

## Eight Handy Hints for Realtors Preparing or Reviewing Offers for New or Proposed Condominium Units (under the *Condominium Act, 1998*)

- **DEFINITION OF THE UNIT.** The proper language is “unit” for an existing condominium unit and “proposed unit” for one that is yet to be registered. Ensure the agreement does not sell only the “unit” – the property purchased must include the “common interest” in the assets and common elements of the condominium.
- **PARKING SPACES & LOCKERS.** If offered, these might or might not be included in the purchase price. They can be *additional units*, in which case they will have their own distinct legal description. Alternatively, they could be designated “exclusive use” common elements – if so, ensure they are correctly designated as such in the proposed declaration (Schedule F). If they are not, the purchaser doesn’t really acquire them. If uncertain, ask the lawyer.
- **MATERIAL CHANGES.** Avoid covenants that seek to override the provisions of the Act dealing with material changes which give rise to a second rescission period. It is not clear that this right can be overridden; but it should not be.
- **IMPLIED COVENANTS.** The Act imposes the following covenants of the developer on all offers, whether set out in the offer or not:
  - a. *to take all reasonable steps to sell all the other residential units without delay, unless the developer intends to lease them;*
  - b. *to take all reasonable steps to deliver a deed to the unit in registerable form without delay; and*
  - c. *to hold in trust the money for the corporation, if any, that the developer collects from the purchaser on behalf of the corporation.*
- **DEPOSITS.** Deposits relating to the purchase of a condominium unit, including under a reservation agreement, and including for fixtures, must be held by the developer’s solicitor or another “prescribed trustee”. Unless he or she is an “Escrow Agent” as defined in the Act, a realtor *cannot* hold the deposits. Evidence of proper holding of a deposit is required to be delivered within 10 days of receipt. Interest is payable and the deposit can only be released in accordance with the provisions of the Act.
- **ADJUSTMENTS.** In addition to usual adjustments for new properties (meter costs, TARIION fees, etc.), condominium developers sometimes seek reimbursement for costs relating to the special handling of deposits required under the Act. It is also not uncommon to see an adjustment for an up-front lump sum contribution to the reserve fund of the new condominium.
- **CLOSING.** Do not confuse the “occupancy date” with the “closing date”. They are entirely different, and different rules apply to the extension of both. Note that setting a specific closing date is often not practical. Title to the unit *cannot* be transferred until the condominium is registered, and the developer does not have complete control over when that will be. It is more typical and appropriate to have closing occur “*x days after registration of the declaration and description (or amendments thereto) creating the Unit*”.

 **Do not use the standard form offer for Resale Condominium Units** 

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