

Agreement of Purchase and Sale explained - part two



Jacques Robert
**REAL ESTATE
 LAW**

This is the second installment in a series of articles in which we are explaining some of the clauses found in the standard Ontario Real Estate Association ("OREA") Agreement of Purchase and Sale. In part one we looked at the clauses relating to Irrevocability, Completion Date, HST, and Title Search. Today we will be explaining UFFI, Chattels Included / Fixtures Excluded, Rental Items, and Spousal Consent.

UFFI

Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.

Ureaformaldehyde foam insulation (UFFI) was used in the 1970s. It was a foam insulation that was injected behind the walls to increase the insulation in a home where using other types of insulation wasn't practical. There were perceived health concerns with UFFI though, and by 1980 the product was banned by the Canadian government. However, the product is still used in European homes today. Given the perceived health risks associated with UFFI, the warranty contained in the Agreement of

Purchase and Sale is designed to provide the Buyer with comfort that the property does not contain UFFI. If the property was built more recently than 1980 there should be no concern. However, if the property is older and could have existed during the time period UFFI was widely used, the Seller should ensure that the warranty states "to the best of the Seller's knowledge" the property does not contain UFFI. Otherwise, if the Seller states that there is no UFFI at the property and it is discovered after closing, the Seller can still be sued for the cost of its removal.

Chattels Included / Fixtures Excluded

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

A chattel is a moveable object that is not affixed to the property. For example, the refrigerator, stove, dishwasher, curtains are considered chattels. Chattels will usually stay with the Seller unless specified. A fixture, on the other hand, is an object that is affixed to the property: the furnace, windows, and faucets, to name a few. Fixtures will usually stay with the building and become the property of the Buyer unless specified. However, there are a large number of items that could be considered either a fixture or a chattel. For example, a wall entertainment system, while a standalone piece of furniture, is often attached to the wall with a set of brack-



ets to prevent the heavy piece of furniture from falling. Importantly, the value of all conveyed fixtures and chattels is included in the purchase price. This can play a role in negotiating the purchase price.

If there are any items in the home that as the seller you definitely want to take with you, or as the buyer you specifically would like to keep in the house, be sure to mention it as "included" or "excluded", so that there is no confusion on the closing date. It is therefore important to always try to be specific when listing the fixtures and chattels. For example, there may be more than one refrigerator in the house; which one is the included chattel? The condition of the item can also be a consideration. For example, the central vacuum system can be included can be described "as is", or the appliances included can be said to

all be "in working order".

Rental Items (Including Lease, Lease to Own):

The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s) if assumable. The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

This clause will most commonly apply to the hot water tank; however, furnaces and propane tanks are other examples of rented items. Buyers need to be aware that by assuming these rental contracts, they are responsible for the term, price, and conditions associated with them. As stated, the cost of the rental (and potentially a fee for transferring the contract) is in addition to the Pur-

chase Price. Potential buyers should make investigations into the details of any rental contracts, in order to be fully aware of their obligations upon their assumption of the contract. Sellers need to make sure they do not omit any rental items from the Agreement that will be staying with the house, as failure to do so can leave them responsible for rental costs after the completion date. Is it a chattel that is being left behind...or is it actually a rental item?

Spousal Consent

The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the Family

Law Act, R.S.O. 1990, and hereby agrees to execute all necessary or incidental documents to give full

force and effect to the sale evidenced herein.

Most often, married couples own a matrimonial home as joint tenants, with each of them having an ownership interest in the home, and both names appearing on the title. In these circumstances, both spouses sign the Agreement as a Seller. In the situation where the spouse of the Seller is not on title to the property, the titled spouse needs to obtain the consent of the non-titled spouse to sell the property if it is a matrimonial home. If proper spousal consent is not obtained for the sale, the transaction may later be set aside by the court in certain situations.

co-authored with Robin Goski, associate lawyer and Mark Armitage, associate lawyer.

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