

Buying and Selling a Home

With the ever-mounting rules, regulations and laws that apply to real estate, never before has the legal maxim "caveat emptor" (buyer beware) been so apropos to buying and selling real estate. The purchase or sale of real estate is a complex matter that requires competent and thorough legal advice from your lawyer.

Throughout the whole transaction, your lawyer will be acting to protect your interests and insure that you receive a good and marketable title to your new home. In relation to other costs of the transaction (purchase price, real estate commission, lender fees, surveyor, home inspection, appraiser) legal fees are "modest" but, like the others, essential.

Before you sign a real estate agreement to purchase or sell, it is essential to have your lawyer review it for you from a legal perspective. You can even make an offer conditional upon a review by your lawyer, before you let it become final and binding upon you. With today's e-mail and facsimile capabilities, it is easy and quick to obtain this ounce of preventative legal assistance.

Should you insist upon a Survey or purchase Title Insurance? In reality, nothing replaces an up-to-date survey of the property that you wish to purchase as completed by a qualified Ontario Land Surveyor. Only with a survey can you be assured as to whether or not the lands that you are purchasing comply with all municipal building and zoning by-laws. A survey will also show you whether or not there are significant encroachments, right-of-ways, easements for utilities or other purposes.

Consider Title Insurance only as a poor second choice alternative to such a survey. Beware of Title Insurance that protects only the lender and not you as purchaser or mortgagor. Further, most Title Insurance does not cover deficiencies that a survey would disclose. The best Title Insurance available on the market today is only available through your lawyer. *Title Plus* is a product of the Law Society of Upper Canada and it, together with your lawyer's written guarantee of title, is the best possible buyer's protection available to you. Your lawyer will make sure that you don't obtain basic Title Insurance that does not cover you or the unique qualities of the land that you are purchasing. But be aware, Title Insurance is not a survey and not the wisest choice.

If you are interested in rural property, insist on the production of documentation in relation to the septic system in order to be insured that it complies with all current applicable health regulations. Also insist that the Vendor provide a warranty as to compliance with such health regulations and in relation to the proper functioning of the system as a whole.

The same goes for properties serviced by wells rather than municipal water systems. Not only should you ask for the production of a water potability certificate, you should also require a well driller's certificate showing that the well in question is capable of producing sufficient water for normal household use. Again, the Vendor's warranty confirming the well's capabilities is an absolute must. If in doubt, ask the neighbors!

Water front properties carry special concerns and you need your lawyer to advise you as to special considerations such as where your land ends and the water begins. Will you actually own the beach in front of your property or is it Crown Land, or worse, a municipal right-of-way? Road access to cottage country often entails private roads and right-of-ways. Will you have deeded access? Will you be required to become a member of a cottagers association and share in the maintenance and insurance costs required to maintain the road and safe guard you and other uses?

Clearly the purchase of real estate is probably the single largest investment that any of us will ever make. It requires the services of a qualified real estate lawyer to insure that you get what you pay for. Your lawyer will insure that you obtain good marketable title based not only on the history of the legal title to the property, but a full review and insistence upon compliance with the terms of your agreement of purchase and sale, applicable municipal by-laws, utilities, taxes and private services.

There are no short cuts or cheap discount methods of successfully purchasing, or for that matter, selling real estate. So put together a proven team of professionals to help you through the complex world of real estate. Throughout the whole transaction, your lawyer will be acting to protect your interest and insure that you receive good and marketable title to your new home. Remember, "caveat emptor"!

The opinions expressed are for information purposes only and readers should consult with a lawyer in relation to specific cases.