

Vendor's Closing Certificate explained: Part 2



Jacques Robert REAL ESTATE LAW

This is the second of three articles covering the Vendors Closing Certificate; a document signed by the sellers on closing to warranty the property to the buyers. In this article, we will cover adjustments on closing, HST, Family Law Statements and surveys.

Adjustments

If the Statement of Adjustments herein is incorrect or incomplete, the Vendors and Purchasers shall re-adjust forthwith. The Purchaser agrees to this covenant by accepting the Transfer on closing.

- On a sale, the lawyer will provide the buyer and the seller with the statement of adjustments. This is a ledger which shows the credits to the buyer and seller and shows the total amount paid by the purchaser and received on the sale. The two most common adjustments are for the deposit provided by the buyer and for property taxes.

Even though the deposit is often paid to the real estate brokerage, and not the seller directly, the buyer will receive a credit for the deposit paid towards the house. The seller will receive the deposit on the closing in the form of a reduction on the real estate commission paid on closing, since the deposit is used to pay a portion of the real estate agent's fee. For example, if the real estate agent's fee with HST is \$20,000 and the agent received the buyer's \$5,000 deposit, the seller will only be paying the remaining \$15,000 towards the real estate agent's invoice.

- The other most common adjustment is for the property taxes. The seller is responsible for their portion of the year and the buyer will be respon-

sible from the closing date onwards. Credits to the buyer or the seller will be adjusted on closing to ensure that each party pays for their portion of the year.

- Other adjustments can be for monthly common elements expenses, tenants' first and last months' rent, fuel tanks, etc.

Direction

The adjusted Balance Due on Closing shall be paid as the Vendor or the Vendor's solicitor shall in writing direct.

- This clause means that the remaining adjusted

amount due on closing by the buyers will be paid to the seller's lawyer as the seller's lawyer directs. On closing, any liens such as mortgages or lines of credit need to be paid out. To ensure that the mortgage, property tax arrears and any other liens are paid out on closing, the buyer's lawyer will make the necessary trust cheques payable to :

- the financial institution holding the mortgage to pay the total amount to discharge the mortgage;

- the City of Ottawa for the property tax arrears;

- the Seller's Lawyer in Trust for the seller's lawyer to disburse the remaining amount to their client.

Deletions

The Vendors shall pay any amount and take all steps

necessary to cause to be registered at the Vendor's expense a deletion from title of every encumbrance or instrument the Vendors' solicitor has agreed in writing to cause to be deleted from title.

- This clause means that any and all mortgages, lines of credit or any other liens on the property will be paid and deleted on closing. This ensures that the buyer receives clear title to the property and the buyer's own mortgage will have first priority, as all other liens have been discharged. Administratively, this can take the bank a few months after closing to discharge the mortgage. The Seller's lawyer will undertake to follow up to ensure that the bank discharges the mortgage as soon as possible and provide the buyer's lawyer with proof of the discharge.

HST

This transaction is not subject to Harmonized Sales Tax as the Property is a personal use property or a used residential complex occupied by the Vendors or by persons authorized by the Vendors, and does not constitute a substantially renovated residential complex, as defined under the Excise Tax Act, S.C.

- This clause warrants that HST is not applicable on this transaction. On a resale residential property, HST is not applicable in addition to the purchase price. Therefore, the seller is warranting that it was not a new build home, vacant land or that any part of the property was used as a commercial space which would be subject to HST.

Family Law

The Transfer delivered in this transaction correctly shows each Vendor's spousal

status and address for service.

- This clause states that the seller has reviewed the transfer document prepared by their lawyer and the document accurately shows their marital status. Marital homes have a special place in property law that provides spouses with additional rights in the property. On the sale of a marital home, even if only one spouse is an owner of the property, the owner's spouse will also have to sign and consent to the sale of the property.

Survey

To the best of our knowledge, the building(s) and any other structure(s), and any fences and other boundary markers, on the Property are accurately shown on the attached copy of a plan prepared by (blank), O.L.S., dated (blank), except: (blank)

- If the seller has a survey of the property which they are providing on the sale, the seller is warranting to the best of their knowledge that all buildings, structures and boundaries are accurately shown on the survey. The seller does not need to be an engineer with knowledge of surveys. Instead, the seller needs to ensure that no other structure was erected on the property that is not shown on this survey and that they are not aware of any existing structure that is encroaching on the boundary line.

In this issue, we have covered adjustments, HST family law and survey clauses. In part three, we will look at clauses relating to Condominiums, construction liens, the Planning Act and residency.

co-authored with Robin Goski, associate lawyer

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

