



## Buying a New Condominium

### About condos

When you buy a condominium, you own your unit outright as well as an interest in common elements shared with other owners. What constitutes a unit is different from condo to condo. In some, it is just the interior; others may include the exterior as well. In the case of vacant land condominiums, the unit consists of land only.

'Common elements' vary. In an apartment building, they usually include the grounds, entrance areas, the exterior of the building, hallways and access areas, the parking garage and amenity areas such as party rooms and swimming pools. In a vacant land condominium, they may consist only of the access roads.

Condominium development surged in Ontario after the province's *Condominium Act* was updated in 2001. Changes allowed for types of condominiums previously unknown in the province, such as vacant land condominiums (in which the units consist of vacant lots on which owners are free to build—common for golf courses, clubhouses and recreational facilities).

### Purchasing your condo

With a new condo, you take possession on what's called the "interim occupancy date." Registration happens on the closing date. Between these two dates, you occupy the premises and pay monthly interim occupancy fees, which are approximately equal to the estimated taxes for the unit, the estimated condominium fees, and the interest on the outstanding balance owed to the developer. The length of the interim occupancy period varies from development to development, depending on many factors.

New condominiums are covered by the Ontario New Home Warranty Program. The Program applies both to your unit and all common elements. There may be rare exceptions to this, for instance when the condominium is located in an existing building that has been renovated or restored.

### Ownership costs

After you become the registered owner of your unit, you pay a monthly fee to cover common expenses. These include insurance and maintenance costs for common elements as well as management fees. Depending on the development, your fees may also include water services or, in some rare cases, all utilities.

## **The disclosure statement**

The disclosure statement is a document that condominium developers are legally required to provide to each purchaser once an Agreement of Purchase and Sale is entered into. You have 10 days to review it and decide whether to proceed with the purchase. Read it carefully and discuss it with your lawyer to make sure you understand your rights. If you decide not to proceed, you can cancel the Agreement of Purchase and Sale and get a full refund of your deposit.

The disclosure statement is accompanied by extensive documentation that should give you all the information needed to decide whether or not to proceed with the transaction. The Condominium Act sets out what the disclosure statement and its accompanying document package must include, among them:

- A provision indicating whether the condominium is freehold or leasehold. If the condominium is freehold, the provision must also indicate whether it is a standard, phased, vacant land or common elements condominium.
- The name and municipal address of the developer (the “Declarant” in *Condominium Act* terms) and the mailing and municipal addresses of the condominium property, if available.
- A general description of the condominium property.
- Confirmation that the condominium property is, or may be, subject to the provisions of the Ontario New Home Warranties Plan Act, and whether the proposed units and common elements are enrolled or intended to be enrolled.
- An indication as to whether any building or unit proposed to form part of the condominium has been converted from a previous use.
- A statement indicating whether any of the units or proposed units may be used for other than residential purposes.
- A provision as to whether the Declarant intends to market any of the units to investors—and, if so, the number of units that may be sold to investors.
- The percentage of units the Declarant intends to lease.
- A schedule of intended commencement and completion dates with respect to the condominium’s amenities that have not yet been constructed or completed.
- A list of the proposed amenities that will be provided to purchasers during the period of interim occupancy.

The document package that accompanies the Disclosure Statement must include a copy of the condominium's existing or proposed by-laws, declaration, rules, trust agreement and other contracts and leases that will affect the completed condominium. It will also include a copy of the proposed budget for the condominium for the first year following its registration or, if more than one year has passed since the registration of the condominium, its budget for the current fiscal year.

## **The closing process**

Closing the deal on a newly constructed condominium is a two-step closing process—an interim closing and a final closing. This is because new condominiums are generally ready for occupancy before legal title can be transferred to you. Only if your closing date is after the date on which the condominium is legally registered do you take possession and become the registered owner on the same date.

### **Interim closing**

The Agreement of Purchase and Sale normally requires you to take possession of the unit on the date when it is substantially complete and ready for occupancy. This is called the Interim Closing Date, and is when you pay the balance owing under the contract (subject to mortgage considerations). After the Interim Closing, you have possession of the unit. All monies paid toward the purchase price are to be held in trust after the Interim Closing per the *Condominium Act*, and security is provided to ensure the funds will be protected until you receive legal title.

After the Interim Closing comes an Interim Occupancy Period. During this time, you must fulfill certain obligations set out in the Agreement of Purchase and Sale. At a minimum, you have to abide by all rules and regulations of the condominium and pay a monthly occupancy fee. Postdated cheques for the occupancy fee are usually delivered to the vendor on the Interim Closing Date.

The Interim Occupancy Fee varies from one development to the next, based on a formula set out in the Condominium Act. The fee cannot exceed the sum of: (a) the common expenses that a registered owner would be required to pay; (b) an amount reasonably estimated on a monthly basis for municipal taxes attributable to the unit; and (c) the interest payable on the balance of the purchase price not paid in cash on the Interim Closing Date. The more cash you pay on the Interim Closing Date, the lower your Interim Occupancy Fee will be.

If you're taking a mortgage, the funds being loaned to you can't be advanced until the Final Closing Date. However, you will pay interest on the amount of your mortgage during the Interim Occupancy Period. You will not pay this interest to your mortgage company but rather to the vendor. The Condominium Act allows the vendor to require you to sign a temporary mortgage so the interest can be collected. The amount of the mortgage will equal the balance of the purchase price not paid by you on Interim Occupancy. The mortgage will be cancelled on the Final Closing Date.

If you fail to pay the occupancy fees during the Interim Occupancy Period or breach any other obligations under the Agreement, the developer can terminate the contract, keep the deposits, and require you to vacate the unit.

## **Final closing**

Once the condominium corporation is registered, the developer can transfer title to individual units to purchasers. On the Final Closing Date you will be required to pay the balance of the purchase price either from your own funds or a mortgage advance. The developer will provide a deed for your unit. The vendor will also prepare and deliver a final accounting for all sums paid or owing under the terms of the Agreement. Once documents and cheques have been exchanged between the your lawyer and that of the purchaser, the deed may be registered, making you the legal owner of your condominium unit.

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