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Lessons for buyers from project fire

Review maximum extension times for closings

Some of the purchasers in the Liberty Walk townhouse project, which burned to the ground in May, are being allowed to back out of their deals, and some are not. It all depends on the originally scheduled closing date.

Those purchasers whose closings could only be extended to April 30, 2002, are being allowed to back out of the contract. But for those whose closings could occur on or after Aug. 31, 2002, the builder is committed to honouring the agreements and the original prices, and expects the buyers to do the same.

Unfortunately, not every purchaser is happy with the decision of Liberty Walk to honour its closings on and after Aug. 31, and the plight of these buyers offers a worthwhile lesson to the buyers of all new homes and condominiums.

A quick recap of the Liberty Walk situation: On May 2, the development of almost 200 condominium townhouses on Lawrence Ave. W. near Dufferin St. was destroyed by fire. The townhouses had been completely framed, and all indications were that the buyers would be able to take possession this summer.

After extensive tests following the fire, consulting engineers hired by the builder determined that the concrete slab, which supports the townhouses, was structurally intact. Liberty Walk then announced it would rebuild the project.

About half of the buyers had possession dates of April 30, 2000, with a 24-month extension clause at the builder's option. Fifteen per cent had possession dates which could be extended to Aug. 31, 2002, and the remaining 35 per cent had possession dates after the end of next August.

Since completion of the project is now expected by the end of August, 2002, Liberty Walk has announced that it expects to honour all of the agreements in the "August and beyond" group by delivering possession within the two-year extension period allowed by the contract. It expects all of the purchasers in this group to honour their contracts, and will not entertain requests to be allowed to terminate the contracts.

For those in the April 30 group, Liberty Walk does not expect to be able to deliver possession of the completed homes within the contractual time limits. Most of the purchasers in this group have been given the option of extending the closing to a date later in 2002 when the completed townhouses can be delivered. The prices would remain the same.

If this is not acceptable, those purchasers also have the option of terminating the agreement and receiving a full refund of the deposits paid, along with accrued interest and monies paid for extras.

The problem arises with those in the "August and later" group who want out of their agreements now, but are being held to them by the builder.

Recently I heard from Todd Kyle, one of the buyers in the August and later group.

Kyle e-mailed me to say he feels betrayed by the fact that the developer is not considering requests to be released from the contract. "My wife and I have already waited two years for our home," he wrote, "and the prospect of waiting another year, living in a one-bedroom apartment with a baby on the way, is extremely depressing."

After receiving the e-mail, I spoke to Kyle by phone. He told me he cannot simply walk away from his deposit because he is responsible for all damages which the builder might suffer, and these could well exceed the deposit.

The agreement prohibits buyers from closing and then renting out the units on completion. Even if this was permitted, it would increase the price of the unit because the buyer would forfeit the roughly 2.5 per cent Goods and Services Tax rebate which is only available for owner-occupied units.

I suggested to Kyle that he rent a larger apartment or townhouse for a year, and then move into Liberty Walk when it is finished. His reply was that when he bought the unit in 1999 he was a single student. By the time the townhouse is finished, he and his wife will have a baby and the house will no longer suit their needs.

For buyers of new homes, the lessons to be learned from the Liberty Walk fire are:

- Carefully review the maximum extension times for closing when you are buying a new home or condominium. Are you prepared to wait out the full term?
- Ignore what the sales personnel say about completion dates. No one can predict the future, and no one could anticipate the Liberty Walk fire.
- If the maximum extension is too long, consider shortening it when you sign the offer to purchase. Builder offers are not engraved in stone.
- Consider what stage your life will be at if the builder takes the maximum amount of time to deliver the unit. What will happen to your need for a home if you gain or lose a spouse or partner, a child or a job?
- Finally, make sure you and your lawyer thoroughly review the extension and cancellation clauses in an agreement of purchase and sale before you sign it.

Bob Aaron is a leading Toronto real estate lawyer.

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