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New delayed occupancy warranty benefits consumers

Tarion Warranty Corporation has introduced a new set of rules for delayed condominium occupancies. The new delayed occupancy warranty came into effect July 1, 2008, and applies to every new condominium project as long as no unit in the project was sold before July 1.

If any unit in the project was sold before that date, the old rules apply, but if the first unit in the project was sold after July 1, 2008, the new rules apply.

Where the new warranty applies, every agreement of purchase and sale for a newly-constructed condominium unit will now have a seven-page attachment entitled Statement of Critical Dates Delayed Occupancy Warranty.

The attachment will show calendar dates for each of the following:

First Tentative Occupancy Date the day the builder anticipates the unit will be completed and ready for occupancy. I call this the Wishful Thinking Date.

A subsequent Tentative Occupancy Date a later date when the builder estimates the unit will be finished. I call this the Second Wishful Thinking Date.

Within 30 days of completion of the roof, the builder must give 90 days' written notice of either a **Final Tentative Occupancy Date** or a **Firm Occupancy Date**. I call these the We're Getting Closer Dates.

In fact, the Final Tentative Occupancy Date is not final at all, and can be extended by up to 120 days to the Firm Occupancy Date. This is the Almost But Not Quite Date.

As it turns out, the Firm Occupancy Date is not firm at all, but is the date on which the right to compensation starts running, and the date on which the builder must set a **Delayed Occupancy Date**. I have run out of new names, so I also call this the Delayed Occupancy Date.

But we're not finished yet. The Delayed Occupancy Date is followed by the **Outside Occupancy Date** which is more or less the final date by which the builder agrees to provide occupancy of the inside of the unit.

If the inside of the unit is still not finished by the Outside Occupancy Date, the purchaser has a further 30 days in which to terminate the transaction and obtain a full refund of all monies paid. This 30-day period is called the **Purchaser's Termination Period**. The builder does not have a similar termination right.

If the purchaser does not terminate the transaction, the builder and purchaser are going to have to come to some new extension agreement, since the Delayed Occupancy Warranty at this stage has run out of names and dates.

In a case where a unit is purchased as the building is nearing completion, a separate document can be attached to the offer, limiting the date options to the Firm Occupancy Date and the Outside Occupancy Date.

Tarion's new Delayed Occupancy Warranty for freehold and condominium homes was designed to bring greater disclosure and transparency to the problem of delays in construction of new condominiums. It is the result of 2 1/2 years of intensive study by a committee chaired by former Supreme Court Justice Frank Iacobucci, who is now chairman of Torstar, which owns the *Toronto Star*. Despite the overabundance of confusing and misleading new names for the possession date targets, the new delayed occupancy warranty is actually beneficial to consumers in several ways.

Firstly, financial compensation for delayed possession is increased by 50 per cent from the previous rules, to \$150 a day with a cap of \$7,500.

Secondly, for the first time in living memory in Ontario, builder agreements of purchase and sale for new condominiums will have actual calendar dates for the tentative and firm occupancy dates. At present, those dates in most builder condominium agreements are obscured in paragraphs and paragraphs of turgid legal prose.

Next, the first page of the Tarion attachment cautions buyers that if they agree to change any of the dates, other critical dates may change as well.

And finally, builders must deliver to the buyers a signed municipal occupancy permit on or before the date the purchaser takes possession a marked change from the current rules.

Full details of the new delayed warranty are available at tarion.com. Enter Bulletin 47 in the search box or navigate to http://www.tarion.com/NR/rdonlyres/20D2537A-D7E6-4DD3-A214-B6A716B1F3B1/0/Builder_Bulletin_47_Condo_Final.pdf.