

# Vendor's Closing Certificate explained: Part 3



## Jacques Robert REAL ESTATE LAW

This is the third and final installment in our series on the Vendors Closing Certificate, a document that the sellers sign at closing warranting the property to the buyers. In this article, we will look at the clauses related to condominiums, construction liens, the Planning Act, and residency.

### Condominium

If the Property is a Condominium, the common expenses have been paid as shown on the Statement of Adjustments. The Vendors have not made any material changes to the common elements other than those permitted by an agreement registered on title. The Vendors have not received a notice convening a meeting respecting (a) the termination of the government of the condominium property, (b) any substantial alteration in or addition to or renovation of the common elements, and (c) any substantial change in the assets or liabilities of the Condominium Corporation.

\* While this clause is included in all Vendor's closing certificates, it will apply only if the property is a condominium. The seller is warranting that all common expenses have been paid as adjusted for on the Statement of Adjustments. The seller is also warranting that they have not made any changes to the common elements. For example, the seller has not built a deck on the common element's backyard that was not authorized or permitted by the condominium. Finally, the seller is stating that they have not received a notice from the condominium corporation that the governing body of the condominium corporation is being termi-

nated, or that there will be a substantial change to the common elements or that there is a significant change to the assets or liabilities of the Corporation. The seller is warranting the buyer that the Corporation is still substantially in the same position it was in when the buyer entered the Agreement and the buyer's lawyer reviewed the Status Certificate.

### Construction Liens

There has not been and there will not be any work, construction, remodeling, repairs or improvements made to the Property or

materials supplied within forty-five (45) days preceding closing of the transaction which could give rise to claims for a lien against the property pursuant to the Construction Lien Act, Ontario, or any amendments thereto.

\* The seller is warranting that there has not been any renovation or construction work at the property or materials supplied to the property that could give rise to a construction lien within 45 days after the closing date. A construction lien arises when contractors or sub-contractors have not been paid. Any liens on the property would need to be removed prior to the sale of the property.

### Planning Act

The Vendors do not retain

the fee or any right or interest in any land abutting the Property, in contravention of the Planning Act, Ontario.

\* The seller is warranting that they do not own property on either side of the property being sold. The Planning Act is a long-standing Act. If a person owns two part of lots which touch, either side by side or back to front, the properties will merge, which is not permitted under the Planning Act. Therefore, the property will have to be severed by the City of Ottawa. Severing property is an expensive process. Most lawyers will ask on opening the file if you own property that is side by side. If the lawyer does not ask, always bring this to the lawyer's attention, as the unintended consequence could

be expensive.

### Binding

All the statements in this Certificate are binding upon each Vendor and each Vendor's heirs, successors and assigns (jointly and severally for multiple Vendors), and are enforceable after closing.

\* All owners of the property will be bound by these statements both together with each other and separately.

Reliance: I make the above statements conscientiously believing each of them to be true, knowing that the Purchasers will be relying on them.

\* The Purchaser will rely on the Statements made in this document. Condi-

an unpaid water account. If the buyer discovers that the seller did not pay their water account as warranted, the buyer can, after closing, demand that the water account be paid.

### Residency

Each Vendor is and will be on the Closing Date not a non-resident of Canada under Section 116 of the Income Tax Act, S.C.

\* Both in the Vendor's Closing Certificate and as an additional declaration, the seller will declare that they are and will be residents of Canada on the closing date. This is an important declaration because if the seller is not or will not be a resident of Canada on the closing date, the seller must supply a clearance certificate from the Canada Revenue Agency declaring that the seller does not owe income tax to the Canadian Government. If the seller does not have the clearance certificate before closing, the lawyer will have to hold back 25% of the purchase price of the home until a clearance certificate is issued. If you will be considered a non-resident at the closing date, you should order a tax certificate at least 6-8 weeks before the sale of your property, as it can take that long for the CRA to issue the certificate.

This was the final installment of our series on the clauses and warranties contained in the Vendors Closing Certificate. In this article, we covered condominiums, construction liens, the Planning Act and residency clauses. If you are selling your property and have further questions about the documents you are signing, your lawyer will be able to assist you in light of your specific transaction.

*co-authored with Robin Goski, associate lawyer*

**Jacques Robert is an Ottawa real estate lawyer. For more information, visit [www.jacquesrobert.com](http://www.jacquesrobert.com)**



GETTY IMAGES