



Bob Aaron bob@aaron.ca

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Loss of part of deposit teaches a hard lesson

Barbara and Michael learned the hard way that pre-construction deposits paid to builders of condominium units are only protected by the Tarion Warranty Corp. up to a maximum of \$20,000.

Barbara emailed me recently to say that three years ago she and her husband purchased a condominium home to be built in Parry Sound, and gave a \$40,000 deposit directly to the builder without consulting a lawyer.

The house she chose was to be a "nice size" home on a lakefront lot, "our dream for the future."

Barbara knows three other couples who also paid deposits to the builder. The builder was a former lawyer who was disbarred by the Law Society in 2003. He had been found guilty of misappropriating more than \$3 million from his clients between 1998 and 2000.

"He wooed us," Barbara told me in her email, "and we trusted him explicitly. We all paid him deposits and for the next two years listened to his excuses and promises that building would start soon.

"My husband and I sold our house in February 2008, and he promised that if our (new) house was not ready, he would look after our living expenses. (We have been living with family since October 2008.)"

Last November, the couple gave up on the builder and finally contacted Tarion. They applied for a return of their deposit, and wrote me if there was any chance of getting back more than Tarion's \$20,000 cap on condominium deposit protection.

I asked Peter Balasubramanian, a lawyer and vice-president of claims for Tarion, about the condominium deposit protection. He told me that the \$20,000 is a hard cap, and a condominium buyer cannot claim more than the maximum under any circumstances.

Under the Condominium Act, all deposits are to be held in trust, usually by the builder's lawyer unless Tarion has received "prescribed security" for the first \$20,000, or excess deposit insurance has been purchased from a company like Lombard Canada or Travellers Guarantee Company for the amount above \$20,000. (Purchasers of freehold homes are protected against loss of deposits up to \$40,000.)

Balasubramanian confirmed to me that "if the money never went into trust but the builder simply took the money, then there would be no protection for the purchaser other than the \$20,000 protected by Tarion" even though the project was not registered with the warranty corporation.

"We are all very grateful that Tarion exists and that we are able to get part of our deposits back; but there is still \$76,000 (among the three couples) that is owing," Barbara wrote.

For buyers of builder condominiums, there are important lessons to be learned, even though the vast majority of Ontario home and condominium builders properly place deposit funds in trust.

- Deposit money should always be paid to a law firm or other trustee, never to the builder, unless security has been posted with Tarion for the funds.
- Purchasers whose deposits exceed \$20,000 should always insist on getting a copy of the builder's excess deposit insurance to ensure that all funds above the Tarion cap are protected.
- Ensure that the builder and project are registered with Tarion.
- Having a lawyer review a purchase agreement before it becomes binding is always a good idea.

Bob Aaron is a Toronto real estate lawyer and a director of the Tarion Warranty Corporation. He can be reached by email at bob@aaron.ca, phone 416-364-9366 or fax 416-364-3818. Visit the column archives at <http://aaron.ca/columns/toronto-star-index.htm> for articles on this and other topics.