



Jacques Robert
Real News
June 2012

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Dear real estate professionals,

We hope this finds you well. In this issue we share with you some information about Bill 36, *Radon Awareness and Prevention Act* and discuss status certificate review clauses.

Did you know that we post all of our newsletters online? Yes, they are available on our website by clicking [here](#).

We also include a list of this month's community events for those of you interested in getting involved in the community.

We thank you for your ongoing support!

Sincerely,

Jacques & Sarah

Jacques Robert Charity Draw: The Snowsuit Fund

By Sarah R. Morgan & Jacques Robert

Our first *Jacques Robert Charity Draw* occurred on March 30th, 2012. From the multitude of ballots submitted by our clients, "**The Snowsuit Fund**" was picked. Our office donated \$500.00 to them.

The Snowsuit Fund is an Ottawa-based charity that raises funds for the purchase and distribution of snowsuits to needy children, 15 years and under, in our community. For more about the Snowsuit Fund, please visit their website by [clicking here](#).

Four times this year, (in March, June, September and December 2012) our office will donate \$500 (CAN) to a local Canadian registered charity.

When our clients attend our office to sign for any legal services we've provided to them (whether buying, selling, refinancing, etc), they will have the opportunity to enter their favorite registered Canadian charity into our quarterly draw for \$500.

The charity must be one of the numerous registered charities appearing on the Canada Revenue Agency website.

The draw results will be announced on:

*Friday March 30th, 2012 (for the period of January 1-March 30th, 2012)

*Friday June 29th, 2012 (for the period of April 1st- June 30th, 2012)

*September 28th, 2012 (for the period of July 1st - September 31st, 2012)

*Friday December 21, 2012 (for the period of October 1 - December 31, 2012)

The draw results will be published on our website, newsletter, and posted in our office. The name of the individual who completed the ballot will not be shared publicly.

We will also contact the individual who completed the ballot and the charity directly.

For more information, please [contact us](#).

Bill 36, Radon Awareness and Prevention Act, 2012

In furtherance to our article "[Radon: Food for Thought](#)" published in the November 2011 issues of "[Real News](#)" we wanted to inform you of *Bill 36 An Act to raise awareness about radon, provide for the Ontario Radon Registry and reduce radon levels in dwellings and workplaces*, introduced by the [Honorable Reza Moridi, MPP \(Richmond Hill\)](#) which passed its first reading on February 23rd, 2012.

This Bill is interesting to real estate professionals as it provides for the establishment of the "Ontario Radon Registry" where radon measurement data across Ontario would be maintained.

Further, it contains specific provisions whereby the Minister "shall conduct public education programs, and provide the public with information, about health risks associated with exposure to radon and ways to reduce the risks" in addition to "encourag[ing] homeowners, to (a) measure the radon level in the normal occupancy area of their hom using a do-it-yourself kit or the services of a radon specialist; and (b) . . . take action to reduce the radon level if it exceeds 200 Bq/m³ per year."

A copy of the bill is available [here](#).

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Disclaimer: *The foregoing articles are for information purposes and do not constitute legal advice.*

As mentioned back in November, radon is more prevalent than most people think, and it may be worthwhile for you to inform your clients about radon testing, if you do not do so already.

Status Certificate Conditional Upon Review, By Who? Food for Thought

Status Certificate Review

More often than not, status certificate review conditions contained in Schedule A of an Agreement of Purchase and Sale read something like this "[t]his Offer is conditional upon the **Buyer's lawyer** reviewing the status certificate and attachments, and finding their contents satisfactory in the **Buyer's lawyer** sole and absolute discretion. . . "

It is important to note that, the purpose of a solicitor reviewing the status certificate is not to encourage a purchaser to proceed with or cancel a transaction but rather for the purposes of informing the purchaser of what we see as being important legal matters in the status certificate in order for the *purchaser to assess* the risk of proceeding. Also, the scope of review of the status certificate by the solicitor is determined by the client and more often, on the basis of what they are willing to pay. For more information about our standard status certificate review [click here](#).

What happens if the condominium expects increases in the common expenses of \$10 per year for the next three years. Legally, that doesn't pose an issue for the lawyer - however it may pose an issue for the Purchaser. What if the purchaser can only budget a certain amount for the common expenses and the \$10 increases bring the purchaser well over their comfort level? What happens if, as a result of this, the Purchaser no longer wants to proceed with the purchase? Are they entitled to rely on the condition that provides that it's in the "Buyer's lawyer sole and absolute discretion" ?

Another example would be in the case of pet restrictions. As you are aware, condos may provide that pets are not allowed on the premises. What if the Purchaser has two dogs and upon reviewing the rules of the condo, the Purchaser realizes that the condo does not allow pets.

In the case of [Pate v. Sinclair \(2011\)](#) the agreement of purchase and sale contained a condition that the status certificate be satisfactory to the Solicitor for the Purchaser. The Purchasers terminated the agreement of purchase and sale alleging that it was upon their solicitor's opinion that the status certificate was unsatisfactory as a result of the condo being involved in litigation. There was evidence however that the Purchasers may have terminated the agreement for other reasons. As such, the Seller sued the buyers.

The Plaintiff (Seller) sought to have the lawyer for the Purchasers disclose his/her opinion regarding the status certificate. The Defendants (Purchasers) argued that it was [solicitor-client privilege](#) and could not be disclosed.

The judge however held that the solicitor-client privilege relating to a solicitor's opinion to the prospective Purchasers regarding the status certificate is waived and as such must be disclosed. Chris Jaglowitz, author of the condo law blog summarizes and describes, in his article [Top 10 Condo Law Cases of 2011](#) the case as follows: "While it's not very sexy, this case is a gem for real estate litigators who will get busier when the local real estate market corrects and purchasers seek to nix their deals. The case also reminds purchasers relying on this clause that they cannot use it in a capricious manner or in bad faith."

It is interesting to compare home inspection conditions with status certificate review conditions. In the case of home inspection conditions they are drafted generally to provide "[t]his Offer is conditional upon the **Buyer obtaining** at his/her own expense an inspection of the property by a qualified home inspector and the obtaining of a report by the **Buyer satisfactory to the Buyer in the Buyer's sole and absolute discretion.**"

Interestingly enough, home inspection conditions are not made conditional upon the *home inspector* satisfying him/herself as to the home but rather conditional upon the *Purchasers* satisfying themselves. Because similarly to a lawyer, the inspector highlights issues, if any, with the property and the Purchaser ultimately makes the decision relative to their comfort level as to whether they would like to proceed as is, terminate the agreement, abate the purchase price, etc. So why is it different for status certificates? Some Food for Thought.

Time for giving status certificates

Further to section 76(3) of the *Condominium Act*, the condo corporation has "10 days after receiving a request . . . and payment of the fee charged" to provide the status certificate. Ten days is interpreted as 10 days inclusive of holidays and weekends. Please keep this in mind when providing timelines for review in the Agreement. As you are surely aware, status certificate packages can include hundreds of documents, will one day really suffice for your client to review these? Will two days provide sufficient time for issues to be rectified? Some more Food for Thought.

Community Events

A list of community events taking place in Ottawa this June:

- **7th Annual Orleans Soap Box Derby:** June 9, 2012 @ Orleans Blvd, between Jeanne d'Arc and St. Joseph (Orleans). For more information click [here](#).
- **Orleans Art Studios Tour:** June 9 - 10, 2012 @ various locations in Orleans (Orleans). For more information click [here](#).
- **Walking Tour Old Ottawa South:** June 10, 2012 from 2pm-3:30pm @ Heritage Ottawa 2 Daly Street) Downtown). For more information click [here](#).
- **Ottawa Fringe Festival:** June 14 - 24, 2012 @ Arts Court 2 Daly Avenue (Downtown). For more information click [here](#).
- **Quebec's National Holiday:** June 23, 2012 all day @ Le Carrefour Secondary School, 50 rue de la Savane (Gatineau). For more information click [here](#).
- **Tim Horton's Ottawa Dragon Boat Festival:** June 22 - 24, 2012 @ Mooney's Bay Park (2960 Riverside Drive). For more information click [here](#).
- **TD Ottawa International Jazz Festival:** June 21 to July 1, 2012 @ various locations (Downtown). For more information click [here](#).

About Our Law Firm

With the dynamic vision of its key player, Jacques Robert, our firm has grown to be one of the largest real estate law firms in the Ottawa area. To meet the changing face of Real Estate Law we are continually upgrading our systems and competitively adjusting our pricing structures.

Our highly trained legal team, consisting of Sarah Morgan (associate lawyer), Adriana Caruso (law clerk), Melanie Soubliere *on leave* (law clerk), Sheri Kind (law clerk), Wendy Kling (customer service/administrative assistant), Eva Mooers (office administrator/receptionist), Cecile Boyer (receptionist) and Milva Caruso (office manager and law clerk) are all well versed in the areas of real estate law, wills and estates.

We offer a fully bilingual service to our clientele - nos services sont également disponibles en français.

Our firm is on the recommended rosters for the Department of National Defence, RCMP as well as

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many corporate relocation firms. We are on the recommended list for all of the major builders in the region.

We have three (3) locations for our clients signing convenience: the East, West, and South parts of the city. Our Central Administration is conducted at the East office which is located in Orléans just minutes from the Queensway, the main freeway through Ottawa from West to East. We are open daily from 8:30 am until 5:00 pm.

East Central Administration
[2788 St. Joseph Blvd.](#)
Orleans, ON K1C 1G5

South Capital Corporate Centre
[9 Antares Drive](#)
Ottawa, ON K2E 7V5

West Gateway Executive Office
Fourth Floor
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Visit our website at www.jacquesrobert.com for more information.

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In all cases, contact your legal professional immediately for any advice on any matter referenced in this document before making any decision whatsoever.