

Condo Smarts

Headline: Pre-sales Cancellations

Topic: Buying

Publication date: January 18, 2009

Publication: The Province

Written by: Tony Gioventu

Dear Condo Smarts: Is a pre-sale agreement a finalized agreement for sale and purchase? A group of investors that I am involved with from Alberta have decided that under the current market conditions we will not proceed with our pre-sale agreement on five units in a new development. The developer's lawyer has advised us that we will be in breach of the sales agreement and liable for any of the damages or losses incurred. How can we be held responsible for something that does not yet exist and is over one year behind completion? It seems to me that the purchasers have little or no protection in these purchase agreements. DC Connors, Alberta

To DC and everyone who has entered into a pre sales agreement: The agreement for the most part is a contract between you and the developer. It is not a sales agreement, but rather an agreement that reserves the right for you, the buyer, under the terms and conditions of the contract to purchase the unit once the project is complete, at the specified price and cost adjustments set out in the agreement. There are a number of issues that pre-sales buyers need to be mindful of. No two contracts are the same and whether you are entering into a new contract, completing the transaction, buying the transfer of a pre-sales agreement, canceling the agreement,

or altering the terms of the agreement, you need legal counsel from an experienced real estate and contract lawyer. There is no actual conveyance of real estate until the product is complete, the titles have been created and the transaction documents are finalized. As this is a contractual relationship, it is quite possible that you may be responsible for much more than simply the loss of your deposit for cancellation. A principle breach of the contract by the developer may also be reasonable grounds to terminate the contract without serious penalties. There may be other associated damages and penalties in the contract; however, the developer may also wish to alter, postpone or cancel the agreement, so the terms and conditions of the contract are absolutely critical. The current credit crunch has also placed a number of small investors at serious risk as they may be struggling to qualify for financing to complete their sales agreements. Consult your financial advisor, your lawyer, and review the contract before you make any hasty decisions. If you are planning on renting your unit as investment, confirm that the pre-sales agreement contains a provision for a Form J" owner developer rental disclosure statement" that properly secures the exemption of the first purchaser to rent in exemption of possible future rental bylaws by a strata corporation.

For more information on CHOA resources and benefits visit www.choa.bc.ca
or contact the office at 1-877-353-2462 or email office@choa.bc.ca.

No part of this publication may be reproduced without the prior written permission of CHOA

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.