

WORKSHOP II

ROLES OF THE PARTIES IN A REAL ESTATE TRANSACTION

AN INTRODUCTION

The aim of this workshop is to develop sample materials to provide to your client regarding their role, and your role in their real estate transaction. Comments are encouraged regarding the role of the agent, and mortgage lender as parties to the transaction.

Some of the most frequent claims in insurance arise as a result of unfulfilled and unrealistic expectations of the client in their lawyer. Clarifying the roles of the parties at the outset of a transaction can only serve to ensure that unrealistic expectations are extinguished before their arise.

As with other workshops - these materials are intended as a beginning, and not an end in themselves. By reducing thoughts to writing, we can begin to assess the way we react to our client's expectations, reasonable or otherwise, and the way that we may be inadvertently contributing to their creation, and by so doing, to our own demise!

To look at the role of the parties historically, the lawyer used to play the first, and most pivotal role in the transaction. The client consulted the lawyer, often before dealing with an agent, and before approaching a lender. Building inspectors were unheard of, and so were pre-approvals, new home warranties programs, GST and economic hard times.

We have come of age. We are now often the last expert to be retained in the purchase process. Invariably the agreement has been drafted, signed, pre-approved mortgage confirmed and building inspector booked before we are retained. We are anxious to please those who refer clients to us, as well as the clients themselves. We too are competing for a "market share".

So - we have changed positions in the purchase process - but has our role or our perception of it changed as well?

Unarguably, levels of consumer awareness are on the rise - but unfortunately, clients often begin and end their inquiries with the conviction that lawyers services can be bartered for in the same manner as their groceries, TV's, stereos and carpets. There is a critical difference however with legal services in that the client has no ability to assess the services that will be provided for the prices quoted. Our responsibility therefore is to assist our clients in their search by educating them as to the process, their role in the process and our role as their legal counsel. Establishing a level playing field can only further the public's positive perception of us, and hopefully to clarify our sometime muddled (or is it muddled?) view of ourselves.

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Halifax, Nova Scotia
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THE ROLE OF THE LAWYER, CLIENT AND MORTGAGEE

1. Preliminary Considerations:

In explaining your role to your client the following are suggested guidelines:

1. Do it in a way that the client can readily understand it;
2. Do it in writing;
3. Do it consistently to establish a pattern in your practice;;
4. Create it in a form that requires little, if any, tailoring for each client:
5. Do it at the outset of the process and ; where at all possible,
6. Do it face to face.

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Other Suggested Considerations:

- Should the information be separate for each type of transaction - i.e., condo, used residential, income, new construction?
- Should the information be client specific or transaction specific?

2. **Where does the role of the lawyer begin and end?**

There are a myriad of considerations to be applied to any given real estate transaction. Most certainly not all considerations apply to every file.

IN THE BEGINNING :

- **take the time at the commencement of your retainer to provide your client, and their matter with your legal expertise.**
- **provide your client the opportunity to review their particular expectations and understanding of the legal contract they have entered into.**
- **assess your client's information and expectations against legal contract they have entered into.**
- **identify risks to client if discrepancies exist, and the options available to them to reduce the risks.**
- **exercise your professional judgment at the outset of the file to assess the considerations to be applied to a particular file.**

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Other suggested considerations?

3A. **Aspects of your role to be included in any material provided:**

- searching your client's property history, and forming an opinion based on the results - including any questions regarding liens, restrictive covenants or encumbrances.
- preparation of the legal mortgage documents reflecting the terms negotiated between your client and their lender.
- arranging for a survey or location certificate in accordance with your client's instructions.
- preparing closing adjustments.
- attending to the closing of the transaction including execution of closing documents.
- providing reports to client and mortgage company with regard to the transaction.
- respond to specific instructions of client's received.

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- it is proposed that a description of your role would not be mixed with your legal advice on specific matters. What is your view?

- it is proposed that the explanation of your role be tied to the major elements of your processing of the file, and include general timing expectations. What is your view?

- Additional aspects of the lawyers role that should be reviewed?

3B **Aspects of clients role to be included in any material provided**

- = **Time Frames** - monitor all time frames set out in agreement and advise agent or lawyer if extension required or question arises, i.e.
 - financing
 - inspection
 - water
- **Arrange inquiries** set out as considerations in agreement and when satisfied i.e., water, inspector, financing;
- **Fire Insurance** - obtain insurance and arrange to have **Certificate of Insurance** faxed to lawyer;
- **Utility hook-ups** - make arrangements for all utility hook-ups - including hot water heater rental;
- **Pre-Closing Inspection** - arrange with agent and advise lawyer as to results;
- **Advise lawyer** of any changes in agreement or closing date, and provide instructions for specific inquiries.

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Additional aspects to be included:

5A. **Practical Matters to be included in material to client:**

- **MONEY** - Review the balance of downpayment, and closing costs at the outset of the transaction;

Invariably costs can be estimated to within \$100.00, and also invariably are of primary concern to any purchaser;

- develop a worksheet tailored to your practice.
- **TAXES** - by far the most confusing adjustment for purchasers - review this early in the transaction
- **HOT WATER HEATER RENTALS** - make sure your clients understand their legal obligation to assume.

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Other considerations:

4A. **Advice to your client to enable the client to provide you with specific instructions:**

- location certificate/survey (waiver if advice not accepted)
- zoning/occupancy/work orders (existing occupancy, in law suits)
- well/water/septic
- use of property (intended vs. existing use)
- limitations of PCDS (best of knowledge and belief)
- limitations of building inspection (i.e. an opinion)

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- additional considerations for general advice: