



## What the Construction Shut Down Means for Residential Buyers in Toronto

by Christina Varga April 6, 2020

With Ontario announcing the [shut down of the industrial construction industry in the province](#) on Friday, and alongside with it, many residential construction projects as well, pre-construction buyers suddenly have a few questions on their mind.

Until April 2, all construction was considered an essential business and allowed to stay open after the province ordered the [closure of all non-essential businesses](#) on March 24.

As of the government's latest announcement, new residential starts will be stopped, but residential projects "near completion" can continue.

These are the types of residential construction projects on the essential businesses list, according to [ConstructConnect](#):

- When a footing permit has been granted for single family, semi-detached and townhomes
- When an above-grade structural permit has been granted for condominiums, mixed use and other buildings
- When the project involves renovations to residential properties and construction work that was started before April 4

**Construction groups are generally behind the move. The Residential Construction Council of Ontario (RESCON), for instance, said in an April 3 release that the move balanced the safety of workers while acknowledging the need to add housing in a tight market, as well as "contractual responsibilities industry has to homebuyers."**

**"There are many people who are waiting for their homes to be finished in the next few weeks. We already have a significant housing crisis in Ontario and most of these homeowners who have sold their homes are at risk of being left on the street without these measures," said Richard Lyall, RESCON's president, in the release.**

Construction unions had been calling for the shut-down of sites, citing worker safety.

### Buyers

Buyers who have already signed contracts may have to live with delays beyond what was laid out in their contracts, says [Azin Ghorbankhani](#), a lawyer with Seif real-estate law firm.

A delay in occupancy dates and final closings is allowed based on most builder agreements, she says, but this crisis may extend that.

“Almost every pre-construction condo is being sold with Tarion Warranty. The Tarion warranty has a clause in the agreement which states that builders may extend any closing dates due to unavoidable delay.” There is a maximum of \$7,500 credit given to purchasers if construction is delayed.

However, she says, “In this case, COVID-19 is declared a pandemic by (the World Health Organization) and therefore considered an unavoidable delay. Builders can extend the critical dates by the length of the unavoidable delay without needing the approval of the purchaser.” So, “if the builder notifies the purchaser in writing setting out the description of the delay and the estimate of the duration, and new critical dates for them,” purchasers may not be eligible for the credit.

But, she adds, if a builder fails to do this, then purchasers can ask for this compensation on the dates mentioned in their agreements.

### **Three scenarios**

For those who are either considering buying pre-construction units, or those who have already signed contracts, there are three scenarios to consider, says [Nima Khadem](#), broker with Royal LePage Signature, who partly specializes in pre-construction.

### **Projects That Have Sold Recently**

The majority of projects where the builder already has permits are going ahead, Khadem says. But buyers can expect longer delays than in normal times, for a variety of reasons, including that suppliers may have trouble getting materials to the builder.

Some builders may have cancellation clauses in the contract allowing them to cancel their projects without having to pay purchasers any penalties. Though purchasers would get their deposits back, they should have their contract reviewed by a lawyer who specializes in pre-construction contracts, Khadem says.

One consequence of the effects of COVID-19 on the economy is that people may have trouble making the payments on their deposits. “If people default on deposits, the builder may have trouble getting financing for the project.” October and November were very busy for pre-construction sales, he says, and those projects may be in greater danger because of the financing issue.

Although buyers have a legal obligation to pay according to their schedule, “Purchasers may ask their lawyers to request for an amendment to their payment periods, which is builders’ discretion to change,” says Ghorbankhani.

### **Projects Near Completion**

Those projects that sold about a year ago will already have all the buyers' deposits and the construction financing arranged, says Khadem. They may be delayed but are likely to go ahead, he adds.

There are several projects in Toronto that are near their occupancy date, says Khadem. But those that were originally slated for move-in in June or July may be delayed because suppliers and contractors are being delayed due to the COVID-19 situation.

### **New Projects**

People who are in the market and are considering projects that just started selling or are about to launch should make sure they have enough flexibility to ride out inevitable delays, Khadem says. But if they know they have to move in 2022-2023, they may not want to buy now, he adds, suggesting projects could easily be delayed a couple of years due to the COVID-19 situation.

They should also find out whether the builder got their permits before the hammer came down. They can ask the builder or find the project name or address online through the Toronto Committee of adjustment.

Prospective buyers should research the builder, he says, looking for things like previous projects that were unduly delayed or cancelled. For those with the flexibility to ride out long delays, this may be an investment opportunity to lock in to lower prices, unless there is a market crash, he says.

“Average condo sales were up 6.7% a year in Toronto over the last decade,” he says. Real estate is a long-term investment.