

INTRODUCTION

The purpose of this paper and the talk this afternoon concerns a number of items as outlined in the brochure dealing with "Real Estate, the Agreement".

In reviewing this topic and attempting to determine what points should be covered, I have concentrated on the practical aspects of the Agreement of Purchase and Sale and the checklist involved when acting for either a vendor and/or a purchaser in initiating, dealing with and then completing the transaction in accordance with the Agreement of Purchase and Sale which you have received. This paper will not be an attempt to draft the perfect Agreement of Purchase and Sale but will rather make reference to problem areas to watch for and attempt to outline through the checklist the standard items which must be looked at and completed to close a transaction successfully and also, a few not-so-standard items which should be watched for when dealing with real estate.

This paper is designed to review a standard residential real estate transaction, as I am advised that the corporate search and/or income property and/or dealing on behalf of a corporate client will be handled by separate cover.

**INFORMATION REQUIRED ON INITIAL TELEPHONE
CONSULTATION FROM VENDOR TO OPEN FILE**

- (1) Clients' full names.
- (2) Clients' mailing address.
- (3) Clients' telephone number
 - home number
 - work number.
- (4) Name of Real Estate Agent the vendor has retained.
- (5) Request client to bring in Deed, copy of Mortgage, Surveyor's Certificates or any other pertinent documents, such as rights-of-way or anything that may affect title to the property.
- (6) Attempt to determine with this initial telephone conversation whether the client feels that these items are readily available. Should the client not be certain of the availability of the documentation, ask the client to contact you again within a reasonable period of time as to whether or not the client can locate the documents, otherwise make arrangements immediately to contact the title searcher to secure a copy of the Deed for your file. This is particularly important in the event of a very quick closing.
- (7) Particulars of outstanding encumbrances against the property, eg. mortgage company and branch of mortgage company.
- (8) Is the property oil heated or electrically heated?

- (9) Is the client going to be in town for closing, and if not, what date do they expect to be leaving the area?

The above-noted questions for information are the questions that I ask a client when receiving a phone call from a vendor who simply announces that he has sold his house and wishes to retain our firm to act on his or her behalf. When we arrive at the checklists further on in this paper, you will see that more detailed explanations and questions may be asked and more information required of the vendor but at this early stage, normally without the benefit of the Agreement of Purchase and Sale in front of me, it is not of any benefit to either myself or to the vendor to get any more details than the above-noted matters.

At the conclusion of this initial telephone conversation with the vendor, at which time I would normally not have an Agreement of Purchase and Sale in front of me, I will ask the vendor to either drop off a copy of his Agreement himself to me and/or have the Agent forward one to my attention immediately. Many vendors would prefer to meet with you personally to review the Agreement of Purchase and Sale, which is fine, but often I find that there are certain conditions in the Agreement that have not yet been met by the purchaser and/or the vendor and therefore, the Agreement is still subject to these conditions and it may be premature to go through, in much detail, in a face-to-face encounter with your client, the terms of the offer and acceptance. Should the client wish to meet, I am more than pleased to do so but normally I will simply suggest that the Agreement be sent to my attention so that I may review it and I would advise the vendor at that time that on receipt of the Agreement, I will call him to go through the Agreement of Purchase and Sale.

It is the practice of many Realtors not to "annoy" the lawyers with a copy of the Agreement of Purchase and Sale until all conditions have been met. If at all possible, I attempt to get a copy immediately, only because the vendor may have a number of questions on any conditions, etc., and would not have had the benefit of legal advice that can be given by the lawyer, and just as importantly, the deadlining and checklist advice of the Paralegal and/or Secretary who may be opening the file and diarizing the important dates.

When discussing the forwarding of the Agreement of Purchase and Sale by the Real Estate Agent when the vendor does not have a copy in his/her possession, I would suggest that you advise the vendor that you will call him or her on immediate receipt of the Agreement and that no news from you is no news from the Realtor in reference to the Agreement, and perhaps they should follow-up on that in three to five days if they have not heard from you. This should also be diarized in your book for three to five days from your discussions so that you can follow-up with the Realtor should the Agreement not be received so that both you and the vendor are working quickly towards getting the file opened and in process.

CHECKLIST WHEN ACTING ON BEHALF OF A VENDOR

- (1) Agreement of Purchase and Sale received.
- (2) Deed, Mortgage, Surveyor's Certificate, and other pertinent documents received from the vendor.
- (3) Agreement of Purchase and Sale reviewed with client.
- (4) All dates to any and all conditions in the Agreement of Purchase and Sale diarized:
 - Completed/satisfied.
- (5) First Mortgage Payout Statement ordered:
 - Received.
 - Copy sent to client.
- (6) Second Mortgage Statement ordered:
 - Received.
 - Copy sent to client.
- (7) Confirmation with client that client is Canadian resident within the meaning of the Income Tax Act.
- (8) Confirmation with client as to spousal status pursuant to the Matrimonial Property Act.
- (9) Receipt of how purchaser is taking title from purchaser's solicitor.
- (10) Preparation of Deed.

- (11) Statement of Adjustments prepared.
 - Statement of Adjustments confirmed by purchaser's solicitor.
- (12) All cheques ordered and prepared.
 - Received.
- (13) Letter to purchaser's solicitor prepared.
- (14) Letter paying out any mortgage or mortgages and requesting release(s).
- (15) Letter to real estate company enclosing cheque and paying real estate commission.

**Items to be Discussed with Vendor Prior to
and When Setting Appointment to Execute Documents**

- (1) Arrangements for keys.
- (2) Instructions as to payment of proceeds of sale.
- (3) When is vendor actually going to be vacating the property.
- (4) Does the vendor have any specific need for the proceeds of sale at any particular time on a closing date.
- (5) Discussion with vendor as to fixtures and any items that must remain pursuant to the Agreement of Purchase and Sale.
- (6) Advise the client to notify Water Department and Power Department of closing date with forwarding address. Also, get forwarding address of client for your records.

When acting for the vendor, it is imperative to diarize any and all dates in the Agreement of Purchase and Sale whether the obligations are of the vendor or of the purchaser. It should be explained to the vendor that he or she should contact you on or before the expiration of any of these dates to advise as to whether the condition has been satisfied or whether they have been approached to grant an extension.

As a courtesy, it is important to forward the description and any pertinent title information, that you may be willing to share with the purchaser's solicitor, to the purchaser's solicitor as soon as practicable. Also, copies of anything you feel that may be helpful in his or her search of title can be forwarded on a "without prejudice" basis. When acting for the vendor, this is particularly important because of Clause 3 of the Agreement of Purchase and Sale, which deadlines the purchaser's solicitor as to the date for title objections, "from the receipt of the legal description".

Another matter that I would strongly urge is that all Payout Statements upon receipt are immediately copied and forwarded to your vendor client. In most instances, there is a payout penalty involved and your client should receive a copy of the Payout Statement as soon as practicable and should be asked to contact you if he or she has any questions on the matter. You will often find that the branch of the lender has waived the penalty because your client is buying a property either locally or in another province and has agreed to finance through the same financial institution and that this waiver has not found its way to the "powers that be" at divisional office where the Payout Statement has been prepared, and a last minute hassle and headache can be avoided if this is pointed out to your client immediately

so that he may respond with the name of his contact so that the matter can be resolved with plenty of time to spare prior to closing.

It is useful to have a conversation with the client about three to five days before closing to go over things, such as keys, any special arrangement or the deposit or transfer of sale proceeds, and the establishment of closing time in the sense of an appointment time for signing of documentation. If the vendors have indicated that they will not be in town for closing, determine when they expect to leave and have them make arrangements to contact your office several days prior to leaving so they may execute the Deed, a Power of Attorney, and leave any instructions for the sale proceeds. The appointment time is preferable a day or two prior to closing which gives you all the documents you will need a day or two early so that you may forward them to the purchaser's lawyer in advance in the hopes of acquiring your funds early on the day of closing, and also, because your vendor is very often moving on the closing date and has better things to do than sit in the lawyer's office for any length of time. It is also very useful at this conversation if you have not had it prior to this point, to explain to the vendor that he or she is entitled to receipt of the sale proceeds when the property is totally vacant and the purchaser can occupy the property. For some unknown reason, many vendors feel that they have until midnight on the day of closing, or some other magical hour, and arrive at your office on the morning of closing to sign documentation, looking for their sale proceeds at the same time they are signing their Deed and advise you that they should be off the property some time before 8:00 that evening. This causes great concerns when the purchaser has made arrangements to move in that very day and refuses to transfer the proceeds of sale until the vendor has vacated. This becomes somewhat difficult when your vendor is buying and selling on the same day and accommodations normally have to be made to acquire keys to the new

property prior to all proceeds being available on the sale of the old property. This can normally be worked out between the clients themselves and confirmed by the lawyers involved.

Another topic that should be brought up during this discussion is, what if anything the vendor has agreed to leave as part and parcel of the purchase price and you should mention that anything affixed by screw or nail to the walls and/or the property is to remain with the property. Particular mention should be made of light fixtures, switch plates, mirrors and bookshelves. During the summer months, I found it is not out of place to mention shrubs and planted flowers. As odd as this may sound, the removal of the above-noted items come up as a problem at the last minute on a higher percentage of real estate sales than one would expect.

**INFORMATION REQUIRED
ON FIRST CONTACT WITH PURCHASER**

- (1) Closing date.
- (2) Clients' full names and how they are taking title.
- (3) Clients' full mailing address and details of any other persons that can be contacted in the event that they are in transit.
- (4) Clients' home telephone number and work telephone number.
- (5) Real Estate Agent involved.
- (6) Is client in town or when does client expect to be in town on day of closing?
- (7) Mortgage company being used.
- (8) Where fire insurance will be arranged.

It is often normal in the circumstances of getting the information from the purchaser at this stage to have the lawyer indicate to you so that you may advise the client as to the fees and disbursements that they will incur on the closing, as most purchasers are concerned with a "ballpark" figure, at least, at this initial stage. It is often advantageous when acting for the purchaser, to have the purchaser attend at the office of the lawyer to discuss these matters with them so that the lawyer can explain all potential costs involved in purchasing a property as it is somewhat more complex than when acting for a vendor. This is particularly true with a first-time home buyer. At this initial telephone consultation, again I would suggest, as I had for the

vendor, that normally you will not have an Agreement of Purchase and Sale in front of you and it would be suggested that the purchaser contact his agent with a view of sending that to you directly or dropping it off himself. This should be diarized in the checklist as to having been received and the Agreement reviewed with the client directly at that stage. There may be a number of things discussed with the purchaser at the initial telephone conversation because most purchasers are curious as to the fee being charged and to adequately explain that to the purchaser, you are obliged to touch on matters such as Surveyor's Certificates, taxes, legal fees and disbursements.

CHECKLIST WHEN ACTING ON BEHALF OF A PURCHASER

- (1) Pre-closing:
 - Agreement of Purchase and Sale received.
 - Agreement of Purchase and Sale reviewed with client.
 - Deadlines to be met pursuant to Agreement of Purchase and Sale.
 - Advise client as to the power.
 - Advise client as to water.
- (2) INITIAL RETAINER LETTER TO CLIENT.
- (3) Letter to vendor's solicitor.
- (4) Title references received.
- (5) Title objections deadline.
- (6) Search requested.
- (7) Search returned.
- (8) Surveyor's Certificate requested.
- (9) Surveyor's Certificate supplied/received.
 - New Certificate requirement waived by client and waiver completed and received.
- (10) Adjustments completed.
- (11) Adjustments confirmed.
- (12) Deed Transfer Tax Affidavits.

- (13) Mortgage documents:
 - Prepared.
 - Checked.

- (14) Funds to be requested on.

- (15) Funds requested.

- (16) Preliminary report done.

- (17) Insurance particulars confirmed.

- (18) Closing time set with clients.

- (19) Client advised of balance to complete.

- (20) Bill done/cheques ordered.

- (21) Bill for reimbursement done.

- (22) Zoning confirmed.

- (23) Advise client of power and water changes.

- (24) On closing:
 - Releases.
 - Undertakings.
 - Holdbacks.
 - Report to client.
 - Report to mortgagee.

Once you have received the Agreement of Purchase and Sale and reviewed it with the client either in person or on the telephone, it is imperative that you, at that point, send the purchaser a letter of retainer. An example letter of retainer is

attached which attempts to touch on the major issues involved in the buying of a home. I have found that the client is much more relaxed when they get something in writing from the law firm that is acting on their behalf as soon as possible and, in any event, within two or three days of the solicitor reviewing the Agreement of Purchase and Sale with them by telephone or in person. In particular, I point out the importance of the Surveyor's Certificate and would highly recommend that, if the purchaser does not request that you arrange, or indeed that he will arrange to secure a new Surveyor's Certificate, you have the purchaser sign a waiver confirming that you have advised him or her of the importance of a new Surveyor's Certificate but, despite this advice, has decided not to. Again, it is important to diarize any dates that are apparent on the Agreement of Purchase and Sale and to order any and all documentation such as mortgage instructions, tax certificates, insurance particulars, etc., as soon as practicable so that these items are all in the file prior to closing.

Again, it is urged that a discussion take place with the purchaser three to five days prior to closing, advising the purchaser of the total amount of funds that are required to close. This is important to avoid any last minute surprises with the purchaser who may not have understood the explanation of the fees that are due on closing and most often did not understand or recall the conversation with the lender, wherein the lender advised that it was going to deduct several hundred dollars for advance taxes, interest until the first of the following month being the interest adjustment date, the mortgage application and the appraisal fee, from the mortgage cheque. Three to five days will normally give that buyer ample opportunity to make arrangements to cover the shortfall, if there is one. Again, I would recommend discussion with the purchaser as to what his/her plans are on actually moving in and occupying the property and whether or not he has discussed

this directly with the vendor and confirmed with the vendor as to the vendor's plans for the time he/she expects to be out of the property. I find that, if the vendor and purchaser talk on this matter three to five days before closing, last minute problems with the vendor who has not vacated by the time the purchaser shows up with his/her moving truck, wife, four children, three dogs, a cat and two budgies, can be avoided.

It is suggested, in the letter to the vendor's solicitor, that any and all warranties and/or representations that may be outlined in the Agreement of Purchase and Sale as coming from the vendor be clarified in the initial letter. In other words, if you, as the purchaser's solicitor, will be looking for further warranties and/or guarantees flowing from a clause in the Agreement of Purchase and Sale at closing, it should be stipulated in your initial letter to the other solicitor to clarify as to whether or not he/she is going to be willing to provide these additional warranties and guarantees. I will make mention of this again a little later when talking more specifically about problem clauses in the Agreement of Purchase and Sale.

When requisitioning the funds from the mortgage company, preferably four to six working days prior to closing, it is important to determine from the lender whether any of the special conditions on its mortgage instructions are still outstanding. It is preferable to confirm this, of course, prior to the mortgage financing clause being deemed arranged, but often you do not get mortgage instructions for some seven to ten days subsequent to this date. When ordering funds, it is imperative that you speak to the lender on these items, as many lenders are now advancing funds through a divisional office without any knowledge as to whether or not these conditions have been met. If the question is not asked when you order the funds, I have seen circumstances where the lender has advised as to the cheque amount that will be available

and a time is given on the day of closing when the cheque is going to be available and the courier from your office arrives with the requisition documents all in order, as requested by the lender, to find that the cheque will not be given to the courier because the branch has indicated that three items in the Offer of Mortgage to the client have not yet been met, such as confirmation of income or the like. It is, therefore, very important that the question is asked to the lender as to all conditions being satisfied as much in advance of closing as possible but, in any event, when the funds are being ordered some four to six days prior to closing.

CHECKLIST FOR CONDOMINIUM PURCHASES

The Halifax/Dartmouth Real Estate Board has recently come out with a suggested form for Realtors in reference to the purchase and/or sale of a condominium. It is recommended that this form be used and be read in detail to note the particulars that are somewhat peculiar to the condominium sale or purchase. Should a standard form Agreement of Purchase and Sale arrive on your desk, it is important that you compare this form to the standard form of condominium Agreement of Purchase and Sale to see that the important matters have been covered. A number of those items which are common concerns with a condominium are:

- (1) Is the vendor required to deliver the Declaration By-laws and any other pertinent information in reference to the condominium?
- (2) There should be a clause dealing with the contingency and/or reserve fund.
- (3) There should be a clause dealing with the common expense fund as to the amount and when it is due and payable, be it in arrears or in advance.
- (4) Is there are reference to parking spaces and/or storage space which may not be in the unit itself?

A careful reading of the Real Estate Condominium Agreement will cover most of these items to the vendor's and/or purchaser's satisfaction. I would recommend it be used whenever possible. Once the Agreement has been received, the checklist is basically the same as the vendor's checklist, as discussed, or the purchaser's checklist, as discussed, with certain items that should be looked after, such as the vendor's solicitor should inquire of

his/her client as to the management company and mailing address of the management company so that an Estoppel Certificate can be ordered by the vendor's solicitor as soon as possible. The vendor's solicitor should attempt to obtain copies of the declaration and by-laws to forward to the purchaser's solicitor.

When acting for the purchaser, the declaration and by-laws should be read in some detail to see if there are any restrictions on the sale of the unit, and indeed, the definition of "unit" should be examined and your client should be advised as to just what he/she is buying as a condominium unit. Also, when acting for the purchaser, it is important to check the plan of the condominium unit against the unit number, etc., that has been supplied by the vendor and, in particular, sit down with the client and have him point out on the plan just what unit he/she thinks he/she is buying.

Several other oddities in reference to a condominium are that the Estoppel Certificate should be checked to see if it has been executed in accordance with the by-laws, and if acting for the purchaser and mortgagee, the following items are important:

- (1) Check the mortgage document to ensure that it contains all the clauses necessary for condominium mortgages.
- (2) Obtain a certificate of blanket insurance coverage from the Condominium Corporation and notify your client as to the necessity for insuring his contents and normally the interior of the unit. This is why it is important to check the definition of "unit" in the declaration and by-laws as by definition it will outline to you as to what is insured by the Condominium and what will have to be insured by your own client.

- (3) It is usually advisable to advise the Condominium Corporation on closing as to your client's name and unit number, etc., and of course, to advise your client as to who the management company and agent is for the Condominium Corporation so they may make arrangements for post-dated cheques, etc., when dealing with the common expenses.
- (4) It is of practical use to you to explain or have the solicitor involved explain to the purchaser of a condominium unit just what a condominium is all about, in terms of exactly what they own and the usage of the common elements, etc.

As mentioned, the checklist for condominium sales and purchases is by no means all inclusive and should be combined with the vendor's checklist, if necessary, or the purchaser's checklist, if applicable, and was merely an attempt to point out some of the anomalies that must be examined when dealing with a condominium.

CHECKLIST WHEN ACTING ON BEHALF OF THE MORTGAGEE

The checklist, again, is not all inclusive because different mortgage companies have different policies and different requirements and each set of mortgage instructions should be read very carefully. Also, when acting on behalf of the purchaser, this checklist is to be read in conjunction with the checklist for the purchaser:

- (1) Mortgage instructions received.
- (2) Special conditions as outlined in mortgage as follows:
 - Tax Certificate ordered/received.
 - Surveyor's Certificate ordered/received.
 - Title search requisitioned.
 - Title search received.
 - Payout of existing mortgage ordered/received.
- (3) Mortgage documents prepared.
- (4) Closing time established with client.
- (5) Mortgage funds requisitioned.
- (6) Net cheque amount advised by lender.
- (7) Prepare and complete Mortgage Advance of Funds Statement.
- (8) Account prepared.
- (9) Insurance placed.
- (10) Other matters and special instructions.

(11) Reporting letter to client prepared and sent.

(12) Reporting letter to lender prepared and sent.

Again, I would point out the importance when doing a refinance on behalf of a lender and/or client, is the reading of the mortgage instructions. Many lenders seem to take pride in using the form that they have been using for the last seven years, "whiting out" paragraph 21 on page 3, photocopying a different set of instructions (you cannot even notice the different type), and sending it out without mention as to change of their usual format. It is, therefore, important in each and every case to look through their instructions in detail to catch the "sale clauses and change in prepayment clauses" that they often have tucked away in small print.

Also, it is imperative to confirm that any and all "special conditions" in the mortgage approval have been met. Often, when ordering funds from divisional office, no mention is made by them of any special conditions that must be met by the Borrower/Borrower's Solicitor, as the instructions containing these conditions were placed at the Branch level. It is most embarrassing to call a client on closing or at closing to find he or she has not dropped off his or her "verification of income" and funds cannot be advanced until he or she does. Also, if the client confirms the Branch has received all items (special conditions) as required, it is wise to ensure that the funding office (divisional) is aware of this.

SEARCH

The most important aspect of any real estate transaction is the title search. The primary reason lawyers handle real estate transactions is because of their ability to investigate titles and determine whether or not they are marketable.

As you know from review of the conditions of the Agreement, in each transaction the vendor is obligated to supply the purchaser with a description of the property to be searched. It is also common practice to provide recording particulars of the vendor's Deed to establish a starting point for the search. In recent years, it has become more common for transactions to close on short notice and, therefore, it is extremely important that the appropriate title information be obtained or supplied as quickly as possible, depending upon whether you are representing purchaser or vendor. Quite often, because it is the vendor's obligation to supply search information, and title objection deadlines do not commence until supplied, the purchaser's solicitor does not actively pursue the vendor's solicitor for information. If the search is not commenced as quickly as possible and completed promptly, there could be a substantial inconvenience created for your client. It is in the best interests of both solicitors and their clients to see the title information is supplied.

Once title information has been supplied by the vendor, the purchaser's objection period, as per the Agreement, begins to run. Therefore, it is extremely important that the search be requisitioned immediately upon receipt of title information. You should make certain that sufficient information is supplied to the title searcher to enable them to commence the search without delay. I have attached a copy of the search requisition form our firm uses, for your information. One of the important dates which you

should diarize is the title objection deadline, so that you can follow-up with the searcher the completion of the search and return of the abstract.

To get a better understanding of what goes into the completion of the search, it would be time well-spent to visit the Registry of Deeds and speak to the searcher or lawyer you work with, concerning an actual search. Briefly, the search involves a process of checking alphabetical indexes at the Registry of Deeds to establish a chain of title. This means a consistent and continuous chain of ownership without interruption. In addition to establishing this "chain of ownership", the searcher will also review: relevant plans to determine that all conveyances comply with the Planning Act, the judgment index to determine whether or not any of the owners of the subject properties have unsatisfied debts which have been entered as judgments and attach to their interest in the property, and whether or not there have been any expropriations that may affect the subject property.

Review the Search - Objections and Requisitions

It is extremely important that you become familiar with title abstracts, which means reviewing each one that is returned and asking questions about its content if there is anything which you do not understand. It is the lawyer's job to review and interpret the abstract for any potential objections. You should make certain that any abstract or report on title is immediately brought to the attention of the lawyer involved so that objections may be made in compliance with the terms of the Agreement of Purchase and Sale. Some common examples of objections to title would be: no root of title, an interest in property not conveyed, no subdivision approval, undisclosed restrictive covenants, and undisclosed easements or rights-of-way. Requisitions are generally made for items which you would anticipate no difficulty in

receiving on closing, for example: undertakings to provide releases of mortgage, releases of assignment of rents, certificates of satisfaction respecting judgments or chattel discharges.

Once the objections and requisitions have been made, the vendor's solicitor will respond as to whether or not they feel the objection is a valid one with their reasons for same, and whether or not they will be able to supply on closing that which you have requisitioned. Quite often, there are differences of opinion between solicitors as to what may constitute a valid title objection. The Vendors and Purchasers Act provides a mechanism whereby the parties can bring their problem to the Court room, on relatively short notice, for a judicial determination as to whether or not the objection is valid. If the objection is determined not be valid, the purchaser will be obliged to close, or suffer appropriate action by the vendor as contemplated by the Agreement. If the objection is held to be a valid one, the vendor may make an effort to satisfy the purchaser respecting same, or, if he/she is not prepared to do this, see the Agreement come to an end with any deposit being returned to the purchaser. I suspect that relative to the number of objections raised, there are few Vendors and Purchasers Act applications. You will generally find that most lawyers are cooperative in providing what is required to satisfy purchaser's objections. Most commonly, the problem is a gap in the title for which the vendor will obtain a Statutory Declaration from some person both parties accept as knowledgeable concerning the subject property.

CORPORATE SEARCH

There will be many occasions when, with a corporate vendor or purchaser, a search of the records at the Registry of Joint Stock will be required. When a corporate vendor is involved, it is important that we know: the exact name of the company (for searching at the Registry of Deeds) and the names of the Officers (to check execution of the Deed). The same things are important when representing a corporate purchaser, respecting the execution of any mortgage document, and preparation of corporate resolutions (a list of Directors can be obtained). The search will also reveal whether or not the company is in good standing - normally a requirement of any lender. In addition, the corporate Minute Book should also be reviewed to determine the shareholding for any shareholder's resolutions which may be required.

AGREEMENT OF PURCHASE AND SALE

Attached hereto is a sample copy of an Agreement of Purchase and Sale. I have not attempted in any way to make the clauses in the Agreement all inclusive or indeed accurate or capable of only one interpretation. I inserted these clauses for examples only so that on receipt of an Agreement of Purchase and Sale, I can point out the types of things that should be looked at and diarized and brought to the attention of the lawyer in charge.

The first item, of course, is the diarization of any dates. Specifically, I would point out the diarization of the deemed arrangement for financing date and the deemed arrangement for the inspection date. Going through the small print which is by no means unimportant, I would point out the closing date in paragraph 2, the number of days to investigate title from receipt of description in paragraph 3, and any other dates that may become apparent because of the Agreement of Purchase and Sale that you may have in front of you at the time. Once the dates are diarized, they of course should be brought forward on a regular basis on the due date and confirmed with the lawyer in charge and/or the client.

It is also important to check for the so-called "warranty clauses" and the so-called "to the best of our knowledge and belief clauses". I have put in two of these clauses in the sample Agreement simply for informational purposes only.

It should be dealt with in the initial letter to the purchaser's and/or the vendor's lawyer as to their interpretation of the meaning of those clauses and whether or not the purchaser's solicitor will be looking for any further warranties and/or guarantees on closing and as to whether or not the vendor's solicitor is prepared to do so.

For example, it has been suggested by many lawyers that it is the "practice" of real property practitioners to provide a separate Ureaformaldehyde Foam Insulation warranty on closing. With this, I would strongly disagree.

It is often requested by a purchaser's lawyer, some day or so prior to closing, that a clause such as "best of one's knowledge and belief" be followed up with a further warranty or guarantee. This is most distressing on closing date or within a day or two of closing date as your client may not be available or be out-of-town and instructions are difficult to come by.

Again, I am not going to get into the "do's and don'ts" about drafting of the particular clauses and whether or not they do survive the closing date and whether or not a separate warranty or guarantee should be given at the date of closing but rather, I am attempting to point out that these clause often cause great concern and delays in a closing and should be dealt with initially by the two solicitors involved and, therefore, should be brought to their attention immediately so that last minute delays will be avoided on behalf of their clients.

In mentioning the importance of the diarization of dates, I would specifically point out Clause 10 of the Agreement of Purchase and Sale which reads, "Time shall in all respects be of the essence in the Agreement." This clause effectively makes any date in the Agreement of Purchase and Sale a critical date and not something that can be dealt with lightly. I would further point out that often solicitors will agree on an extension between themselves, be it verbally or in writing. I would strongly recommend that it be in writing on each and every occasion because of the continuation of Clause 10 which states, "written agreement of extension, time shall continue to be of the essence." The importance of any extension or alteration being in writing need not be stressed further.

SUMMARY

I would hope, by this paper and the talk that accompanied it, that we now have a better overview of the Agreement of Purchase and Sale and the checklists involved when acting for a vendor and/or purchaser in the successful dealing of a real estate transaction.

Again, I have not been all inclusive in either my lists or my discussion but have attempted to point out the basic items which must be addressed in each and every occasion. There will obviously be the odd and/or different transactions which will require a lot more work and/or additions or deletions to the checklists.

The success of an efficient Secretary and/or Paralegal and/or Real Estate Lawyer depends very much on the "system" and flow of the files through that person's hands. I hope the topic today will be of use to all of you in assisting you with this goal.

WRC1.3
Enclosures

[SAMPLE]

AGREEMENT OF PURCHASE AND SALE

JOHN SMITH, of Dartmouth, Nova Scotia, hereinafter called the "Purchaser", having inspected the following described property, hereby offer to purchase from SAM BROWN and GLORIA BROWN, hereinafter called the "Vendor" through Agent, TERRIFIC REALTIES LIMITED, the property known as 81 Blank Street, in the County of Halifax, Province of Nova Scotia, at the purchase price of One Hundred Thousand Dollars (\$100,000.00) in Canada dollars, on the following terms:

- (a) Purchaser submits this offer with One Thousand Dollars (\$1,000.00) cash or cheque payable to the Vendor's Agent as a deposit to be held in trust, pending completion of this Agreement and to be credited on account of the purchase money on closing;
- (b) This Agreement of Purchase and Sale is subject to the Purchaser arranging a mortgage for eighty percent (80%) of the purchase price through a recognized lending institution at current interest rates for a five (5) year term amortized over twenty-five (25) years. This mortgage shall be deemed arranged unless the Vendor or the Vendor's Agent is notified to the contrary in writing within five (5) banking days of acceptance of this offer;
- (c) The purchase price is to include the fridge, stove, washer, dryer and bookshelf in the family room;
- (d) The Vendor warrants that the property does not nor ever has contained Ureaformaldehyde Foam Insulation, and this warranty shall survive the closing;

- (e) This Agreement of Purchase and Sale is subject to the Purchaser arranging for an inspection of the property by a qualified building contractor of the Purchaser's choice and at the Purchaser's expense, the report of the contractor being satisfactory to the Purchaser. This inspection shall be deemed to be satisfactory to the Purchaser unless the Vendor or the Vendor's Agent is notified to the contrary within three (3) banking days of acceptance of this offer;
- (f) The Vendor states that, to the best of their knowledge and belief, there has never been any roof leakage nor leakage through the basement foundation walls during their ownership of the property;
- (g) The balance in cash or solicitor's trust cheque on date of closing.

2. This Agreement shall be completed on or before the 30th day of October, 1989, hereinafter called the "closing date".

3. The Vendor is to furnish the Purchaser with a metes and bounds description of the property which is the subject of this Agreement, after receipt whereof the Purchaser is allowed twenty (20) days to investigate title to the property, which he shall do at his own expense. If within that time any valid objection to title is made in writing, to the Vendor, which the Vendor shall be unable or unwilling to remove, and which the Purchaser will not waive, this Agreement shall be null and void and the deposit herein shall be returned to the Purchaser, without interest, and without liability by the Vendor for any expenses incurred or damages sustained by the Purchaser.

4. The conveyance (of the property which is the subject of this Agreement) shall be by Warranty Deed, drawn at the expense of the Vendor, to be delivered on payment of the purchase price on the closing date. The said property is to be conveyed free from other encumbrances, except as to any easements, registered restrictions or covenants that affect the property and do not materially affect the enjoyment of the property and except as specifically set out in paragraph 1 of this Agreement.

5. All lands, buildings, fixtures and all other property being purchased hereby, shall be and remain at the risk of the Vendor. Pending completion of the sale, the Vendor will hold all insurance policies and the proceeds thereof in trust for the parties as their interests may appear and in event of damage to the said premises, the Purchaser may either have the proceeds of the insurance and complete the purchase, or may cancel the Agreement and have all monies theretofore paid returned without interest.

6. Interest, rentals taxes, rates, fuel on the premises and assessments are to be adjusted to the date of closing. The cost of municipal improvements (including, but without limiting the generality of the phrase "municipal improvements", betterment charges and capital charges for utility or municipal services) completed as of the date of this Agreement, are to be paid by the Vendor on or before the closing date, unless otherwise stated.

7. Any tender of documents to be delivered or money payable hereunder may be made upon the Vendor or the Purchaser or any party acting for him and money to be legal tender.

8. The Purchaser shall have the right to inspect the premises during daylight hours, once prior to the closing of the within transaction, upon providing the Vendor twenty-four (24) hours' prior notice of intention to inspect.

9. It is understood and agreed that if the Purchaser does not complete this Agreement in accordance with the terms thereof, he will forfeit the above deposit in addition to any other claim which the Vendor may have against the Purchaser for his failure to so complete.

10. Time shall in all respects be of the essence in the Agreement. In the event of a written agreement of extension, time shall continue to be of the essence.

11. This Agreement shall enure the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns.

12. This Agreement is to be read with all changes of gender or number required of the context.

13. This offer shall be open for acceptance until _____ o'clock on the _____ day of _____, 19__.

DATED at _____, in the Province of Nova Scotia, this _____ day of _____, A.D. 19__.

Witness

JOHN SMITH

14. I hereby accept the above offer and agree to sell on the terms as therein set forth and I agree to pay the Agent a commission of _____ Dollars (\$_____) or _____ of the sale price, for having procured this offer, said commissions to be deducted from the deposit, and I irrevocably instruct my solicitor to pay direct to the said Agent any balance of commission from the process of the

sale and further instruct the Agent to remit any balance of monies to my solicitor herein.

DATED at _____, in the Province of Nova Scotia,
this _____ day of _____, A.D. 19__.

Witness

SAM BROWN

Witness

GLORIA BROWN

Vendor's Solicitor

Address

Phone

Purchaser's Solicitor

Address

Phone

WRC1.4