



Primegate

A PERSONAL PRACTICE OF TARAN AUJLA

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PRACTICE NOTE · PRE-CONSTRUCTION

# Premium pre-construction. What gets noticed early, *versus what gets discovered late.*

*The questions I work through on every premium pre-construction file.  
Clauses, deposits, and structural questions that decide whether the purchase  
closes well, or unravels at the eleventh hour.*

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Pre-construction at \$1 million and up looks straightforward on paper. A reputable builder. A floor plan you like. A neighbourhood that fits. A closing date 18 to 36 months out. You sign, you wait, you take possession.

But the work that decides whether your purchase closes well or unravels at the eleventh hour happens before your pen touches the agreement. It happens in the review of the things most buyers skim. The Tarion Addendum that runs over forty pages. The deposit structure buried in the schedule. The "specifications and finishes" disclaimer that quietly gives the builder authority to substitute. The interim occupancy clause that nobody reads until interim occupancy actually arrives.

This is what I read for.

Below: the questions I work through on every premium pre-construction file. Not in order of importance. In order of when each one matters.

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## 1. The builder. Specifically: their delivery history.

Marketing materials say one thing about a builder. Court records, Tarion's public Builder Directory, and the resale prices of their last three completed projects say another. The first source is not enough.

What I look at:

- How many of their last five projects closed on the original projected occupancy date, versus how many were extended?
- When projects were extended, by how long, and were the buyers compensated under the Tarion delayed closing rules?
- Are there ongoing complaints with the HCRA (Home Construction Regulatory Authority) that suggest a pattern, not a one-off?
- What do the resale prices of their three most recent completed projects look like, two years post-occupancy? A builder whose homes hold value tells you something different from a builder whose homes do not.

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A premium price tag is not a substitute for a delivery record. The builders I prefer are the ones whose track record is boring. Boring is the goal in pre-construction.

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## 2. The deposit. Specifically: where it sits, and what protects it.

**P**remium freehold pre-construction in Ontario typically asks for an installment schedule that totals 10 to 20 percent of purchase price by final closing, paid out across signing, the firming-up date after the cooling-off period, and construction milestones.

A few things to confirm before you write the first cheque:

- The deposit must go into a trust account at the builder's lawyer's firm. Not the builder's operating account. The agreement should say so explicitly. If it does not, ask why.
- Tarion administers a deposit guarantee that covers up to a fixed cap if the builder defaults. For premium homes where the deposit will exceed the cap by a meaningful margin, the exposed portion is exposed. Confirm the current cap. Confirm whether the builder offers additional deposit insurance on premium projects. Some do. Most do not.
- Confirm the deposit is being held in interest-bearing trust and that the interest belongs to you, not the builder. The standard OREA form covers this. Many builder-drafted agreements do not.

The deposit is the part of the deal you can lose entirely if the builder runs into financial trouble after firming up. It deserves more attention than buyers typically give it.

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## 3. The cooling-off period. Specifically: what to actually do with those ten days.

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Ontario law gives a buyer of a newly built home a ten-day statutory cooling-off period under the New Home Construction Licensing Act, beginning when the agreement is signed. The right to rescind is unconditional and does not require cause.

Most buyers treat the cooling-off period as a formality. It is not. It is the only ten days where you have the right to walk away from a deal at no cost, after seeing the agreement in full. Use them.

What I do during the cooling-off period:

- Read the Tarion Addendum end to end. The Addendum sets out the parties' statutory rights and duties under the warranty. It governs over conflicting agreement language. Knowing what the Addendum actually says is the only way to know what is actually protected.
- Pull the builder's current Tarion Builder Directory record and review for ongoing complaints, conciliations, and warranty performance.
- Have the agreement reviewed by independent counsel. The builder's lawyer represents the builder. The buyer needs their own.
- Confirm the deposit has been paid and is sitting in trust as agreed.

If something is wrong, the cooling-off period is the time to find it. After it expires, every position is materially weaker.

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## 4. Assignment rights. Specifically: what you give up if you sign without negotiating.

Most builder-drafted agreements give the builder a strong veto right on assignments and impose an assignment fee, typically a percentage of purchase price, payable to the builder. Some agreements prohibit assignments entirely.

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For HNW buyers whose plans may shift over an 18 to 36 month build, this matters. The points to look at:

- Whether the agreement permits assignment at all.
- The exact assignment fee, and whether it can be negotiated downward at signing.
- Whether the builder requires consent in their sole discretion, or whether consent must be reasonable.
- Any exclusion of assignment to family members or wholly-owned corporations, which can sometimes be carved out at signing if the request is made early enough.

Federal tax changes on pre-construction assignments have affected the math in recent years, and assignments that previously closed cleanly under older rules now carry HST implications that buyers and assignees need to understand before pricing an assignment. Tax counsel should run the math.

The time to negotiate assignment terms is at the offer stage, not when you suddenly need to assign. By the time you need to assign, you have no leverage.

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## 5. Interim occupancy. Specifically: the part of pre-construction nobody tells you about.

**F**or pre-construction condominium and some freehold townhouse projects, the buyer takes interim occupancy of the unit before the project is registered and final closing happens. During interim occupancy, the buyer pays an interim occupancy fee that typically includes interest on the unpaid balance of the purchase price, an estimate of property taxes, and an estimate of common element fees where applicable.

Interim occupancy can last weeks. It can also last over a year on troubled projects. Buyers who have not budgeted for interim occupancy fees on top of their existing carrying costs get squeezed.

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For premium pre-construction freehold detached homes, full final closing usually happens at occupancy and interim occupancy is not a feature. But on premium new condominiums and some freehold towns, the interim period is where the deal economics get rewritten in the builder's favour, slowly, on a monthly basis, while the buyer waits for registration.

Ask before signing: is there interim occupancy on this product? If yes, what is the projected interim occupancy fee, and what happens if registration is delayed?

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## 6. Specifications and finishes. Specifically: the "or equivalent" question.

**B**uilder agreements include a standard clause permitting the builder to substitute specified materials, fixtures, and finishes with items of "equal or greater quality" at the builder's discretion. The phrase has flexible meanings.

In premium pre-construction at the \$1M+ tier, the buyer is paying for the specifications. If the agreement permits unilateral substitution, the buyer has no recourse when the kitchen package they were sold becomes the kitchen package the builder's procurement team could source three months before closing.

What I look for:

- Whether high-value items (cabinetry brand, appliance package, flooring, countertop selection, primary bath fixtures) are listed by specific model or brand, with substitution requiring buyer consent.
- Whether the clause distinguishes between minor finish substitutions and major spec changes.
- Whether there is any obligation on the builder to notify the buyer of substitutions before they are installed.

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For most master-planned community homes, builders will not negotiate substitution rights universally. But for higher-tier premium projects, specific protections on signature items can sometimes be added if the request is made at signing.

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## 7. The colour selection deadline and the customization window.

**F**or most pre-construction freehold homes, the buyer has a defined window to make finish selections (cabinets, counters, flooring, paint, fixtures). Outside that window, the builder picks for you.

The window is usually shorter than buyers expect. It often falls during a period when the build is already in motion, and there are typically hard cut-offs after which changes incur charge-backs or are not possible at all.

Ask at signing:

- When is the colour selection appointment?
- What happens if the buyer is unavailable during the selection window?
- What are the cut-off dates for structural changes versus finish changes?
- What charge-backs apply to changes after each cut-off?

For premium buyers who want input on the home, missing the selection window is the difference between a custom-feeling delivery and a generic one.

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## The meta-rule.

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re-construction at \$1 million and up rewards the buyer who reads the agreement before signing it, treats the cooling-off period as the diligence period it actually is, and handles the structural questions (deposit, assignment, occupancy, substitution, customization) at the offer stage.

The buyer who signs first and figures it out later is the buyer who calls me at month 22, when the closing date has slipped, the deposit insurance question becomes real, and the substitution clause that nobody read becomes the clause that determines what the kitchen actually looks like.

The work that decides the outcome of a premium pre-construction file happens before the agreement is firm. After the cooling-off period, every position is materially weaker than it was the day before.

That is what the preparation is for.

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*This piece is a written observation from the practice. Not legal advice. Legal opinions stay with your lawyer.*