

Condominium Home Owners' Association

Serving BC's Strata Property Owners since 1976

Bulletin: 300-337

Condo Smarts

Headline: Presales Nightmares

Topic: Presales

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Written by: Tony Gioventu

Dear Condo Smarts: A word of warning for anyone who is considering or has entered into a presales agreement. In 2005, I was doing business in Vancouver and fell in love with a proposed development on the waterfront. It was originally planned for occupancy in 2008, but as delays mounted it ended up being available in 2009. Seems simple enough except I transferred (sold) my presales contract to a Vancouver buyer in 2007 for a \$50,000 premium. They in turn transferred the contract to a Toronto buyer in 2008 for another premium. Well we thought after our sale it was the end, never to come up again. In the fall of 2009, the third presales agreement holder defaulted on their obligation to complete the sale. The developer, in an effort to recover the losses from the sale, proceeded with a court action that has ended back at our door step. With both the 2nd and 3rd buyers defaulting, the developer has named us in the lawsuit. Even though we sold or assigned our presales agreement, we did not discharge our obligation to the developer with their written consent, to complete the sale. As a result we may very likely end up having to complete the sale, or face the consequences of the law suit. JC Bryden, Winnipeg

Attention Presales Buyers: If you are unable to complete your transaction of sale, or have assigned your agreement to another party who has not completed the transaction, gather your contracts and documents and make an appointment to meet with your

lawyer. Presales agreements are contractual obligations with a developer, where you the buyer are compelled to purchase the unit, when it is complete, at the fixed conditions in the agreement. This is not a sales agreement. It binds the rights and obligations of the potential buyer and the developer to the conditions of the contract. If you have transferred your presales agreement to another party you may very likely have an obligation to the developer if the assigned buyer defaults. Sales and marketing commissions may also be at risk, if they were paid as conditions of the completion during the presales period. Brokers and agents may also want to review their contractual relationships with the owner developer.

A growing problem in the development industry is the requirement that lenders impose on developers for presales. As a condition of financing, developers are often obliged to pre sell 75 – 100% of the project before the funding is released for the development. This places a current value on a future product that may or may not be constant, and consumers often pay the price in significantly higher costs at the time of sale or a reduction of products and services. A project strained by future uncontrollable costs or bankruptcy may also be a concern for buyers and strata corporations in reviewing operations, deficiencies and warranty claims in the early years of their strata corporation.

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