



All-inclusive pricing



Jacques Robert REAL ESTATE LAW

The Law Society of Upper Canada has recently made amendments to the rules governing the advertising of fixed-price, or “all inclusive” residential real estate services. These changes were made in order to provide more clarity for potential clients of real estate practitioners, as well as to allow for easier comparisons of services through consistency in advertising across law firms.

These amendments were approved by the Law Society at the end of last month after being initially presented for consideration in June 2017. The rule applies where a lawyer (or law firm) advertises a price for services on a sale, a purchase or a refinancing of residential real estate. The amendments to the rule apply

to all advertising formats including electronic methods or traditional media.

Permitted disbursements

Lawyers may continue to advertise a price for services involving a residential real estate transaction inclusive of all fees for legal services, as long as they follow the amended rules. The rule changes provide that if a lawyer advertises a price for the completion of a residential real estate transaction, then the advertisement needs to meet certain requirements. Among these, the advertised price must be inclusive of all fees, disbursements, and third party charges except for HST and certain “permitted disbursements”. These permitted

disbursements can include land transfer tax, government fees, Teranet fees, and any title insurance premium. The amendments also include the requirement that there must be a clear opportunity for the customer to learn of the permitted disbursements component in relation to the advertised price, and as a result the permitted disbursements should not be in small print or found in a separate document or webpage from the advertised price. The all-inclusive price must include things such as staff costs, postage fees, courier costs, bank fees, photocopy costs and all other costs and disbursements that are not permitted disbursements specifically under the rule.

Three areas that were specifically looked at by the Law Society were whether third party title searches could be included in permitted disbursements, whether the cost of a condominium status certificate could be included in permitted disbursements, and how the advertised price should be presented in sales

transactions involving the discharge of a first mortgage.

Third party title searches

Most title searching for residential real estate transactions is done in house. However, it is sometimes the case that the services of a professional title searcher will need to be obtained because of the complexity involved. The Law Society concluded that this should not be included among permitted disbursements in all-inclusive advertising based on ethical and economical arguments, including the fact that it is reasonable to require this cost to be absorbed by lawyers who advertise all inclusive fees, since these services are not usually necessary in most real estate transactions. As well as helping to maintain price transparency, this also eliminates the possibility of the practice of “bait and switch” pricing based on title search requirements, where the client finds out at the last minute that the actual price will be higher than the all-

inclusive advertised price. With the amendments to the advertising rules, if a lawyer needs to hire a third party title searcher on a real estate transaction, the lawyer is expected to do so without exceeding the advertised price.

Cost of a condominium status certificate

With the amendments, the cost of a condominium status certificate may be included as a permitted disbursement in all-inclusive pricing. The reasoning of the Law Society for this is 1) that that not all residential real estate transactions require a condominium status certificate, and 2) the cost of obtaining a condominium status certificate can vary. Customers purchasing a condominium property should enquire with their lawyer how much the status certificate will cost to obtain, and what the lawyer’s fee is for reviewing the status certificate.

Acting on the discharge

of a first mortgage in a sale transaction

In a sale transaction, the rule amendments now require the advertised all-inclusive price to include the cost for acting on the discharge of a first mortgage. According to the Law Society, this was included to prevent lawyers from charging for discharging a first mortgage in a sale as a separate service in addition to the advertised price, which would run against the Law Society’s goal of increasing transparency in all-inclusive pricing.

In addition, the previously existing requirement concerning advertising of pricing that the lawyer strictly adheres to the advertised fee in every applicable case remains.

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RENTAL GUIDE

Police access to rental units: what landlords need to know

BY DICKIE & LYMAN LLP
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Q: What are a landlord’s obligations and rights if the police or other authorities want to enter a rental unit? Do the police need a warrant to enter an apartment?

A: The answer depends on who is seeking entry and for what purpose, and may depend on whether the officer seeking entry has a search warrant.

A search warrant is an order issued by a justice of the peace that authorizes a person to enter into a location and seize specified evidence that is relevant and material to a crime or offence. For a search of an apartment, the warrant must specify the unit

number or identify the unit, not just the building.

Unless there are unusual circumstances, the officer executing the warrant must make an announcement before forcing entry into a dwelling unit. This is known as the knock-and-announce rule. This involves:

1. knocking on the door or ringing the doorbell
2. identifying themselves as law enforcement officers
3. stating a lawful reason for entry

Once the announcement has been made, the police must give the potential occupants a reasonable amount of time to answer the door. After that, the police are entitled to break down the door to gain entry to the dwelling. If the landlord or a superintendent is present, that person can

unlock the door for the police, thus reducing disruption for other tenants, and saving the cost and nuisance of replacing the door.

The purpose of the knock-and-announce rule is to protect the dignity and privacy interests of the occupants of the house, and to enhance

the safety of the police and the public. The police must have a copy of the warrant available for the occupant to look at.

If the police have grounds to believe that following the knock-and-announce rule may result in evidence being destroyed, or resistance where

officers will be put at risk, they can enter without following the rule. If asked, a landlord could cooperate with the police in making that entry by unlocking the door or giving the officer a key to the door.

Now let’s look at the question of entry without a warrant. Under the Residential Tenancies Act, a landlord can enter a rental unit with the consent of the tenant, or with 24 hours’ written notice, or in the case of an emergency.

Typically, if the police ask to enter a rental unit without a warrant it will be in response to an emergency call, though the landlord should not assume that. Instead, if the police ask for help to enter without a warrant, the landlord should ask them if there is an emergency. If the police say there is an emergency,

then allowing them entry should be acceptable.

The landlord should only enter the unit if asked to do so by the police, or if some emergency repair is needed.

Other government officials sometimes want entry, usually to see the condition of the rental unit or the state of repair of the rental unit. If the tenant allows them entry, then that entry is legal. However, if there is no emergency, then generally the landlord should indicate that he or she needs to provide the tenant with 24 hours’ written notice of the entry.

Like other members of the public, landlords should generally co-operate with the police or with other government officials who want entry in order to perform their duties.



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