

When to contact a real estate lawyer



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When contemplating buying or selling a home, the first professional many people will think of to assist them in the transaction is a real estate agent. This is understandable given the significance a real estate agent plays in a home purchase or sale. Usually only later in the process, after a firm agreement has been reached and the completion date is approaching, will people consider that they may need to contact a lawyer. However, the need for a real estate lawyer can often begin prior to an actual agreement being reached for the purchase and sale of a property.

A real estate lawyer does more than register the purchase or sale on the comple-

tion date. Prior to entering into an Agreement of Purchase and Sale, a real estate lawyer can be asked to review the document. Although real estate agents have great familiarity with these agreements, they are not necessarily experts on the legal ramifications of certain clauses and conditions that these agreements may contain. Many times, an agreement will be drafted to be conditional upon the review of the agreement by a lawyer. In these cases, unless this condition is formally waived, the agreement may be terminated.

If you are purchasing a new home from a builder, the agreement will be provided by the builder and can often

be 40 or 50 pages in length. These types of Agreements of Purchase and Sale generally always include a schedule stating that the agreement is conditional upon a review by the purchaser's lawyer.

In these cases, it is important to get the agreement to a lawyer as soon as possible for review. The timelines provided in these conditions are usually short, generally between 5 and 10 days, often including weekends. In order for a lawyer to review the agreement in detail and have a meaningful discussion with the client about it, a new home purchaser should not wait until the final day to contact a lawyer. Keep in mind that the way lawyer review conditions are often drafted in new build home agreements provides that unless a legal objection is raised within the timeframe, it is agreed that the review condition has been met or waived by the purchaser.

As well as reviewing an agreement prior to or after execution, real estate lawyers are in many cases also retained to draft an Agreement of Purchase and Sale for a client. A real estate lawyer can draft a custom contract that may be more beneficial in cases of unique or complex properties. Further, people do not always seek the assistance of a real estate agent. If you are purchasing or selling a home and neither party is represented by a real estate agent, it is highly advisable that you get the agreement drafted by a real estate lawyer in order to best protect your interests, including for example ensuring that the property in question is described completely and accurately. Describing a property only by its municipal address is not sufficient for such a significant transaction and can leave you open to future legal problems.

Another example of why you may need to contact a

real estate lawyer early in a transaction can be seen in the purchase of a condominium property. Even if the closing date agreed to in the Agreement of Purchase and Sale is several months or more away, the agreement will be conditional upon the purchaser's lawyer obtaining and reviewing the status certificate for the condominium. This condition is inserted for the protection of the buyer and should not be waived until the buyers' lawyer has had the opportunity to discuss the status certificate with the client. Again there will be a timeframe within which this must be done. After receiving a copy of the agreement, the lawyer will need to contact the property manager for the condominium to order the status certificate. After receiving this request, the property manager has 10 days within which to provide the certificate.

This is by no means an

exhaustive list of why it is often better to contact a real estate lawyer sooner than later in the transaction. Real estate lawyers have a duty of due diligence to their clients. This means that a lawyer must expertly and carefully examine the legal aspects of a real estate purchase and sale to ensure that the deal matches the clients' needs and expectations. By contacting a real estate lawyer early in the process of a purchase or sale, common missteps or delays may more easily be avoided. In a future article, we will go into more detail about the role of a real estate lawyer after a firm Agreement of Purchase and Sale has been obtained.

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RENTAL GUIDE

National Housing Strategy should reassure social housing occupants

BY DICKIE & LYMAN LLP
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Q: I live in what our board of directors calls a federal co-op. For months now, there have been discussions about the upcoming end of our operating agreement, and what that will mean for the co-op's ability to continue to charge below-market rents to people who cannot afford to pay market rents, including me. I tried to find out by looking at the new National Housing Strategy at CMHC's website www.placetocallhome.ca, but I didn't see anything about federal co-ops, or even much about social housing. Should I still be worried?

A: Technically in a housing co-op, what members pay to cover the mortgage, property taxes and operating costs is

a monthly "housing charge." Sometimes, some units are occupied by tenants who pay rent to the co-op, just as tenants pay rent to for-profit landlords.

In the new National Housing Strategy, the term "community housing" is used for what has been known as "social housing." In Ottawa, community housing includes:

- Ottawa Community Housing
- non-profit or co-operative housing supported and supervised by the city
- non-profit co-operative housing supported by the federal government (known as federal co-ops).

Many people in community housing are concerned about the end of their operating agreements. The operating agreements have been ending on a rolling basis as

the 35th or 50th anniversary of the agreement start dates has occurred. Many more operating agreements are to end over the next 10 years.

The end of operating agreements coincides with the end of the original mortgages, and also means the end of government subsi-

dies for housing charges or rents. Many social housing advocates argued that the projects would be self-sustaining (without further subsidies) once the mortgages were paid off, but for many properties that did not work out because the member incomes were lower — and repair and building renewal costs were higher — than expected.

The provinces and municipalities were also concerned that they would have to pay 100 per cent of the cost of extending the operating agreements.

The National Housing Strategy makes it clear that the federal government will continue its support for all types of community housing, while providing new flexibility for them to re-finance their projects.

In addition, the federal government says it will consult with the associations

representing federal co-ops in order to design a new program of rental assistance with the goal of maintaining the current stock of such housing. That may mean the assistance to provide housing units at below-market rents will be delivered in a different way, but the funding should still be available, either to the federal co-op or to the residents like you.

In the strategy, the government also says it plans to roll out a separate program of portable rental assistance to be paid directly to low-income renters who are currently paying market-level rents in city-supervised social housing or to residential landlords. Many details of the planned Canada Housing Benefit still need to be decided between the federal government and the provinces. As a result, that new separate program is not expected to start until 2020.



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