

## Assignment of Agreements of Purchase and Sale

An Assignment of an agreement of purchase and sale is not the transfer or assignment of real property but rather an assignment or transfer of rights arising out of the agreement or contract relating to real property.

Assignments have become increasingly more common in the condominium sector. However, in all builder contracts there is a restriction on the right of the initial buyer to assign the agreement of purchase or sale or contract without the builder's consent. Builders will charge the buyer a fee for the consent to assign the contract to a new or subsequent buyer.

When the agreement is assigned to the second buyer, this buyer will be subject to both the benefits and obligations arising under the agreement unless otherwise provided in the assignment agreement between the initial buyer (the assignor) and the second/subsequent buyer (the assignee). As an example, unless otherwise agreed to between the assignor and the assignee in their assignment agreement, the assignee will receive the benefit of the interest the builder credits the buyer on the deposits paid to the builder as well as incur the expense of paying builder's closing costs such as the Tarion Warranty premium, utility meters and connections and development charges and educational levies.

We have provided the following checklist of issues to be considered when preparing an assignment of agreement of purchase and sale:

1. Obtain a copy of the builder's agreement of purchase and sale;
2. What form of assignment agreement to be used;
3. What is the original purchase price;
4. What is the new purchase price
5. The amount of builder deposits already paid by the assignor; are these deposits included in new purchase price or in addition to the purchase price as a reimbursement to the assignor (the builder will provide a credit for these deposits to the assignee on the final statement of adjustments)
6. What is the deposit amount on the assignment transaction and who will hold the deposit – the agent/broker, the assignor's lawyer etc.
7. status of construction and closing dates – interim occupancy and final closing dates;
8. the anticipated possession by the assignee – pre/post interim closing date
9. the amount of the occupancy payment
10. postdated cheques for occupancy payments and other adjustments
11. the cost to obtain builder's consent and status of obtaining such consent
12. who pays for the consent
13. builder's form of assumption/assignment agreement
14. who is paying the builder's closing costs
15. who is receiving credit for interest on the assignor's deposits already paid to the builder
16. How is payment of purchase price made – amount down, any amount paid prior to possession, amount paid upon the builder's consent being obtained; amount paid on final closing etc.
17. Other Issues – Non-residency/withholding taxes - Assignor; GST/HST; Tarion registration by Assignor; Capital Gains Tax – Assignor

For a copy of our pro forma assignment agreement and our annotated assignment agreement, please email us at [service@shapirocho.com](mailto:service@shapirocho.com) or go to our website at [www.shapirocho.com](http://www.shapirocho.com) where these forms of agreements will be posted in the New Year.

This information was posted courtesy of Garry Shapiro