



Bob Aaron bob@aaron.ca

April 5 2003

Buyers need protection from delayed closings

Builders can extend deadlines

Too many buyers unaware of rights

When Amardeep Singh and his wife Jagjit Kaur signed an agreement to buy a new home in Mississauga in July, 2001, they had no idea the closing would be delayed by almost two years.

Nor were they aware when they signed for a closing date of Sept. 4, 2002, that the builder had no hope of finishing the house on time. Now, in the spring of 2003, construction has still not begun and they are wondering whether they will ever get their new home.

Their predicament vividly illustrates the illusion that the Ontario New Home Warranty Plan legislation adequately protects Ontario homebuyers from closing delays.

When this couple inked the deal to buy their 1,465-square-foot detached home, the subdivision land was still a farm. In small print, the agreement provided that the September, 2002, closing date could be extended by 90 days if the subdivision plan was not registered by spring of last year.

Buried in the back of the agreement was the standard ONHWP addendum required in every Ontario new home purchase agreement. It provides that the builder may extend the closing date by 120 days. If the home is still not complete, the buyer then has 10 days in which to kill the transaction, although the builder is under no obligation to notify the buyer when the 10 days start running.

If the buyer does not terminate within the 10-day window, the builder may extend for a further 120 days. At this point, 250 days after the closing date in the contract, the transaction automatically terminates unless the parties agree to extend closing further.

In May, 2002, the builder of the Singh/Kaur house told the buyers they had to sign an amendment to the agreement extending the closing date from Sept. 4 to Dec. 4, 2002. In August last year, another amendment arrived for their signature, extending the closing date to yesterday, April 4, 2003. And in February of this year, the buyers were informed they had to sign an amendment extending the closing date to Aug. 2, 2003.

What the builder's sales staff neglected to tell the purchasers, according to Singh, was that they did not have to sign any amendments extending closing. Nor were they told that each time they signed an extension, the clock was being reset on the builder's ONHWP extension rights.

As things stand now, the builder could potentially extend the closing by another 250 days until mid-April, 2004, more than a year and a half after the contract's original closing date.

There is no question that Singh and his wife should have consulted a lawyer specializing in real estate. They would have been told the clock was being reset when they signed the amendments.

Had they not signed the extensions, the 250 days would have elapsed without construction having been started. At that point, either the vendor or purchaser could have terminated the agreement or simply agreed to further extensions.

No wonder Singh and his wife are unhappy, and feel that ONHWP's rules have failed them.

In a recent interview with the Toronto Star's Elvira Cordileone, ONHWP president Gordon Gee acknowledged that "we have not accomplished what we might have in the past."

He went on to say that many buyers don't know their rights or obligations, and the organization is planning a public awareness campaign.

ONHWP is also planning changes to streamline and improve its operations, but the problem really lies in gaps in consumer protection within the program and the governing law.

The Ontario government should overhaul ONHWP legislation so that homebuyers will not find themselves in the predicament of the Singh family.

Here are some of the changes I would recommend to the legislation:

Builders should be required to provide more realistic closing dates.

When homes are "pre-sold" before the subdivision is registered, buyers should be given a realistic estimate of the time it will take to get a building permit.

Buyers should be entitled to compensation from the first day of any delay (except those caused by strikes) even if they agree to the extension.

Any request by a builder to have a buyer agree to amend the closing date should have a clear statement of the rights that the buyer is giving up and the fact the new closing can be extended by a further 120 or 250 days. It should also state the buyer does not have to sign the agreement.

Builders should be required to advise purchasers when the 10-day cancellation window starts running.

If the deal dies because the house is still not complete by the final extension date, consideration should be given to compensating a buyer where a similar house in another subdivision is then selling for tens of thousands of dollars more than the original house.

And above all, the ONHWP legislation should contain a clear and binding requirement that the plan is governed in the public interest.

I believe the warranty plan should be administered by a board consisting of equal representation from the government, the public and the building industry.

These are significant omissions from the current law, and they should be rectified.

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.