

## Certificate of Completion and Possession Puzzle

Many builders of new homes in the Province of Ontario run into problems dealing with the Ontario New Home Warranty Program (“ONHWP”) at the date of closing of a new home they have constructed.

Prior to the closing date ONHWP is supposed to have supplied to the builder a Certificate of Completion and Possession (CCP) so that it can be provided to the purchaser’s solicitor.

This document contains an enrollment number confirming the enrollment of the home in the Plan. It also confirms the builder’s registration number, which information is used by the purchaser’s lender to provide proof of registration which in turn ensures mortgage funds will be released on closing.

Without the production of the CCP, many lenders and their insurers will not permit the advancement of mortgage funds to prospective owners on closing. Therefore the sale cannot occur and both the owner and builder are put in an extremely difficult position.

It does not matter why the Program does not provide the CCP. Whether there is an outstanding dispute between the builder and the Program regarding terms and conditions of registration or whether ONHWP is asserting that the builder is not registered or owes money on outstanding invoices, the refusal to provide the CCP can prevent the deal from closing.

In other words, ONHWP may use the leverage of withholding the CCP to oblige the builder to comply with terms and conditions of registration that may be in dispute.

If the builder is unable to produce the CCP on closing it jeopardizes the closing and it can be argued that the builder is in breach of contract.

Because the builder cannot close, he does not obtain the closing funds, the homeowner is without a home and the Warranty Program may be exposed to deposit refund claims from the owner or a lawsuit from the builder or owner for jeopardizing the closing.

In this scenario there is no benefit to either the owner or the builder by ONHWP withholding the CCP.

The above situation is all too familiar to many builders and to numerous owners. In my view it is completely unnecessary. The CCP is not a document that is required as a matter of law to close the transaction and has nothing to do with whether or not the warranty attaches to the new home!

The warranties attach to the home when title passes, irrespective of whether or not the builder is registered with ONHWP.

Recently I had occasion to deal with a situation where ONHWP questioned whether the builder was or was not appropriately registered with the Plan. For that reason it would not forward CCPs to the builder and sales transactions could not close.

At first the financial institution and CMHC would not advance the funds. However, after several discussions with them and with solicitors for both the owner and the builder, the financial institution finally accepted that there was a warranty that attaches, that good and marketable title

would pass, whether or not the builder was registered and whether or not it received a CCP. The financial institution then released the mortgage funds and the deals closed.

Representatives of the Warranty Program confirmed that while they would not provide the CCP, and while they knew this jeopardized the closing, they conceded that the CCP was not required to either pass title or to provide the warranty coverage! Builders should be aware that a CCP is not a document that goes to title and is not required for the warranty to apply to their homes!

In my opinion ONHWP should never interfere with the closing of real estate transactions by withholding the CCP, thereby jeopardizing closings and leaving builders and owners out in the cold. There appears to be no good reason why ONHWP should not supply the CCP and permit the closing because there is coverage for every new home, whether or not enrolled and whether or not the builder is registered.

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