

## **Sales**

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*Residential Real Estate for Legal Support Staff*

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## **SALES**

### **1. INTRODUCTION**

This paper is intended to deal with the basic requirements of an Alberta residential real estate transaction when you are acting for the seller, but is not an exhaustive list of all possible steps you may need to take. You should keep in mind that there is no one-size-fits-all method that applies to all files in all cases, and the onus is on the lawyer and law firm staff to evaluate the requirements of each transaction individually.

### **2. OPENING A FILE**

Lawyers typically receive a real estate file from a client directly contacting them about a transaction or by being sent instructions from a realtor. In either case, the obvious first step is to open a file with whatever administrative system your office uses. I recommend having information sheets glued to the front and back cover of a legal size file folder that can be used to record contact information and as check lists throughout the file. For internal organization, my office uses a two peg system, where all the documents are on one peg, and the correspondence, notes and phone calls are on the other.

### **3. REVIEWING THE CONTRACT**

There are many different forms of real estate purchase contracts that get used in a sale. While most realtors will use the most recent AREA form of contract, there are older versions that are still in circulation. As there are differences between the various versions, you can't assume all contracts prepared by realtors are the same or that they have been completed correctly. There is an ever greater variation of contracts used by people acting on their own, without a realtor. The seller may have a Com-Free form, an AREA form, a random contract found on the internet, or sometimes just a hand written agreement.

The legal assistant will often be responsible for the initial review of the contract to establish the basics, including the parties, closing date and essential terms of the transaction. However, this should never replace the role of the lawyer, who is ultimately responsible for understanding the terms of each contract and ensuring the sale proceeds in accordance with them.

When reviewing the contract, you should pay special attention to the following:

- a. Have all the necessary parties signed the contract?
- b. Have all of the conditions/subject-to's been removed?
- c. What is the sale price and what are the terms of the sale: cash, mortgage, assumption, other consideration?
- d. When is the closing date?
- e. Is the client obligated to provide a real property report and compliance?
- f. Is the client required to provide condominium documents?
- g. Are there any additional/unique terms that have been added to the contract?

#### **4. TITLE SEARCHES**

The first and most important search you must do when a file is opened is the title search. If you do not have an on-line account with Land Titles (through SPIN), you will need to contact that office to set one up. It is virtually impossible to complete a real estate transaction without one, particularly using the Western Torrens Protocol.

The information on the title should be cross checked with the sale contract to ensure that all the names, legal descriptions, etc. match. It is not unusual for a name to be misspelled, a number reversed in the address, or the legal description on the title to be more detailed than in the contract.

When reviewing the registrations on title, you must evaluate which ones will remain on title and which ones the seller is obligated to discharge. Generally, a non-financial encumbrance, such as a Utility Right of Way, Easement, Party Wall Agreement, or Restrictive Covenant will remain on title. Mortgages (that are not being assumed), Builders Liens, Writs and Caveats securing a financial claim must be discharged. Some financial encumbrances, such as Homeowners Association and their related fees, are intended to remain on the title and become the buyer's obligation.

#### **5. PROPERTY TAX SEARCHES**

A tax search for the property and any parking titles (for condominiums) should be done when the file is opened. Searches are done in the municipality where the property is located, and are usually done by fax, phone call or on-line, depending on the municipality involved. Some will allow you to set

up an account, so that payment for each search does not have to be sent separately. A copy of the contact information that my office has for the municipalities we deal with most frequently is included with these materials. You should prepare and keep updated a similar list for your most common contacts.

The important information to be obtained from the tax search is the amount of the current year's taxes, when they are due, have they been paid and if the seller is on a monthly payment plan. If the taxes are in arrears, you will normally have to undertake in your trust letter to pay the outstanding amount and any further penalties due before closing, and provide proof of payment. A receipt from the municipality is normally sufficient, and you don't need to undertake to provide a tax certificate to the buyer.

The tax search will also indicate if the taxes are being paid by the seller's mortgage company. This can be an issue if the sale closes near when the taxes are due, as the mortgage company will pay the taxes for hundreds of properties in one lump sum, and the municipality will not be able to process these payments for several days or weeks later. Therefore, a tax search done at closing will show the taxes are unpaid. The buyer will therefore require an undertaking to ensure they are paid as they should not have to rely on a simple representation that the taxes will be paid by the mortgage company, as there have been occasions when the mortgage company did not in fact do so. It is the practice in my office to provide the undertaking, hold back the amount of the outstanding taxes until the payments have been processed and release the holdback to the seller once an updated tax search shows the taxes are paid.

## **6. CONTACTING THE CLIENT**

The client should be contacted as early as possible in the process. Not only do you want to confirm that he wants your office to act for him before you spend time on the file, you also want to find out about any potential issues sooner rather than later. In some firms, this contact is exclusively done by the lawyer, while others rely on the assistants for this.

In any event, in the initial discussion with the client, you should cover the following:

- a. Obtain all his current contact information, such as phone numbers, email, current mailing address etc.