

Understanding The Purchase Process

Making a “Reservation” to Buy Your Future Home.

At the Pre-Construction phase of a development, the Developer will typically ask for money to secure your intent to purchase but those funds won't be called a deposit or down payment.

*Instead, you'll be asked for a “Reservation”.
It's like an option to buy.*

The amount of this “Reservation” may be small but it reserves for you the right to purchase the unit of your choice at an agreed price even if all the required disclosure documents, specifically the registered Condominium Plan, are not available to you at the time.

Usually the Reservation Agreement will give you a time period to enter into a formal agreement after notice is given, or it will expire after a specified time period such as 30 days from signing. In either case, you need to ensure that the time period is one that is reasonable for you.





Careful attention needs to be paid to these terms of the Reservation Agreement. If notice is given while you are out of the country, for example, you might find that your reservation has gone, along with your opportunity to sign the formal agreements.

Before you make your Reservation, however, some important questions need to be asked, including:

- *Is the money refundable if I don't go ahead with the purchase?*
- *Is the money credited to my deposit if I do go ahead?*
- *Will the funds be held in a lawyer's trust account or paid directly to the Developer?*

Exercising Your Option to Buy

Converting a “Reservation” to a Purchase Agreement.

Your Developer will advise you when you can convert a Reservation into a Purchase Agreement and how much money, in the form of a deposit, will be needed at that time.

Making a deposit, as opposed to a Reservation, offers certain protections for your deposit money under the law and The Alberta New Home Warranty Program.

Alberta’s Condominium Property Act requires that the Developer must hold deposits “in trust” (typically a trust account set up by the Developer’s lawyer) unless the deposits are held under an approved plan like The Alberta New Home Warranty Program.

*Under The Alberta New Home
Warranty Program, your deposit
monies benefit from specific
protections and safeguards.*

(see also page 75, “Deposit Protection”).





So it's worthwhile to find out:

- *if the Developer is a Registered Builder Member of The Alberta New Home Warranty Program;*
- *if the development itself is also registered with The Alberta New Home Warranty Program;*
- *if the individual unit is registered with The Alberta New Home Warranty Program;*
- *the amount of the available Program Deposit Protection for the unit and project.*

These are all requirements before an official Alberta New Home Warranty Program deposit receipt can be issued to you for your specific unit purchase and so that your Deposit Protection can be in force.

If necessary, contact the Alberta New Home Warranty Program Registration Department to confirm that the Developer, the development and the unit are all registered and to determine the amount of the available Deposit Protection for the unit and project.

Besides protecting your deposits, The Alberta New Home Warranty Program's coverage is also beneficial for the Developer. Once construction starts, the Program covers your deposit funds as they are released from trust, within the limits of your Deposit Protection. So your money is still protected but the Developer gets access to it to help pay construction costs.

The Purchase Agreement

*Make no mistake,
this is a contract!*

As with any residential home purchase, the Purchase Agreement for a condominium home is a contract that outlines the purchase price, the manner of payments, terms, conditions and a tentative possession date.

The Purchase Agreement covers a number of obligations for both parties in the transaction.

The Developer is obliged to build your Unit and the Common Property at an agreed price, within an agreed time period and according to the plans, specifications and other disclosure documents provided to you. The Developer is also obliged to transfer Title to you at Closing.

As the Purchaser, you're obliged to make all payments due at Closing so that Title transfer can take place.

The Purchase Agreement also discloses remedies available if either party doesn't meet its respective obligations.

The Purchase Agreement is a binding legal contract. If you have concerns, you may wish to seek the advice of your own lawyer.

Do not rely on any verbal assurances or promises made. All terms must be in writing and form part of the Purchase Agreement. If there is a change later, then the Purchase Agreement can be changed by an amending agreement that must be signed by both Purchaser and Developer.



Rescission

Your Right to Cancel the Purchase Agreement.

There are two circumstances which impact on your right to terminate the Purchase Agreement, if you wish to do so. This right to terminate is called the Right of Rescission.

In the first circumstance, the Developer provides the contract and all of the disclosure documents required by law at least 10 days prior to the signing of the Purchase Agreement.

When you receive all the disclosure documents — and sign the receipt acknowledging that you have received them — you then have 10 days to review them. If you are satisfied, you can enter into the contract, which will be binding immediately.

The Developer will ask you to sign a receipt for the disclosure documents. This acknowledges that you have received all the documents, as of that date.





In Alberta, the law provides that you receive all the required disclosure documents at least 10 days before the Purchase Agreement is signed. If you don't cancel the purchase in writing within 10 days, then the contract will be effective and there is no statutory right to rescind the agreement once it's signed.

The second circumstance occurs if you don't receive all the required disclosure documents at least 10 days before the date that the Purchase Agreement is to go into effect. In that event, you can cancel the agreement by a notice in writing given within 10 days of receipt of the last of the disclosure documents.

The right to rescind is a statutory right and cannot be taken away by the terms of the contract or otherwise.

If you sign the Purchase Agreement but don't use your Right of Rescission within the ten day period, then the Purchase Agreement is not subject to cancellation under your right to rescind. The contract may still be subject to other conditions such as financing but the right to rescind will be gone.

Purchase Advice & Directions

*You have 10 days to decide
if you want to go ahead...*

You've signed a Purchase Agreement. You've received the complete package of disclosure documents from your Developer. Your Developer's representative asks you to sign a receipt for the disclosure package. Where do you go from here?

You now have 10 days to review the documents before the Purchase Agreement can go into effect.

In that time, it's important to carefully consider everything that's being disclosed before you decide whether to confirm or cancel the Purchase Agreement.

If you are not familiar with the various disclosure documents, consider retaining an independent lawyer to review them and to answer any questions you may have about them.

There also may be conditions that have to be removed in order for the Purchase Agreement to proceed. For example, the sale may be subject to mortgage approval. So it's a good idea to double-check and confirm how much time you have to remove any conditions.

Once the Rescission period has ended, whereby you have the option to terminate the agreement, and once any conditions have been removed, your Purchase Agreement takes effect.

*Congratulations!
You're on your way home.*

