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Home completion delays a sign of the times

Last week I received an interesting email from a reader who had some questions about delays in closing his new home purchase.

"William" explained that he had signed a contract with a builder, with an original closing date set for this coming July 7.

About two months ago, the builder asked him to sign an amendment delaying the closing day to Dec. 15. William wanted to know whether the builder could unilaterally terminate the contract and whether the builder had to provide 65 days' notice of the extension.

He explained he was not looking to walk away from the deal, but just didn't want the builder to delay him forever. He noted that he was planning to ask for compensation from the builder for the delay.

The situation William described is a fairly common occurrence given the current housing boom. Builders don't make money delaying closings because of the costs of carrying the unfinished home, but they are sometimes forced to extend due to shortages of labour or materials.

According to the regulations of the Taron Warranty Program, if the builder cannot close by the scheduled closing date, it "shall" extend the closing date by notice in writing to the purchaser, but the delay cannot exceed 120 days.

After the 120 days, the purchaser has the option for 10 calendar days to terminate the transaction by way of a written notice, and receive a refund of the deposit money paid. If the purchaser does nothing, the closing is deemed to be extended for up to an additional 120 days.

If the house is still incomplete by the end of the 240th day, and the builder has taken all reasonable steps to construct the dwelling without delay, the deal dies unless the parties agree otherwise.

The clock stops ticking during a strike, and the time limits are extended until the strike is over. The same thing applies to a fire, flood, act of God or civil insurrection although the last two items rarely seem to affect the Toronto-area real estate market.

The Taron regulations on closing extensions strike a balance between ensuring that buyers are not put on hold forever, and at the same time allowing builders necessary breathing room when they experience unavoidable delays.

In William's case, if no amendment is signed, the builder has the right to extend closing for 120 days, to about Nov. 7. This could be followed by the 10-day back-out period, and a further period of up to 120 days, ending in early March next year.

The builder would have to give 65 days' notice of the intention to extend for up to 120 days from the original date.

If William does not sign an extension, the builder would be able to kill the deal without his consent next March if the house is not finished. If William does sign the amendment to extend the closing, the 120 plus 120 days starts running all over again, and the closing could be delayed until August next year.

The builder can also extend for a one-time minor delay of up to 15 days, with 35 days' notice. All notices must be in writing.

If a purchaser signs an "acknowledgment" that the builder has invoked the 120-day extension period, the clock does not start running again. But if the purchaser signs an amendment to change the closing date, the 120-day delay period starts from the new, extended date.

Under current Taron regulations, a builder is not obliged to caution purchasers that when they sign an "amendment" to change the closing date, the clock is reset on the 240-day extension rights.

The builder cannot force a purchaser into killing the deal. At the same time, it is possible but extremely rare for a builder to simply wait out the clock, and terminate after Day 240. A builder can only do this, however, if all reasonable steps were taken to construct the dwelling without delay.

When the builder gives proper notice and the delay is within the allowable limits, a purchaser is not entitled to compensation. But if the builder breaches the delayed closing warranty, for example by not giving enough notice, a purchaser can claim compensation for living expenses of up to \$100 a day, and direct costs such as moving, storage, and boarding of pets, up to a direct compensation package amount of \$5,000.

Purchasers in a rising market often find themselves married to a builder's delays, since the cost to replace the same house elsewhere will often be more than the price of the delayed home. On the other hand, builders only get their profits when the deals close.

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