

free

Buying a New Condominium

What you need to know



ONTARIO NEW HOME
WARRANTY PROGRAM

Shopper information

Thinking about buying a new condominium but not sure where to begin? You've probably already given a lot of thought to your future new home's cost, location, size, layout and features, but did you know that the **Ontario New Home Warranty Program** (the "Warranty Program") helps protect your investment by backing your builder's warranty?

Your deposit is protected against financial loss by the Warranty Program up to \$20,000, while deposits over this amount are covered by the trust provisions of the *Condominium Act, 1998*. Your warranty includes one- and two-year protection against defects in work and materials, as well as seven-year coverage for Major Structural Defects (MSD).

It helps to think about the new condominium buying process as having three different stages—shopping, buying and owning. The following pages will help guide you through each—providing you with the information you need to ensure your new home buying experience is a favourable one.



Get the facts— know what you're buying, before you buy

A condominium project may consist of many different types of homes, including low-rise and high-rise buildings, single-family, semi-detached, and townhomes.

Warranty coverage on your unit takes effect from the date of occupancy, and remains in effect, even if the unit is sold before the end of the warranty period. Condominium conversions are not covered.*

Read the fine print

Upon deciding to purchase a condominium unit, you will be asked to sign an **Agreement of Purchase and Sale** (APS) and to make a deposit (more on deposits on the following page).

The APS is a contract between you and your builder. It represents your only opportunity to make changes.

Be sure you understand the occupancy conditions stated in the APS. For example, you should know if the date given is a tentative or confirmed occupancy date, and how long the date could be extended.

It is important to document, in the APS, all changes, extras and items that are NOT covered in the purchase price.

In addition to the APS, you will be given a **Disclosure Statement**. **(Have your condominium lawyer review both documents carefully.)** The Disclosure Statement outlines important information about your condominium, including what items are considered part of your unit and what items are considered part of the common elements. Along with the Disclosure Statement, you will receive a copy of the first year budget of the condominium corporation together with the proposed declaration of by-laws and rules that unit owners must abide by.

The 10-day cooling off period

You have 10 days from the time you receive a copy of the signed APS or Disclosure Statement (whichever comes later) in which to reconsider the purchase of the condominium unit and either terminate the transaction or finalize the purchase. This is called your **Right of Rescission** or "cooling off" period.

* Warranties under the *Ontario New Home Warranties Plan Act* apply only to new construction. Therefore, condominium conversions (where all or part of an existing building is incorporated in the new construction) are not covered.

Shopper information

Your deposit is protected

The Warranty Program protects deposits on new condominium units to a **maximum of \$20,000** (plus interest at the prescribed rate) per unit if the builder cannot or will not complete the sale, through no fault of your own, or if you exercise your rights of rescission under the *Condominium Act, 1998*.

Your deposit is protected from the moment it is paid.

If you intend to put down more than \$20,000, your builder is obliged to have your deposit held in trust and the trustee must send you a notice confirming compliance (Evidence of Compliance form) with the trust provisions of the *Condominium Act*. If the money is released from trust, the first \$20,000 is protected by the Warranty Program, while the rest of your deposit would be protected by excess deposit insurance.

Interest is paid on condominium deposits as required by the *Condominium Act, 1998*. Money paid for extras or upgrades will not be refunded as part of your deposit unless the money was credited toward the purchase price of your APS. The total amount of the Warranty Program coverage for deposits and extras/upgrades (if included) will not exceed \$20,000 plus interest.

Note—The Warranty Program does not protect “reserve” or “hold” deposits

The Warranty Program does not protect deposits you make with the intention of reserving or “holding” a unit before you enter into an agreement to purchase that unit. Ensure that all “reserve” monies are made payable directly to the vendor’s solicitor in trust, or to a prescribed trustee. You should expect to receive an *Evidence of Compliance* form from the trustee confirming that the payment was put in trust.

Research Research Research

Shoppers should

Shop around

Make a list of features and amenities that are important to you and then visit the sales offices of several condominium projects. You might even want to visit their Web sites first to get a sense of what the project is like.

Check the builder’s record with the Warranty Program

Check that each builder you are considering is registered with the Warranty Program (it’s the law). You can also view the builder’s record with the Warranty Program dating back 10 years by using the “Find a Builder” search on our Web site, www.newhome.on.ca

Retain a condominium lawyer

Retain a real estate lawyer who specializes in condominium law, and have him/her review your APS and Disclosure Statement as soon as you receive them.

Get pre-approved for a mortgage

Meet with your bank or mortgage lender to determine what you can afford. Include up-to-date financial information.

Calculate closing costs

Factor in all upfront and closing costs, including: down payment, monthly mortgage, common expenses or maintenance fees, realty taxes, moving costs, land transfer tax, legal fees, occupancy fees, the Warranty Program enrolment fee, GST, water, gas and hydro meter installation, mortgage insurance.

Be aware of builder’s construction schedule

If the project is in the planning stages, find out when the builder expects to begin construction and the proposed occupancy and closing dates. Find out how many phases will be built, and what they will look like.

Review Disclosure Statement thoroughly

Pay attention to what you are buying as a whole, and not just your particular unit. As a condominium owner, you hold title to the unit, but share in the cost of paying for the upkeep and operation of the common elements (the spaces shared by all condo residents, including recreational facilities such as pools and gyms, lobbies, parking garages, gardens, etc.). You will receive copies of the proposed by-laws and rules unit owners must abide by. Some of these may affect your decision to purchase the condominium unit.



Buyer information

Unauthorized substitutions

Be aware that the vendor/builder generally has the right to make changes to construction finishes without your consent under the terms of most purchase agreements. Hence, the builder is allowed to substitute items that are referred to in the APS with items of equal or better quality. **The builder is not, however, allowed to substitute items that you are entitled to select under the APS, without your consent.**

Material changes

If the builder changes something described in the Disclosure Statement, and if the change is significant enough to affect a purchaser's decision to buy the unit, then it may be considered a "material change." Under the *Condominium Act, 1998*, the builder is required to notify the purchaser of any material changes no later than 10 days before the transfer of the title to the unit, and the purchaser has the right to review the purchase and decide if he/she wants to continue with or rescind the agreement based on the material changes.

So, for example, if the Disclosure Statement indicates that the condominium will include a complete recreation facility including sauna, swimming pool and workout room, but the vendor/builder later proposes to eliminate the facility from the plans, you may be entitled to opt out of the deal. Your lawyer will be able to assist you.

Occupancy closing

Condominium purchasers will generally be required to occupy their unit ("occupancy closing") before the developer is able to transfer legal ownership to it. During the period that precedes ownership of a condominium unit, ("interim occupancy"), the developer may charge the purchaser a **monthly occupancy fee** (until legal ownership is transferred after the condominium corporation is registered) which should not exceed the total of (i) interest at the prescribed rate on the unpaid balance of the purchase price; (ii) an estimate of the municipal taxes for that unit; and (iii) the projected common expense contribution for that unit, all calculated on a monthly basis.

Occupancy closing will take place when your unit is ready for you to move in. If you signed the APS at the beginning of the project's marketing campaign, for example, this could mean you may have to wait as much as two years or more to occupy your unit. Developers typically will not begin construction until at least 70 per cent of the units in the condominium are sold.

If you entered into the APS at the earlier stages of marketing, your APS probably contains a **tentative occupancy date**. This indicates that it is too early for your builder to know when you will be able to move into your unit. However, your builder must change it to a confirmed date (the date the builder expects you to move into your unit) no later than 30 days after the roof assembly is completed.

Communication is key

If it is 90 days before your tentative date, and your builder has not given you a confirmed occupancy date, then the tentative occupancy date becomes the confirmed occupancy date for the purposes of calculating compensation for delayed occupancy, if applicable. For example, if March 30, 2005 is your tentative occupancy date and your builder has not notified you of a confirmed occupancy date by December 30, 2004, March 30, 2005 automatically becomes the confirmed date.

Extending your occupancy date

A confirmed occupancy date does not necessarily mean that you will actually be moving into your unit that day; things may not go as planned for your builder, and your confirmed occupancy date may be postponed.

Your builder has certain unilateral rights to extend your confirmed occupancy date, and you should take this into consideration before you set up a date to terminate your current lease or list your home for sale. (Remember to update your builder's contact information should you move before your unit is ready.)

Plan ahead **Communication is key**
Communication is key

Buyer information

Remember, the right of your builder to extend your occupancy date cannot be exercised without penalty unless you are given adequate notice.

Notice of delay

Your builder may extend the confirmed occupancy date once by up to 120 days, if you are given written notice at least 65 days before the confirmed date. For example, if your confirmed occupancy date is July 15, 2005, and your builder needs additional time in which to finish your unit, he must let you know by May 10, 2005 about his change of plans. **In addition, for delays of 15 days or less, written notice of at least 35 days before your confirmed occupancy date must be given to you by your builder.** For example, if your confirmed occupancy date is July 15, 2005, and your builder needs an extra 10 days to complete your unit, he must let you know by June 10, 2005.

Always inform your lawyer upon receiving notices to extend your tentative and confirmed occupancy dates. If you sign an Amendment that changes the occupancy date, then the amended date becomes your new confirmed occupancy date, giving your builder, again, the unilateral right to extend it twice without penalty provided you are given adequate notice.

Earlier occupancy

Your builder cannot demand you move in earlier than your confirmed occupancy date—you must consent in writing.

Compensation for delay

You may be eligible for compensation for your living expenses incurred as a result of delay if you **weren't properly notified** of delays in the occupancy of your unit, or if the delay exceeds 135 days.

The confirmed occupancy date in your APS is the one that the Warranty Program takes into account to calculate compensation for delays in occupancy.

Not all delays are compensated. Delays beyond the builder's control, such as strikes, fires, floods or "acts of God," are not covered or compensated.

Furthermore, there is a five-day "grace period," meaning that the confirmed occupancy date can be extended for up to 5 days by your builder with no need for notification, and with no compensation.

However, this grace period only applies if your builder is able to have the unit ready for occupancy within the five days. If not, then the five-day grace period does not apply.

If your confirmed occupancy date was extended by your builder and you were not notified according to the established timelines, you may be entitled to compensation for living expenses incurred as a result of the delay to a maximum claim of \$100 per day, up to \$5,000 in total. Your claim must be based on direct costs incurred as a result of the delay, such as extra moving expenses, storage costs and temporary accommodation.

The onus is on you to prove what you spent as a result of the delay.

For details on making a claim for compensation due to delayed occupancy, please refer to your Homeowner Information Package or visit our Web site at www.newhome.on.ca (Note—If your date of possession was before October 1, 2003, you should contact your builder and copy all correspondence to the Warranty Program).

Buyers should

Confirm occupancy date

Check to see whether the occupancy date listed in the APS is tentative or confirmed, and understand the implications.

Stay in regular contact with builder

Communicate with the builder regularly to assess progress.

Prepare for the Pre-Delivery Inspection

Get ready for the Pre-Delivery Inspection (PDI). This is when the builder and homeowner review the unit's features and document any missing and/or damaged items. The Warranty Program's free publication, *Getting Ready for the Pre-Delivery Inspection* examines the PDI in more detail. To obtain a copy, call the Warranty Program at 1-800-668-0124 or visit our Web site at www.newhome.on.ca to download a copy.

Document all correspondence

Keep copies of all correspondence with builder.

Owner information



Your unit is covered...

You are entitled to warranty protection for your unit, to a maximum of \$100,000 from the date of occupancy. **Unit warranty coverage is divided into one-, two-, and seven-year warranty periods, and begins on the date of occupancy.** It remains in effect even if the unit is sold before the end of the warranty period.

...as are the common elements

The common elements may also be covered—up to \$50,000 x the number of units in the condominium corporation, to a maximum of \$2.5 million. **The common elements' warranty takes effect the day the condo corporation is registered.**

(Note—coverage does not apply to common elements condominiums or to the common elements of vacant land condominiums.)

Know what's covered—and what's not

One-Year Warranty

- Protection from defects in work and materials
- Protection against incomplete work (subject to a cap of 2% of the purchase price or \$5,000, whichever is higher)
- Protection from Ontario Building Code violations
- Protection against delayed occupancy
- Protection from unauthorized substitutions

If your occupancy date is June 2, 2005, then the first year warranty expires at midnight, June 1, 2006.

Two-Year Warranty

- Protection from water seepage through the basement (including below-ground areas such as parking garages)
- Protection from defects in work and materials (including caulking, windows and doors), resulting in water penetration through the building envelope
- Protection from defects in work and materials in the electrical, plumbing, heating delivery and distribution systems (not appliances, fittings or fixtures)
- Protection from defects in work and materials which result in the detachment, displacement, or deterioration of the exterior cladding
- Protection from violations of the Ontario Building Code's health and safety provisions

If your occupancy date is June 2, 2005, then the second year warranty expires at midnight, June 1, 2007.

Seven-Year MSD Coverage

- Seven-year protection from major structural defects

If your occupancy date is June 2, 2005, then the seven-year coverage expires at midnight, June 1, 2012.

For detailed descriptions of the warranties and definitions, consult the **Ontario New Home Warranties Plan Act** on our Web site, www.newhome.on.ca

Owner information

Complaints concerning your unit

You are responsible for reporting all of the complaints contained within the boundaries of your condominium unit according to the procedures described in your *Homeowner Information Package* if your date of possession is on or after October 1, 2003. If your date of possession is before October 1, 2003 you must submit complaints, in writing, to the Warranty Program and your builder before the end of the applicable warranty period (midnight of the first, second, or seventh anniversary of your occupancy date, as noted on the previous page) in order to have them considered for warranty coverage.

Complaints concerning common elements

The *Ontario New Home Warranties Plan Act* recognizes the condominium corporation as the “owner” of the common elements. You must report all common element complaints in writing to your condominium board and ask that your condominium board follow up with the builder and the Warranty Program on your behalf. The Warranty Program can only deal with the condominium corporation regarding common element complaints.

Legal ownership— you don’t own until you close

Unlike owning a freehold home, you do not become the legal owner of your home on the day you move in. In the case of condominiums, legal ownership is transferred after the condominium corporation is registered with the municipality’s Land Titles Office (also known as “final closing”).

Generally, condominium purchasers will be required to occupy their unit before the builder/developer is able to transfer legal ownership to it. This is referred to as “occupancy closing.” During the period that follows occupancy closing, known as “interim occupancy,” the developer may charge the purchaser a monthly occupancy fee.

Board turnover

Once your condominium is registered and more than 50% of the condominium units are transferred to unit owners, your builder is required to call a turnover meeting within 21 days, and to hold the meeting within 21 days of the notice. The builder will turn over some items at the turnover meeting itself, while other items will be turned over within 30 days of the meeting—including proof of enrolment of units and common elements

Be warranty wise
Wise
Be warranty wise

Owners should

Review the declaration before making changes

Know what can and cannot be done to the unit and common areas, so as not to risk warranty coverage and the integrity of the construction.

Understand unit warranty coverage

Become familiar with the terms of your unit’s warranty coverage and report any claims according to the procedures described in your *Homeowner Information Package* if your date of possession is on or after October 1, 2003. If your date of possession is before October 1, 2003, report claims in writing to both your builder and the Warranty Program, before the appropriate deadlines.

Understand common elements coverage

Be familiar with **common elements warranty coverage** and report any deficiencies, in writing, before the deadline, to the condominium corporation.

(where applicable) with the Warranty Program, plans, budgets and manufacturers’ warranties. A Board of Directors is then elected by the unit owners at the meeting (members of the board need not be unit owners, but if at least 15% of the units are owned and occupied at the time of the turnover, at least one position in the board must be available for a representative of the owner-occupied units). The board represents the interests of all unit owners with respect to the common elements, including common element warranty complaints.

Ontario’s *Condominium Act*

Effective May 5, 2001, the *Condominium Act, 1998* replaced the *Act* first introduced in 1967 to govern the creation, administration and termination of condominium corporations in Ontario. It aims to provide better protection for consumers by improving the quality of information disclosed to purchasers; clarifying the rights and responsibilities of condominium corporations; and allowing for new kinds of development. Consult your lawyer for information concerning the *Act*, or contact the Ministry of Consumer and Business Services (see contact information on the back cover).

Ontario New Home Warranty Program

Contact Information

Toll-Free: 1.800.668.0124
Web site: www.newhome.on.ca
E-mail: info@newhome.on.ca

For questions concerning your condo's warranty coverage, contact:

Condominium Office

1091 Gorham Street, Unit B
NEWMARKET ON L3Y 7V1
(905) 836.6715
Toll-Free: 1.888.803.9913
Fax: (905) 836.0314

Additional Resources

Ontario New Home Warranty Program

If you have questions concerning condominium ownership call the Condominium Office at the telephone numbers above or visit our Web site at www.newhome.on.ca. To order any of our free publications, call 1.800.668.0124.

Canadian Condominium Institute (CCI)

CCI publishes a comprehensive handbook ideal for directors and managers of condominiums. To order the *Condominium Handbook* send cheque for \$18.05 to 2175 Sheppard Ave. E, Ste. 310, Toronto, Ontario M2J 1W8

Canada Mortgage and Housing Corporation (CMHC)

Ontario Regional Office
For questions, publications or instructional videos call 1.800.668.2642 or visit their Web site at www.cmhc-schl.gc.ca

Canadian Bankers Association

To order consumer publications call 1.800.263.0231 or visit their Web site at www.cba.ca

Ministry of Consumer and Business Services

For more information about the new *Condominium Act, 1998*, or to order the Ministry's pamphlet, *Condominium Living—Tips for Buyers and Owners*, call 416.326.8555 in Toronto, or toll-free 1.800.268.1142 (from other parts of Ontario). You can also visit the Ministry's Web site at www.cbs.gov.on.ca

Law Society of Upper Canada

If you would like help selecting a lawyer, call the Law Society of Upper Canada's lawyer-referral service. In the Greater Toronto Area (GTA) call (416) 947.3330, outside of the GTA call toll-free at 1.800.268.8326 or visit their Web site at www.lsuc.on.ca

Municipal Building Department

Your municipal building department is an excellent source for information on all aspects of building in your area. Call your local municipal office for any municipal services.

Consumers Council of Canada

373 Eldon Street
Goderich, Ontario N7A 4K7

Ontario Home Builders' Association (OHBA)

The local association of Ontario Home Builders can help you with a builder reference check. Contact OHBA at 20 Upjohn Road Toronto, Ontario M3B 2V9 Telephone (416) 443.1545 Fax (416) 443.9982 Toll-Free 1.800.387.0109 or visit their Web site at www.homesontario.com

Greater Toronto Home Builders' Association (GTHBA)

20 Upjohn Road Toronto, Ontario M3B 2V9 Telephone (416) 391.3445 x301 Fax (416) 391.2118 or E-mail them at info@gthba.ca

Note to Reader

If there is any conflict between this publication and the Act or regulations, the latter prevails. The Warranty Program assumes no liability for any omission or error in this publication.