

# MarketNews

GEORGINA RATCLIFFE'S REAL ESTATE UPDATE

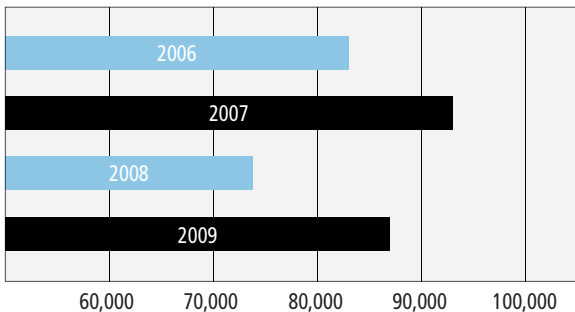
WINTER 2010

## MARKET ROARS BACK IN 2009

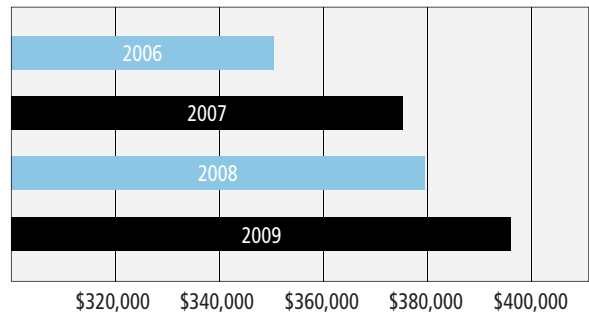
A total of 87,308 single family homes changed hands in the GTA in 2009 which was up by 17% over 2008 although still shy of 2007's record-setting total of 93,193. After a sluggish start to the year (20% decline in the January-to-April period), the market roared back over the balance of the year (37% increase in the May-to-December period). Increasing consumer confidence, historically low interest rates and pent-up demand were the key drivers of the market during the resurgence. In fact, the strong residential real estate sector was a key contributor to the overall economic recovery in Canada.

The average home price in 2009 climbed 4% to \$395,460. Once again it was a tale of two distinctly different performances with an average price decline of 4% during the January-to-April period followed by an average price increase of 7% for the May-to-December period. The back half of the year was characterized by an extremely tight supply of listings relative to demand causing prices to escalate dramatically. In fact, the average price recorded a 16% increase in the 4th Quarter alone. A greater supply of listings in 2010 will likely see price growth begin to moderate in the new year.

GTA RESALE HOME SALES (UNITS SOLD)



GTA RESALE HOME SALES (AVERAGE PRICE)



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# Legally Speaking



Can a buyer refuse to close the purchase of a new home if there are deficiencies in construction, forgotten or incomplete items, or unauthorized changes to the design, layout or materials?

That question was the subject of a paper presented to a builder's conference earlier this year by Harry Herskowitz, of the Toronto law firm DelZotto Zorzi LLP. Herskowitz is well-known and respected as an author, lawyer for builders and developers, and chair of the Tarion Warranty Corp.

In his presentation, Herskowitz carefully analyzes 10 reported Ontario court decisions in which the purchaser was entitled to refuse to close, and seven other cases where the court ruled the buyer was wrong in refusing to close.

According to the Herskowitz analysis, whether or not a purchaser may refuse to close depends on the nature of the builder's default. If it is considered to be a fundamental breach of contract, one which substantially deprives the buyer of the whole benefit of the transaction, the buyer may terminate and get a refund of all deposit money.

If, however, it is a minor or "immaterial" breach of contract, one which is incidental or inconsequential to the main purpose of the contract, the buyer has to close, but may be able to claim damages from the builder.

Unfortunately, the reported court decisions in this area are all over the map. Ontario courts have failed to create a clear guideline so buyers and their lawyers are able to decide when a home deficiency or unauthorized alteration entitles the buyer to terminate the contract.

"One would think," writes Herskowitz, "that over the years, in the aftermath of several real estate recessions...the courts in Ontario would have clearly delineated when a particular breach or misrepresentation...will be considered minor, or conversely fundamental..."

He notes that more often than not the demarcation line between a minor and fundamental breach by the builder is blurred by the facts and equities of each particular case.

To me, one of the most puzzling cases cited in the Herskowitz paper is the 1995 decision of Justice Sidney Lederman in the case of Three D Developments (Kingwood) Ltd. v. Gogos. On the day of closing there was only temporary power in the house, the heating was incomplete, and the screens, kitchen desk, kitchen island, garage door and outside steps had not been installed.

The concrete garage floor had not been poured, and there was construction debris strewn around the house.

When the building inspector arrived on the morning of closing, the house failed inspection and he determined that it was not fit for occupancy.

The buyers refused to close and pay the balance of the purchase price, claiming the interior work of the house was not substantially complete so as to permit reasonable occupancy.

By the time the inspector returned at 4 p.m., the water was connected and although the furnace was not completely installed (it was July), the house was deemed fit for occupancy.

The builder sued the buyer for damages and won. The judge found that the issues were "relatively minor in nature." The house "on any objective standard" could reasonably be occupied, said the judge, and the buyer was not justified in refusing to close.

Other court decisions reach opposite results on similar facts.

Herskowitz concludes that the facts of each case are critically important to a court ruling whether or not the purchaser is entitled to terminate. The risk to the purchaser of refusing to close, he says, is very high, but so is the risk to a builder who refuses to acknowledge the purchaser's legitimate concerns.

In situations like these, Herskowitz urges both sides to act with the utmost good faith on closing day, to avoid winding up in a courtroom.

*This article was contributed by Bob Aaron, a prominent Toronto real estate lawyer. Please visit him online at [www.aaron.ca](http://www.aaron.ca)*

# House Smart



Not all firewood is created equal. If you have ever tried burning wood that is too green; too long for your fireplace or woodstove; or too full of bugs, detritus, or sap, you know this already!

Know the length you want your pieces of firewood to be before cutting or purchasing firewood for either your fireplace or woodstove. For a fireplace, consider the length of your grate. If your wood is too short, you will be carrying in load after load of firewood, but pieces too large are even worse.

Properly seasoned firewood eliminates the smoke associated with green wood as well as much of the bugs and detritus that you don't want brought into your home. But not everyone agrees what the term "properly seasoned" means. What you are really looking for is firewood that has been stacked in a sunny location so that air can freely circulate around the pieces and wood that has dried, ideally for about a year.

Your firewood, both as it seasons and as it awaits use outside your house, should be kept off the ground. Wooden rails can be used for this, but sometimes termites use those rails as conduits to your firewood. Many destructive and expensive termite infestations start under stacked firewood and then invade homes. So metal racks are good investments because they keep your firewood off the ground. In addition, they assure that any firewood by your home does not lean against an exterior wall of your house.

When firewood has been allowed to season properly, much of the loose bark, which harbours both live and dead bugs as well as dust, has already fallen off. That means, when you bring it into your home for your fireplace or woodstove, you're not going to find as much loose detritus or as many unwelcome bugs.

Firewood from pine and spruce pine trees, even after ample seasoning, still has sap that gets on your hands and clothes as you manage your firewood. Some people just use fireplace gloves as protection and don't mind the sap. Even worse, as the sap burns it deposits a thick crust in your chimney that can harbor a chimney fire, or gradually reduce the draft of your fireplace.

The aroma of burning logs is part of a fireplace's or woodstove's ambiance many people enjoy. If there are particular types of firewood, however, that produce an aroma you don't especially enjoy, you will want to note them so you can avoid such firewood. Also, if there are people in your home with an allergy to a specific wood, you'll want to skip that type of firewood.

One type of firewood everyone will want to skip is firewood with poison ivy or poison oak on the logs! These pose a hazard not only to the people who have touched the firewood, but also can cause reactions among some people who have breathed in any smoke from the fire. Watching out for "leaves of three" isn't enough after poison ivy's growing season is over. You'll want to familiarize yourself with poison ivy's stems and hairy vines that can be an irritant even when the plant looks dead!

Energy content is measured in British Thermal Units, better known as BTU's. Different types of firewood all have the same amount of BTU's per pound, but since they are not all equally dense, they vary considerably in the amount of BTU's available per cord. A cord of rock elm, for example, has almost twice the energy content of a cord of white spruce.

Keeping variables such as the proper seasoning and storage of wood, and the selection of firewood with desirable characteristics, can make your fireside experience all that you hoped it would be.

## TO MY VALUED CLIENTS

Resale home sales rebounded robustly in 2009 partially as a result of the very strong presence of first-time buyers entering the market. First-time buyers were aided by improved affordability conditions (low interest rates), the expansion of the Home Buyer's Plan and the introduction of the First Time Home Buyer's Tax Credit. All of these factors stimulated the demand side of the equation.

Meanwhile, the supply side of the equation moved in the opposite direction in 2009. Many existing homeowners decided to stay put and invest in their existing home due to the newly introduced Home Renovation Tax Credit program. Other would-be sellers were seemingly hamstrung by a sense of uncertainty in the market following the very weak Oct 2008 - April 2009 period.

The forces described above created a market imbalance for much of 2009 and a so-called seller's market. Multiple offer scenarios abounded and shorter days on market averages became the new norm.

Most market forecasters are predicting increased market balance in 2010 with some softening in demand relative to 2009 and an eventual uptick in listing inventory. Having said this, would-be sellers still have a definite window of opportunity in the near-term to trade up or even trade out of the market in the current high demand/low supply environment. Another reason for would-be sellers to list early in the year is purely seasonal: typically there are fewer sellers relative to buyers in the early portion of spring market than in the latter portion, thereby improving both the pricing outlook and the days on market outlook for sellers.

Until next time, take care and please remember that all of your real estate referrals are both highly valued and greatly appreciated. Happy New Year!



## PEARLS OF WISDOM

Actual signs:

In a restroom: "Toilet out of order. Please use floor below."

Notice in a farmer's field: "The farmer allows walkers to cross the field for free but the bull charges."

In a laundromat: "Automatic washing machines: Please remove all your clothes when the light goes out."



**"YOUR REFERRALS ARE ALWAYS WELCOME!"**



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