

Overdue Undertakings?

There has been much discussion in lawyer's offices recently about the new Royal Bank policy of registering their own releases for their conventional mortgages that are being paid out. They now collect the registration fee as part of their discharge statement, and they will register the release, in an effort to "free up time for law offices" and "streamline the process for our clients and lawyers." This has traditionally been part of lawyers' undertakings on closing. So how will those undertakings change?

Many lawyers have concluded that it may be inappropriate to extend an undertaking to the securing of the release for these Royal Bank mortgages, restricting the undertaking on closing to paying the mortgage out. But who will do the follow-up to ensure that the lender does what they say they are going to do? How can we ensure that our clients' interests continue to be well served?

Considering this, and the recently reported cases from Newfoundland and British Columbia, we might do well to reflect on mortgage payouts and undertakings in general in our practices.

I recently had a closing with a lawyer whose practice was focused in the litigation field – sometimes considered to be the bane of property practitioners. I had provided an undertaking on closing to payout and secure a release of mortgage. Shortly after the closing (30 days or so), the lawyer wrote and asked about the status of the release. This was during the busiest part of the summer, but the lawyer continued to write, with annoying regularity. I decided to deal with it, and obtained the release and sent it along. It only then occurred to me that it was quite appropriate for the lawyer to act as he did, and the fulfillment of my undertaking was an important part of the transaction. We now have a tracking system for all outstanding undertakings, and a means of ensuring that they are all on a regular follow-up, and not just waiting for the summer help to work on when they have time. (Do they ever?)

Both lawyers' offices need to be satisfied that a mortgage against a property has been paid out, and both offices need to have enough mortgage information to be able to follow-up independently on the issuance of a release. We should consider whether we need to make changes to our practices to ensure that our clients are well served, and that we are extending the proper courtesy to other lawyers regarding follow-up.

Undertakings can be like overdue library books. Remember how good it feels when you hear that the library will waive the fines if you dig in the corners of your kids' rooms and find those books that got borrowed in the summer and never returned? I suggest that we declare a general amnesty for those outstanding undertakings. Dust them off, and treat them with the respect that they deserve.

