



Title search for a new construction home



Jacques Robert
**REAL ESTATE
LAW**

Buying a new construction home can be expensive. To save money, buyers frequently ask lawyers to avoid a title search because there cannot be any title issues on a new construction. Lawyers still have to do the title search on the property because many issues can affect a property, including a new construction home. In this article, we will only name a few. Each file is different and, based on the file, the lawyer will know which searches to perform to ensure that proper title is transferred to the buyer.

Outstanding Mortgages

Most builders will need a mortgage on the land to finance the construction of the subdivision. The buyer's lawyer needs to search the property to determine the number of mortgages on the property and which banks hold the mortgage. The lawyer will then send a letter to the builder's lawyer asking for the builder's undertaking to discharge the mortgages from the property.

Construction Liens

If builders are not paying the trades for their labour, the trades can have a construction lien registered against the property. This lien will need to be removed from the property before the buyer can close. The buyer's lawyer will write to the builder's lawyer to ensure that the construction lien is dealt with prior to close.

Execution Search

The lawyer will search to ensure that neither the purchaser nor the builder owes any money on a court judgment. The judgment will have to be paid prior to the closing date and a new execution search will have to be ordered to show no executions. A complication sometimes arises when the buyer has a commonly-used name. Execution searches will pull

up anyone with the same name. For example, one John Smith may have a judgement against him. If a second John Smith were buying property, the execution search would reveal that "John Smith" has an outstanding judgment. In that case, the lawyer for the second John Smith will have his client sign an affidavit stating that he is not the John Smith who has not paid the judgment.

Restrictive Covenants

These are clauses and rules registered with the property that tell the owner what they can and cannot do with the property. For example, the restrictive covenants may list what trees the owner can plant and not plant. They may also detail what size of satellite dish can be installed on the roof and whether an

above ground pool is permitted. It is becoming increasingly common for builders to register a set of restrictive covenants with their new construction homes. Buyers must be aware of the rules that they will have to comply with during their ownership. These restrictive covenants follow the property, therefore, any subsequent owners will also have to comply with these rules.

Easements

An easement is a right of way over another property. Almost all townhouses have easements registered on the property. For example, properties in the middle of a row of townhouses will have an easement registered with all the neighbours' properties allowing the owners in the middle to have access to the

backyards. Lawyers search the easements to ensure that they are properly registered so their client will have proper access to their property.

These are only some of the searches a lawyer will perform through a title search. Other searches may be necessary. While lawyers are sensitive to their clients' needs to keep legal fees as economical as possible, lawyers have obligations to ensure that their clients are obtaining valid title to the property. The lawyer cannot leave out the title search on a home simply because it is a new construction.

co-authored with Robin Goski,
cassioate lawyer

Jacques Robert is an Ottawa real estate lawyer. For more information, visit www.jacquesrobert.com