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Beware if you're buying new to flip

A recently discovered policy of the Taron Warranty Corp. could have an enormous impact on the thousands of buyers of new homes and condominiums who resell the properties without moving in.

The policy was brought to my attention by Vidas Augaitis, a colleague who practises real estate law in Collingwood.

In April 2005, two of his clients, whom I will call Deb and Chris, bought a new house in Wasaga Beach from Pinevalley Developments Corp. On closing, the buyers received a Certificate of Completion and Inspection and a warranty certificate from Taron confirming that the house was enrolled under the warranty program.

When they closed the transaction with the builder, Deb and Chris intended to sell their existing home and move into the new one. For various reasons, they changed their minds and eventually decided to sell the new house. The resale closed on July 24, 2007.

In January of this year, Deb and Chris received a visit from a senior investigator with Taron's enforcement department. He told them that they should have registered the house with Taron when they resold the property, since he believed it had not been occupied during the period of their ownership. The Taron representative pointed out that anyone who sells a new home in Ontario without registering it with Taron is liable to a fine of up to \$25,000 or a term of imprisonment of up to one year, or both.

Deb and Chris were told that they would not be charged under the warranty legislation if they registered the house with Taron at a cost of \$600. In addition, they might have to post a \$10,000 performance bond.

It makes no difference to Taron that the house had already been registered by Pinevalley and that the original warranty remains in place for seven years, even if the house changes owners. If a new house is not occupied between the first sale and the second, it remains a new house, and the seller must register or re-register it.

Since this sounded rather bizarre, I checked with Taron spokesperson Robert Mitchell, who confirmed that Taron requires the house to be registered twice.

When the first buyer resells the home without moving in, Mitchell emailed me, "the home is still a new home it has never been occupied. The moment (the first buyer) sells a previously unoccupied home they fall within the definition of "vendor" under the Act and they must be registered.

"The two registrations are helpful from a consumer protection perspective because the home has the benefits of all the warranties, including the delayed closing and deposit protection. Since it is (the original buyer) who will now be the one selling the home, taking deposits ... and setting up a closing date, it makes sense that they should have responsibility for those warranty obligations."

In other words, even though the one-, two- and seven-year Taron defect warranties carry over from Pinevalley's enrolment of the house to all owners within the warranty periods, Taron requires the second owners to be protected by a second warranty enrolment.

In response to Taron's position, Augaitis, who represents the original buyers, told me that both parties to the second transaction were clear that this was a resale, with no expectation of, or need for, deposit or delayed closing protection.

The house has still not been registered a second time with Taron. The warranty police are currently examining the gas bills to try to verify that the house had been occupied by a tradesman who lived in the house rent-free from November 2005 through April 2006 while he built a recreation room in the basement. If occupancy can be verified independently, then presumably the house is exempt from double registration.

The ramifications of this case extend far beyond one house in Wasaga Beach. In recent years, thousands of Toronto-area homes and condominiums have been "flipped" by buyers without being occupied. Is Taron on a campaign to extract a double set of registration fees and performance bonds (or fines) from investors who buy and sell without moving in?

The logic of the warranty corporation's position in this matter completely escapes me.

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