

MARK WEISLEDER

Real Estate Lawyer, Author, Speaker

Lessons from a condo bankruptcy

The bankruptcy of a proposed condo development and the arrest of a prominent real estate lawyer last month left many buyers potentially out of deposits totalling millions of dollars. It shouldn't have happened.

Here's why:

When you buy a new home or residential condominium from a developer in Ontario, part of your deposit is protected by the Tarion New Home Warranty Program. This covers up to \$20,000 for a new residential condominium deposit and \$40,000 in deposits for a new house. However, deposits over and above these amounts are not protected. Similarly, no deposits for a proposed commercial or hotel condominium development are protected by Tarion. In most cases, all deposits are paid to the developer's lawyer, to be held in trust.

Under the regulations governing the Condominium Act, a lawyer is not supposed to release the moneys from trust unless and until they have been given proof by way of a security bond from the developer that the money is protected. In virtually all cases, the money is released when the developer is ready to begin construction on the project and would like to access the deposits for this purpose. As long as the security bond is provided, the law firm will release the funds from trust.

In the Centrum condominium bankruptcy in North York, the Bratty's law firm was holding millions of dollars in trust for the proposed residential condominium that was never built. The money was never released to the developer Yo Sup (Joseph) Lee and the buyers who purchased these residential units will get their deposits back, in full, even though the development is bankrupt and it appears that Lee has disappeared.

However, Lee retained another lawyer, Meerei Cho, to handle the commercial/hotel condominium project and although over 14 million dollars in total was placed into her trust account from buyers, it has since disappeared, even though construction never started and it does not appear that any security bond was posted. In another twist, 1.9 million of the 14 million dollars in deposits was originally placed into Bratty's trust account but developer Lee then instructed Bratty's to pay this money to Cho, which they did, and this money is part of what is now missing.

If Cho made an error in releasing the money, then part of this loss may be covered under her errors and omissions insurance policy, but this may only provide 1 million dollars in coverage for the victims. The law society has a discretionary fraud victim fund of \$150,000 but this will also not be nearly enough to compensate all of the victims.

I imagine that some buyers may sue the Bratty's law firm for giving the money to Cho but in my opinion, as long as Bratty's obtained proof from Cho that the money was going to be held by her in trust according to the rules, they should succeed in any claim against them.

The good news is that over the past 20 years, in thousands of new condominium buildings, this has not occurred before, showing that in virtually all cases, lawyers follow the rules and buyers are protected.

The main lesson when buying a new condominium is still the same; check out the reputation of the builder. Reputable builders follow the rules, finish buildings on time and deliver what they promise. Still, whenever you are paying more than the Tarion protected deposits, you should now insist that the developer provide proof that they have sufficient security to protect any deposit over \$20,000 if it is a new residential condominium and over \$40,000 for a new residential home. It would also be a good idea for the government to just change the rules and make it a law that all lawyers holding trust moneys be bonded themselves, so it can't happen again.

Mark Weisleder
62 Hillmount Ave. Toronto, Ontario, M6B 1X4
(416) 702-2499
170 Wilkinson Rd., Brampton, Ontario, L6T 4Z5
(905) 454-9606
mark@markweisleder.com
<http://www.markweisleder.com>