
Condo Smarts

Headline: Pre sales purchases

Topic: Buying and Selling

Publication / Date: Province, April 28, 2022

Written by: Tony Gioventu

Dear Tony: How do we find out the costs and liabilities of a new strata high rise in a development in Burnaby with several air space parcels, when it is a pre-sales purchase? We have asked in the sales office and the only answer we receive is *“the expenses of each property are allocated to that property only”*. We lived in a strata with an Air Space Parcel Agreement (ASP) where this was not the case and the agreement can have a significant impact on strata fees and the obligations of the strata council and managers to administer property. Doesn't the legislation require the terms and conditions of the agreement to be included and disclosed prior to any sales?

Margo Walker, Toronto

Dear Margo: A pre-sales agreement is not a purchase or sale of a strata lot. This is a contractual agreement where a buyer agrees to complete the purchase of the strata lot under certain conditions. As there are no established disclosure conditions required by the *Real Estate Development Marketing Act* for pre-sales, the developer has no obligation to disclose any specific details of an ASP at this time. Once the pre-sales period is over, a disclosure statement will identify the legal relationships that will be created under the ASP agreements. It is impossible to disclose an agreement that does not exist at this point.

An Air Space Agreement indicates there are multiple properties within the base elevation that share the property, access to each property, building structures, services, cost and liabilities. Think of this as 5 neighbouring detached houses suddenly stacked one above the other. An ASP may have only 2 properties owners or upwards of 5-7 or more, depending on the scope and size of the property. They are an effective use of property densification and enable multiple uses of property.

All property owners will have some portion of shared access, such as elevators that travel through multiple levels, building systems such as roofing, sanitation, heating and ventilation that are interconnected, and parking facilities. The ASP agreement will set out the conditions for shared costs, authority over the use of property and joint liabilities such as the placement and maintenance of insurance.

Once the disclosure statement is filed for the purpose of marketing the property, the air space agreement will be created. Whether the property is a new development or existing, a successful relationship between the property owners will require all parties to understand the implications and cost sharing obligations of the ASP. The ASP is filed in the Land Title Registry. It is a form of easement or covenant. In addition to the monthly strata fees and contributions to the contingency reserve fund within the strata corporation budgeting, look for line items identified for the funding of the ASP obligations.

If you are shopping for a new home, check out the Home Buyer Master Class series created by Homebuilders Association Vancouver <https://havan.ca/home-buying-masterclass/>. For more information on ASP's, go to www.choa.bc.ca and use the search for *Air Space Parcels, Guide 600-006*, for an extensive guide to understanding their function and operation.