

Addendum to Agreements of Purchase and Sale

This Bulletin replaces Bulletin 14 (Revised) issued on September 25, 2000. It applies to all Agreements of Purchase and Sale for new homes (except condominiums) dated on or after November 1, 2000.

BACKGROUND

All Vendors are required to add the Addendum to all Agreements of Purchase and Sale for new homes (except condominiums) enrolled under the Ontario New Home Warranty Program (ONHWP).

The Addendum provides Purchasers with information about the Agreement (s. 1), planning status of the property (s. 2), the Builder (s. 3-4), and the home's enrolment number, if available (s. 3). The Addendum also gives Purchasers the right to terminate the Agreement if construction is delayed for 120 days beyond the agreed upon closing date (s. 5). The Purchaser may exercise this optional termination right in the 10-day window immediately following the first 120 days of delay. If the Purchaser does not terminate the Agreement in this window, then the closing date is automatically extended for a further 120-day period (for a total extension of 240 days). If construction is still not complete after this further 120-day period (i.e., a total of 240 days' delay), then the Agreement is at an end unless the parties agree otherwise. Upon such termination, the Purchaser is then entitled to a refund of all money paid on account of the purchase, plus interest at the prescribed rate for the second 120 days of delay.

HERE'S WHAT HAS CHANGED

1. Events may be excluded from the 120-day calculation: For all Agreements entered into on or after November 1, 2000, the Vendor may exclude extensions of the closing date reasonably required as a result of a strike, fire, flood, act of God or civil insurrection (an '**Event**') when calculating either of the 120-day extensions. Before this amendment to the Addendum the "clock" continued to "tick" regardless of the source of the delay in construction.

2. Notice by a Vendor: In order to exclude reasonable delays caused by an Event from the

calculation of the first or second 120 days, a Vendor must send the Purchaser *both* of the following notices:

- A. First written Notice: no later than 20 days from the *beginning* of the Event, outlining the nature of the Event and providing an estimate, if available, of the length of the delay; *AND*
- B. Second written Notice: as soon as reasonably possible but no later than 20 days after the *conclusion* of the Event, describing the Event, providing the exact length of the delay and the new closing date. When necessary, this Second Notice may be provided to the Purchaser before the conclusion of the Event, e.g., when Day 120 or Day 240 is approaching prior to the conclusion of the Event, and the Vendor wishes to "stop the clock".

3. Notice by a Purchaser: If the Vendor has not provided the two required notices to the Purchaser, the Purchaser may provide written notice to the Vendor and to ONHWP, requesting a formal extension of the closing date as a result of the Event. This notice must be sent no later than 40 days after the conclusion of the Event. ONHWP will then determine the reasonable length of extension, and will notify the Purchaser and the Vendor accordingly.

4. No Statutory Declaration: A statutory declaration by Vendors is no longer required.

5. New Addendum: The new Addendum (which is identical to the one that was appended to Bulletin 14 (Revised) that was issued on September 25, 2000) is appended to this Bulletin for use on all applicable Agreements entered into **on or after November 1, 2000 (except condominiums)**.

PLEASE NOTE that consultations are underway to further revise the Addendum in the coming months. Therefore, you are advised to make a limited amount of copies of the new Addendum.

REASONS FOR THE CHANGE

This change represents a balanced approach, aimed at providing increased protection to Vendors, Purchasers and ONHWP at different times in the economic cycle of the construction industry:

- *Vendors are protected in a declining market:* Strikes and other Events can seriously impede the Vendor's efforts to close the purchase of a new home on time. Such Events may even prevent the Vendor from completing the home within the permitted maximum 240-day extension of the original closing date. This change to the Addendum will reduce the risk of a Vendor losing a closing due to an Event outside of the Vendor's control. This is particularly the case in a declining market, when Purchasers may be more likely to "walk away" from a closing during the 10-day "walk away" period following the first 120 days' delay.
- *Purchasers are protected in an escalating market:* This change to the Addendum also benefits Purchasers, especially in times of an escalating market. The Purchaser may now trigger the Event exclusion, if the Vendor elects not to do so. The notice provisions granted to Purchasers will prevent Vendors from relying on the delay caused by an Event as the reason to terminate an Agreement, in circumstances when it is in the Vendor's interest to terminate rather than extend the closing.
- *ONHWP Guarantee Fund risk is reduced:* The risk of Builders losing multiple closings and facing the potential inability to refund Purchasers' deposit monies on cancelled Agreements is now reduced. If Builders are faced with significant delays in construction due to strikes or other Events, they can now "stop the clock" to prevent contracts being terminated during the 10-day window. This reduces the risk that ONHWP's Guarantee Fund would be called upon to refund Purchasers walking away from Agreements with Builders who have faced delays in construction due to Events, and who have become insolvent (and therefore unable to refund the Purchaser's deposit upon termination of the Agreement).

THE DETAILS

1. Three new clauses have been added to Section 5 of the Addendum:

- 5(vi) – **Events may be excluded from the 120-day calculation:** The Vendor may exclude days reasonably lost as a result of an Event when calculating the first and the second 120-day periods referred to in Sections 5(i) and 5(iii) of the Addendum, if the Vendor provides the Purchaser with the two required notices listed in s. 5(vii). This change to the Addendum affects the calculation of the first or the second 120-day periods, but does not permit the Vendor to interrupt the Purchaser's 10-day "walk-away window" (normally Days 121-130) once it has started to run. This exclusion applies for delays reasonably resulting from each Event that occurs.

Note: The 10-day window when Purchasers may terminate the Agreement (normally at days 121-130 after the original closing date) continues to apply. If the Purchaser receives from the Vendor both required notices (including the Second Notice providing a new closing date) BEFORE the first 120-day mark, then the "clock stops" and the 10-day window is deferred or pushed back by the length of the delay caused by the Event. Once the window opens, it stays open until the full 10 days have elapsed.

- 5(vii) – **Notice by a Vendor:** A Vendor who wishes to exclude days reasonably lost because of an Event must satisfy the following **two** notice requirements for each Event:
 - a. Vendor's First Notice as soon as reasonably possible but no later than 20 days after an Event has begun must:**
 - Be in writing.
 - Go to the Purchaser.
 - Include a brief description of the Event *e.g.*, large fire at the construction site, and an estimate (if available) of the possible length of extension to the closing date.
 - b. Vendor's Second Notice as soon as reasonably possible but no later than 20 days after the end of an Event must:**
 - Be in writing.
 - Go to the Purchaser.

- Include a brief description of the Event, and provide the number of days extension to the closing date caused by the Event and the new closing date.

Note: The “clock stops” when the Purchaser receives the Second Notice. For example, if the Purchaser receives the Second Notice from the Vendor on day 112 after the original closing date, stating that the closing will be delayed by 15 days due to an Event, then the 10-day window is moved by 15 days, to days 136-145 after the original closing date. However, if the Purchaser receives the Second Notice of a 15-day delay on or after day 120, then the 10-day window will remain on days 121-130. The Second Notice will extend the end of the second 120 days (i.e., day 240) by 15 days, to day 255, if the Purchaser chooses not to exercise the walk-away right at days 121-130.

If an Event is ongoing and Day 120 or 240 is approaching: However, if an Event, such as a strike, begins during the first 120 days and is still ongoing as Day 120 approaches, and if the Vendor wants to “stop the clock” before Day 120, then the Vendor must ensure that the Second Notice to the Purchaser arrives before the end of Day 119. In this situation, the Second Notice will provide the best reasonable estimate of the end of the Event, and set a new, FIRM closing date based upon that estimate. If the Second Notice is received before the end of Day 119, it “stops the clock” before the 10-day window, which would have otherwise commenced at day 120.

Similarly, if an Event is still ongoing and Day 240 is approaching, and if the Vendor does not want the Agreement to end at Day 240, the Vendor may send the Second Notice to the Purchaser, estimating the number of days’ extension reasonably required and providing a FIRM closing date based upon this estimate. The Second Notice must be received by the Purchaser by the end of Day 239, in order to “stop the clock” for the second period of 120 days. **ONHWP will provide reasonable leeway to Vendors in their estimation of the extensions required in both circumstances, i.e., Events that have not ended when Day 120 or Day 240 is approaching.**

- 5(viii) – **Notice by a Purchaser:** The Purchaser can request to exclude days lost because of an Event if the Vendor has failed to serve the required notices according to s. 5(vii).

Purchaser’s notice no later than 40 days after the end of an Event must:

- Be in writing.
- Be sent to ONHWP and to the Vendor.
- Briefly describe the Event, and request a formal extension of the closing date. ONHWP will then determine a reasonable extension and notify the Purchaser and the Vendor in writing.

Note: If an Event is still ongoing, Day 120 or 240 is approaching, the Vendor has not delivered the required notices to the Purchaser, and the Purchaser does not wish to terminate the Agreement, then the Purchaser may send the required notice to ONHWP and to the Vendor before the conclusion of the Event. ONHWP will act reasonably in estimating the required extension.

2. These new Event notice provisions in the Addendum are **in addition to** the Vendor’s notices required under the delayed closing and occupancy warranty provisions in the Regulations, (i.e., the 35-day and 65-day notices). Also, the Purchaser’s Event notice is solely for purposes of exclusion of delays caused by an Event: it is not a Purchaser’s extension of the closing/occupancy date as it relates to delayed closing/occupancy compensation. For details of the notices required under the delayed closing/occupancy warranty please refer to Builder Bulletin 20 (Freeholds) and Builder Bulletin 25 (Condominiums).
3. A new section 6 has been created, which recommends to Purchasers that they consult their lawyer and ONHWP for further information on the Addendum and other warranties available under the *Ontario New Home Warranties Plan Act*. A toll-free telephone number is provided for Purchasers’ use. Vendors are requested to contact their regional offices for further information.

FOR MORE INFORMATION

If you have any questions about the Addendum to Agreements of Purchase and Sale please contact the regional ONHWP office in your area. A list of offices is included at the end of this Bulletin.

Offices of the Ontario New Home Warranty Program

CORPORATE OFFICE

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