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Amazing grace period spells grief for buyers

Builder is allowed 5-day delay with no consequences

ONHWP loophole can wreak havoc on moving day

After waiting more than a year, it's finally closing day.

The builder has notified you that the house you have watched rise slowly from a hole in the ground is ready for closing and occupancy.

The movers have arrived at your apartment and started to cart boxes and furniture down the elevator to their truck.

The phone and cable TV have been cut off and the new tenants will arrive within a couple of hours.

You went down to your lawyer's office the day before and signed all the papers.

The clock is ticking because the movers are being paid by the hour, and they have to be at their next job in three hours.

The kids are with the in-laws, you haven't slept in a week, and you and your spouse are experiencing equal parts of excitement, stress and exhaustion as the move gets underway.

Suddenly, the cellphone rings. It's the builder's sales office.

Sorry, but there's been a mixup with a couple of the trades, and the heating and plumbing aren't quite finished.

Just another two or three days, they tell you, but to be on the safe side five at the most.

Needless to say, you are shocked. You demand to speak to the owner of the company, but he's unavailable.

There are some harsh words with the site superintendent, and frantic calls to the lawyer, the ex-landlord, the bank, the moving company's owner and the in-laws.

The tears are soon replaced by the cold chill of reality. You have nowhere to go and a truck full of belongings to get rid of.

You can't move into your new house, the in-laws don't have room, you don't want to impose yourself on friends, and the mover wants his truck emptied right now.

First things first. All the belongings go into storage, except for some hastily retrieved clothes and toiletries.

You throw handfuls of \$20 and \$50 bills at the movers and the storage company, and you trudge off to the local Holiday Inn for a few days.

The Visa card is fast approaching its credit limit.

Later that night, you start to add up the extra costs.

There's a double move, lost wages from time off work, storage, hotel bill, five days of restaurant meals, plus extra legal fees for advice on your predicament. It's a brutal surprise.

After closing, you submit a claim to the builder for the extra losses, and you are politely told to get lost.

The same message comes from the Ontario New Home Warranty Program.

Very quickly you learn that, under the ONHWP legislation, a builder can delay possession of a new home for up to five days without giving notice or compensation.

(If the delay is more than five days, compensation is limited to all direct costs of the delay, up to a measly \$100 a day for living expenses and \$5,000 in total.)

You just got what I call the "ONHWP shaft," and you can join other new homebuyers who have been hurt by the same loophole in ONHWP's so-called consumer protection.

This scenario almost happened to Timothy Fuller and Patricia Swick when their new home on Central Park Dr. in Ottawa wasn't ready on Aug. 28, 1998.

The builder forgot to request an occupancy permit from the city and the couple refused to move in without one.

The city wouldn't issue the permit until it had done a dye test of the septic system.

Closing was postponed for a week and the buyers demanded financial compensation. The builder said no.

Their claim for the delay and defects in the house came before the Licence Appeal Tribunal three times in 2001, with the final hearing stretching over four days.

Eventually, they received \$1,220 for their legal fees and extra living costs, but they had to suffer through an appeal to the Divisional Court, which they won 14 months later.

In cases where the delay is five days or less, total compensation in similar circumstances is zero.

Something is clearly wrong with the gaping holes in the consumer protection initiative of the Ontario New Home Warranty Program.

It's time for Ontario's new government to put some teeth into the ONHWP legislation.

It should consider replacing the board, which is controlled and appointed by the builder community, with one appointed by the Consumer Minister to represent the public, the builders and the government in equal proportions.

And if you're buying a new home, be sure to have your lawyer insert a clause into the offer stating that if final closing is delayed by five days or less, you will at least receive the same compensation that would be payable if there is a delay of more than five days.

If the builder won't sign it, be aware that he or she could take advantage of that five-day grace period at the time of closing.