



# 楼花转让相关的法律问题

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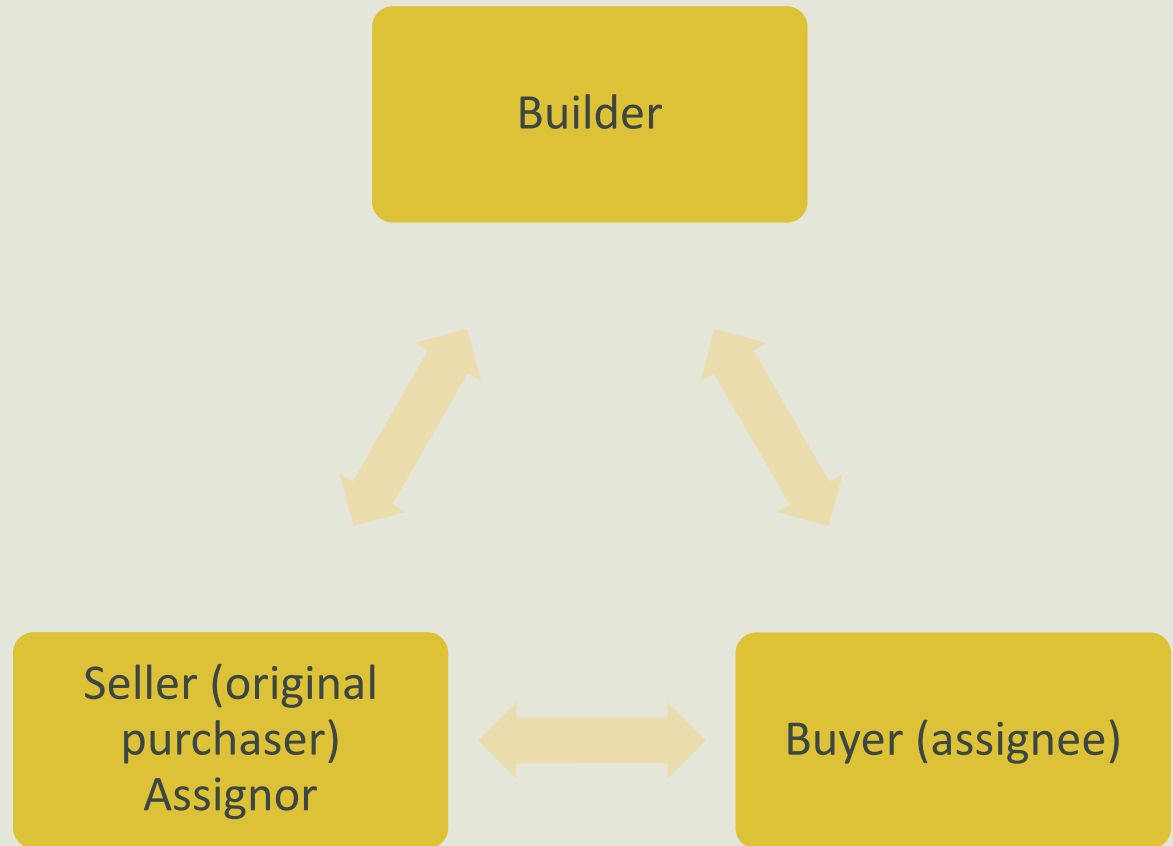
B.A., J.D. Barrister and Solicitor

Location: Master's Trust Realty Brokerage, 3190 Steeles Ave East 110, Markham

Date: April 18, 2018

# What is Assignment of New Home/New Condo?

- It's flipping "papers"
- The Players
  - Builder
  - Seller (the "Assignor")
  - Buyer (the "Assignee")
  - CRA
- The Contracts
  - Original builder agreement
  - Assignment agreement
  - Three-party consent



# A very typical procedure

## Step 1 Assessment

- Builder's attitude
- Seller: Assignment clause in the agreement; fees and costs; whether occupancy; tax implication; any restriction on advertising and timing
- Buyer: money; NRST; HST; general risk of new construction

## Step 2 Contract Negotiation

- Sign Assignment Agreement, deliver supporting documentation
- Conditions (e.g. Solicitor review, financing etc.)
- Seller solicitor initiate contact with builder solicitor regarding consent

## Step 3 Assignment Closing

- Receive builder consent
- Three party consent agreement
- Assignment Closing

## Step 4 Assignee closing with builder

- Interim closing
- Final Closing

# Money Trail

## Assignment Closing



1. The Profit



2. Recovery of all deposit



3. Any money paid to builder for extras and upgrades

## Final Closing



1. NRST



3. Land Transfer Tax



2. Builder Adjustment

3. HST rebate

# Example of Risks

- For Assignor

- HST and CRA
- Builder's approval and charges
- Not fully released
- Withholding tax for non-resident

- For Assignee

- Original agreement of purchase and sale
- All the risk applicable to any pre-construction project
- HST rebate and CRA
- Builder's incentives
- Price and mortgage



## INDEX

I.	Introduction
II.	Definitions
III.	Allocation of Parking, Locker & Other Ancillary Units
IV.	Adjustments & HST Provisions
V.	Prohibition on Purchaser Selling, Leasing or Assigning
VI.	Provisions Confirming the Purchaser's Financial Resources
VII.	Purchaser's Failure to Provide Financial Information or to Procure Needed Financing
VIII.	Terms of Interim Occupancy
IX.	Metering of Utilities
X.	Noise Warning & Other Special Notices
XI.	Purchaser's Consent to the Collection and Limited Use of Personal Information
XII.	Construction Matters
XIII.	Finishes, Appliances & Extras
XIV.	Title
XV.	Tender - General
XVI.	Electronic Registration of Documents & Tender
XVII.	Requisitions
XVIII.	The Vendor's Electronic Closing System
XIX.	Consent to the Delivery of Documents in Electronic Format
XX.	Execution of Documents
XXI.	Default



### **Condominium Form (Tentative Occupancy Date)**

#### **SCHEDULE A**

##### **Types of Permitted Early Termination Conditions**



### **(Tentative Occupancy Date)**

#### **Condominium Form**

**Property** Suite: 606  
Unit: 06 level: 6

#### **SCHEDULE B**

##### **Adjustments to Purchase Price**



### **Condominium Form (Tentative Occupancy Date)**

#### **SETTING AND CHANGING CRITICAL DATES**

##### **1. Setting Tentative Occupancy Dates and the Firm Occupancy Date**

# Financing

“conditional upon receipt by the Vendor of confirmation that financing for the project... has been arranged on terms satisfactory to the vendor in its sole discretion and has been accepted...”

“conditional upon receipt by the Vendor of confirmation that sales of condominium dwelling units have exceeded 70% of the proposed....”

## **Condo cancellation at Vaughan Metropolitan Centre leaves buyers ‘in the dust’**

Liberty Development has cancelled three towers in Vaughan but a deposit refund won't be enough to secure new homes for some buyers.



## Financing: not sold enough unit?

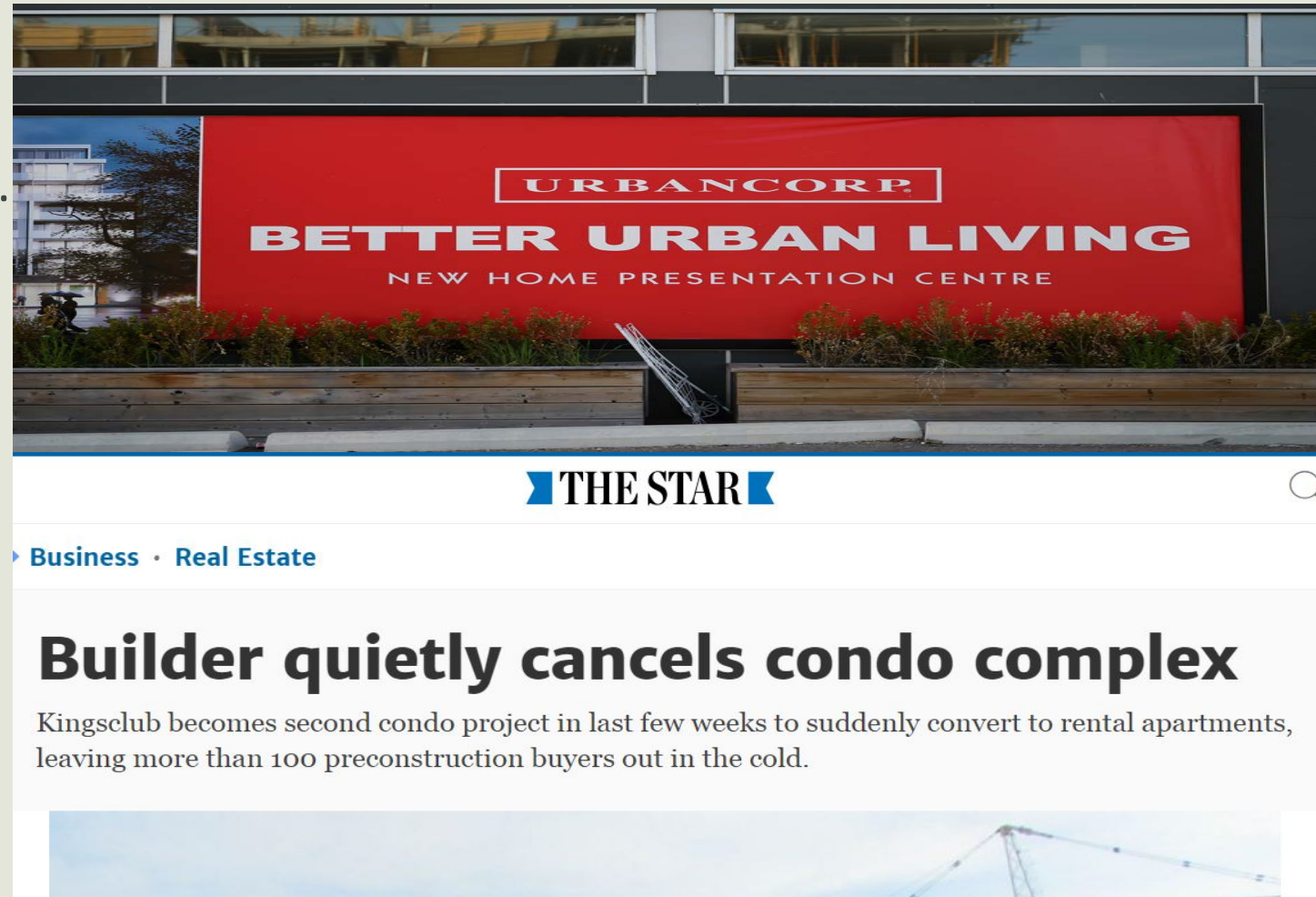
“The developer of Kennedy Gardens, Time Development Group Inc., told buyers in a Jan. 31 letter that it had not sold enough units and did not have satisfactory construction financing in place to proceed with the project.” -Toronto Star





# Financial Difficulty?

- Urbancorp (Lawrence) Inc.
- Urbancorp (St. Clair Village) Inc.
- Urbancorp (Woodbine) Inc.
- Urbancorp (Bridlepath) Inc.
- Kingsclub



# Authority approval?

- Tarion Schedule A
- Castlepoint Numa of Museum Flts
- “Castlepoint’s Alfredo Romano....blamed slow city approvals for making Museum Flts untenable...has rendered the project commercially un-financeable”- Toronto Star





# Bankruptcy and Fraud?

- Centrium Condo project
- Event in 2014- deposit is being returned eventually



# Buyer compensation

- Deposit: Tarion coverage
  - \$20,000.00 for condo
  - \$40,000 for freehold signed before January 1, 2018; \$60,000 after Jan 1, 2018 with 10% price for over, with max \$100,000
- Interest: Bank of Canada overnight rate minus 2%





# Can Buyer Walk Away?

- Solicitor Review of Purchase Agreement from builder: Cooling off period: 10 calendar days under Condominium Act
- Construction delay
- Consequence of default

# Before the Purchase

- Builder's reputation and history, Tarion record
- Project, site information, pricing
- Beware of innovation
- Anything else? Please share with peers and lawyers

# CRA Matter

“The CRA obtained court orders for 69 condo developments in the Toronto region last year and found a total of 2,810 flips. Approximately 100 of those transactions have been targeted for audits, 15 of which have been completed. Of those, five cases resulted in reassessments that found a total of about \$70,000 in unpaid income taxes.”

THE  
GLOBE  
AND  
MAIL

★ DONGHU

## Inside the unregulated world of paper flipping in Canada



Paper flips, when a condo buyer resells a unit before it is completed, are private and unregulated.  
FRED LUM/THE GLOBE AND MAIL

JILL MAHONEY >  
PUBLISHED NOVEMBER 3, 2017

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### TRENDING

- 1 B.C. moves to block Kinder Morgan's Trans Mountain pipeline expansion
- 2 Ex-Glee star Mark Salling, who pled guilty to child porn charges, dies at 35
- 3 Shaw Communications offers buyouts, expects to cut about 650 jobs
- 4 RRSPs are getting a bum rap as a tax trap
- 5 Vic Fedeli will not seek leadership bid for Ontario PCs

### LATEST VIDEOS

'Glee' star Mark Salling, convicted on child porn charges, found dead

# CRA Matters for the Buyer

## HST Rebate

- What is HST rebate in new homes?
  - Primary residence
  - Rental
- Assignment
  - Risk of building refusing credit the rebate, needs additional down payment
  - Risk of CRA denying rebate

## After closing

- If rebate is denied by the builder, speak to accountant about filing for rebate application.
- There is no guarantee that CRA will allow the rebate application



# CRA Matters for the Seller

## Personal Income Tax

- Speak to accountants
- Non-resident withholding apply for non-resident

## HST

- Whether transaction is subject to HST?
  - When is an assignor a Builder for HST purpose? INTENTION
    - Did the Assignor acquire the new home with the intention of using it as his primary place of residence?
    - Did the individual selling an interest in a new house in the course of a business or adventure or concern in the nature of trade
- If so, the calculation
  - GST/HST info Sheet GI-120 (2011)
  - Casa Blanca Homes Ltd. V. The Queen (2013)

# Assignment Myth Uncovered

- I signed the Agreement of Purchase and Sale with the builder before April 20, 2017 so when I sell the agreement, my purchaser does not have to worry about NRST
- My agreement says I am allowed to assign the agreement upon payment of \$5000.00 +HST so I can sell my contract to whoever I want, however I want, whenever I want
- My agreement does not mention any fees for assignment so I only have to pay some small administrative fee
- If I buy a condo through assignment, I can save on Land Transfer Tax
- My contract contains a builder incentive e.g. Closing credit, development fee levy and I can assign it to the new buyer
- Once I assign the condo to someone else, I never have to worry about it not closing

# Questions? Comments? Contact us?

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