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## New form gives buyers protection

### Standard offer sheet isn't perfect, but it's the best yet

Back in the late 1980s, the real estate industry came under government pressure to introduce a standard agreement for the purchase of newly constructed homes.

Since many of the builder forms then in use were heavily weighted in favour of the builders, purchasers were facing many problems and turned to the government for help.

In response to the demand, the Greater Toronto Home Builders' Association developed its own standard form agreement of purchase and sale for purchases of new homes in 1987. Although some builders did adopt the form, it unfortunately did not gain widespread acceptance among GTHBA members.

Designed from the point of view of the consumer, the form was relatively short, printed with a large size and readable typeface, and set up with marginal notes highlighting the contents of each section.

In addition, the GTHBA standard form clearly indicated the rights and obligations of both the purchaser and the vendor when it came to extensions of closing dates, construction modifications, the colour selection process and the details of the Ontario New Home Warranty Program (ONHWP).

Although the 1987 offer was devised as a vendor's agreement, it did create a balanced approach to many of the issues found in a standard agreement. It was designed so it could not be amended except in an attached schedule, related items were grouped together, and lawyers could review it quickly and easily for their clients.

Fast forward to the present. The agreement was becoming dated and needed to be revised to reflect changes in the law, as well as building and selling practices. In consultation with its members and other industry players earlier this year, the GTHBA designed an updated form to make it more attractive to its builder members while retaining the friendly and fair approach in language and disclosure for consumers.

Last week, at a Law Society of Upper Canada seminar for real estate lawyers, an analysis of the new form was presented by Leor Margulies, a lawyer with Robins, Appleby and Taub. Margulies highlighted the changes for the 300-plus lawyers present:

Formatting changes now have the buyer signing on the front page underneath the important contract details such as the address and type of property, the price and the deposit.

The new agreement also incorporates a Schedule A feature sheet, consistent with the current industry practice. I always tell clients that the most important part of the feature sheet is what has been left out. From plumbing to pantry to pot lights, if it's not on the schedule, it won't be in the home.

Following the signature page is the Schedule 1 nuts and bolts terms of the agreement, and then Schedule 2 with a list of the extra charges. This list is the highlight of the agreement to me: all of the extras are clearly listed in one place and miracle of miracles most of them have a maximum amount that may be charged for the item. The vast majority of builder agreements allow the builder to charge unlimited amounts for the extras.

**The agreement allows accompanied visits to the site if purchasers comply with safety regulations and wear appropriate apparel. Most builder agreements prohibit entry to the home site'**

The listed extras include connection of utilities and meters, the enrolment fee paid to ONHWP for the home warranty, boulevard landscaping, driveway paving, the \$53.50 transaction charge imposed by the Law Society, a property survey, and a damage deposit for the purchaser's obligations to the municipality not to interfere with the lot grading. (This last item is refundable.)

The only item that's not capped, and this is a glaring omission in the offer, is the requirement to pay an unlimited amount for any increase in government charges or levies, or the imposition of a new levy.

I've always felt a home should be priced with all extras included. Why the builder should charge the \$53.50 Law Society levy as an extra and not charge additional amounts for the kitchen sink or washers in the faucets is beyond me.

In any event, this particular part of the agreement is a model of fairness and disclosure for the consumer, and that probably explains why so many GTHBA members don't use it.

The agreement comes from the GTHBA to its member users in encrypted form so it cannot be altered without adding an additional schedule.

Margulies pointed out to the lawyers at last week's seminar that more purchasers are treating the unfinished home as their own prior to closing. As a result, the agreement allows accompanied visits to the site if purchasers comply with safety regulations and wear appropriate apparel. By contrast, most builder agreements prohibit entry under any circumstances during construction.

The clause prohibiting a purchaser from selling before closing has been beefed up to cover not only actual sales but attempted sales or advertisements of the home by the purchaser before closing. This prohibition is inserted to prevent buyers from offering the home for sale in direct competition to the builder's own marketing program.

The new offer also incorporates clauses to enable electronic registration at Land Registry Offices such as Brampton and Newmarket, which no longer require signed paper documents to transfer ownership or register mortgages.

A new GST clause makes it clear that if a purchaser no longer qualifies for a GST rebate, the purchase price will increase to compensate the builder for the loss of the rebate.

From the consumer point of view the new offer may not be perfect, but it's significantly better than most builder forms of new home offers. It deserves more widespread acceptance in the industry.

If you're thinking of buying a new home, ask to speak to the owner of the company and tell him or her you want to use the GTHBA offer form. If they say no, please report to me what they say so I can write a follow-up column in the New Year.

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

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