

# Harlequin Property (SVG) Limited

## Understanding your Rights as a Purchaser of Property at Buccament Bay Resort

**Disclaimer:** The information that follows is based on the advice that the Trustee has received, is given in very general terms, and is not meant to represent advice as to the legal position or standing of any particular creditor who is in the position of a purchaser of land under or pursuant to a contract for sale with Harlequin SVG. These comments are meant to provide general information as to the potential rights of any such purchaser, and is not a substitute for each creditor/purchaser obtaining his own independent legal advice from a suitably qualified legal practitioner.

Under the provisions of the Bankruptcy and Insolvency Act (the “BIA”), Harlequin SVG, having failed to file a proposal within the time prescribed, is deemed to have made an assignment of its property to the Trustee for the benefit of its creditors. It has accordingly entered into bankruptcy, and Mr. Brian Glasgow is now the trustee in bankruptcy (the “Trustee”). Any creditor who is a purchaser of land under a contract for sale with Harlequin SVG must satisfy himself by taking appropriate legal advice as to his position under a bankruptcy regime. Every unsecured creditor who wishes to assert a right to be paid his claim out of the assets comprising the bankrupt estate of Harlequin SVG is required by section 114 of the BIA to file or lodge with the Trustee a proof of claim, setting out the amount being claimed and any supporting evidence. However, purchasers of real estate belonging to Harlequin SVG may have the right to claim an interest in the property that he agreed to purchase, instead of proving a claim in respect of a debt or liability.

As a general rule, a trustee in bankruptcy takes the property of the bankrupt subject to any equities or interests affecting it at the time of the bankruptcy. The interest of a purchaser under a contract for sale of land has been described as an equitable



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Interest or a proprietary interest in the land itself, and the vendor of the land is sometimes treated as a trustee or constructive trustee of the land, holding it upon trust for the benefit of the purchaser. The position of each purchaser should therefore be carefully considered in light of the provisions of the BIA, which state that property that at the time of bankruptcy was held by the bankrupt in trust for any other person will not form part of the bankrupt's estate: section 51(a); and that any person claiming a proprietary or other interest in property that is in the possession of the bankrupt at the time of bankruptcy may prove a claim to have that property turned over to him: section 70. A proof of claim for the recovery of an interest in property must be filed with the Trustee in accordance with the provisions of that section. **Note: this is not a claim in respect of a debt or liability, and any person making a claim under section 70 is required to submit a different proof of claim to that required of a person submitting a provable claim under section 114 of the BIA.**

Section 65 of the BIA also provides that an agreement for sale of land in favour of a bona fide purchaser for valuable consideration is valid and effectual as if the bankruptcy never occurred. This provision has been construed as having the effect of compelling the trustee in bankruptcy to carry to completion the provisions of the agreement, that is, by conveying it to the purchaser, subject of course to the purchaser paying any outstanding purchase money. A trustee in bankruptcy may, in certain circumstances, e.g. where the performance of the contract will impose an onerous burden on the estate, have the right to disclaim the property. If he does so, the purchaser of the property may still have rights against the property.



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Not every purchaser will be in a position to insist on performance of his contract, and the position of any purchaser who has not already paid his purchase money in full is not by any means clear. Also, the rights of the purchaser to enforce may depend on other factors, such as the ability of Harlequin SVG to convey title (in some instances, Harlequin SVG is not the owner of the subject land). Again, each purchaser must take independent legal advice as to his own personal circumstances.

This memorandum contains general information, and may not be relied on by any person to whom it is addressed for any purpose whatsoever. The Trustee accepts no liability for any loss or damage sustained by any person as a result of his reliance on the contents of this memorandum, and it is once more strongly advised that you obtain independent legal advice.

