

Acting for the Buyer

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Real Estate Boot Camp

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ACTING FOR THE BUYER

A basic residential real estate transaction is generally straight forward and is completed without too many problems. Of course, any number of issues can arise that can make even the simplest transaction difficult. But, by far, the vast majority of residential real estate transactions are completed with no or very few problems. However, real estate transactions are the highest area of complaints and claims to The Law Society. How can a relatively simple transaction result in so many complaints and claims? I believe the answer is a simple one – volume. The more real estate transactions you do in a month, the greater the chance for a mistake.

My goal is to provide an insight on how to organize your practice so that you can reduce mistakes and increase efficiency. What follows is an organizational check list. Every City, Town, County, etc. has its own subtle nuances and requirements that must be followed by the practicing lawyer to have a real estate transaction successfully concluded. Each lawyer must establish their own way of organizing their practice and their own check list so that they are certain that they meet all of the requirements of their specific location. This paper deals solely with the purchase of Residential Real Estate. When completing a real estate purchase transaction you generally follow these steps:

STEP 1: RECEIPT OF THE REAL ESTATE PURCHASE CONTRACT.

The vast majority of Real Estate Purchase Contracts are completed on the most recent Alberta Real Estate Association Contract (see Resource Tab). Being familiar with this Contract is essential. But there are many other forms of Real Estate Purchase Contracts in common use. Reviewing the Contract at the start of the file will help avoid later problems. The first challenge is whether the Contract is legible. So many Contracts are faxed and photocopied so often that what you receive is unreadable. Demand a legible copy of the Contract from the Realtor immediately. Some of the things to look for in the Real Estate Purchase Contract are:

- a) The Parties (all too often the parties named on the Purchase Contract are not the same as the Sellers listed on the Certificate of Title and the people you are advised will be the Buyers);
- b) The municipal and legal address for the Property (Addresses are quite often incomplete or wrong.);
- c) Are chattels included in the Purchase Price and, if so, what are they (e.g. mobile home, fridge, stove, shed, etc);
- d) The Purchase Price – is it coming from mortgage proceeds or is this a cash deal or is there some other form of financing. Clearly, if there is a mortgage, you must chase mortgage instructions as soon as possible;
- e) The Completion Date - Clearly the shorter the period of time between receiving the Real Estate Purchase Contract and the Completion Date, the greater priority you must place on the file. Also, have the Realtors selected a date which is on a weekend or a statutory holiday, so that now you must be aware of closing the real estate transaction on a date other than the one stated in the Contract;
- f) Have all the “Subject To” Conditions been removed;

- g) Are there any Addendums or additional information sheets attached to the Real Estate Purchase Contract and what conditions do they add to the transaction;
- h) Is there a requirement for the Seller to provide a Real Property Report and Compliance or Title Insurance or neither;
- i) If the Property is to be an investment property, are there Tenants in the Property that are being assumed;
- j) Is there any reference to GST and GST Rebate;
- k) Is this a rural Property which may require Foreign Ownership of Land documents;
- l) Does the Contract indicate that the Sellers are nonresidents of Canada, requiring you to comply with Non-Resident Withholding Tax;
- m) If the Property is a Condominium, are there separate titles for parking stalls and storage units.

STEP 2: SEARCHES

A. Tax Search

You need to do a tax search (See Schedule 1) as soon as possible to:

- a) Confirm the legal description for the Property;
- b) Confirm the amount of taxes for the year and what has or has not been paid towards the taxes so that you can prepare your Statement of Adjustments;
- c) Confirm whether or not utilities are outstanding which may or may not be added to the Tax Roll; and lastly
- d) Confirm whether there are any local improvement levies.

B. Title Search (See Schedule 2)

The Certificate of Title will confirm who the registered owners of the Property are. (Too many Contracts have the wrong Seller named.) You need to review all the encumbrances on Title to the land and order copies of those which are potential issues such as Restrictive Covenants, Homeowners Association Caveats, etc.

C. Condominium Plan (See Schedule 3)

If the Property is a Condominium, you need to order a copy of the Condominium Plan to ascertain whether or not the Condominium is a Bare Land Condo or a Conventional Condo. If a Bare Land Condo, the Seller must provide a Real Property Report and Compliance Certificate. Also, you must obtain from Land Titles a copy of the CADS (Condominium Additional Sheet) (See Schedule 4).