

Real Estate

Ethics code for new home sales 'can only be good news' for Ontario consumers, lawyer says

By **Ian Burns**

(June 29, 2021, 5:22 PM EDT) -- The Ontario government has introduced a new code of ethics for builders and vendors of new homes in the province, and legal experts are saying it will help consumers in the real estate market because it has the potential to cut down on misrepresentations in sales and weed out bad players in the real estate market.

The code, which comes into effect July 1, will require licensed builders and vendors to "operate in a professional manner with honesty, integrity, financial responsibility and without intimidation or coercion." Licensees are required to be "clear and truthful" in describing the features, benefits and prices connected with a new home and in explaining the products, services, programs and prices connected with those new homes, and any alleged violations of the code are subject to discipline by the Home Construction Regulatory Authority (HCRA).

"Since taking on overdue changes to this important sector, our number one goal has been to protect homeowners and support ethical practices and top-notch service by home builders and vendors," said provincial Government and Consumer Services Minister Ross Romano. "We all benefit when we raise the bar for quality new home construction in Ontario and make it easier for buyers and owners to get what they paid for."



Toronto real estate lawyer Bob Aaron

Toronto real estate lawyer Bob Aaron said the code "can only be good news" for consumers because there have been a number of instances where builders or sellers make promises to buyers which are included in a purchase and sale agreement.

"As a result of misrepresentations in sales offices buyers have unrealistic expectations and are disappointed when they actually get delivery of their unit, but when you look at the contract they didn't make any representations about things like size or view in the agreement," he said. "But now a consumer can file a complaint and if the registrar deems it to have some merit it can be sent to a discipline committee. I think that is wonderful when builders or salespeople are going to be subject to a discipline regulation like any other professional body."

Edward Lynde of Singleton Urquhart Reynolds Vogel LLP said the moves are an attempt to weed out the bad builders in the marketplace "because consumers don't know which are the good ones and which are the bad ones."



Edward Lynde of Singleton, Urquhart Reynolds Vogel LLP

"And as we move towards more protection for consumers there is also a degree of fairness for builders, because the ethical obligations are written down and they are aware of them," he said. "There is this real movement towards a consumer-based model because it used to be a little bit like the Wild West for new builds. This is a good step in the right direction, but as with anything we will have to see how it plays out."

Leor Margulies of Robins Appleby said the new rules give consumers a safety valve but thinks that their impact is being slightly overstated.

"When we have bad builders that give the industry a black eye people use industry pressure to get them to change their ways or make amends, and the good builders always go well beyond what they are required to do because it is a good idea for both customer service and longevity," he said. "But I agree that this should not be a self-regulated thing."

Lawyers will now have to highlight any discrepancies between what the customers are shown as part of the sales process and how those representations may differ from disclaimer clauses in the agreements, said Aaron.

"Builders are going to have to make a sea change in their marketing practices and be a lot more careful in what they tell consumers, because they are now subject to this regulation and it has teeth," he said. "Any straying from the straight and narrow can be referred to the discipline committee and those results will be public, so it's not going to help their reputation if any of their sales people are going to be hauled before a disciplinary committee or any complaint against them is upheld."

Enhancements are also being made to the dispute resolution process at Tarion, which administers the province's new home warranty program. It simplifies the claims process while also requiring Tarion to provide claimants with expert opinions when it issues a warranty assessment report, and also enables homeowners who dispute the regulator's assessment of their warranty claim to request that it participate in a mediation process.

Lynde said sometimes people don't understand the dispute resolution process at Tarion and "they are trying to simplify something that is more complex — but it is still fairly complex."

"There is only so much you can do sometimes to simplify things, but I do like the mediation feature because there is there is a perception of bias at Tarion towards builders — so a mediation process which can be more cost-effective and independent can sort of do away with that perception," he said. "I think this real attempt at facilitating dialogue between Tarion and the homeowner in order to resolve their issues and get things off the table before moving to more formalized litigation."

More information about the Home Construction Regulatory Authority can be found [here](#).

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