



UNDERSTANDING ASSIGNMENTS

HOW WE MARKET, MANAGE AND MITIGATE
THE MANY MOVING PARTS OF AN ASSIGNMENT



Let's start from the beginning: What exactly is an assignment?

An assignment is when the original purchaser (the assignor) sells their agreement to purchase (and the rights and obligations of that agreement) to a new buyer (the assignee). Assignment agreements can be used anytime an assignor is looking to sell their accepted agreement to purchase (APS) prior to closing (provided the APS permits assignment). However they are primarily transacted during the course of condo pre-construction to closing, which is what we will reference on this document to make it as clear as possible.

In a nutshell, what does the entire process look like?

1. The assignor buys a condo from the builder
2. The assignor decides they prefer to sell their agreement rather than close on the condo - and puts it to market
3. Assignor finds an assignee to take over the agreement
4. Assignor requests and is granted permission from the builder to assign the agreement
5. Assignment is finalized and the assignee now moves forward with the agreement

Seems simple, right? It's actually quite complex.

ASSIGNOR

Marketing Restrictions

Builders will almost always restrict an assignors ability to market the property - including not advertising it on MLS or realtor.ca. To sell an assignment, you'll want to use a trusted brokerage that has a proper marketing strategy and a healthy database of buyers to ensure it gets promoted to the most number of buyers.

Can you assign?

Builders won't voluntarily put in a clause to the original agreement that permits a buyer to assign the agreement - a purchaser will need to negotiate this into the agreement from the beginning or they may be held to the agreement. Further, even with an assignment clause the builder will still need to consent to any assignment, the assignor may still be held liable both jointly and severally after assignment, and there will be a fee involved to assign - which will need to be negotiated out between assignor and assignee.

Deposit and Equity Takeout

In a rising market, assignments happen because there is substantial equity grown in the purchase. For example, you may have purchased a condo from the builder for \$400,000, put \$60,000 down (15%) as a deposit, and have now assigned the agreement to an assignor for \$500,000. However, you may only get the deposit back of \$60,000 and have to wait until the assignor completes the agreement and closes on the condo to receive all the remaining equity - which could be months or years, depending on the timing and wording of the assignment transaction.

H S T A N D
T H E C R A

ASSIGNEE

Deposit Required

While most re-sale properties ask for a deposit typically between 3-5% of the purchase price, assignments normally require full repayment of the deposit to the assignor - which would be 10-20% of the original purchase price. The assignor may also ask for the difference between the new purchase price and the original purchase price either to be paid to the assignor on assignment (not recommended) or to be held in trust until the unit closes. This may mean the assignee needs to come up with 20-50% cash in quick order - none of which a bank would finance both prior to closing and potentially on closing. It's very important to note that a bank may only finance the assignor's original purchase price (not the new price purchased by the assignee). Speak with your bank regarding what their policies are on financing assignments.

Review of Entire Agreement

It is very important to note that the assignee will be bound by all terms of the original agreement between the assignor and builder. Things to consider: who is responsible for the development charges? Are they capped? Can the unit be rented during occupancy (if being purchased by an investor)? Have upgrades been selected, and if so, what are they and who is responsible for paying for them? What other fees are associated with the agreement that the assignee will be responsible for on closing? Ensure this agreement is read carefully by the assignee and a good real estate lawyer prior to purchasing.

While HST does not typically apply to re-sale properties, there are serious HST implications when purchasing new construction.

There are a number of ways the CRA looks at HST implications in new construction, including:

1. What was the intention of the assignor when they purchased the unit? Did they intend to assign prior to closing, live in the unit or was it an investment?
2. What is the intention of the assignee? Will they be moving into the unit, renting it or also intending to assign?

Here is the most important takeaway regarding assignments: involve professionals. Even the most savvy investors stumble through assignment sales, so the first step is to consult with your real estate agent to consult on whether selling your assignment or purchasing an assignment is right for you.

Conditional Period

It is critically important for the assignee (as well as assignor) to ensure that there is a conditional period to determine a number of items after acceptance of an assignment:

1. Ensure a lawyer is able to review the entirety of the current APS as well as the original APS between assignor and builder
2. Have an accountant and lawyer review any potential HST implications as well as additional fees contained in the agreement
3. Ensure the conditional period contains the provision to allow for builder consent for the assignment

Both investors and end-users can be eligible to apply for an HST rebate to claim some or all of the HST payable (up to \$24,000).

What are some ways one wouldn't qualify for an HST rebate?

1. If a unit is being occupied by the assignor and subsequently assigned, it will make the unit ineligible for the HST rebate.
2. If the intention of the assignor was to assign when purchasing the unit from the builder, they will not qualify for the HST rebate
3. If the unit is not occupied by the end-user or rented for a 12 month term after closing by the investor, it will not be eligible for an HST rebate.

WHY USE A TRILLIUMWEST AGENT?

TrilliumWest Realtors® continuously educate themselves, tirelessly expand their marketing efforts and get up each and every day with one goal in mind - to do the best they can for their client.

At TrilliumWest we take the responsibility of ensuring that all obligations and implications of an assignment are understood, both for the assignor and the assignee. For an assignor, this all happens through custom internet targeted advertisements, social media and specialty websites - all unique ways to sell your purchase agreement when MLS may not be an option. For an assignee, it means collaborative communication within the real estate community to see what is available on the assignment market.

The connected TrilliumWest agent has the ability to move you seamlessly through the assignment process, whether as an assignor or assignee. Well-versed and experienced with assignments, we are constantly working on contracts, clauses, conditions and closings - this is how we spend our days, nights and weekends. With our skill, knowledge and experience, we will protect your interests and provide you with the best possible experience.

A full commitment to you, our client, is what keeps us loving our careers and continuing to help those in our community realize the best possible results.

A TrilliumWest agent knows the region and the market, and is held to a high standard of professionalism by our Brokerage. It is our responsibility to protect, educate and ensure the process is a rewarding experience.

WHY WORK WITH ANYONE ELSE?

TW | GUELPH
292 STONE ROAD
UNIT 8
GUELPH, ONTARIO
N1G 3C4

TW | KW
240 DUKE STREET WEST
UNIT 100
KITCHENER, ONTARIO
N2H 3X6

226.314.1600
hello@trilliumwest.com
trilliumwest.com



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