

New Home Construction

Seminar For Real Estate Legal Assistants

Prepared for: Legal Education Society of Alberta

**For Presentation in: Edmonton – October 18, 2006
 Calgary – October 25, 2006**

**Prepared by: Andrew Thorne
 Thorne & Thorne
 Fort McMurray, Alberta
 (780) 791-9979**

New Home Construction

New home construction has the same issues as those involving a used residential property. However, there are many additional issues that must be addressed. There is no standard building contract form that is used by the builders in Alberta when selling homes, but there are basic terms that are usually present in most contracts. There are also certain builder requirements that are based on statute. The purpose of this discussion is to identify the basic issues that arise while acting in a new home construction transaction and provide a basic analysis of these issues.

Goods and Services Tax and Rebates

Pursuant to the *Excise Tax Act* (of Canada), hereinafter referred to as the “*ETA*”, a commercial transaction such as selling a home that is new and has not been previously lived in, is subject to Goods and Services Tax (“GST”). By law, a builder does not have to address the issue of GST in the contract in order for it to be payable by the purchaser, but the vast majority of builders include a GST provision in the contract.

The *ETA* also creates a GST New Housing Rebate that is payable to the purchaser of a new home that passes a test:

- 1) the property being purchased must be a single-unit residential complex (as defined by the *ETA*);
- 2) a builder must be charging the purchaser GST;
- 3) the purchaser must have paid the GST liability;
- 4) the purchase price must be less than \$450,000.00;
- 5) the purchaser, or a relative of the purchaser must intend to reside in the property as a primary place of residency;
- 6) ownership of the property must be transferred to the purchaser; and
- 7) the property must not have been occupied previously by any other person.

The GST New Housing Rebate is equal to 36% of the GST payable up to a home purchase price of \$350,000.00. Thereafter, the rate is diminished until the purchaser price reaches \$450,000.00, at which point no rebate is available.

The *ETA* allows the purchaser to assign the GST New Housing Rebate to the builder. Accordingly, most builder contracts include a purchase price that is “net GST”, which is a simplistic method of indicating that the purchase price includes GST and the assignment of the GST New Housing Rebate shall be made by the purchaser to the builder. Other contracts are much more specific and spell out these terms in plain language. Regardless of the terminology, if the GST New Housing Rebate is not