

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

LECLAIR THIBEAULT
Barristers and Solicitors
<http://www.calgarylaw.com>
Ph. 403 245 3500

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INTRODUCTION & ANNOUNCEMENTS
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1. New Articles and Information

We have begun adding in articles into our website including articles on real estate law, general law and web site design and marketing.

On occasion we will introduce you to the latest article added so that you can decide whether you would like to read more. As you will see, this week's article is an article that was prepared relating to the selecting of a real estate lawyer to help in the closing of a transaction.

We encourage you to review these articles. They are somewhat more in depth than our typical information on EM3 but we think that you will find the information useful.

On a special note we are also giving you the option to add these articles to your own site if you think that they will be useful for your visitors. One of the important facets of a web site is the content you provide (the subject of a future article). The use of articles is one of the best ways to present this information.

If you would like to use any of the articles simply email us at the address at the bottom of the article and we will forward the text of the article to you in html code so that you can simply drop it right into your site.

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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 witnessing of contracts and some of the issues you should be aware of. These hints will help you understand what some of those concerns might be.

1. Witnessing of Signatures

At one of our recent meetings there was a question raised as to the witnessing of signatures by sellers and buyers. In particular, the question was whether it was important that the same witness to dual signatures also sign across from each of the signatures. The classic example of this is when you as a Realtor witness a husband and wife sign but you only sign across from one of the signatures.

The key concern is that the validity of signatures becomes a serious concern when the seller and buyer are in conflict. At that point there may be a question as to whether all of the parties to the contract agreed to the terms of it or to the terms of an amendment.

The point to remember here is that there may not be an issue as to whether the signatures are valid unless there is a dispute as to the meaning or validity of the contract itself. However, that is the situation where your risk is highest. The concern is not that you witnessed each signature but whether the witness for the other parties witnessed all of the signatures.

The risk for you as a real estate professional is that you may be relying on a third party to swear that the other parties did in fact sign the agreement or amendment. This is a serious concern because your clients' case may rely on a third party who, in turn, might state that they only witnessed one signature. In that situation, the liability might be turned on you for failing to obtain the appropriate signatures.

The simple solution is to sign across from both signatures and to insist that the representative of the opposing party do the same.

2. Who Makes a Proper Witness

In the last week we were also asked the question as to whether “cross-signing” was appropriate.

“Cross-signing” is where you have two parties to a contract and they witness each other’s signatures. This can involve husbands/wives, children/parents, etc.

Where this typically comes about is when one party to a contract is missing when you present it for signature and the other person asks to take the document to have it signed. Most often, they simply witness the missing person’s signature and bring it back.

The danger of this is simply that the party witnessing the signature is a party to the contract or has a non-arm’s length relationship with the person signing. If all goes according to plan this will not be problem. However, the problem will rear its ugly head when the parties are in disagreement.

The second issue relates to fraud where the other party simply forges the signatures and then presents it to you as a completed contract. By not witnessing the signatures yourself you are open to this possible scenario. Far fetched as you may think it to be, it has occurred in the past.

The issue becomes whether you can rely on the testimony of the witness if the person signing denies that they executed the documents? Remember, they are related and are interested in the outcome!

NEW ARTICLES

Choosing a Real Estate Lawyer

One of the questions that people have asked over and over again is how to select a real estate lawyer. The answer is pretty complex because there is no easy, fits everyone answer. Of course, not every jurisdiction requires that you have a real estate lawyer. However, when one is needed choosing a real estate lawyer involves a large number of variables ranging from experience to personality issues. There are, though, some basic things that everyone should be working from.

The first issue most people focus on is price . . .wrong! Price is only one factor and unless the fees of one lawyer are 30% more than another then it should become a minor fact. Why? . . . It's simple actually...Click on the link below to read the rest of this article

http://www.calgarylaw.com/html/Choosing_a_lawyer.html

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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.

Does a mortgage company have to renew a mortgage that was assumed?

The fact is that mortgage companies reserve the right to refuse to renew any mortgage when the term is expired. Do they do it often? The answer is rarely and especially where there have been no problems on the payments side. The same holds true for assumed mortgages. Rarely do banks refuse to renew a mortgage that was assumed as long as the terms of the mortgage have been complied with but they do have the right if they so desire or need to.

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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 23, 2002, meaning that registration is 3 full business days!

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FINAL MESSAGES

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We would like to welcome Linda Day to our staff. Linda is experienced in the fields of real estate, corporate/commercial and estate law and has been a great addition to our team.

Some of you will have contact with her over the next while and we are absolutely certain that you will find her attitude and skill level refreshing. When you have a chance, say hello and help us welcome her to LeClair Thibeault.

Have a Great Week Buying and Selling
Same Time Next Week

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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.
