

# Purchaser or Seller not able to close



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Imagine, the sale of your home is coming up quickly and you hear from your lawyer that the purchaser may not be able to close on the closing date. While this scenario is relatively rare, it does occur a few times a year at our firm. Sometimes, extenuating circumstances occur such as the purchaser has lost their job or the purchaser's lender was not able to get the mortgage documents prepared on time. The reverse can happen as well where the seller is not able to close because of circumstances beyond their control. For example, where an estate is selling a home and the estate trustees are waiting for the Will to be probated (also known as letters of administration) from the Courts. If the Will is not probated before the closing date, then the transaction cannot close.

When a situation occurs where one party cannot

close, the lawyers will try to negotiate an extension of the Agreement by a few days depending on how quickly the lawyers believe both sides will be ready to close. Note that lawyers always act on the instructions of their clients. Lawyers can recommend to their clients that the extension is reasonable and recommend that the clients accept the extension. But if the clients decide that they do not want to accept the extension, the lawyer has no choice but to reject the extension.

If a purchaser is not able to close on the closing date and the seller decides not to extend the closing date, the seller will have to minimize their losses by re-listing and re-selling their home. Once the seller has sold their home again, if they sold at a loss despite trying to sell it for the same price, the seller can sue the first purchaser who

was not able to close on the closing date for any losses including carrying costs (per diem interest on the current mortgage, insurance costs) and any difference in the purchase price. For example, if the original purchaser was purchasing the home for \$400,000, and the seller could then only sell the home for \$380,000, the seller would be able to sue the purchaser for the \$20,000 difference in the

purchase price.

If a purchaser or seller is only asking for an extension for a few days or a week and will be covering the carrying costs, the other party should be reasonable in these situations and agree to the extension. The courts in many cases have not looked favourably on parties who have not agreed to reasonable extensions, especially in cases where the extension is a

result of an event beyond the party's control, or the party is only asking for an extension for a few days.

While situations requiring an extension on a transaction do not occur all the time, purchasers and sellers are wise to plan for those possibilities. For example, we do not recommend buying and selling on the same day. If the purchaser is not able to buy the seller's home on the closing

date because the mortgage documents are delayed then the seller will also not be able to buy their new home on that day and could possibly find themselves staying overnight in a hotel. If a client is selling and buying a new home on the same day, we recommend the clients look into bridge financing. Banks offer bridge loans at very reasonable rates. The advantages of a bank loan greatly outweigh the headaches that could occur if the sale and buy transactions are not completed on the same day as scheduled.

If you find yourself in a situation where the transaction may not close on the closing date, your lawyer will assist you through the process and present to you the available options. As the client, you should be available by both telephone and email for your lawyer to easily communicate with you.

*co-authored with Robin Goski, associate lawyer*

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## RENTAL GUIDE

### Safety issues prompt landlord to close stairway in winter

**BY DICKIE & LYMAN LLP**

who practice landlord/tenant law and other areas of law

**Q: I live in a large apartment building that offers access to a major street behind the building via an outdoor stairway. Many of us use this stairway to get quickly to the bus stop. However, in the winter time, the landlord puts up a "CLOSED" sign and blocks the entrance to the stairway with a piece of plywood. Some tenants climb down or up the stairway anyway, but it looks very dangerous because of the snow and ice.**

**I spoke to the property**

**management company in charge of the building. They told me that the closure is to prevent accidents.**

**Not having access to the stairway is a real inconvenience to me and the other tenants because we now have to walk all the way around the block to get to the bus stop. Doesn't the landlord have an obligation to maintain all parts of the apartment building and the apartment complex, even though that would take time and money?**

**A:** From what you describe, it seems like this staircase is not an entrance to the building or a fire exit, but rather

was built as an extra convenience for the tenants for quicker access to the main street.

You are correct in stating that the landlord has an obligation to maintain the apartment complex. However, your landlord has the right to close off this stairway, subject only to the rules about closing an existing service or facility. If your landlord closed off the stairs last winter, then winter maintenance of these stairs is probably not a service that is currently included in your rent. That means the landlord can choose to close the stairs during the winter with no negative legal consequence.

As they have done, your landlord should make sure that the stairway is clearly marked as closed, and barricaded or chained off to avoid accidents.

Practically speaking, why would this be the law? Consider the safety element. You write that the stairs "look very dangerous." No matter how many staff are working, the staircase is going to be dangerous any time there is ice and blowing snow. Your landlord does not want to risk tenant injuries when bad weather strikes before they can clear and salt or sand the stairway.

Even though it takes longer, you are safer taking

the longer walk around the block, rather than risking the stairs where a fall could have serious consequences.

You are probably right that there is an economic element to your landlord's decision. The stairs would require constant, round-the-clock monitoring and maintenance to keep them reasonably safe all winter.

The only alternative would be to install a heating system for the stairway. That would be expensive, and your landlord could apply for an above-guideline rent increase to pass the cost of such a system on to the tenants. For most tenants the benefit would probably not

be worth the cost.

The landlord's liability insurer may also have had a say in the matter. Particularly if there was a claim in the past, an insurer may indicate that they will renew the insurance policy only if certain safety measures are taken. That could include a requirement to close those stairs in the winter.

Because of these same concerns, closing or reducing outdoor stairways is a common practice in parks and on university campuses. There too, it may not be reasonable to keep the most convenient fair weather access open during a Montreal winter.

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