



Real Estate Primer

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Buying a Pre-sale Condominium (part 1 of 2)

In the Lower Mainland, many home-buyers consider purchasing what is commonly called a “pre-sale” condominium or townhome. This means the buyer contracts with the builder to buy a home (usually an apartment) at a date in the future that is currently under construction or in some cases, that is still a hole in the ground. As real estate lawyers, there are some predictable issues for buyers. This newsletter is to help buyers understand the pros and cons of buying a pre-sale home.

THE HOME IS NOT BUILT

Not to belabour the obvious, but with a pre-sale purchase, you are buying something that is not finished. If you sign a contract to buy a pre-sale home, you will be making a financial commitment to buy the product without the benefit of seeing the final product. This means that the completed condo may be different from what you expected as a purchaser. There can be differences in finishings, appliance brands, orientation of doors and windows, and the final measurements of the suite you purchase.

The sales office provides details and sketches of the final homes, but there is no requirement that the finished home be exactly what was specified in the original plans. The general rule is that the home must be “substantially the same” as what was originally contracted for. This means a court will not award a purchaser damages or costs for small changes between the original marketing materials and the finished home. What counts as a small change versus a material change is a matter that is decided on a case by case basis by the courts. It also means, a buyer will not generally be allowed to “walk away” from the contract if he or she is not happy with the finished product.



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A pre-sale home purchaser should expect small changes to the finished product. This can happen because a supply of a certain material may no longer be available, or other legitimate reasons.

If you don't like the uncertainty of buying a pre-sale home, this type of purchase may not be for you.

BUILDER'S REPUTATION

It is always preferable to buy from an established builder. They will have an ongoing reputation to protect, and will want their purchasers to be happy with the finished product. They may also have the experience to handle most issues on closing directly with their purchasers to come up with a solution that everyone is happy with.

Scope out the reputation of the builder before you sign any contract. If you have your own realtor, she or he should be able to help you with this information.

THE SALES OFFICE

Most pre-sale condos are sold through a sales centre on or near the property where the finished building is being constructed. The sales people in the sales centre are hired by the builder to market this particular building and will be experts at the specifications of the building as well as the services in the local area such as schools, shopping and transit. They may also have a very good idea of what similar properties in the neighbourhood are selling for.

You may bring your own realtor with you to the sales centre. They will be able to give you an independent opinion about the project and may know of similar properties in the area that are for sale.

If you sign a contract with the sales centre, your realtor will earn a commission for the sale. This is taken into account in the price of your home, and will not increase the cost to you.

THE CONTRACT AND THE 7-DAY RESCISSION PERIOD

Each project will have a pre-printed contract that is used for purchasers to make offers. This document will set out standard terms for everyone buying in the project, and will include such terms as the amount of the deposit, the purchase price, the taxes payable on the unit, and whether or not the unit comes with parking or storage.

The Contract will also reference the Disclosure Statement and any amendments to the Disclosure Statement. This is a document required by law in BC that developers must provide to all purchasers. It is quite lengthy and gives the purchaser information about the whole project, financing, estimated time-lines, services for the building, the total number of units in the project and many other critical details.

It is very important to review this document in detail and ask any question you may have of your realtor or lawyer.

You will have seven days from the receipt of the Disclosure Statement to cancel your purchase contract. This is to allow purchasers to fully understand the details of the project before making a final decision.

Once the seven day period expires, you are contractually obligated to complete the purchase when the building is ready for occupancy.



WHAT ARE THE BENEFITS OF BUYING A PRE-SALE CONDO?

There are many benefits of buying a pre-sale home. Some reasons that might appeal to a buyer are:

- There is nothing currently like the proposed building in the neighbourhood;
- The buyer will pay the going price for the home. If the market is rising in the area, it could be worth more than the contract price by the time the home is complete. (Conversely, it could be worth less if the market is falling);
- The buyer will get a brand-new home in a brand-new building on the Completion Date;
- All new homes in BC must have a 2-5-10 year warranty in place to protect the home purchasers.

WHAT CAN BE THE PROBLEMS?

The number one problem we hear from purchasers is the timing of the Completion Date. This is the date you must pay for the home and ownership of the home will be transferred to you in the land registry. Typically, you will be granted possession (get the keys) one or two days after the Completion Date.

Because of the enormity of the project, builders are not able to give an exact date for Completion, unless the building is almost finished. If you buy early on in the process, you will be given an estimated Completion Date. This can be legally changed according to the terms of your specific contract, and may vary from the original Completion Date by six months or more.

Because the timing is so imprecise, it is hard to plan things like your final mortgage interest rate, the month you give notice on your current rental, and travel plans for holidays around the proposed Completion Date. This is normal in a pre-sale situation. You will be expected to complete on the final date given to you by the developer. It is very unlikely that you will be allowed to delay your Completion Date because it is not convenient for you. You must expect to complete as required by the terms of your contract on the date set by the developer.

A standard contract will require the developer to give the purchaser 10 days' notice of the Completion Date for their unit.

If you have extensive travel plans around the anticipated Completion Date, make sure to speak to the sales office and your lawyer. You may be able to arrange a Power of Attorney before you travel, so that someone else can sign the final documents if you are out of town.

Our next newsletter will include more information on this topic, including deficiencies, hiring a lawyer, and closing costs.

DISCLAIMER

Information, strategies and opinions contained in this newsletter are provided for general information and convenience only. Since the particulars of each situation may differ and information may change rapidly, the reader should seek specific, appropriate, qualified professional advice before acting based upon any information provided by Drysdale Bacon McStravick LLP.