

Condo Smarts

Headline: Who Owns the Parking?
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Dear Condo Smarts: We bought a Vancouver condo in the spring of 2010. We actually took possession of our presale that was finally ready for occupancy. With the purchase we understood we were buying two parking spaces that would be registered with our strata lot. We have decided to move back to the east coast and when we listed our unit, our realtor started questioning the status of our parking as we could not find anything that identified our two parking spaces anywhere in the strata records or the land title registry. We paid \$5,000 for each space and now have the sense that we don't own anything. How is it possible that with our purchase we actually bought something we don't own? Does the legislation make this possible? Jenna D.

Dear Jenna: The first thing that a buyer has to understand is that a presale is not an agreement for sale of a strata lot. At the time you entered into the agreement the strata lot did not exist, so you only entered into a contract (the presales agreement) that you would be obliged to purchase on the specified conditions in the agreement. Presales agreements will often project or anticipate what the developer intends to provide as part of the eventual purchase; however, if you read the agreements closely there are often conditions in the contract that permit variances of price, size of the strata lot, amenities, parking and storage facilities, finishing in the strata lot and even the end date for occupancy. A presale is much like speculating in the stock market. The more concrete information you have in the agreement the better security you have, but frequently all that is in the agreement is projected. So as a buyer, how do you protect yourself? Before you enter into a presales agreement, take the agreement to your lawyer and review the conditions of the sale and the variables that you have limited control over. The parking may indicate that you are entitled to one allotted parking

space, and that you may purchase additional parking spaces, but the cost may not be established at that time, and you will have no idea of the location of the parking. As in Jenna's case, in most strata corporations, parking is either common or limited common property, so you are not actually buying a parking space, you may only be buying a license/lease to use an allocated parking space, but there is seldom any documentation provided to the strata corporation to know who is allocated to which parking space. The result is frequently parking conflicts in the strata for years to come over the number of spaces allocated or location. After several subsequent buyers, no one ever knows who has the parking allocation unless the developer has filed enforceable leases with the land title registry or filed a limited common property designation identifying your parking spaces for your strata lot. The price is also an item that may not be firmly established in the presales agreement. While the agreement may set a price, there is likely a clause that permits that developer to charge a higher price, up to a certain percentage, determined at their discretion.

According to Wes McMillan, a Vancouver lawyer who routinely represents presales purchasers, "developers commonly create a subsidiary company and then lease the parking area to the subsidiary. The subsidiary then provides a license to lot owners to use a stall and often sub-lease stalls for a profit. Whether this arrangement creates a valid and enforceable lease is questionable. A prudent presale purchaser will thoroughly review the disclosure statements prior to signing the presale agreement. This should reveal the developer's intentions with respect to the parking area. If the purchase of the strata lot has already completed, the purchaser or the strata corporation should consult a lawyer to determine if they can challenge the validity of the lease, obtain control over the parking area and even get the revenue from any sub-leases."

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