

EM3 – The Electronic Monday Morning Meeting
Legal News and Information for Realtors and Mortgage Specialists
Volume 1 - Friday, March 8, 2002

Brought to you by:

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

=====
TABLE OF CONTENTS
=====

- * Introduction and Announcements
 - The launch of our Realtor/Broker Newsletter
 - Our upcoming move
- * Realtor/Broker Quick Helpers
 - Watching for Hidden Agendas
 - Nailing Down the Numbers on Assumption Deals
- * Final Messages

=====
INTRODUCTION & ANNOUCEMENTS
=====

1. Launch of EM3

Welcome to our first edition of EM3 the “Electronic Monday Morning Meeting” for Realtors and in the Calgary area. We have sent you this copy because you are a Realtor that deals with our firm or your broker owner has requested that we send you this information on a weekly basis.

Over the years both of us have attended a number of Monday morning meetings in Calgary Real Estate Offices. At those meetings we give a couple of hints as to what to watch for and protect yourself from liability. However, a number of you can't make the meetings because of other appointments, offers, etc. Why should you not get the information to help you protect yourself just because you are busy?

EM3 is a new approach that we are using to help solve this problem so that each and every Realtor we know can get the hints and helpers that we give to help you avoid liability on deals and become a better Realtor. By sending out this newsletter we hope that each of you will find it useful so that if you can't make a Monday morning meeting that you at least get the information that may just save you money in the long run.

The idea is that you can keep these newsletters in a file or binder and refer to them as different situations arise. We will be sending out an index of the items discussed every six months for your handy reference.

Back issue copies of our newsletter will also be posted to our new website which is going to be launched sometime in the next 2 weeks.

2. Our Upcoming Move

We have recently confirmed that we will be moving offices in June. The move is a short but positive one as the current space we occupy is no longer meeting our needs.

We will be keeping you informed of the change as it approaches so that you can ensure that your clients are directed to the right location. Please also let us know whether you will be needing new business cards from us for when the move occurs. To be added to our mailing list please email us at thibeault@calgarylaw.com and your name will be added.

=====

REALTOR/BROKER QUICK HELPERS

=====

This week's hints will help you in terms of writing contracts and being aware of what motivates your clients. We see a number of different clauses that are written which can be dangerous for the real estate professional that is trying to draft them. These hints will help you understand what the concerns might be.

1. Beware of Your Clients' Motivations

A recent case that we have run across highlights the importance of understanding what motivates your clients.

In this situation, a client was relocating to Calgary (he has been relocated a number of times). The company he works for has a policy of only guaranteeing the initial sale price of a home its employees buy if they are relocated again in less than 6 months.

The client wanted to do renovations but wanted to ensure that the value of those renovations was going to be taken into account if the client was transferred within the 6 months. Normally, the contract would be written at x dollars and the purchasers bank would hold back the amount of the renovations (in this case \$20,000).

The client and his agent attempted to draft a clause where the purchase price would be based on the original price + \$20,000 with the seller “abating” back the \$20,000 after closing.

This deal could not be completed this way for 2 reasons. First, the purchaser’s bank might actually fund based on the bumped up cost and the renovations never get done. This would be a fraud upon the bank.

Second, the purchase price might be misrepresented to the company knowing what the internal policy was. This could have been perpetrating a fraud on the company. Either way, any real estate professional doing this type of deal is in jeopardy of a serious RECA problem.

As a real estate professional you must understand why your clients want to do something. Turning a blind eye could land you in hot water. If you do understand but have any suspicions, immediately contact a lawyer you know to get advice BEFORE you get a deal signed.

2. Nail Down Assumption Numbers To Protect Clients

When you are writing deals based on an assumption of mortgage you must ensure that you are protecting your clients against differences in the cash balance required to close the deal.

The real issue is the Real Estate Purchase Contract where in section 2.2 the section for the balance of the mortgage uses the words “approximate principal balance”. The issue here is that the contract contemplates that the number you insert is not exact.

By using the words “approximate” there is the possibility that the mortgage could be significantly lower which would increase the cash that your client has to come up with to close the deal. Typically, this comes as a shock to purchasers which then can reflect badly on the Realtor.

There is a way to avoid this problem. The key is to make sure that the “Balance Owing” section is limited by the words “not to exceed except for normal property tax adjustments”.

=====

FINAL MESSAGES

Over the next few weeks we will be launching our new website located at <http://www.calgarylalaw.com>. Of course, if you go there now you won't see anything because we are just putting the final touches on some things.

Our goal with the website will be to do a number of things including:

- Keeping your clients up to date on important issues that affect them;
- Keeping you up to date on new legal developments; and
- Providing a source of information that is easy to access.

We think that you will find the new format both useful and productive. We will be keeping you up to date as to the official launch date and we welcome your comments once it is up and running.

=====

Have a Great Week Buying and Selling
Same Time Next Friday

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