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New condo delayed-closing rules coming

Would apply after July 1 if approved by province, but documents' legalese is certain to baffle many

Tarion Warranty Corporation is getting ready to implement changes to its new delayed closing regime for condominiums.

Earlier this month, I wrote about the proposed changes to the delayed closing rules for freehold homes, and now details of the condominium rules have emerged from closed-door meetings with Ontario condominium builders.

After July 1, 2008, following expected government approval, all purchase agreements for residential condominiums which have not yet been built will have a new, compulsory, seven-page attachment containing a summary of the delayed occupancy warranty, along with a Statement of Critical Dates on the first page.

At present, virtually all builder agreements for condominiums, where the occupancy date is uncertain because construction has yet to be started, contain turgid and confusing explanations of the proposed and final occupancy and closing dates.

The legalese in many of these agreements makes the Income Tax Act seem like a children's book for new readers. As well, the terminology differs from builder to builder, and can be confusing to buyers.

Now, builder agreements will be required to set out and define a series of five differently-named occupancy dates, but at least the terminology will be uniform throughout the industry.

Here are the new terms that will be used in all builder condo offers:

- **First Tentative Occupancy Date** the date the builder anticipates the unit will be completed and ready to occupy;
- **Tentative Occupancy Date** a target date if the unit is not ready on the First Tentative Occupancy Date;
- **Final Tentative Occupancy Date** a new date, which is not final at all, but a new, semi-finalish target date for the builder to provide occupancy;
- **Firm Occupancy Date** not a firm occupancy date at all, but it cannot be any later than 120 days after the Final Tentative Occupancy Date. The right to compensation for delay only starts if the builder misses the Firm Occupancy Date;
- **Outside Occupancy Date** the latest date by which the builder agrees to provide occupancy.

Each builder agreement will be required to set out clearly the actual calendar dates for the First Tentative Occupancy Date and the Outside Occupancy Date.

As purchasers watch their condominium being constructed, they are to receive a series of notices from their builder. These notices will set new dates using words like tentative, final tentative, firm, and outside.

It remains to be seen whether purchasers will be more or less confused by the introduction of five new definitions of occupancy dates, some of which may amount to little more than wishful thinking on the part of the builders.

In the new delayed occupancy documents, I was unable to find any provision that would prevent the builder from insisting on the purchaser signing an amendment to start the clock running all over again with new target dates. Nor was I able to find any prohibition on builders demanding that purchasers sign amendments waiving rights to compensation for delayed closing. Both of these practices have become increasingly common under the current regime.

In the new Tarion warranty attachment, the builder must disclose whether or not formal zoning approval has been obtained and when construction is expected to start.

The agreement may not be made conditional on receipt of a building or occupancy permit, or completion of the condominium unit, but it may be made conditional on the happening of up to 10 separate events, including obtaining certain municipal or provincial approvals, completion of utility services and compliance with municipal agreements.

Other conditions may include the vendor reaching a minimum sales target and obtaining the necessary construction financing. No other conditions may be inserted by the builder into the agreement.

Public release of the new, delayed closing warranty is awaiting fine-tuning of some of the provisions, and government approval.