

# The Role of the Paralegal in a Real Estate Transaction

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# **THE ROLE OF THE PARALEGAL IN A REAL ESTATE TRANSACTION**

## **I. INTRODUCTION**

In most law firms, real estate paralegals operate in an occupational grey zone somewhere between lawyers and clerical assistants. They are often expected to perform functions which transcend the limits of the conventional assistant and border on the provision of legal services. This paper attempts to define the roles and responsibilities of the paralegal in an effort to bring some clarity and consistency to that designation.

## **II. ROLE AND RESPONSIBILITIES**

In a typical real estate transaction, a client will retain a lawyer to help them with the purchase, sale or financing of a property. This lawyer will meet with the client, answer their questions and manage the legal aspects of their matter. In order to better serve their client, the lawyer can assign certain aspects of the transaction to a “competent” and “properly trained and supervised”<sup>1</sup> assistant. In the real estate context, these specialized assistants are generally referred to as paralegals.

The number of responsibilities delegated to a paralegal will depend on their level of experience, competence, training and ability to work with limited supervision. As a result, the duties of a competent and well-trained paralegal should differ from those new to the position. Regardless of their skill level or competency, it is ultimately the lawyer’s decision as to how much of the file will be delegated to a paralegal. It is also the lawyer’s responsibility to properly train and supervise the paralegals they employ. According to the Code, the standard of supervision required for a paralegal is higher than that of a conventional assistant because the tasks they perform are legal rather than strictly clerical in nature.<sup>2</sup>

Depending on the amount of delegation by the lawyer, a paralegal may be responsible for some or all of the following:

- (a) reviewing/preparing general correspondence/instructions, trust letters, mortgages and statements of adjustments;
- (b) reviewing purchase and sale contracts;

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<sup>1</sup> *Code of Professional Conduct*, Law Society of Alberta, C. 2, R. 4 (the “Code”).

<sup>2</sup> *Ibid.* at C. 4.1.

- (c) reviewing/requesting/ordering real property reports, certificates of title, title insurance, due diligence searches and related documents;
- (d) recording important dates and diarizing;
- (e) organizing closing funds; and
- (f) preparing transfers/affidavit of transferees, closing documents, closing reports and accounts.

Despite the fact that a paralegal can administer the lion's share of any real estate transaction, there are certain functions which they are not allowed to perform. These include the following:

- (a) accept new cases;
- (b) exercise professional judgment;
- (c) negotiate or compromise a matter with another lawyer or third party;
- (d) approve legal documents;
- (e) advise on the merits of a case;
- (f) set fees;
- (g) exercise judgment with respect to accepting, imposing or amending trust conditions; and
- (h) exercise judgment with respect to giving or accepting undertakings.<sup>3</sup>

In no event should a paralegal undertake any of the above tasks. If they are asked to do so, they must refuse and immediately consult their immediate superior. If their immediate superior is the lawyer making the request, the paralegal should present this list for their consideration.

### **III. REQUIRED SKILLS**

According to the Code, a lawyer is considered to be competent if they possess the skills and attributes relevant to each matter undertaken on behalf of a client and apply them in a manner appropriate to that matter.<sup>4</sup>

In a real estate transaction, the responsibilities of the paralegal derive from those of the lawyer. Therefore, it is reasonable to assume that a similar level of competency should be expected of the paralegal as it is for the lawyer.

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<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.* at C. 2, R. 1.