

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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REALTOR/BROKER QUICK HELPERS
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This week's hints deal with only a few of the issues relating to Real Property Reports and New Home Walkthroughs. These hints will help you understand what some of those concerns might be.

1. RPR's and Warranties

Clause 4.12 of the current real estate contract in use for Calgary requires that the Seller provide a Real Property Report showing the current state of the improvements. Occasionally, we see where the parties agree to the existing one in the possession of the Seller and clause 4.12 of the Offer is crossed out and initialled.

This approach is OK as far as it goes and as long as you don't misrepresent what is being done. The problem is that there are warranties contained in clauses 6.1(d), (e) and (f) where the Seller warrants to the Buyer that, amongst other things, the property complies with current by-laws.

Where you can get caught inadvertently is in crossing out clause 4.12 and telling your Seller that this absolves them of liability. All crossing out 4.12 does is absolve them from providing a updated or new RPR and compliance. If the Buyer gets a new RPR or applies for an up to date compliance stamp, the Seller may still be obligated to rectify an encroachment or side-yard problem if one exists. The warranty in 6.1 catches them on this.

A recent file in our office highlights this problem. A Buyer and Seller agreed to cross out 4.12 but didn't cross out the relevant clauses in 6.1. The RPR was from 1994 and was complied. However, under the newest by-laws the shed that complied in 1994 couldn't be complied as it was over 10 sq/m and was in the utility right of way. Furthermore, the deck was over 0.9 metres high and right to the property line (both of these were acceptable in 1994 but no longer).

The Seller thought that he was in the clear but the warranties caught him. Ultimately, the Seller was forced to pay for an encroachment agreement and the City gave a Development Permit for the deck. The Seller thought he had no liabilities whatsoever which was not the case.

2. New Home Walkthroughs

There seems to be some confusion with clients as to the purpose of new home walkthroughs. Occasionally, you represent buyers who are purchasing new homes.

When possession finally does come, the process for a Home Warranty purchase is that your client will do a detailed walkthrough with the builder (often a penultimate walkthrough is done a week or so before) in order to obtain possession. This walkthrough is vital and shouldn't be taken lightly.

The final walkthrough on possession day is the trigger for the Home Warranty program. What happens is that your client does a very detailed walkthrough looking for any issues whatsoever such as painting problems, chips, cracks, etc. Each item should be listed on the Certificate of Possession that is to be signed by the builder and your client.

Once signed, the Certificate of Possession invokes the Home Warranty program and thereby provides a definitive list of items to be covered. Undetected items are still covered but the issue of responsibility for that problem can sometimes arise.

As such, the walkthrough your client does is of vital importance. Please make sure that your clients take their time with it and that they understand just how important it is. Also, make note that your client's lawyer will need a fax copy of the Certificate of Possession in order to fund the mortgage (if there is one).

FINAL MESSAGES

On this Easter weekend it is important for all of us to be thankful for where we are in the world and the country we are in. We would like to extend our best

wishes to you this Easter and our hopes that the following year will be a peaceful one.

Have a great Easter weekend. Have a Great Week Buying and Selling

Same Time Next Week

Ron Thibeault and Bill LeClair
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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.
