


ASSIGNMENT SALE FAQ'S



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*Not intended to solicit those already under contract with another REALTOR



CONDOMINIUM ASSIGNMENTS FAQ

GENERAL QUESTIONS

1. What is an assignment?

An assignment is essentially a sale of a contract or right to acquire property. An assignment is a transaction whereby the original purchaser (the “Assignor”) of a property sells, and thereby transfers, their interest and obligations under the original contract to a new purchaser (the “Assignee”). The Assignee will generally assume all of the Assignor’s duties and obligations under the original Agreement of Purchase and Sale. These rights and obligations are stated in the original Agreement of Purchase and Sale and include terms such as interest payments, taxes and maintenance fees during interim occupancy. Upon completion, the Assignee is granted the title to the real property and will incur all final closing costs.

- a. Assignor: An Assignor is the original buyer of the unit from the Builder/Developer.
- b. Assignee: An Assignee is the buyer of the Agreement of Purchase and Sale from the Assignor.

2. Can an Agreement of Purchase and Sale, involving any type of real estate transaction, be assigned?

Under normal circumstances, any Agreement of Purchase and Sale can be assigned providing that agreement doesn’t prohibit assignments.

3. Is there a course that a REALTOR® can take to learn about assignments?

Yes. The Toronto Real Estate Board will begin to hold seminars on assignments. Contact the Education Department at TREB or click the Education banner link on the TorontoMLS home page, then select Education Seminars.

4. Is an assignment legal?

An assignment is legally permitted unless otherwise expressly prohibited in writing in the original Agreement of Purchase and Sale. An assignment fee may be charged by the developer and is normally a cost borne by the Assignor (the original purchaser).

5. Is it necessary to get permission from the Seller/Developer to assign the Agreement of Purchase and Sale?

You need to consult the Agreement of Purchase and Sale. Generally, Developers will not permit assignments without the Developer’s consent, therefore every situation requires consultation with the Developer and your lawyer. Please note, there have been incidents where an unauthorized assignment has resulted in termination of the original agreement and the withholding of the deposit.

6. Is there a form for assignments?

Yes, there are two: OREA Form 150 Assignment of Agreement of Purchase and Sale Condominium and OREA Form 145 Assignment of Agreement of Purchase and Sale (including applicable schedules.) In most cases, the Developer will have its own form as well.

7. Will the Assignor’s or Assignee’s lawyer’s services be adequate?

It is essential that the Assignor and Assignee each retain a lawyer with expertise in this area of real estate.

8. Can the Assignor’s REALTOR® market on the MLS?

It all depends on whether the developer permits advertising of the assignment. Refer to the original Agreement of Purchase and Sale to see if there are any prohibitions against listing the assignment or consult the Developer (Most Agreements of Purchase and Sale contain such a prohibition).

GENERAL QUESTIONS

9. What if the construction, occupancy, closing, or unit transfer date is delayed?

In the event of a delay, the assignment is still valid: the Assignee has agreed to take on their agreement and all responsibilities involved in it.

10. What if the Assignee doesn't close?

This is no different than in any sale. The Assignor in most cases is not released from the obligations under the Agreement of Purchase and Sale. Accordingly, both the Assignor and Assignee will be liable.

COSTS AND FINANCING QUESTIONS

11. What is the cost of assigning an Agreement of Purchase and Sale?

If the Developer consents to an assignment, there will generally be an administration fee and legal fees. These fees will vary. Consult the original Agreement of Purchase and Sale and the Developer.

12. How does the REALTOR® deal with financing in Forms 145 and 150?

A standard financing clause may be used.

13. When does the Assignor get their money?

In an assignment, depending on the closing date and the terms of the assignment agreement that Assignor and Assignee agreed on, the Assignor is usually paid when:

- a. the Assignee gets possession or occupancy or,
- b. when the original seller approves the assignment, if applicable or,
- c. when the Assignee obtains legal title.

14. Who gets the interest, if any, payable by the Builder on the original deposits?

Unless otherwise specified, the interest is likely to be paid to the Assignor.

15. What closing fees are payable?

See the Condominium Assignment Basic Guidelines, found on the last page of this document.

16. Who pays the interim occupancy costs?

Once assignment is finalized, the Assignee will typically pay occupancy costs through to the final closing and will pay the final closing costs unless specifically negotiated otherwise.

17. Does the Assignor have to claim Capital Gains for tax purposes?

Clause 10 of Form 150 addresses capital gains for non-residents.

Whether a resident or non-resident, the Assignor should discuss this question with a tax advisor.

CONDOMINIUM ASSIGNMENT BASIC GUIDELINES

ASSIGNOR

- 1. Is the original Agreement of Purchase and Sale assignable?**
- 2. Are there any restrictions on marketing the Assignment?**
 - MLS®, Exclusive, or Privately
- 3. The Builder may require the Assignor and Assignee to sign the Builder's consent form or the Builder's Assignment Agreement.**
 - The Assignee may be required to prove that they can obtain a mortgage.
- 4. The Assignor usually agrees to obtain Builder consent and pay consent fee (may be the Assignee).**
- 5. The Assignee may be required to pay the Assignor an amount equal to the deposits (and possibly the interest on the deposits) already paid to the Builder at time of occupancy.**
- 6. Provide the Assignee with original Agreement of Purchase and Sale and all related documents.**
- 7. The Assignor is not usually released from their obligation to the Builder if the Assignee does not complete the purchase.**
- 8. The Assignor is responsible for the following costs:**
 - Legal fees and disbursements
 - Builder consent fees and/or assignment fee
 - Real estate commission.
- 9. Change of dates or other changes by the developer should be sent to the Assignee by the Assignor.**

ASSIGNEE

- 1. Enter into an Assignment Agreement.**
- 2. Obtain original Agreement of Purchase and Sale and related documents. Review obligations carefully. Have a lawyer review.**
- 3. The Assignee may pay the following on occupancy:**
 - a. Final deposit
 - b. Occupancy fees:
 - i. Estimated property taxes
 - ii. Estimated common expenses
 - iii. Interest on purchase price.The Assignee usually delivers 6–12 postdated cheques to the Builder.
- 4. The Assignee may pay the following to the Builder on final closing:**
 - a. Estimated property taxes for up to two years
 - b. Hydro/water/gas meter installation and connection charges (approx. \$500–\$700 per meter)
 - c. Development charges/levies (potentially thousands of dollars)
 - d. Tarion New Home Warranty (ranging from \$600–\$1,900. See Tarion website for fee structure)
 - e. Discharge of Builder's mortgages (approx. \$200–\$300 per mortgage)

ASSIGNEE

- f. Builder's lawyer's Law Society charge (approx. \$70)
- g. Compensation for the Builder—cost of handling the Assignor's deposit cheques (approx. \$250)
- h. Two months of occupancy fees for reserve fund
- i. Other amounts set out in the Agreement of Purchase and Sale. These costs are typically not financed with a mortgage.

5. The Assignee is responsible for the following additional fees:

- a) Legal fees and disbursements
- b) Land transfer tax (provincial and municipal.)
- c) GST/HST rebate
- d) Municipal levies.

Consult with lawyer/accountant regarding other tax implications.

6. Assignee takes occupancy of unit and all applicable financial obligations.

7. After the condominium is registered, on final closing the Builder transfers title to Assignee.

The Assignee pays the balance to the Builder. The Assignee may also pay any amount still owed to the Assignor depending on the terms of the Assignment.

8. Assignee should include a clause that makes the offer conditional on the Assignor providing the Assignee with the original Agreement of Purchase and Sale, all applicable amendments, and all applicable documents.

Assignor: An Assignor is the original Buyer of the unit from the Builder/Developer.

Assignee: An Assignee is the Buyer of the Agreement of Purchase and Sale from the Assignor.

Note: All figures are approximate and subject to change (2012)



Your condo could be worth more than you think
Call me today for your complimentary valuation

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