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**Bob Aaron**  
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## Did you buy at site of fire?

### Here's what buyers of Liberty Walk townhouses need to know

I was driving south down Allen Rd. in the early evening of May 2, and noticed a huge pillar of smoke blowing westward in the sky over the world's shortest expressway. As I exited on to Lawrence Ave., I could see flames and emergency vehicles blocking the street.

Judging from the location and size of the fire, it was apparent to me that the entire Liberty Walk development of almost 200 condominium townhouses was substantially destroyed. Since several of my clients are purchasers in the development, the first thing I did at the office the following morning was check the agreements of purchase and sale. I also received calls from some very unhappy buyers.

I was bombarded with the kind of questions I would ask if my future home had gone up in flames: Can we get out of the deal? Can the builder get out of the deal? Can we get our money back? How long will this postpone closing? Is our deposit protected? What about the money we paid for extras?

Earlier this week, I spoke to my colleague Harry Herskowitz, a partner at DelZotto Zorzi, the lawyers for the developer Liberty Walk Developments Inc. Herskowitz is one of the city's top condominium lawyers and is always a pleasure to deal with when he is on the other side of a real estate transaction.

Herskowitz told me that every cent invested in the property by the builder, the construction lenders and the purchasers is protected by various insurance policies.

All purchaser deposits up to \$20,000 are protected under the Ontario New Home Warranty Plan. Excess deposit insurance is in place for those deposits exceeding \$20,000, and fire insurance coverage is more than adequate to rebuild the project. The builder will honour money paid for extras.

Immediately after the fire, the developer and its lawyers sent out letters to all purchasers and their lawyers. The letters explained the situation and asked everyone to stand by until the Fire Marshal's investigation had been completed and the full extent of the damage was known.

At the same time, letters went out to all of the construction trades asking them to be ready to rebuild when the decision is made to proceed.

All of the townhouses were constructed above a concrete slab, which serves as the roof of the underground parking garage. If the fire damaged the structure of the slab, all or part of it would have to be removed and replaced for construction to start again. If it was not damaged, and is structurally stable, reconstruction can begin as soon as the site is cleaned up from the fire debris.

I spoke with David Hirsh, the president of Liberty Walk Developments. He confirmed that the Liberty Walk project will definitely be rebuilt, whether the parking slab is good or not.

If Liberty Walk can rebuild the townhouses within the time limits set out in each offer, it will do so.

If the structure is damaged such that construction will extend beyond the time limits in the offer, Liberty Walk will be up front with each purchaser and discuss with them as early as possible whether they want to stay in the project or opt out.

Hirsh told me Liberty Walk will not wait until the last minute to tell purchasers whether the project will be completed on time or not.

What are the time limits on the offers? Most of the Liberty Walk agreements were signed in mid- to late 1999. About half had tentative possession dates of April 30, 2000, and the other half had Aug. 30, 2000.

Each of the agreements has a clause allowing the builder to extend the tentative possession date by up to 24 months. Virtually all new condominium offers contain similar clauses.

Under this provision - fire or no fire - Liberty Walk has the option to extend occupancy on half of the units to April 30, 2002 and, on the other half, to Aug. 30, 2002. For homebuyers expecting to move in this summer, that is small consolation.

Liberty Walk is required to advise purchasers of their confirmed possession dates no later than 30 days following completion of the roof assembly of their homes. The notice period cannot be less than 120 days, and although the Liberty Walk purchasers were originally expecting occupancy this summer, no formal notices had been given.

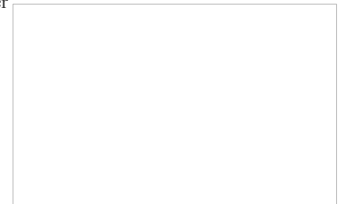
If the parking slab is good, Herskowitz is confident the development can be completed by next April. If not, and if some of the original purchasers back out, the project will be re-marketed to different purchasers. Either way, Hirsh says, Liberty Walk will be rebuilt.

I asked him whether a purchaser who didn't want to wait until next summer would be allowed to resell the unit. (The offers prohibit "flips.") He said no decision had been taken on that issue. Liberty Walk will adopt a reasoned approach to the issue and take purchasers' interests into account.

Fortunately for the unhappy buyers, Hirsh and his associates have been upfront and open about their decision-making process.

In summary, here is how the Liberty Walk situation appears at the moment:

- The project will be rebuilt.
- All deposits and excess deposits are insured and all money paid for extras will be honoured.
- Reconstruction costs are insured.



MICHAEL STUPARYK/TORONTO STAR

UP IN SMOKE: This massive townhouse fire has left hundreds of buyers up in the air.



STARTING OVER: Buyers of Liberty Walk at Dufferin and Lawrence have been told reconstruction will begin as soon as possible.

- The builder is working closely with purchasers, their lawyers, the insurers, construction lenders, the Ontario New Home Warranty Program, trades and materials suppliers.

- The Fire Marshall released the site to the builder May 8. The Fire Marshall determined the cause was accidental.

- Extensive testing on the underground garage was scheduled to begin Thursday. In the meantime, water in the underground garage is being pumped out as quickly as the storm sewer system can handle it.

If the concrete slab supporting the houses is intact, there is every likelihood the developer will be able to complete the project by the two-year time extensions written into each offer.

If the slab is not intact, construction may well extend beyond the time limits. In that case, the developer will have to decide whether to allow purchasers to back out, or to cancel contracts on its own.

From the evidence to date, the builder appears to be making rational decisions in circumstances that are very trying for everybody involved - particularly the homebuyers who are putting their lives on hold for another year.

For the latest breaking news on Liberty Walk, call the fire information update line at 416-636-4111.

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***Bob Aaron is a leading Toronto real estate lawyer.***

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