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From dream home to unholy mess

Buyers in the Union Lofts church-condo conversion waited through years of construction delays only to be told their purchases were cancelled. Now the developer is reselling at a higher price.



“We’ve done our best to try and mitigate the losses for everybody, but clearly people are very disappointed and I certainly understand that,” Windmill Development’s Alex Speigel said. (COLE BURSTON / FOR THE TORONTO STAR)

By **TESS KALINOWSKI** Real Estate Reporter
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Stories of building delays are not uncommon on the front lines of Toronto’s condo craze.

But when Tracey DaSilva bought in the [Union Lofts](#) in the Junction Triangle four years ago, she expected her inconvenience and uncertainty would eventually be rewarded with the key to a dream home in a boutique church conversion in one of the city’s coolest neighbourhoods.

Instead, she was handed a refund for her deposit and builder upgrades and now faces the prospect of watching the developer resell the original condos for a higher price.

Although the original purchasers of Union Lofts are getting first right of refusal and a \$20,000 discount off the new offering, one buyer said he expects his unit will have a price tag more than \$100,000 above what he paid.

DaSilva, who was forced to move several times through a series of construction delays and promises, has been so upset by the cancellation of her sale — not to mention more than three years of lost equity in a climbing market — she can’t even bear to visit the site.

“I don’t even know if I can drive by it to see it completed,” said the 38-year-old marketing manager.



The original buyers of Union Lofts will get first right of refusal and a \$20,000 discount off the new offering, but one buyer says his unit will likely be worth over \$100,000 more than what he paid. (COLE BURSTON / FOR THE TORONTO STAR)

It's rare that a Toronto condo project goes south before it's built. Only 1.5 per cent of developments are cancelled after being publicly offered for sale, according to BuzzBuzzHome, an online real estate hub.

But it does happen and buyers need to be aware of the risk, say legal experts.

"It's a cautionary tale to read the contract and make sure you know what you're getting into," said real estate lawyer Bob Aaron. "It's all a question of what's in the purchase agreement."

Buyers need to know if the builder has an out if it can't complete the project.

"There's some escape clauses in the agreement, which are there to protect both the builder and the purchasers against certain situations that can happen," said lawyer Ted Charney, who specializes in real estate class-action suits.

Sometimes those clauses are abused.

"But, in other circumstances, if the clause is in the agreement and it was properly negotiated and it was relied on in circumstances where it legitimately should be, one of the risks of buying these condos is, years down the road, you could just end up with your money back," Charney said.

Windmill Development Group partner Alex Speigel said the Union Lofts outcome is the last thing his company wanted or expected when it undertook the tricky conversion of a designated heritage church, and put it on the market in November 2012. But under refinancing conditions, it has no choice but to resell the project for more money.

The letter it sent buyers cites a paragraph in the purchase and sale agreement that releases the developer from its contract because it is unable to meet "the current outside occupancy date" set out in that agreement.

"We've done our best to try and mitigate the losses for everybody, but clearly people are very disappointed and I certainly understand that," Speigel said.

Union Lofts originated with a Windmill partner called Cornerstone Lofts Ltd. Windmill was in charge of design and marketing. Cornerstone was in charge of construction, including hiring a general contractor.

Speigel had worked on similar projects, including The Loretta and Tip Top Lofts, prior to joining Windmill. He said that with a 43-unit development, getting a builder of the right size can be difficult: it has to be able to build something bigger than a house but smaller than a skyscraper.

Mark McGroarty of Cornerstone said the developers went to see another project on Spadina Ave. by the same builder and it looked good.



Speigel says this outcome was the last thing the company wanted or expected to happen. (COLE BURSTON / FOR THE TORONTO STAR)

But within six to eight months of starting on Union Lofts, in the fall of 2013, construction was behind schedule and then the contractor disappeared without paying its subtrades, said Speigel.

The trades put liens against the project and the developer's funding was frozen.

"It took us a huge amount of time and effort to get the liens cleared," Speigel said. He said Windmill, which specializes in green development, expects to lose money on the project, but declined to provide specifics of the loss they were expecting.

A project of this size is typically in the \$20 million to \$30-million range, said Speigel. He would not say what Union Lofts will cost overall.

The Star found records of numerous liens against Union Lofts, but could not contact the contractor.

Because it's the Ottawa-based developer's first Toronto project and it is trying to maintain its reputation and do the right thing, Speigel said Windmill chose to complete Union Lofts rather than walk away.

"A number of the (buyers) I've spoken with, although they're very disappointed, kind of understand the situation and have expressed interest in actually repurchasing units in the new project we're going to launch so that gives me some small comfort," he said. "It's not a great situation, but at least it acknowledges we haven't burned bridges."

In addition to returning buyers' deposits, he said, "We're also giving them back their upgrade deposits which we're not actually required to do. We're going beyond what we're legally required to do in order to be as fair as possible," Speigel said.

Cornerstone is still part of the limited partnership that owns the property but is not involved in "day-to-day" management, said McGroarty.

"It's a very unfortunate situation we found ourselves in. I certainly have empathy toward the purchasers," he said. "On the other side of the coin, we have suffered a huge financial setback. It's not like we're going to walk away making all sorts of money, because we're not."

Asked if the developers would make any money on the project, McGroarty said no.

Construction on the new Union Lofts offering is already underway at the old Perth Ave. Methodist Church. The original 43 units have been reduced to 40 to create some bigger apartments. A Nov. 14 letter to purchasers said the project will be relaunched in early 2017 "with a new identity and some new unit types" at "current market prices."

Those who have not yet received refunds will get them in mid-December, according to the letter. Purchasers interested in the new condo offering will have that opportunity before the public is invited to buy.

"I've made an effort to speak personally with as many purchasers as I can. We feel terrible about the way this has gone," Speigel said. "I've been in this business 35 years and I've never had a project go this way."

Windmill has focused on salvaging the project rather than pursuing the builder, which it might consider in the future, he said.

None of that matters to DaSilva and the other buyers, who have had their purchases cancelled.



Tracey DaSilva got her money refunded by Windmill Developments but not before a series of delays that left her scrambling to move several times. (MELISSA RENWICK / TORONTO STAR)

DaSilva already owned a condo downtown four years ago when she got a flyer advertising the Union Lofts. Two weeks later, she bought the corner unit near the church doors at the corner of Wallace and Perth Aves.

“I had the most ideal unit. It would have been my own personal door. It was such a great idea of being actually in the church,” she said. “I literally signed and sealed on that day: I came back and deposited a \$5,000 cheque.”

She was convinced that the 800 sq. ft. unit with patio was a great investment for \$427,000.

She bought in November 2012, with the condo to be ready in November 2014. In April 2014, she got a letter saying it wouldn't be ready until the following April.

DaSilva put her old condo on the market to avoid competing with a new phase that was coming on the market in that location.

As soon as her sale closed, she got a letter saying Union Lofts wouldn't be ready until July. DaSilva moved into accommodations with a series of friends and relatives.

“I don't remember when I got a notice saying July wasn't going to be happening,” she said. But visits to the site showed there was no progress.

By late last year, DaSilva rented a place downtown. The landlord even agreed to discount her rent until this July, when Union Lofts was finally supposed to be finished.

“The day that I closed the lease agreement, I got a notice saying that July wasn't going to happen and they were going to delay it. A couple of weeks later, I got a notice saying that, as an original owner, I had to sign something that would allow a refund of the property and relinquish all of the ownership,” said DaSilva.

“There was no guarantee when the money was coming through. They were going to see how many people would go for the refund,” DaSilva said.

Her lawyer advised taking the refund and getting out.

“I didn't want to because, emotionally, I was so invested. I had been waiting three-and-a-half years. I'd been living just to make that place work,” she said.

In March, she got a letter telling her to pick up the cheque for \$67,000. She has since purchased another condo downtown — a resale.

Other buyers who spoke to the Star said they were angry and suspicious, but would not agree to have their names published for fear the developer might hold back refunds or because they were considering paying more to stay at Union Lofts.

One man said he and his partner bought the smallest unit on offer — \$297,000 for 550 sq. ft. Now, they can't afford to buy at the new price that he anticipates will be about \$125,000 higher, based on current market value.

“It's not just a financial issue, it's a personal issue, too. I don't think they should be allowed to get away with this,” he said.

His spouse had planned to retire due to a chronic pain condition that is making it difficult for her to work. Their plan had been to use their existing home as a rental that would pay for the maintenance fees on the new place.

Another buyer, part of a family group of investors who planned to rent their condo to relatives, said he expects the unit they bought for \$449,000 will be resold for about \$564,000.

“That money they raised ... it shows how much we would have earned in that time period,” said the investor.

“It just feels like they took us for a bit of a ride ... because maybe they underpriced (the condos) at the beginning. It doesn't sit right,” he said.

“I just want what I paid for.”

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