



Bob Aaron bob@aaron.ca

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## It's difficult to sell pre-registration condo units

With thousands of new Toronto condominiums being completed each year, investor purchasers are putting many of them on the market, anxious to cash in on their profits. Unfortunately, the paperwork involved in selling them, either during construction or after completion and registration, is complex and problematic.

Adding to the difficulties, the Ontario Real Estate Association (OREA) has not published a template agreement for these flips, and as a result real estate agents and lawyers involved in these resale transactions are forced to "reinvent the wheel" for each new sale.

The flipping of condo units can take place at different times during the lengthy construction process.

During construction, with the written consent of the builder, the agreements themselves can be transferred to new purchasers. Some builders refuse consent under any circumstances. Others will ask for a fee of \$2,000 to \$5,000 (plus HST), effectively becoming a partner in any profits garnered by the investor.

When the condo is flipped and the purchase agreement is transferred before the building is finished, the parties need to prepare an assignment agreement which will determine whether the investor gets his profit immediately or only when the building is completed and registered.

An assignment can also take place after the investor gets registered title. In this case, the buyer has to close on the purchase, arrange financing and the pay land transfer taxes as well as legal fees on the purchase, mortgage financing and subsequent resale.

Either way, there are many issues which must be dealt with in negotiating condominium flip transactions. Some of the important ones are:

- If the reseller/investor sells without moving in, and the ultimate purchaser is buying a previously unoccupied unit, the reseller must re-register the unit with the Taron Warranty Corp. by completing a Vendor (Reseller) Registration Package and paying a fee of \$350. Failure to do this may result in charges being laid under the Taron legislation.
- If the ultimate purchaser from the builder is an investor or landlord, he or she will forfeit the HST buyer rebate (but may qualify for an equivalent rebate as a landlord). The resale agreement should make clear that any lost rebate is an expense for the end buyer, in addition to the resale purchase price.
- If the unit was originally sold when the federal GST rate was either 7 or 6 per cent, the purchaser is entitled to a transitional rebate directly from the Canada Revenue Agency. This brings the net GST payable down to 5 per cent. The resale agreement should provide whether the reseller or the final buyer is entitled to claim this rebate.
- If unit occupancy has already taken place at the time of the resale, then within the following year or two, the City of Toronto will issue a retroactive tax bill (called a supplementary or "omit" bill) for property tax back to the date of first occupancy. Often builders will charge purchasers for this reassessment on the assumption that the builders themselves will eventually pay it, but their charges are often inflated. Agreements for resale of the units should provide a mechanism for tax adjustments among the builder, the reseller, the buyer and the City when the final tax bill is issued.
- Every builder condominium purchase agreement requires the buyer to pay for "adjustments" like development charges, the Taron enrolment fee, utility connection charges and even part of the builder's legal fees. Resale agreements should specify whether the reseller or the buyer will get hit with these charges, which may total thousands of dollars.
- Occasionally the builder will impose conditions on giving consent to the flip. Resale agreements should provide a mechanism for negotiating changes if the builder's conditions conflict with the resale agreement negotiated by the parties.

Due to the complexity of condominium resale transactions, buyers and sellers would be wise to deal with real estate agents and lawyers familiar with creating condominium resale agreements. Hopefully, OREA will eventually arrive in the 20th, if not the 21st century, and create a standard form agreement for use by its members

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*Bob Aaron is a Toronto real estate lawyer. [www.aaron.ca](http://www.aaron.ca) ©Aaron & Aaron. All Rights Reserved.*