



Bob Aaron bob@aaron.ca

March 8, 2003

Adopting condo model for new homes won't work

Could lead to even longer delays

In his Bricks and Sticks column last month, Greater Toronto Home Builders' Association president Joe Valela asked readers whether they would favour his idea of attempting to solve the problem of closing delays for new homes by adopting the regulations which apply to condominium closings. In my view the idea is a non-starter, and would only aggravate the problem if it was implemented.

As it currently stands, builders of new homes can delay stated closing dates by 120 days. Then there is a 10-day window in which buyers can back out. If they fail to terminate at that stage, the builder can delay for a further 120 days. The clock stops running if there is a strike, which halts construction.

Valela says this system causes problems between builders and buyers. I can assure him the buyers do not cause the problems. Valela wants to import into home sales the condominium rules which allow the builder to give a tentative possession date in the offer, and then a confirmed date. Buyers must be given 120 days' advance notice of closing to arrange their affairs.

The problem with the condominium regime is that virtually every new condominium offer in the Toronto area these days states the tentative closing date on the front page, and then buried in the tiniest typeface possible many pages into the agreement is a clause allowing the builder to extend closing by 18 to 24 months. The delay rights are usually couched in language that is difficult to decipher.

In dealing with thousands of new condominium buyers in my career, I can say with certainty that virtually all of them do not understand the delay rights when they leave the sales office. And if the condominium process is any example, the closings on houses could be three to four years after the deal is signed. Is this what we want in the new-home industry?

With cabinet approval, the Ontario New Home Warranty Program can change the regulations governing delays in house closings. Any amendments would be recommended to cabinet by the ONHWP board, which is nominated by Ontario's builders through the Ontario Home Builders' Association. The proposals in Valela's Bricks and Sticks column to allow builders to delay closings more than the current 250-day limit do not, I believe, reflect the interests of consumers.

What would I suggest for dealing with home closing delays?

Leave the present time frames the way they are.

Prohibit pre-selling of homes on unregistered or unserviced land.

The front page of each agreement of purchase and sale should state, in clear language, the target date for completion and the final possible extension date.

No builder should be allowed to terminate a transaction if the house is not complete on the final extension date. After that date, the price should start dropping for each late day.

It is the job of the Minister of Consumer and Business Services to protect Ontario consumers. He should require ONHWP to govern the home building industry in the public interest.

FOLLOWING UP: In my Feb. 22 column, I wrote about the case of Wemyss v. Moldenhauer. In that decision, a homebuyer successfully sued his real estate agent for \$50,000 for allowing him to sign an inspection clause in an offer to purchase which limited his ability to terminate the transaction.

Counsel for the successful purchaser was Denise Lessard of Cohen, Sabsay. Her law partner Howard C. Cohen answered the question a number of readers had: What happened to the \$50,000 deposit?

Cohen says the purchaser, Wemyss, agreed to forfeit the deposit to the vendor to avoid a potential lawsuit over the purchase agreement.

Bryan Skolnik, of Toronto's Gardiner Roberts, acted for the agent, Moldenhauer. He has advised that a notice of appeal has been filed on the basis that his client did not receive a fair trial.

Watch this column for further developments.

Bob Aaron is a Toronto real estate lawyer. Send questions to Bob Aaron, 10 King Street East, #1400, Toronto, Ontario M5C 1C3, or by e-mail to bob@aaron.ca, phone 416-364-9366, or fax 416-364-3818.

