investment schemes, such as Shire International, Lucid Group, Harvest Group and Foundation Capital, Platinum Equities and Concrete Equities. In part, this is because historically parties involved in raising capital in the “exempt market” in Alberta have, in many cases, been able to utilize marketing documentation, such as Subscription Agreements or Offering Memoranda which were not preapproved by the Alberta Securities Commission (“ASC”). Generally, companies raise capital via a “Prospectus”, a document vetted by securities regulatory authorities, which in Alberta is the ASC. However, some companies rely on exemptions to the “Prospectus” requirement. In those cases, until recently, they may have been able to utilize un-vetted documentation to solicit investments from the public. And it was only in the face of actual fraud or misconduct that the ASC had taken enforcement action.

That began to change to some degree, on September 28, 2009, with the enactment across Canada of National Instrument 31-103. Thereafter, certain “exempt market dealers” operating in Alberta were required to be registered with the ASC and their marketing representatives were required to be licensed. Still, some companies and their dealers may be exempt from registration and still others may rely on certain Prospectus exemptions that do not require them to have or to file with the ASC any marketing document, such as an Offering Memorandum. And still other companies have either qualified themselves, or pretended to be qualified, as “mortgage investment corporations” (MICs), to make their shares “qualified investments” for RRSP purposes.

One such case has recently surfaced in Alberta. Lawyers at McLeod Law are acting for investors involved in the Investment Exchange Mortgage Corporation, where approximately \$27,500,000 was raised over 10 years, from 2002 to 2012, largely from Alberta investors. Many of these investments were RRSP funds. The funds were to be used for investment in mortgages. Instead, the funds were used, in part, to make limited repayments to earlier investors as dividends and the majority of funds were transferred to other companies owned by the principals, where they were used for securities day trading activities and to support the principal’s highly extravagant lifestyle.

What do you look for and how do you protect yourself if you are asked to be involved in a real estate development venture? In the first place, if the company has filed a “Prospectus” with the ASC, that has been approved or “receipted”, you should be provided with a copy of it. You will then have the assurance that this document has been vetted by the ASC. If a Prospectus has not been issued, then you know you are dealing in

the “exempt market”, in which case the following are some steps you can take to protect yourself:

- Request the audited financial statements of the company you have or are being asked to invest in. If they have no audited financial statements, walk away;
- Check with the auditor directly to verify the legitimacy of the statements (in at least one recent case, audited statements were forged);
- Conduct online searches on the company and all of its main principals to learn all you can about their background, training and experience;
- If you are being told your money is being invested in the particular project, ask to see the relevant documentation;
- Ask the market dealer who is or has solicited you if he/she is licensed, and ask to see a copy of the license;
- Is the person or company offering you the investment registered to sell investments? Confirm by checking the [www.albertasecurities.com](http://www.albertasecurities.com) website and select the tab “For Investors”, then “Check First”;
- Also check on [www.albertasecurities.com](http://www.albertasecurities.com) to see if the company, or its market dealers, have any enforcement record or history with the ASC;
- Check out the company with the Real Estate Council of Alberta (RECA) at [www.reca.ca](http://www.reca.ca) to determine if a person or company is authorized by RECA to trade in real estate or deal in mortgages;
- If you have suspicions, ask your lawyer or accountant to investigate on your behalf;
- Beware of promised high returns. Most fraudulent schemes entice their investor/ victims with the promise of significantly aboveaverage returns or dividends (e.g. 10-18%). Initially, these returns may in fact be paid out, but usually out of the proceeds of investments made by subsequent investors (i.e. a “Ponzi” scheme);
- Be wary if you are asked to invest your RRSP money, as this is an area where many fraudulent schemes have been found to operate.

Above all, exercise prudence and caution. You owe it to yourself to conduct proper “due diligence”. Hard earned life-savings should not be hastily put at risk. And diversify! Never invest more than you can afford to lose.

For further information, please contact our [Real Estate Litigation & Dispute Resolution group](#).