

LEGAL MATTERS

Key items in agreement

Part two: The Agreement of Purchase and Sale gets updated

BY LEOR MARGULIES

Most builders have their own form of agreement of purchase and sale which covers the matters mentioned in these columns.

The Greater Toronto Home Builders' Association (GTHBA), which represents over 600 home builders in the GTA, developed a standard form of new home agreement of purchase and sale in 1988. This agreement is user friendly and

clearly spells out purchaser and vendor rights in simple but fair language.

It has earned significant acceptance by builders over the years and is well understood by real estate lawyers in the business.

Any changes to these agreements are separately marked or noted and so are easily identified.

The GTHBA in February 2001 updated its standard agreement of purchase and sale to address issues that have arisen since the original agreement was prepared and to bet-

ter mirror industry standards. Builders are licensed by the GTHBA and are listed to use this agreement on the GTHBA's Web site at www.newhomes.org. Purchasers can also view the new standard agreement at this Web site.

It is expected that this agreement over the next year will garner even more acceptance by both builders and purchasers, particularly in its CD- and computer-friendly format.

Let's continue our look at some key terms of builder's sales agreements.

Extras

Usually changes to the builder's

standard specifications and finishings are handled by what is known in the industry as "extras." The purchaser enters into a separate agreement with the builder, where kitchen cabinets are upgraded, floors may be changed to hardwood floors, carpets upgraded, and so forth.

A credit is given to the purchaser for the value of the original item as against the increased cost of the upgraded item. The difference is payable by the purchaser at the time that the upgrade is ordered, either when the agreement of purchase and sale is signed or when finishings are selected. This cost is not financed by lenders, as it is not

included in the purchase price.

Purchasers are not allowed to bring in their own trades to complete upgrades or changes prior to closing. Although they are free to do so after closing, the cost of ripping out a kitchen cabinet and replacing it would not be justified in those circumstances. It is usually advisable for the purchaser to pay the builder for the extras prior to closing and get the credit for the value of the original item.

Assignments of agreements of purchase and sale

Most agreements prohibit the purchaser from selling, advertising or entering into an agreement of purchase and sale for a new home prior to closing. The reason for this is that the builder is constructing other houses in the subdivision and does not want to have competition from its own purchasers on resales.

In addition, builders are looking to sell to owner-occupiers and not investors or speculators. In the event of a downturn in the market, those types of purchasers are most likely to default under their agreements of purchase and sale.

However, most builders are sympathetic to situations involving death, disability or significant family circumstance changes, such as loss of a job or a change of location. In those cases, builders will endeavour to resell the house on behalf of the purchaser as part of its overall sales program. In this way sales are conducted through one office in an orderly basis.

Completion arrangements

I have talked about the various rights and limitations for extensions of closings in our earlier columns. The key condition for closing is the availability of either an occupancy permit or municipal permission to occupy the home by the municipality, and completion of the property so that it may be reasonably occupied.

This does not mean that every item in house is complete or all deficiencies have been rectified. Nor does it mean that most exterior work may be completed.

This usually occurs at a later date in the servicing of the subdivision when items like grading and driveways are completed.

The builder does provide its undertaking to complete all incomplete or deficient work within a reasonable period of time after closing. ONHWP, the government insurer, provides backup insurance to the various warranties provided by the

builder for deficient work in the event that the builder fails to fulfil all of its obligations after closing.

However, this does not cover incomplete work such as driveways, grading or landscaping.

Most standard builder's agreements also do not permit any hold-back for deficient or incomplete work. The purchaser must rely upon the builder's undertaking to do so.

In the end, the desire of the builder to maintain its good reputation will be the best insurance for the purchaser. This is just more reason for purchasers to do their homework (through ONHWP, GTHBA, and so forth) on the reputation of a particular builder as to the type of homes it builds, its after sales service and any warranty record.

Post-closing builder rights

Most agreements also permit the vendor, the developer and the municipality to enter upon the property to complete grading or drainage in accordance with subdivision agreements for municipal requirements.

They also prevent purchasers from altering grading or drainage or constructing fences, pools or other structures on the property until the final grading has been completed, which may not occur for another 12 months.

This provision is meant for the protection of both the vendor and the purchaser, as many of the final grading and drainage matters are only completed once the entire subdivision is completed.

As a result, buyers buying earlier in the subdivision may have to wait longer to have these matters dealt with. It is also for this reason that they usually get a better purchase price.

Leor Margulies is a senior partner in the real estate group at the law firm of Robins, Appleby & Taub in Toronto. He has been in practice for 20 years with a primary focus on land development as well as condominium and new home construction. His firm provides advice and assistance to family businesses and the real estate industry. Call 416-360-3372 or e-mail at lmargulies@robapp.com.



Leor Margulies, senior partner, Robins, Appleby, & Taub, Toronto

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WARRANTY

Good reference points

How to select a reputable builder

You've made up your mind to buy a new home. Chances are you've already chosen a lawyer and a bank to help you with the financial and legal matters.

But what about the builder? How do you select a reputable builder with whom to entrust what will likely be the single largest purchase you will ever make?

Fortunately, buyers of new homes in Ontario have a unique advantage that only two other provinces in Canada can lay claim to: a mandatory new home warranty program.

Established by home builders in 1976, the Ontario New Home Warranty Program (ONHWP) administers the Ontario New Home Warranties Plan Act, which defines the coverage offered by home builders.

As such, all new home vendors and builders in Ontario must provide new home warranty protection and enrol each home and condominium unit they sell or build, before construction begins.

While it is comforting for consumers to know that there are certain measures in place to regulate builders, there are also a number of things prospective new home buyers can do to help ensure the home buying experience goes smoothly.

ONHWP recommends you check

both the builder's registration and after sales service rating before you buy.

If possible, consult previous customers or homeowners in your prospective neighbourhood about their dealings with the builder. Assess the builder's professionalism in responding to inquiries and complaints.

It is in the builder's interest to maintain a superior level of customer satisfaction with after-sales service. Each year, ONHWP acknowledges professionalism and excellence in the industry with the Ernest Assaly Builder Awards, recognizing excellent after sales service and superior quality of construction.

These industry awards and accolades are another good measure by which to judge builders. Winners of these awards often outperform their clients' expectations.

Ultimately, award-winning builders care about delivering on their promise to provide a safe, attractive and comfortable new home. However, the onus remains on consumers to do a little preliminary investigating.

Builder ratings and information is available online at www.newhome.on.ca, or by calling the Toll Free Builder Rating Hotline at 1-888-463-6466. (NC)