

## Condo Smarts

Headline: Pre-Sales Agreements

Topic: Buying & Selling

Publication / Date: The Province, April 12, 2018

Written by: Tony Gioventu

**Dear Tony:** I purchased a condo 2 years ago before it was constructed. At the time the price was negotiated at \$595,000 and we paid 10% down as a deposit. The property is now coming available for us to move in, but we have received a notice from the developer that there have been additional costs of construction and development and they are increasing the price by 20% so we will have to pay an additional \$120,000 if we want to purchase the unit. If we don't they have offered to refund our deposit including the interest earned for the two years. We were told by the developer this was in our contract, but is this legal?

*Jenny C.*

**Dear Jenny:** A pre-sales agreement is a contractual agreement where you the buyer agree to complete a purchase agreement upon completion of the project. It is not an actual purchase of a unit, it is simply a contract where you have agreed to purchase the unit when it is complete. Developers often use a presale as a method of securing buyers to ensure the project is financially viable. While a presale of a condo can be a great way of entering the market as an owner or investor, you must look closely at the terms and conditions of the agreements. As the buyer you must be provided with a copy of the Disclosure Statement where the developer explains what they are selling and describes your right under the *Real Estate Development Marketing Act* (REDMA) to cancel a pre-sales contract within seven days of signing the agreement, with no penalties.

It is critical that you read the agreement closely and understand the terms and conditions of the contract along with what you are actually purchasing; however, it is easy to understand how buyers become highly motivated to purchase when there is so much excitement and pressure around the presales process.

Buyers have either been prequalified for advance purchases at a posh evening event or you have possibly lined up for hours hoping to have the opportunity to secure one of the units, and once you are in the sales centre if you don't purchase, someone else in the lineup likely will. The seven day cooling off period ensures the buyers have the opportunity to contact their lawyer and closely review the details of the agreement.

When you review the agreement, pay close attention to the dates of completion and if there are any penalties associated with the deadlines. This will help you plan for your possession dates and identify what happens if the developer misses the deadlines. If you pay a deposit, identify who will get the interest on the deposit. Look for additional costs or increases the developer may be permitted to charge for construction, inflation or development. If you have agreed to a possible increase of 25% of the purchase then yes, the developer is likely in a position to charge the greater amount. Don't forget to review what you have purchased! How many parking spaces are identified in the agreement? Did you secure a storage locker? Have you confirmed the finishing details in the unit? Everything should be in the pre-sales agreement. Remember this is a contract to purchase and you may change or negotiate conditions with the agreement of the developer at the time of purchase, and you still have a seven day period of recession.

Review the conditions of common expenses. If the projected development subjects your future strata to leases for elevators, parking lots, storage lockers, entry and security systems, or use of shared facilities or Air Space Parcel agreements, those future costs can easily double or triple strata fees once you have taken ownership of your unit. The disclosures and pre-sales agreements are sophisticated documents. You are

about to commit to a purchase that will likely cost in excess of half a million dollars. Isn't it worth a \$1,000 dollars for legal review and the peace of mind of a sound purchase?

If there is a breach in the agreement or compliance with REDMA, act quickly to exercise your rights and seek legal advice. Delay may result in the loss of your rights or a significant weakening of any legal claim you may have.