



Bob Aaron bob@aaron.ca

November 3, 2007

Buyer beware if you want that GST rebate

With the GST falling again from 6 per cent to 5 per cent buyers of new homes should be warned about a practice some builders have employed to scoop the purchasers' transitional rebates.

May 2, 2006 was the last date when the old 7 per cent GST applied to the price of new homes. Anyone buying a new home from a builder between May 2 and July 1 last year, and taking possession and ownership on or after July 1, 2006, became eligible for a transitional GST rebate equivalent to 1 per cent of the net GST on the price of a home.

After closing, buyers entitled to the rebate may apply for reimbursement of the rebate directly to the Canada Revenue Agency.

Unless, of course, the builder has found a way to snatch it back.

Lately, I have had a number of phone calls that go something like this: "My builder is so late in finishing the home/condo that he is entitled to cancel the deal. He will only extend the closing if I sign over the transitional rebate. Do I have to do it?"

My reply is that if they fail to sign over the rebate, they risk losing the new home, and there is no consumer legislation out there to protect them.

Last month, the *Star* received an email complaining about the same thing:

"There's a sleazy practice being perpetrated by at least one big home builder I know of, and you might know of a way to call it to others' attention, before they get swindled like my colleague did," the reader wrote.

"The builder in question and their lawyers decided that they would like to keep that 1 per cent, and here's how they are doing it: they are inserting this paragraph below in all kinds of documents, hoping the unsuspecting buyer will miss it.

"Notwithstanding anything to the contrary in this Agreement of Purchase and Sale the Purchaser and Vendor agree that the benefit of any reduction or rebate of GST that resulted from the May 2006 or any subsequent Federal Budget shall be the property of the Vendor and the Purchaser shall execute any further documents required by the Vendor to effect the foregoing."

"This first appeared in a document of acknowledgment that the delivery date of the home was being extended," the emailer wrote, adding that the purchaser caught it and told the builder the new wording was unacceptable.

He says his colleague was then confronted with the same paragraph weeks later, as part of a special offer (from the builder) for a discount on cable television service. "So basically when you signed and accepted the good deal on cable, if you didn't read it fully, you were duped into tendering your GST Transitional Rebate to the builder."

But it didn't end there, the emailer says. Weeks later, the clause was found again, this time in paperwork for the final pre-delivery inspection.

The same thing happened to two clients of mine whose townhouse deal closed on Oct. 25. When I pointed out that they were being charged GST at 6 per cent and therefore couldn't claim the transitional rebate, the builder's lawyer faxed me an amendment to the offer which my clients had signed but I hadn't seen.

The clients' original offer was signed May 2, 2006, so they would normally have been eligible for the GST rebate of \$1,878.05 on a purchase of \$318,366.58. But on June 10, 2006, they were called in to the sales office to sign an amendment to the agreement that needlessly acknowledged that the conditions had been waived.

The amendment also stated that "notwithstanding the dates of original signatures on the Agreement of Purchase and Sale, the effective date of this Agreement is the date hereof."

Without knowing it, the purchasers had changed the date on their agreement from May 2, 2006 which had entitled them to the rebate to June 10, which did not.

As a result, the net price of the townhouse to the builder (after GST) was \$306,593.39 instead of \$304,715.31.

The builder scooped the GST rebate of \$1,878.08 and the clients unknowingly lost it.

A word to the wise: Never sign anything which hands a transitional GST rebate over to the builder, or changes the date on an agreement.

Bob Aaron is a Toronto real estate lawyer. He can be reached by email at bob@aaron.ca, phone 416-364-9366 or fax 416-364-3818. Visit the column archives at www.aaron.ca/columns/toronto-star-index.htm.