



## CONDO LAW FOR ALBERTANS

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# Buying a New Condo: Pre-Possession Issues

You should **NOT** rely on this booklet for legal advice. It provides general information on **Alberta law only**. 2020

The contents of this booklet are provided as general information only. It is not legal advice. If you have a legal problem, you should consult a lawyer.

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This booklet applies to the purchase of new and conversion condominium developments only. This booklet will provide you with an overview of deposits, occupancy fees and other potential issues that may arise (for example, purchase agreement cancellations, changes in construction and move in delays).

## What happens to your deposit?

After you sign a purchase agreement for a new or conversion condominium unit, you must provide the developer with a deposit for the unit. Within 3 days (exclusive of holidays and Saturdays) of receiving your money, the developer must deposit the money into a trust account at a financial institution in Alberta.

The deposit is held in a trust account maintained by a lawyer until your unit and the common property is substantially complete. Within 10 days of receiving your money, the lawyer must notify you that the deposit is held on deposit in his or her trust account. You must receive the title to your property before the deposit money is taken out of the trust fund.



### TIP

Part 1.4 of the *Condominium Property Regulation* addresses trust accounts in further detail, including notification requirements, restrictions on the release of trust money and trust account records.

## What happens if you change your mind?

After you sign a purchase agreement, you have the right to cancel (or “rescind”) the agreement within 10 days of signing the purchase agreement. If you do not receive all the required documents and information from the developer when you sign the purchase agreement, then you have an additional 10 days within receiving the documents to cancel your agreement.



## EXAMPLE

If you sign the purchase agreement on March 1<sup>st</sup> but receive all required documents and information on March 15<sup>th</sup>, you will have until March 25<sup>th</sup> to cancel your agreement.

The developer must provide you with a full refund within 15 days of receiving your written notice to cancel the purchase agreement.

## What happens if there are changes in construction that I did not agree to?

A developer must notify you of any material changes in the information and documents that it has provided to you. The developer must provide you with a written notice within a reasonable time after the change occurs and before you take possession of the unit.

A material change is a change in the developer's information or documents that would have a negative effect on the value/use of your unit or the corporation's common or real property.



Some changes are **not** considered material, for example:

- A difference between the project expenses in the proposed budget and actual expenses in the first 12 months that condo fees are levied
- A difference between the estimated condo fees and actual condo fees
- A change in the final occupancy date when the developer has followed the regulations

If a material change arises before you take possession, you can make a court application for damages or to cancel your purchase agreement. You have 60 days within receiving the developer's notice or when you became aware of the material change to make the application.



**TIP**

Seek legal advice if you have a dispute with your developer over any changes that arise during construction.

### What are occupancy fees?

Occupancy fees are money that you pay to the developer so that you can live in an unit before receiving the certificate of title. Before you can move into your unit, the developer must provide an occupancy permit. The permit proves the unit has passed all safety checks and complies with local bylaws. You may receive the occupancy permit and be able to move in before you receive the certificate of title for the unit. This period of time is known as interim occupancy and the developer may require you to pay occupancy fees during this time.

Talk to your lawyer or real estate agent about how the purchase agreement deals with occupancy fees. Sometimes developers will apply occupancy fees towards the final purchase price of the unit.



**TIP**

Occupancy fees cannot exceed the amount the developer disclosed to you when you signed the purchase agreement.

## How do I know when I can move in?

When you purchase a condo, the developer must provide you with an occupancy date statement with a fixed date or a range of dates in which you can move in. An occupancy date statement is a statement that contains a single fixed date or range of dates in which a unit is available for move-in. The developer must ensure that you initial the occupancy date statement when you sign the purchase agreement. When a developer provides a range of dates in an occupancy date statement and has decided on a specific date for move in, they must give you at least 30 days' written notice.

## What happens if my move in date is delayed?

If your unit is not ready within 30 days of the final occupancy date on the occupancy date statement, then you have the right to cancel your purchase agreement with a written notice.

If a developer has sent you a written notice of a revised final occupancy date, you can give written acceptance of the revised final occupancy date or cancel the purchase agreement within 10 days of receiving the developer's notice. Otherwise, you will be bound by the revised final occupancy date.

When you cancel your purchase agreement, the developer or the developer's lawyer must give you a full refund within 15 days of receiving the notice.



There are some situations where a developer is allowed to delay occupancy beyond the final occupancy date. For example, you will not be able to cancel your purchase agreement in the following events:

- Fire
- Explosion
- Flood
- Events leading to a declaration of an emergency, a public emergency or disaster
- Impact by aircraft, spacecraft, watercraft or land vehicles
- Riot, vandalism or malicious acts
- Delays in issuing a development permit
- An outstanding appeal

# Buying a New Condo:

## Pre-Possession Issues

This booklet was produced for the Condo Law for Albertans project by the Centre for Public Legal Education Alberta. For further information about condominium law in Alberta, visit [www.CondoLawAlberta.ca](http://www.CondoLawAlberta.ca).

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