

**Condo Smarts**

Headline: Presales Agreements

Topic: Presales

Publication date: April 18, 2010

Publication: The Province

Written by: Tony Gioventu

---

**Dear Mr. Gioventu:** My husband Barry and I were planning to move to Vancouver this winter for our retirement, but our condo that we purchased two years ago on a presale purchase agreement was not ready. It appears that it may not be available for occupancy for at least another six months, but the contract said it would be ready by January 15, 2010. So now we have to live somewhere in the duration, keep our furniture in storage and hope there is a completion date soon. Do we have any legal recourse for the delays, the additional costs and the delays? Marg and Barry C., Vancouver

**Dear Marg & Barry:** A presales agreement is a contractual agreement to enter to a purchase agreement upon completion of the project within the conditions of the contract. So it's not an agreement for sale yet, it's simply a contract giving you those rights in the event the conditions of the contract are met.

Wesley McMillan, a lawyer with Harper Grey in Vancouver, has some helpful insight into presales contracts. According to McMillan, "Only a careful review of your contract will help you understand your legal rights and obligations in these circumstances. There is no standard presale contract. Many presale contracts contain multiple closing dates. One contract may refer to as many as three dates, such as an estimated, target and outside completion date. The terms of the contract will set out the legal effect of missing any one of these dates. In addition, presale contracts often provide the developer the right to unilaterally extend the completion date for no reason at all. Only with a careful review of the entire contract and an understanding of the legal principles governing these contracts can you

understand your rights, if a date is missed. It may be that you have the right to the return of your deposit (in which case you would have to find a new home to buy) or a claim against the developer for monetary damages.

In addition to any rights you have under the contract, you may have rights under the Real Estate Development and Marketing Act ("REDMA"). The marketing and sale of all pre-construction condominiums in British Columbia is subject to the REDMA, consumer protection legislation in force since 2004. Failure to comply with these obligations may give a purchaser the right to cancel the contract. The right to cancel the contract, if it exists, may exist and be enforceable at any time after the contract is signed."

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. For new investors/buyers who are contemplating entering into a presales agreement, remember you have the right to seek legal counsel on the agreement, before you sign on the dotted line or provide your deposit. Also review the conditions of common expenses, parking, storage lockers and common amenities. 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 at an additional cost to the operations of the strata, those future costs can easily double or triple your planned cash flow. Tony Gioventu, Executive Director of the Condominium Home Owners' Association of BC. [tony@choa.bc.ca](mailto:tony@choa.bc.ca)

---

**For more information on CHOA resources and benefits visit [www.choa.bc.ca](http://www.choa.bc.ca)  
or contact the office at 1-877-353-2462 or email [office@choa.bc.ca](mailto: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.