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Undisclosed costs can really add up

It's hard to think of any consumer purchase contract where the price on the front page is not the full purchase price, where additional charges are unlimited, and where the seller has no legal obligation to make full disclosure of extra charges to the buyer at the time of sale.

And yet this is a common practice among some Toronto-area condominium builders. It is an issue that cries out for the government to intervene in the public interest.

I was reminded of this problem once again last week while I was reviewing a client's pre-construction purchase contract for a unit in a large mixed-use condominium development in downtown Toronto.

When I added up all the extra charges buried in the disclosure statement but not even hinted at in my client's purchase agreement, the total came to just shy of a staggering \$70,000.

The 33-page purchase and sale agreement for this project is typical for pre-construction condominium contracts. For a mere \$935,300, the buyer gets a floor plan without measurements or any guaranteed size, along with an obligation to pay a number of disclosed but unlimited charges such as government taxes and levies, and the costs of utility meters and connections. In order to discourage buyers and their lawyers from actually reading the contract, it is written in the tiniest type face possible. (No wonder I have to use trifocals after years of reading these contracts!)

But the \$935,300 cost of the condo (plus the disclosed but unlimited extras) is far from the total tab the buyer has to pay.

Under the 1998 Condominium Act, at the time a purchase contract is signed, the builder is required to deliver to the purchaser a thick volume of materials which includes the proposed condominium organization documents and a disclosure statement setting out 27 specific details of the project.

Buried in the disclosure document is a statement setting out whether the unit buyers jointly will be required to purchase assets or services from the developer.

In my experience, the vast majority of buyers find these disclosure documents intimidating and incomprehensible and do not bother to read them.

In reviewing the disclosure statement for the new downtown project with my client last week, I pointed out that after the condominium project is registered, all of the unit owners as a group will be required to purchase from the developer:

Up to 6 guest suites at \$200,000 plus HST each, or \$1,356,000, plus 8 per cent interest over 10 years,

A superintendent unit for \$565,000 including HST, plus 8 per cent interest over 10 years.

A recreation centre for an astonishing \$11.3 million, repayable without interest over 10 years.

Including \$860,000 in interest on the guest suites and superintendent's unit, the unit owners as a group are on the hook to the developer for a total of slightly more than \$14 million during the first 10 years of ownership.

My client's share of the total cost works out to \$69,560, or a hit of more than 7.4 per cent in addition to his purchase price.

None of these charges were disclosed in the sales office, so when I calculated it out for my client, he was in shock at the total amount of the costs.

In my experience, this project marks a new high or low, depending on your viewpoint in undisclosed extra charges for condominium buyers. It's a situation which demands greater government protection for unsuspecting consumers.

And it's also an issue which the members of the Building Industry and Land Development Association might want to tackle before the government does it for them.

Until the disclosure laws are changed, condominium buyers can protect themselves by taking several steps:

Ask about undisclosed charges in the sales office before signing anything.

Read the disclosure statement and especially Section 17 (about extra costs).

Above all, always have an experienced condominium lawyer review the purchase agreement and disclosure statement within the 10 day cancellation period after signing it.

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