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Closing dates you can take to the bank

On July 1, Tarion Warranty Corp. introduced a completely new set of rules and procedures for delayed closings of freehold homes and condominiums purchased from builders.

According to Howard Bogach, Tarion's recently appointed president and CEO, the updated warranty is intended to protect new-home buyers from the impact of delays in the closing of their purchases.

In my view, it also provides more disclosure and transparency to the process, while acknowledging industry realities that construction completion dates are often a moving target.

A new addendum must be attached to all freehold house purchase agreements signed on or after July 1, 2008. In it, builders have to set out a specific closing date and whether that date is firm or tentative the builder has a choice.

If the builder chooses the firm option, the agreement must provide a specific calendar date for a "firm closing date," as well as an "outside closing date" which is 365 days after the first date.

If the house is not complete by the outside date, the purchasers have 30 days to terminate the agreement. They will then receive a full refund of all money paid, plus delayed closing compensation of up to \$150 a day after the firm closing date, up to a total of \$7,500.

The same compensation is available if the purchaser completes the deal but closing takes place after the builder has used up all of its permitted extensions.

If the builder chooses the tentative closing date option in the initial purchase agreement, the buyer will know right up front that the date may be changed. In that case, the agreement must show calendar dates for each of the following:

First tentative closing date: The date of the builder's original closing estimate.

Second tentative closing date: A date up to 120 days after the first date. The builder can unilaterally extend closing to this date without penalty.

Firm closing date: A date 120 days after the second date. This is the maximum limitation on the builder's ability to extend without setting a "delayed closing date" and paying compensation.

Outside closing date: This is 365 days after the second tentative date or the firm closing date, whichever is earlier. If the house is still not finished and final closing does not take place by this outside date, the purchaser can terminate, receive a full refund, and claim delayed closing compensation.

If this all sounds terribly complicated, that's because it is. To that end, Tarion has provided a web-based calculator on its website so that consumers can do their own calculations or verify those of the builder.

Using this calculator, I entered a sample home purchase with a first tentative closing date of Jan. 7, 2009. Using that date yields a second tentative closing date of May 7, 2009, a firm closing date of Sept. 4, 2009, and an outside closing date of May 7, 2010.

In a real purchase situation, those exact dates would be clearly set out in the builder agreement, so there would be no confusion in the mind of the purchaser.

The new addendum also limits the builder's ability to terminate the agreement unilaterally if, for example, it does not get financing or achieve a sales target.

However, it can still be permitted to terminate unilaterally if it is unable to obtain a building permit, register the subdivision plan, or complete utility services to the site.

Purchase agreements must now clearly disclose the status of development approvals and construction so that purchasers can better assess the risk that a delay or termination may occur.

One of the best aspects of the new delayed closing regime which I enthusiastically applaud is a requirement for a builder to deliver a signed municipal occupancy permit to the purchaser on or before the date of closing.

This marks a significant change in the Tarion warranty program from the old days, when the occasional municipal occupancy approval would not be granted until long after the purchaser moved in.

Full details of the new delayed warranty are available at tarion.com. Enter Bulletin 46 in the search box or go to http://www.tarion.com/NR/rdonlyres/0C0D8F16-C891-4EA6-BEBD-3AF3654091B9/0/Builder_Bulletin_46_FreeholdFinal.pdf

Separate rules apply to condominium closings. Watch this space for details.