



# Interim versus final closing for a new build condominium



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When a buyer signs an Agreement of Purchase and Sale for a new build condominium unit, the first question to the sales representative should be whether the condominium project has been declared with the Land Registry Office. A condominium project has been declared when the Declaration is registered with the Land Registry Office. The Declaration is the founding document of the Corporation, similar to a Constitution for the Corpora-

tion. Until the condominium project has been declared, there are no recognized units to own. In the event that the units are ready to live in, but the condominium project is not declared, no unit ownership can be transferred to the buyers. Instead of having units sit empty until the condominium project is declared, the builder will allow the buyer to move into the unit under interim occupancy closing. As well as other units, building amenities and common elements

may still be under construction during the occupancy period. Once the condominium project is declared, the individual units will be recognized with the Land Registry Office and title can be transferred to the buyer, known as final closing.

In between the interim occupancy closing and the final closing, the buyer will pay occupancy fees to the builder. These fees will not be allocated to payments due at the final closing.

These occupancy fees are a monthly amount calculated from:

1. The estimated common expenses for the unit per month.
2. The estimated property taxes per month for the unit.
3. The interest on the out-

standing balance of the purchase price. (For example, if the purchase price is \$350,000.00 and the buyer has paid deposits of \$50,000.00, the outstanding balance is \$300,000.00. The interest is the Bank of Canada 1-year conventional mortgage rate for the month that the buyer takes possession. If the interest rate is 3%, the interest payable is \$750.00 per month.)

Therefore, the monthly occupancy fee in this example would be \$200.00 (estimated common expenses) plus \$300.00 (estimated monthly property taxes) plus \$750.00 (interest on outstanding balance), for a total of \$1250.00 per month. Any other costs that are the responsibility of the occupant, such as utilities and

home insurance, would be additional to this amount.

If the buyer wants to avoid paying the interest on the outstanding balance of the purchase price, the buyer will have to notify the builder within the 10-day rescission period after signing the agreement that the buyer will provide the remainder of the purchase price in cash at the interim closing date, and will not be needing a mortgage at the final closing date. If the buyer provides the remainder of the purchase price, the buyer will only have to pay the estimated property taxes and the estimated common expenses per month in occupancy fees.

In the Agreement of Purchase and Sale, the builder will stipulate that once the unit is ready to be occu-

pied, the buyer must complete interim closing and begin paying occupancy fees. The buyer is not able to defer until the final closing in order to avoid paying occupancy fees altogether.

Once the Condominium has been declared and registered with the Land Registry Office, the buyer can receive title to the unit they have purchased, through the final closing. This will require the payment of the balance of the purchase price, as well as any adjustments.

*co-authored with Robin Goski, associate lawyer.*

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## RENTAL GUIDE

# Fee for changing units within same apartment is allowed, providing it is correctly applied

**BY DICKIE & LYMAN LLP**  
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**Q: I have been living in a two-bedroom apartment for several years with my son. My son recently moved out and I asked my landlord if I could move to a one-bedroom apartment in the building to save some money. The landlord said that they are willing to let me move, and I would save about \$150 per month. But they said they would charge me a one-time transfer fee of \$600 to allow me to move. Are they allowed to**

**charge me a transfer fee?**

**A:** While there are good reasons for the landlord to want to charge that fee, whether it is legal depends on what the fee is called.

Although you will be moving within the same building, from a legal perspective you will be moving into a new unit. You need to terminate your current tenancy and enter into a new tenancy agreement for the new unit. Normally, a tenant needs to give their landlord 60 days' written notice to the end of their lease (or to the end of any month in a month-to-

month tenancy). A tenant may also reach an agreement with their landlord to terminate their tenancy on shorter notice. It is common enough for a tenant to pay a fee to the landlord in order to end their tenancy early, and that is legal.

Just as with tenants who move into a building, when tenants move between units within a building, landlords usually incur expenses. For example, your landlord will likely pay for minor repairs to remedy wear and tear in your current unit. When an existing tenant moves to a newly vacated unit in the same

building, a landlord pays for such repairs to two units as opposed to one. Also, if you move into the vacant unit, rather than someone new to the building, the landlord may well lose a month's rent waiting to rent your current unit.

As to the rent for the new unit, you and your landlord are able to negotiate a new rent. Legally, the rent you pay now for your current unit is not relevant, nor is the amount that the previous tenant paid for the lower unit. The setting of a new rent on unit turnover between tenants is called

vacancy decontrol. Many other provinces, other countries and U.S. states have no rent control at all. In that situation, landlords and tenants negotiate a new rent at every tenancy renewal. However, in Ontario, free-market rent negotiation only takes place when a tenant rents a new unit.

Since you will be moving to a new unit, the guideline is not relevant to you. For you to get the new one-bedroom apartment you and the landlord need to agree on the rent you will pay for it.

In negotiating a new rent, a landlord can charge a higher

rent in the first month of a new tenancy. If the \$600 is called part of the rent for the first month, then it is legal.

However, a section in the Residential Tenancies Act held over from the days before vacancy decontrol provides that a landlord may not charge a separate fee to a tenant as a condition for granting a tenancy. Therefore, a fee described as a fee or charge for granting a new tenancy would not be legal.

What would be legal would be a premium for the first month or an agreement to pay the \$600 to end your current tenancy early.