



Jacques Robert Real News December 2011

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Dear real estate professionals,

We are thrilled to announce our team's newest addition, Katie Moore. With more than 10 years experience as a law clerk, eight of which have been in real estate/real estate development, our team is as strong as ever! Please join us in welcoming Katie to our team.

We thank those that provided us with some issues/questions that they wanted to see addressed in our next newsletter. In this issue, we discuss home inspections.

We hope that in each upcoming newsletter we will continue to address issues which you find relevant and provide you with useful information and tools to continue providing the best service to our clients.

We also include a list of this month's community events for you to share with your new clients moving to Ottawa and interested in getting involved in the community.

We thank you for your ongoing support.

Sincerely,

Jacques & Sarah

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

Home Inspections

By Sarah R. Morgan & Jacques Robert

These days, almost all resale transactions are conditional upon a home inspection as it is widely recognized that home inspections are well worth the investment. Typically, the condition reads, in part, as follows:

"This Offer is conditional until (time) on the (day) day of (month), (year), upon the inspection of the subject property by a home inspector at the Buyer's own expense, and the obtaining of a report satisfactory to the Buyer, in the Buyer's sole and absolute discretion. The Seller agrees to cooperate in providing access to the property for the purpose of this inspection...."

There is no question that retaining the services of a home inspector to inspect the subject property can avoid complicated legal disputes between the buyer and seller after closing.

It is important to note however, that agents do have a duty beyond that of simply adding the clause to the agreement.

Referring a home inspector

Unlike mortgage brokers, insurance brokers, lawyers and real estate agents, home inspectors are currently not regulated in Ontario. That is, they are currently not required to be licensed, as such, there are currently no mandatory standards (relating to training, certification and ethics for e.g.) governing them in our province.

However, there is the CAHPI. The Canadian Association of Home & Property Inspectors (CAHPI) is a national association whose mission is to promote and develop the home inspection profession. The Ontario Association of Home Inspectors is the CAHPI member in Ontario. While membership is voluntary, its members agree to abide by standards of practice, national occupational standards and code of ethics. Its members are "registered home inspectors." The member database is available [here](#).

When discussing home inspections with your client, a common question they may ask you is "can you refer me to a home inspector?"

An important consideration for you should be whether you are inducing reliance on a competent person or not. Referring your client to an incompetent person will not only reflect on you, but may potentially lead to you being held wholly or partially responsible for their incompetence.

We recommend that you read the following articles and consider these when referring your clients to home inspectors.

- [Mike Holmes, "Inspecting the Inspector," The Ottawa Citizen \(Oct. 3, 2009\)](#)
- [RECO, "Home Inspections"](#)
- [Canadian Mortgage and Housing Corporation, "Canadian Home Inspectors & Building Officials National Initiative," Research Highlights Technical Series 00-131](#)

In light of recent changes in the home inspection industry, the CMHC is currently revising its "About Your House" fact sheet *Hiring a Home Inspector*. We will periodically visit their website and will post on our website when that update is available.

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Reviewing the Report

So your client has retained the services a home inspector and an inspection is scheduled. What is your responsibility vis-a-vis the inspection report? Can you "wash your hands" of all responsibility to your clients regarding this report? Can you rely solely on the inspector's review of the report with your client? The simple answer is no.

A [2011 Ontario case](#) found a real estate agent responsible in part (25%) where moisture issues were found in a basement following closing. In this case, the real estate agent had referred an inspector who performed an inspection of the subject property. The real estate agent's liability was based in part on his failure to advise the purchaser of the use to be made of the inspection report and failing to review the report with the client before waiving the home inspection condition.

We strongly recommend, if you have time, to read this decision and should you have any questions, please do not hesitate to contact us.

So there are deficiencies, what now?

The inspection is completed and some deficiencies have been discovered. It is important that you discuss with your clients his/her options: end the agreement, propose an amendment relating to the deficiencies or waive the inspection condition.

When proposing an amendment to perform work dealing with the deficiencies one should consider whether the work must be performed by a licensed professional, whether building permits are required, what type of evidence will be accepted to demonstrate that the work has been completed, and what will happen if the work is not completed before closing. Each amendment should be tailored to your client's particular needs. The amendment must be clear as to the work to be performed, how it will be performed, by whom, timelines and consequences for unfinished work.

If proposing an amendment to reduce the purchase price in light of the deficiencies, it is important to consider whether the full extent of the deficiencies are known and whether an expert in the field should be retained to further inspect the subject property.

When dealing with deficiencies at a subject property, the risks and benefits of each option should be clearly outlined and discussed with your client in order to allow them to make a clear and conscious decision representative of their best interest.

Please note that the above is not an exhaustive list of considerations when dealing with home inspections. If you have any questions regarding the above or any other matter, please do not hesitate to contact us.

Give the Gift of Estate Planning to Your Family and Friends

During this holiday season, our office is offering personalized gift certificates for Standard Wills and Power of Attorneys.

For more information about our standard Wills and Power of Attorneys please visit our [website](#).

To purchase, please contact our office directly.

In the Community

Milva Caruso

Our office manager, Milva Caruso, was recently interviewed by Metro news Ottawa concerning her important work with World Vision. Read the full article [here](#). If you would like to find out how you can get involved, please contact [Milva directly](#).

Interested in attending an informational seminar?

Both Jacques and Sarah are teachers at heart and offer various seminars on real estate, wills and estates matters free of charge.

If your office is interested in receiving an informational seminar, please [contact us](#) to schedule a date and time.

Client Quarterly Newsletter

Next Issue: March 2012

If you would like to automatically receive our client newsletter, please send us an [email](#).

To access previous issues, click [here](#).

Community Events

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

- **Free Christmas Programming (Holiday Choirs & Carriage Rides):** Saturdays and Sundays on December 3, 4, 10, 11, 17 & 18 from 12-4pm @ Byward Market (Downtown). For more information click [here](#).
- **Santa's Pancake Breakfast:** December 17, 2011 from 7am-11am @ 190 Glen Park Drive, Community Centre (Blackburn Hamlet).

For Santa Claus and holiday parades please visit our [website](#).

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 (law clerk), Katie Moore (law clerk), Eva Mooers (office

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administrator/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 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.

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 2788 St. Joseph Blvd.
 Orleans, ON K1C 1G5

South Capital Corporate Centre
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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.