

**Effective:** August 19, 2022

**Updated:** July 5, 2023

## 11. Price Escalations and Contract Terminations

### Adjustments to the Purchase Price

#### Licensees Must Honour Their Agreements

The HCRA expects licensees to abide by the agreements of purchase and sale (“Agreements”) they enter into with purchasers in a way that is both legal and which conforms to the principles set out in the Code of Ethics (O.Reg. 245/21). On the issue of potential price adjustments or charges passed through to purchasers, these must be either set out in the original Agreement, in which case Section 8 and Schedule B to the mandatory Addendum (Adjustments to Purchase Price or Balance Due on Closing) requires full disclosure of such clauses. Or alternatively, if not set out in the original Agreement, this must be accomplished by amendment to the Agreement.

Additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing may be a set price stipulated in the Purchase Agreement (the “Agreement”) or may be determined based on the terms of the Agreement.

#### Clear Communication

The HCRA also expects that price adjustment clauses in the Agreement will be drafted in a way that is clear to purchasers and, where possible, based on an objective and easily calculable method. Furthermore, a cap or maximum limit on the adjustment price may be negotiated. Wording that is not sufficiently clear and specific may be determined to be an act of professional misconduct, including on the grounds of misrepresentation and false advertising, among others:

12. In carrying on business, a licensee shall not engage or be a party to misrepresentation.

17. (1) A licensee shall 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.

When collecting adjustments outlined in the Agreement from purchasers prior to closing, the HCRA also expects licensees to communicate with purchasers clearly and in a timely manner. Purchasers should be provided, at minimum, a summary of how the adjustments were calculated and reasonable time to review the adjustments.

In addition, for third party charges, such as municipal charges, the following information should be provided:

- The basis for the charge
- How the amount was arrived at



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- When the licensee was informed of the charge from the third party
- Confirmation that the licensee is not imposing a mark-up on the charge

## What Happens if a Licensee Does Not Honour Its Agreement

If a licensee does not abide by the Agreement it entered into with a purchaser or drafts the Agreement in a way that is not clear or is potentially misleading, the HCRA may consider whether the licensee engaged in professional misconduct and/or whether the licensee has the necessary competencies to possess a licence.

## Seeking Consent from Purchasers if a Licensee Wants to Amend Agreement of Purchase and Sale

If the Addendum and Agreement do not include a specific additional charge, payment, or anticipated adjustment, or if such a clause is not clear or is potentially misleading, the HCRA expects licensees to honour the original purchase price and complete the Agreement unless the purchaser consents by amendment to the Agreement to price adjustments/additional charges.

Depending on the circumstances, the HCRA may consider a licensee's attempt to amend the Agreement to increase the purchase price as an indicator that a licensee has not demonstrated the necessary competencies to possess a licence including financial competency. In determining financial competency, the HCRA will consider such factors as:

- The amount of the increase
- The reason for the increase
- The stage of construction
- The number of purchasers for whom consent is being sought
- The proximity to the closing date including whether the purchaser is given reasonable opportunity to review and consider the request for price increase.

If a licensee is planning to ask a purchaser to consent to an increase in purchase price, the HCRA expects that licensees will provide purchasers with sufficient information and a reasonable time to respond to these requests, including:

- Advising purchasers of the amount of the increase and the reason for it, including a summary of how the increase was calculated and how the figure departs from the initial budgeting for the project.
- Advising purchasers of all their options, including the option to continue with the original signed Agreement.
- Recommending that purchasers obtain legal advice with a lawyer who is familiar with real estate transactions.

In addition to being a possible indicator that a licensee may not be able to demonstrate necessary competencies, the HCRA may consider it an act of professional misconduct if a licensee threatens to improperly terminate the Agreement or other intimidation if a purchaser does not agree to a request to increase the price of the new home or other charges for the new home.

The HCRA may consider it an act of professional misconduct if a licensee does not return the purchaser's deposit (with applicable interest); the licensee insists upon a release of claims before it will return deposits, or if a licensee does not provide a purchaser with sufficient information or a reasonable time to respond to this kind of request.



## Early Termination Conditions

When a licensee attempts to terminate an Agreement, the HCRA expects the licensee to communicate with purchasers in a way that is clear. Among other things, this communication should include:

- The provision in the Addendum the licensee is relying upon to do so
- How the decision to cancel was reached.
- A clear explanation summarizing the reasons for the cancellation, including an explanation of any good-faith efforts the licensee has made to avoid termination of the agreement.
- If the *Condominium Act* applies, a copy of any insurance policies that cover deposit funds that have been released from trust pursuant to that Act. **\*updated July 5, 2023**

Licensees may not cancel an Agreement on the basis of a condition (right of termination) that is not outlined in the Addendum to the Agreement and permitted in Schedule A of the Addendum (Types of Permitted Early Termination Conditions). Some conditions, such as unit sales or suitable financing, must be exercised by a specific date. The HCRA may consider that licensees who purport to cancel for reasons not outlined in the Addendum are in breach of the Code of Ethics.

Canceling an Agreement due to a purchaser not agreeing to a price increase is not a permitted Early Termination Condition.

### Projects

Depending on the circumstances, the HCRA may consider a licensee's attempt to terminate/cancel a project (terminate all or a significant number of the Agreements entered into by the licensee) as an indicator that a licensee has not demonstrated the necessary competencies including financial competency. In determining financial competency, the HCRA will consider, among other things, such factors as:

- The stage of construction
- The number of purchasers who entered into Agreements
- The proximity to the closing date
- The licensee's plans for the use of the land/building
- The licensee's attempts to secure financing
- The steps the licensee took to prepare a realistic, defensible construction budget before offering units for sale
- How promptly the licensee returned deposits

If, after purporting to cancel a project, the licensee attempts to re-launch the project and enter into new agreements of purchase and sale for the same property the HCRA may review the re-launch and look at such factors such as:

- The licensee's history of project cancellation
- Time elapsed since cancelling the project
- Amount of the increase
- Reasons for cancelling along with supporting documentation
- Communications when cancelling and re-launching the project



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The HCRA may consider it an act of professional misconduct if a licensee cancelled the initial project in an illegitimate or unethical manner.

## Timely Return of Deposits

If a licensee terminates an Agreement, the HCRA expects licensees to return deposits (including any applicable interest) in a timely manner and in accordance with the law. The HCRA also expects licensees to inform purchasers of the date the licensee expects to return the deposit.

If a licensee asks a purchaser to sign a release, the HCRA expects that licensees will provide purchasers with sufficient information and a reasonable time to respond to this request, including:

- Advising purchasers that signing the release cannot be a condition of returning the purchaser's deposit.
- Advising purchasers of all their options, including the option not to sign the release.
- Recommending that purchasers obtain legal advice with a lawyer who is familiar with real estate transactions.

The HCRA may consider it an act of professional misconduct if a licensee does not return the purchaser's deposit or if a licensee does not provide a purchaser with sufficient information or a reasonable time to respond to this kind of request.