

free

Buying a New Condominium

What you need to know



ONTARIO NEW HOME
WARRANTY PROGRAM

Creating Consumer Confidence Through Commitment to
Consumer Protection and Builder Excellence

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** (ONHWP) helps protect your investment by backing your builder's warranty?

Your builder's warranty, mandatory in Ontario since 1976, protects your deposit (up to \$20,000 plus interest), and provides one-, two-, and seven-year warranty protection against defects in work and materials. (For more detailed descriptions of warranty coverage turn to the first page of the *Owner Information* section of this booklet.)

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* however, 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.



Document, in the APS, all changes, extras and items that are NOT covered in the purchase price.

After signing 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. It will also outline all of the by-laws and rules you will be required to follow (note—more by-laws may be enacted once the condominium corporation is formed).

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 finalize the sale. This is called your **Right of Rescission** or "cooling off" period.

*Warranty does NOT apply to condominium conversions

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

ONHWP protects deposits on new condominium units to a **maximum of \$20,000** (plus interest) 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 however, you should ask your builder if they provide additional deposit insurance. If not, ask your builder for the names of companies that provide this type of insurance.

Interest is paid on condominium deposits as required by the *Condominium Act, 1998*. Money paid for extras or upgrades may be refunded as part of your deposit, provided the extras or upgrades formed part of the APS, and are permanently affixed to the unit. However, the total amount of ONHWP coverage for deposits and extras/upgrades will not exceed \$20,000 plus interest.

Note—ONHWP does NOT protect "reserve" or "hold" deposits

ONHWP 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. Therefore, it is recommended that you not give cash or a large sum of money. Ask that any money you give be held in trust and obtain a receipt and an *Evidence of Compliance* form (Form 4).



Research Research Research

Shoppers should

Check the builder's rating with ONHWP

Make a list of features and amenities that are important to you, and visit several sales sites. Check that each builder you are considering is registered with ONHWP (it's the law). Check ONHWP's **Builder Rating for After Sales Service** (see back cover for information about builder ratings)

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, maintenance fees, common elements fees, realty taxes, moving costs, land transfer tax, legal fees, occupancy fees, ONHWP enrolment fee, GST, water, gas and hydro meter installation, reserve fund fees, 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.). Your Disclosure Statement outlines the by-laws and rules unit owners must abide by. Some of these may affect your decision to purchase the condominium unit

Ensure deposits are held in trust

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 amend the Disclosure Statement, 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 change.

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 before the developer is able to transfer legal ownership to it ("occupancy closing"). 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) the prescribed interest on the unpaid balance of the purchase price; (ii) an estimate of the municipal taxes for that unit; and (iii) the projected common expenses 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, he/she must change it to a **confirmed date** at least 90 days before your **tentative date** arrives. For example,

if March 30, 2002 is your tentative date, by December 30, 2001, your builder must notify you with the confirmed date.

If it is 90 days before your tentative date, and your builder has not given you a confirmed occupancy date, the tentative occupancy date becomes the confirmed occupancy date (the date in which the builder expects you to move into your unit).

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.)

Communication is key

Communication is key

Plan ahead

Communication is key

Remember, the right of your builder to extend your occupancy date cannot be exercised unless you are given adequate notice. He/she 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. The builder can also have a 15-day extension if you are given 35 days notice.

Notice of delay

Written notice of delay must be delivered to you at least 65 days before your confirmed date to move in if the builder wants to extend your occupancy date for more than 15 days. For example, if your confirmed occupancy date is July 15, 2002, and your builder needs additional time in which to finish your unit, he must let you know by May 10, 2002 about his change of plans. **In addition, for delays of 15 days or less, written notice of 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, 2002, and your builder needs an extra 10 days to complete your unit, he must let you know by June 10, 2002.

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.

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 the maximum extension periods explained above.

The confirmed occupancy date in your APS is the one that ONHWP 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.

Contact your builder and copy ONHWP if you think you qualify for compensation as a result of delays in the occupancy of your condominium unit.

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. ONHWP's free publication, *New Home Buyer's Checklist* examines the PDI in more detail. To obtain a copy, call ONHWP's Toll Free Publications Line, noted on the back cover of this booklet. A video is also available through the Greater Toronto Home Builders' Association. See *Additional Resources* on back cover to order

Document all correspondence

Document all correspondence with builder in writing

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, to a maximum of \$2.5 million. **The common elements' warranty takes effect the day the condo corporation is registered.**

(Note—common elements coverage does not apply to common element and 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
- Protection from Ontario Building Code violations
- Protection against delayed occupancy
- Protection from unauthorized substitutions
- **Complaints/claims** must be received in writing* by midnight of the day before the **first anniversary** of your occupancy date

Therefore, if your occupancy date was June 2, 2001, then the first year warranty expires at midnight, June 1, 2002

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
- **Complaints/claims** must be received in writing* by midnight on the day before the **second anniversary** of your occupancy date. Therefore, if your occupancy date was June 2, 2001, then the second year warranty expires at midnight, June 1, 2003

Seven-Year Warranty

- Seven-year protection from major structural defects
- **Complaints/claims** must be received in writing* by midnight on the day before the **seventh anniversary** of your occupancy date.

Therefore, if your occupancy date was June 2, 2001, then the seventh year warranty expires at midnight, June 1, 2008

For detailed descriptions of the warranties and definitions, consult the **Ontario New Home Warranties Plan Act** (an unofficial version is available online at www.newhome.on.ca/pdf/onhwp_act_200108.pdf) and ONHWP's publication, **Warranty Protection in Ontario** (see back cover for information on how to order)

* Copy both your builder and ONHWP

Owner information

Be warranty wise
Be warranty wise
Wise

Owners should

Consult builder when making changes

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

Understand unit warranty coverage

Be familiar with **unit warranty coverage** and report any claims, in writing, to both the builder and ONHWP, before the appropriate deadline

Understand common elements coverage

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

Know your warranty deadlines

Your warranties are time-limited, so you should know what the deadlines are for submitting claims (see *complaints/claims* sections under each warranty period on previous page)

Complaints concerning your unit

You are responsible for reporting all of the complaints contained within the boundaries of your condominium unit. **You must submit complaints, in writing, to ONHWP and your builder before the end of the warranty period (midnight on the day before 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 builder and ask that your condominium board follow up with the builder and ONHWP on your behalf. You may send a copy of the letter to ONHWP but we can only deal with the condominium corporation regarding common element complaints.

Legal ownership— you don't own until you close

Unlike your freehold home-owning counterparts, 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 specific items at the turnover meeting—including proof of

enrolment of units and common elements (where applicable) with ONHWP, plans, budgets, manufacturers' warranties; and a Board of Directors is elected by the unit owners at the meeting. The board is made up of owners of the condominium, and represents the interests of all unit owners with respect to the common elements, including common element warranty complaints.

Ontario's new 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

Creating Consumer Confidence Through Commitment to
Consumer Protection and Builder Excellence

One-stop-shopping on our web site:

www.newhome.on.ca

Builder Rating Hotline

Toll Free 1.888.463.6466

Publications Line

Toll Free 1.800.668.7504

Information Line

Toll Free 1.800.668.0124

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

ONHWP Condominium Office

(Serving all of Ontario)

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 contact ONHWP's Condominium Office at the telephone numbers above or visit the web site at www.newhome.on.ca. To order any of ONHWP's free publications, call the Toll Free Publications Line at 1.800.668.7504. ONHWP also rates builders annually for after sales service. To inquire about your builder's rating, call the Toll Free Builder Rating for After Sales Service Hotline at 1.888.463.6466

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)

To order the PDI Video for \$18.95 (includes all taxes, shipping and handling) contact the GTHBA at 20 Upjohn Road Toronto, Ontario M3B 2V9 Telephone (416) 391.3445 x301 Fax (416) 391.2118 or E-mail them at gthba@newhomes.org

Note to Reader

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