

EM3 – The Electronic Monday Morning Meeting
Legal News and Information for Realtors and Mortgage Specialists
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Brought to you by:

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INTRODUCTION & ANNOUCEMENTS
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1. New Site Sections

As we continue the process of completing our web site located at <http://www.calgarylaw.com> we thought that we would take the opportunity to canvass our EM3 recipients as to ideas for articles, sections, etc.

The idea of our site is to provide a great information source for you and your clients. So, if there is something that we can add to help you we would appreciate hearing from you.

Over the next few weeks we will introduce each of the sections to you so that you can get a feel of the overall concept and how the site is intended to operate.

2. Office Move Now Scheduled

As we reported some time ago, we are moving to our new offices and the actual date has now been set. On June 8, 2002, we will be changing over our office to our new space located at 200, 1333 – 8th Street SW.

We are, of course, hoping for an absolutely seamless move and the plans are going well. Our Move Committee is allocating all of the jobs that need to be done so that on Monday, June 10th we can simply turn on the light switches and start working.

We will keep you totally up to date on the move and give you an email to request for new business cards with the new address on it if you would like.

3. Web Marketing Hints Section

Starting next week we will start adding in some web marketing hints for our readers. One of the specialties that we can now claim is in the web-marketing arena as we start marketing our own site.

In particular, we will let you know of new sites to list yours in, sections or articles that might be of interest and other information that you might find useful. One of the best ways to distinguish yourself now is to be Internet savvy and to have a good web presence. We hope that we can help you with this to some extent.

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REALTOR/BROKER QUICK HELPERS

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This week's hints deal with only a few of the issues relating to interim financing and when it should be addressed with your clients. These hints will help you understand what some of those concerns might be.

1. Changing Possession Days

One of the questions we often get asked is why lawyers insist on there being an amendment signed for a change of possession when possession is relatively close. A recent example illustrates why this is insisted on.

In the case in question, the possession day in the Offer was for a Saturday. The Buyer wanted to move this up to Friday. The Seller was asked by the agent's assistant as to whether she was in agreement. The Seller stated that she wasn't adverse to it but that if she changed her mind she would be in contact with the agent.

As it turned out, the Seller changed her mind on the Thursday and emailed her note to the agent's assistant. Unfortunately, that person was on holiday. The next day, the agent released the keys to the Purchaser not knowing that there was no authority to do so. The end result was a significant problem.

In this case, the entire situation would have been solved by virtue of a signed amendment as between the parties. That way, if the Seller wouldn't have had the chance to change her mind without there being consequences to her. It would

also eliminate the issue of there being no formal agreement to change possession upon which the Seller could act.

This is why we insist on changes being in writing is to stop the situation where Buyers or Sellers change their minds. Without the amendment, the probability of that happening is higher since the consequences are so much lower.

The key to remember is that what may seem to be a hassle or waste of time can have serious consequences if it isn't done. If you are unable to get to your client to have them sign a change in front of you (which is the preferred option) then at the very minimum fax it to them, have them sign it and fax it to you indicating their agreement with the change. Remember, everything is in writing for a reason... to protect your client and you!

2. Real Property Report Warranties – Part II

In a previous issue we discussed the issue that warranties relating to RPR's survived the crossing out of clause 4.12. A recent issue in our office indicates how the warranties themselves are often misunderstood.

In the case in question, the Buyer purchased a home and accepted the existing RPR because it showed all of the improvements on the property. However, until the RPR was brought to our office and reviewed, no one noticed that it showed both the eaves of the house and the shed were actually in the neighbour's lot.

When we checked into this further we discovered that there was no encroachment agreement between the Vendor and the neighbour that allowed these encroachments to exist. One of the opinions expressed was that it didn't matter as the City of Calgary didn't care.

Unfortunately (or fortunately depending on your perspective), clause 6.1(e) of the Offer does cover this in that the Seller warrants to the Buyer that the improvements are entirely on the lands and that they do not encroach on neighbouring lands. This covers City land and privately held lands.

In this case, the problem should have been identified when the Sellers originally bought the lands or, alternatively, before they listed it as they were intending to use the original RPR that was ultimately used. Instead, the end result has been a series of complicated negotiations with the deal closing late as a solution is crafted.

This situation can be avoided simply by quickly looking at the RPR if it is available when you list a property or when presented to you as a Buyers agent and ensuring that there are no encroaching improvements whatsoever. If there

are or if you have any questions, bring it to your clients' lawyer's attention so that the problem can be dealt with before the completion date comes and goes.

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ASK AWAY!
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To ask your real estate or corporate question to us please send us an email at pleasehelp@calgarylaw.com and we will review it for you. We can't answer every question in our newsletter but if you have a short concise question that we think is of a concern for others we will include it. Remember, these questions are for general information only and you should consult your own attorney before acting on information you see here.

Are there any ways to totally eliminate liability for a vendor who lets a purchaser assume their CMHC mortgage?

The short answer is no. Unless the purchaser qualifies for the mortgage with the lender/CMHC the liability under the mortgage cannot be totally avoided. There are ways to minimize the liability but it can't be eliminated. Over the next few weeks we will dig into this issue for you to help eliminate some of the misunderstandings.

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LAND TITLES WATCH!
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As of Friday, 4:00 p.m. Land Titles was registering documents submitted on April 16, 2002, meaning that registration is 3 full business days! As the month end approaches this will likely move to 5 full days.

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FINAL MESSAGES
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Our impending move to our new office space has all of our staff excited as the new space will be optimized for our use. We think that the changes will be noticeable not only in our office but in the service we provide you and your clients as well.

Have a Great Week Buying and Selling
Same Time Next Week

Ron Thibeault and Bill LeClair
Barristers & Solicitors
Your Source for Information You and Your Clients Need

DISCLAIMER

The information provided is for general reference only. Prior to taking any actions, you should seek the advice of a lawyer to ensure that the steps you take to protect your client are sufficient.
