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Tarion proposals should help buyers in delayed closings

Tarion Warranty Corp. has released details of its planned changes to the delayed closing warranty for freehold homes. The changes are subject to final government approval, and are slated to go into effect July 1.

A new seven-page compulsory attachment to builder agreements contains a summary of the delayed closing warranty, along with a clear Statement of Critical Dates on the first page. Buyers will no longer have to hunt through the document to figure out the maximum possible extensions of closing.

For purchase agreements where the builder is able to commit to a date on which the house will be finished and ready for occupancy, the attachment clearly sets out the Firm Closing Date. Unfortunately, the "firm closing date" is not really a firm closing date; it can be extended for an additional 365 days to the Delayed Closing Date, which is also set out in the document.

After 240 days of extension, however, the builder must start paying compensation. This is a significant change from the current rules, under which the longest possible extension is a maximum of 240 days. The clock stops running during the 365-day extension period for unavoidable delays, such as strikes, fire and flood.

Perhaps the most significant change is that the builder will no longer have the right to terminate the transaction and sell the house to someone else. This is what could happen if the builder runs out of all the time extensions and the house is not finished or even started.

Under the current rules, the builder has the right to terminate the agreement and refund the purchaser's deposit after all the extensions are used up. Under the new rules, if the closing has not occurred by the delayed closing date, the purchaser will have 30 days to terminate the agreement.

If the purchaser fails to terminate, the builder can set a new date. If an agreement is terminated for any reason other than a breach of contract by the purchaser, the vendor must return not only the deposit, but now must pay accumulated interest, and all money paid for extras and upgrades.

Except for unavoidable delays, when the closing is extended beyond the firm closing date, purchasers will be entitled to delayed-closing compensation at the rate of \$150 a day without receipts, plus reimbursement for actual expenses such as moving and storage, up to a total maximum compensation of \$7,500. This is a significant increase from current levels.

Full disclosure will be required by the builder as to whether there is sufficient water and sewage capacity to service the house, and the vendor must notify purchasers in writing within 10 days that construction has started.

Under the current regime, builders often make the agreements conditional on numerous external events. The new regulations clearly state that the builder is not permitted to make the purchase agreement conditional on the receipt of a building permit, receipt of an occupancy permit or completion of the dwelling.

Starting in July, the vendor of a freehold home will be permitted to make the purchase agreement conditional only on the happening of up to 10 separate events, such as septic approval, signing site plan agreements with the municipality, completion of utilities serving the property and zoning consent. The builder will not be permitted to include conditions other than the specifically described early termination conditions.

In addition, builders will now be required to give written confirmation that all conditions of occupancy have been fulfilled by closing or else there will be a delay and delayed closing compensation paid.

The form recommends that before signing a purchase agreement or any amendment to it, the buyer consult a lawyer. Unless the offer specifically allows it, there is no 10-day cooling-off period like the one that applies to builder condominium purchases.

However, the new regime does permit a three-day review period if the builder chooses to include any early termination conditions.

In the event of any dispute regarding the termination of the agreement, the matter is referred to arbitration with the builder paying for the arbitrator and the purchaser's legal fees unless the arbitrator rules otherwise.

Rules for delayed occupancies in condos are expected to be released shortly.