

OTTAWA SUN 2015 **BUYING/SELLING**

# Things to consider when buying/selling



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**REAL ESTATE  
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Ottawa real estate lawyer Jacques Robert continues his series on key terms and conditions that buyers and sellers should be aware of.

## Broom Swept Condition

■ Broom swept condition means that you have agreed to remove anything that did not originally come with the home and that was not contracted to stay with the property in the agreement.

■ If you do want to leave something in the home as a housewarming gift, ie. A side table that fits perfectly in the living room nook, you need to ask the purchaser's permission to leave the item. The buyers may not want the object and if they do not want the object, you would be breaching the broom swept clause by leaving any item behind.

■ You will also want to clean the property before you leave. You will want to sweep, wash and/or vacuum the floors, clean the kitchen and bathrooms and remove any marks or stains.

■ If you do have a broom

swept condition in the agreement, it is something to consider when planning the logistics of the closing date. If you plan to move on the closing date, be sure to leave yourself enough time to clean the floors, kitchen and bathrooms.

■ The rates for Bridge financing are relatively inexpensive and may be a worthwhile investment for you when planning your move so that you can move and clean the property being sold at your own pace rather than being rushed because the purchasers are anxious to move in.

## Hidden defects

■ A hidden defect is a problem that could not have been discovered before the closing of the transaction either because it was not possible to discover or that the sellers purposely hid the problem.

■ An important principle that applies to real estate transactions is called "Caveat Empor"; Latin for "Buyers beware!". According to this principle, the Buyers have to take all necessary measures to ensure the

quality of the construction of the house and its present state. It is strongly recommended to conduct a professional home inspector.

■ Sellers are not legally obligated to declare every single problem or defects pertaining to the property (unless questions are asked) as long as there are no risks to the health or security of the buyers. When a question arises, the sellers then have the obligation to tell the truth; to respond in a non fraudulent manner.

■ There are not guarantees applicable to a residential property. However, in most cases, buyers do add guarantees to their contract about the general condition of the house and will include a clause to say that all fixtures/chattels will be in 'good working order'.

■ A document that can help with this is called the "Seller Property Information Statement" (SPIS) which constitutes a questionnaire pertaining to the property and contains specific questions. Bear in mind however that this questionnaire does not operate as a warranty and is often incomplete or incorrect. In fact, most lawyers will advise their clients not to complete such Statement.

■ If you have been the victim of hidden defects, the first step would be to get a quote to repair the problem, then contact your lawyer and ask that a letter be written to the other lawyer. If you do not get a positive (or any) answer from the other party (either through their lawyer or them directly), your only other option would be to bring the matter to the Small Claims Court. However, keep in mind the actual value of the repair - it may end up costing more in legal fees, time and effort than having the repairs done.

co-authored with Robin Goski, associate lawyer

Jacques Robert is an Ottawa real estate lawyer. For more information visit [www.jacquesrobert.com](http://www.jacquesrobert.com)

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