I. Introduction

Harvey Hairball, senior partner of Wee Do It Rite Legal Emporium, arrived to find his most important client waiting for him. What could he want?, Harvey wondered. Maybe he's bringing me another 20 pounds of lobster for "getting him off" (as he called it) of his latest tax evasion charge. Or maybe another bottle of scotch for proving that he was not the only possible father in his latest paternity suit ("It's better to have 10 people chip in than just me!" - he had said).

Harvey ushered him into the board room and discovered that he was buying a five million dollar apartment building. Harvey beamed with delight - as he finally found how he will pay for Bobby's braces.

I. Introduction (cont'd)

He hastily dug up a N.S. Real Estate Associate form of Agreement of Purchase and Sale, filled in the blanks and inserted the following

clauses:

a) Balance in cash at date of closing

b) Subject to financing

c) All fridges and stoves to go with the building

The transaction closed without a hitch. Harvey figured he was now the J. J. Robinette of property lawyers. Best of all, Bobby had his braces ("train-tracks" - as Bobby called them). Two months later,

Harvey received a note from his client. It stated:

1. the interest on the mortgage which had been assumed was 17$ not 7$.

2. the sprinkler system broke and turned the furnace room into the laundry roam.

3. Trans Canada Credit repossessed all the fridges and stoves.

4. the Health Department evacuated the building until the Hungarian carpet beetle problem was cleared up.

5. he wanted his lobster, scotch and all his files back.

Poor Harvey was destroyed. "Wzat more could I have done?" he

wondered.

I. Introduction (cont'd)

The purchase of a multiple unit building can be very different from the purchase of a single family dwelling. With the introduction of a growing mound of governmental regulations, complex financing arrangements, zoning, etc., the seemingly "simple, straightforward" purchase of a multiple unit building can quickly turn into a real bees' nest.

If you are lucky enough to be contacted by your client before he makes an offer on the property, try to encourage him to meet with you first and encourage him to have you draft the agreement prior to presentation. It is important that you consider all relevant aspects frcxn-the very outset. Anything less will leave you at date of closing with two problems; attempting to resolve the matter with the other lawyer with pistols at 20 paces (assuming that this could achieve the desired results) and trying to calm dawn your less than estatic client.

What should you consider and check before providing your client with that oft-damning thing known as a certificate of title and congratulating him on the purchase of his new building?

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I. Introduction (cont'd)

These considerations can be broken into two sections, the first dealing with land/chattels/building, and the second dealing with the "business" end of things.

II. LAND/CHATTELS/BUILDING

Whether you are buying Aunt Bessie's house in the South End or the Park Victoria, the title must be searched, the tax certificate ordered and the taxes adjusted and, accordingly, no more will be.said regarding these matters.

II. (a) Appraisal

Before your client gets around to making the offer on the building, you may suggest that your client have an independent appraisal done on the building. Often, the purchaser doesn't have the foggiest idea as to the true value of the building and will be guided by the advice of his lawyer or real estate agent. Remember whom the lawyer and/or the agent represents and that he has a vested interest in seeing the deal closed. It may be money well spent for your purchaser to hire a duly ccredited appraiser to ensure that he will offer a fair and reasonable price .

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II. (a) Appraisal (cont'd)

The following clause may be appropriate if the offer is made prior to obtaining the appraisal. This agreement is subject to the purchaser obtaining within 10 days of acceptance of this offer, at his own expense, an appraisel of the property performed by a duly accredited appraiser. Should the property appraise for a value of less than the purchase price ($400,000.00), the purchaser shall so notify the vendor in writing within the 10 day time period and then either party shall be at liberty to declare this agreement null and void.

II. (b) Financing

Since the multiple unit building tends to be a more complicated beast than a single family dwelling, so is the financing; not only in terms of what the mortgage company will require, but also in how long it takes for the mortgage company to go through the approval process and grind out instructions. It is well known that some mortgage lenders are more skilled than others in approving financing for a large multiple unit building (others take an eternity to approve it, require items that are virtually impossible to provide, etc.) and you may save your client and yourself a lot of headache by steering them away from these particular lenders. Once a lender has been selected, ensure that your client knows exactly what the mortgage lender will want from him: for example, statements of **income**, **more than one appraisel**, special forms of property and business insurance, life insurance, etc..

I. (b) Financing (cont'd)

Whether your client is applying for a new mortgage or applying to assume the existing one, try, when drafting the agreement, to set out all relevant details of the mortgage including principal, interest rate, term, amortization and choice of lender. Above all, ensure that your client has enough time to gather together the necessary items for the mortgage company and that the mortgage company has enough time to approve the mortgage. Often, the size of the building will dictate the amount of time required. If you are unsure, call the mortgage company and ask how much time they will need. The following clause may be inserted into your agreement.

> This agreement is subject to the purchaser applying for and being approved, within 21 days of acceptance of this offer, for a first mortgage through Mutual Life in a principal amount of not less than two hundred fifty thousand dollars ($250,000.00) at a rate not to exceed ten and one half percent (10 1/2$) for a term of 5 years and amortized over 25 years. Should the purchaser be unable to arrange said financing, he shall so notify the vendor in writing within the 21 day time period and either party shall be at liberty to declare this agreement null and void.

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I. (b) Financing (cont'd)

Once the mortgage instructions arrive at your office, CAREFULLY read them from start to finish. It is standard practice for most lending institutions to require, in addition to the mortgage of the land and building, a chattel mortgage and an assignment of rentals. If your client is a limited company,.the mortgage company may require the personal guarantees of the principals of the company. (Remember to prepare the proper resolutions authorizing the Company to borrow the money and give a mortgage on the property).- Usually they will also require confirmation of zoning, from the Rent Review Ccnmission, of insurance, etc. A short word on insurance - with larger buildings, the mortgage company may require, in addition to a fire insurance policy, a policy which covers loss of rental income, etc. Advise your client to arrange his insurance well in advance of closing as his agent may need a number of days to seek out the necessary coverages. Often, the risk is such that the agent may have to spread the risk among more than one company and he may have "to go shopping" to secure the proper insurance. It is often a good idea to forward a copy of the mortgage instructions , with the insurance requirements circled, directly to the agent in order that he may refer directly to the instructions and obtain exactly what is required. Also ask the insurance agent to provide you with confirmation in writing that all necessary coverages are in place at date of closing .

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I. (b) Financing (cont'd)

Is there a vendor take-back mortgage involved in the transaction? From the Purchaser's point of view, the clause in the agreement should give exact details of the mortgage (rate, principal, payments, terns, etc.). You may wish a clause in the mortgage allowing prepayment of any amount at any time, without notice or penalty and also a clause allowing the refinancing of the first mortgage at a later date although it would only seem fair to stipulate that any excess principal of the new first mortgage over the original principal of the existing first mortgage be used to pay down the vendor take-back mortgage. The. clause in the agreement could look something like this.

> This agreement is subject to the Vendor holding a second mortgage in the principal amount of $50,000.00 at a rate of 12$ for a term of 5 years and amortized over 25 years. The second mortgage will contain a clause allowing prepayment of any or all of the principal outstanding at any time without notice, bonus or penalty. The second mortgage will also contain a clause permitting renewal or replacement of the original first mortgage at any time, provided that any excess of principal of the new first mortgage over the amount of the principal outstanding on the original first mortgage

shall be applied to reduce the prindipal owing on the second mortgage, and provided further that the vendor ../. .

I. (b) Financing (cont'd)

shall execute, at the expense of the purchaser, any necessary postponement agreement required to facilitate the removal or replacement of the original first mortgage. The Vendor has many more things to consider. First have your client assess his security position with respect to the remaining equity in the property and the clause in the agreement should stipulate that the vendor take-back mortgage will only be subject to a first mortgage not exceeding a particular principal amount and a particular interest rate. The Vendor may wish to conduct a credit check on the Purchaser (remember, you need his consent to do it) and also decide if he requires any guarantors (especially principals if the purchaser is a limited company). Also if the vendor is planning to sell the mortgage, have him contact the company or individual buying the mortgage prior to drafting the agreement and the mortgage. This will ensure that the completed mortgage will be in a form acceptable to the company or individual purchasing the mortgage. The Vendor may also wish a clause requiring the mortgage, at his option, to be paid out upon the Purchaser selling, conveying or transferring the property

II. (b) Financing (cont'd)

Last, but not least, think of yourself. You may wish to insert a clause in the agreement requiring the purchaser's lawyer to provide the vendor with a limited certificate of title certifying that the vendor take-back mortgage is recorded immediately after the first mortgage, that there are no judgements recorded against the mortgagor which would affect the Vendor's security and lastly, providing verification of insurance with loss payable to the Vendor. Most importantly, ensure that your fee for services rendered regarding the mortgage is paid at closing. The following clause would do the trick. The purchaser agrees to instruct his solicitor to provide to the vendor, within 30 days of closing, a limited certificate of title certifying that the vendor take-back mortgage was recorded directly after the first mortgage that there are no judgements recorded at the Registry against the purchaser that would affect the vendor's security and providing verification of fire insurance in an amount of not less than the aggregate value of the two mortgages with the vendor shown as second loss payable. The purchaser also agrees to pay the vendor's solicitor's account for services rendered regarding the vendor take-back mortgage at date of closing .

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II. (c) Zoning/Occupancy Permits/Work orders

It should be absolutely crystal clear that the building being purchased by your client conforms to the zoning by-laws of that particular area. You may be asked to provide a copy of your location certificate to the municipality in order that they may confirm that the setback requirements are satisfied.

In some cases, the building may not conform to the zoning by-law presently existing at the time of purchase but still may be a permitted use by being a "legal non-conforming use". Section 83 (1) of the Planning Act (ICS.) states:

> "Subject to this Act, a non-ccnforming structure or a non-conforming use of land or a structure, existing at the date of the first publication of the notice of intention to acjopt a land use by-law or amend or revise a land use by-law, may continue to exist."

Section 83(2) states that a non-conforming "structure" or "use" shall be deemed to be existing if the structure or use was lawfully under construction or the permit for construction or use was issued and construction or use commenced within twelve months of issuance of the permit.

The appropriate municipality, upon request, will provide you with confirmation in writing that your building is or is not in violation. However, be careful of Section 86 (2) which states:

10 . II. (c) Zoning/Occupancy Permit/Work Orders (cont'd) "(2) a non-conforming use of land or structure shall not be recommended if it has been discontinued for a continuous period of six months, and in such event the land or structure shall not thereafter be used except in conformity with requirements of the land use by-law applicable to the property."

In short, if the use has been discontinued for six months, it cannot be used again except in conformity to the existing zoning by-law. The municipality, in all likelihood, will have no record of this and, if you feel it necessary, you will have to dredge up someone with lengthy knowledge of the use of the building e. g. neighbours, etc. and obtain confirmation of the use of the building to at least a date prior to the introduction of the present zoning by-law for that area. If you discover that the building constitutes a legal non-conforming use, make sure that you advise your client in writing of it well in advance of the closing and also have him sign a written acknowledgement of same at date of closing . It wouldn't be the first time that purchaser altered the use of the building, lost his legal non-conforming use status and then is complaining because he is obliged to observe the existing zoning by-laws.

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II. (c) Zoning/Occupancy Permits/Work Orders (cont'd)

Also inquire of your client as to his future intended use of the property. If the client intends an expansion or change of use or whatever, you may wish to ensure that the zoning allows not only the existing use but also the future use. Advise your client, however, that the zoning by-laws could change after the closing but, prior to the commencement of the new use and there unfortunately, is really no sure way to predict or guard against this.

Assuming that the zoning is satisfactory, inquire of the Building Inspection Department of the appropriate municipality if occupancy permit has been issued for the building. It is not sufficient that only zoning requirements are met. For example, City ordinance 131 of the City of Halifax allows the Buflding Inspector to issue the occupancy permit and if the permit is not issued, in theory, the City may prosecute and levy a maximum fine of $2,000.00 for each day that the violation takes place. They may also apply for a court order requiring the vacancy or demolition. Wouldn't your client be impressed! Also ensure that the occupancy permit allows the use presently made of the property and not the use made of the property at the time at which the permit was issued (assuming that they differ).

A check should also be made at the appropriate muncipality to ensure that there are no outstanding work orders issued by the muncipality . . 12/.

II. (c) Zoning/Occupancy Permit/Work Orders (cont'd)

against the property. For example, City ordinance 157 of the City of Halifax allows the Building Inspector to issue work orders against properties to bring them up to minimum building standards (for things

like structure, plumbing, etc.) Section 363 of the Halifax City Charter allows the Building Inspector to issue work orders for unsightly premises. Failure to comply with the work order can result in the City carrying out the work and billing the property owner for it or proceeding through the Courts to enforce compliance. Your client may be less than pleasantly surprised when called upon to repair the eavestroughing on a building which he just purchased. Obviously the major danger areas here are run-down buildings, vacant buildings, older buildings, etc..

To check the zoning, occupancy permit and work order status, you must apply in writing for the information to the appropriate muncipality. Ask the following questions: 1. Was a building permit and occupancy permit granted for the property? 2. Are there any work orders outstanding against the property? 3. From the attached location certificate, (include survey), does the property meet all municipal standards for side and front yard clearance? 4. What is the zoning for the property?

II. (c) Zoning/Occupancy Permit/Work Orders (Cont'd)

5. We understand that the building on the property is being used as a 15 unit apartment building. Is this a permitted use within the zoning area? A quick word about question 5. If you have any doubt whatsoever regarding the use of the property, ask the Building Inspector to physically inspect the premises to determine the use and then comment on whether that use is permitted. Remember, you will need the Vendor's authorization for this

The following clause might prove useful: The parties acknowledge that the building is to be used as a 15 unit apartment building and the purchaser shall have 21 days to confirm that the property fully complies with all by-laws, regulations and standards enacted by the municipality or other authority having jurisdiction. Should there be any violation of any of the aforementioned by-laws, regulations or standards, the purchaser shall so notify the vendor in writing within the 21 day period and, then either party shall be at liberty to declare this agreement null and void.

The Vendor warrants that there are no outstanding work orders at the date of this agreement nor will there by any outstanding work orders at date of closing.

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II. (d) Oil Adjustment

Depending on the size of the building, an oil adjustment can amount to a significant amount of money. If there is to be no adjustment, the agreement should say so. If the vendor wishes an adjustment, the purchaser should require proof of the size of the tanks and that they have been filled at date of closing. Often in large buildings, the tanks are underground and your purchaser can only be protected by requiring from the vendor's oil company, written confirmation as to the size of the tanks and also an oil fill-up slip confirming that they are full on closing. Even if the tanks are visible, your purchaser likely doesn't know how much oil the tanks hold and usually the gauges are less than useless. Also, consider if the adjustment should be based on the current retail cost or the vendor's actual cost. Often vendors with many rental buildings are able to purchase their oil at a reduced price. The agreement should state on what price the adjustment will be calculated.

> The parties agree that the oil tanks servicing the property shall be filled at date of closing. The vendor agrees to provide to the purchaser, at date of closing, written confirmation from the oil company of the size of the tanks and oil top-3ff slip. The purchaser agrees to pay to the vendor, at date of closing and in addition to the purchase price, any amount equal to the cost of fully filled tanks based on current retail prices.

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II. (d) Oil Adjustment (cont'd)

While on the topic of oil, think of those items which burn oil, e. g. the furnace and hot water heaters. Inquire as to whether these are owned or leased. If they are leased, the purchaser will wish to know all of the details of the leases and make appropriate arrangements to assume the leases.

Once in a while you will find the building is heated not by oil but by propane. The adjustment for propane is very similiar to oil but for one exception. The propane tanks are never owned by the building owner but are leased from the propane company for a nominal yearly fee. Thus, prior to closing, your purchaser should make the necessary arrangements to lease the existing tanks to prevent any interruption of service. Other than that, it is simply a matter of having the tank topped off and adjusting for a full tank.

II. (e) Keys

There is probably nothing more annoying for your purchaser than to receive at date of closing, a little bag of keys with no indication as to what fits where if, in fact, they fit at all. Your agreement should include a clause stating that the keys for the apartments and

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II. (e) Keys (cont'd)

security doors, the master keys and, last but not least, the keys for the coin-operated machinery will be provided at date of closing with each of the keys properly indentified as to its location. Be careful not to use the words "all keys" as this may be construed as keys for all interior doors and keys for absolutely everything else, which is likely not intended. Consider the following clause:

> The vendor agrees to provide to the purchaser, at date of closing, the keys for each apartment entrance, the security doors, the master keys, the keys for the laundry, furnace and other roams and the keys for the coin-operated machinery, each key to be adequately indentified as to its location and use.

II. (f) Inspection of Physical Structure

It is often a wise idea to have the purchaser have the building inspected by his contractor, architect or engineer prior to even making the offer to purchase. Better to find out right off the bat if there is a problem. However, sane vendors will not allow the potential purchaser access to the building until he has shown at least

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enough interest to make an offer and pay a deposit. If this is the case, a conditional clause should be inserted to allow the purchaser an opportunity to have the building checked within a reasonable period of time. Any particular problem may well be minor to the vendor but disasterous to the purchaser and thus, your clause should state that unless the purchaser is completely satisfied with the condition of the building, he has the option of voiding the agreement and retrieving his deposit. The following clause is a possibility:

> This agreement is subject to the purchaser, at his expense, within 15 days of acceptance of this offer having the condition of the premises, including but not limited to, the structure, electrical, plumbing and heating sytems, checked by a duly qualified architect, engineer or tradesman and being satisfied with same. Should the purchaser be unsatisfied with the condition of the premises, he shall so notify the vendor in writing within the 15 day period and then either party shall be at liberty to declare this agreement null and void

Also remember that not all items can be physically inspected by your engineer, etc.. In light of this, give same thought to inserting a warranty in the agreement warranting that the vendor is not aware of any defects in the building which, if known to the purchaser, might reasonably be expected to deter the purchaser from completing the transaction. (Refer to the **discussion of warranties and merger in the** section III. (a) Financial Records). This type of warranty would

likely cover Urea Formaldehyde Foam Insulation but it would be advisable to insert a separate warranty dealing solely with this item. It should warrant that the property does not nor has ever contained UFFI.

II. (g) Boundaries

In all likelihood, you will wish to have a location certificate prepared to ensure that the building and all improvements are located wholly within the boundaries of the lot. This, as previously mentioned, will also have some bearing on the satisfaction of the setback requirements regarding zoning.

In addition, also consider parking and future expansion. The value of the building may be significantly impaired if there are not sufficient parking spaces to serve all units in the building. You may wish to count the spaces which apparently go with the property and then have your surveyor ensure **that they are wholly within the lot** lines. Likewise, with land for future development; have the surveyor confirm that the purchaser actually is getting the amount of land that he thinks he is getting. The following clause is a possibility:

> This agreement is subject to the purchaser having the property surveyed at his own expense within 15 days of the date of acceptance of this offer. Should the results of the survey not confirm that

all buildings and improvements are located wholly within the lot lines in compliance with all

II. (g) Boundaries (cont'd)

applicable setback requirements or that all 15 parking spaces are located wholly within the lot lines or that the lot is at least 35,000 square feet in size, the purchaser shall so notify the vendor in writing and then either party shall be at liberty to declare this agreement null and void. Also, remember to check your location certificate against any building restrictions to ensure that the location of the building, etc. do not violate same.

II. (h) Fire Inspection

As you can appreciate, the hazard of fire presents very special problems in multiple unit dwellings, especially highrises. Accordingly, you should give serious consideration to including in your agreement, a clause making the purchase of the property conditional upon a satisfactory fire inspection. The inspections are usually conducted by the Fire Prevention Division of the Fire Department for the area in which you building is located. Section 16 (1) of the Fire Prevention Act, (ICS.) allows the "Fire Marshall, Deputy Fire Marshall or local assistant, upon receipt of a

complaint, or when he deems it necessary to enter into and upon any building or premises in the Province" for the purpose of inspecting and ascertaining whether a fire hazard exists. Subsection 2 allows the making of orders to correct fire hazards and Section 24 provides for a penalty not exceeding one thousand dollars or in

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II. (h) Fire Inspection (cont'd)

default, imprisonment not to exceed six months, for failure to comply with the order. The definition of a "disgruntled client" may be one who has had his building evacuated by the Fire Marshall under Section 20 of the Act.

The City of Halifax under authority of the City Charter has adopted the National Fire Code as City Ordinance 168 (the City has amended the Code slightly, however), the Code setting out certain standards regarding fire safety. Section 8 allows the Fire Marshall free access to any building or property and provides for the making of orders to remedy fire hazards. The penalties are similiar to those in the Fire Prevention Acct. The Fire Marshall may also recommend to the Building Inspector that the occupancy permit for any building be cancelled.

A request for fire inspection must be made by the owner or may be made by a prospective purchaser if he has armed himself with written consent of the owner or his agent. The inspector will look for various things, depending on the building being inspected, but, generally he will inspect items such as cleanliness, fire protection equipment, furnace roans, generators, storage rooms, fire doors, garbage disposal systems, sprinkler systems, etc.. He will then issue a written report indentifying any things which need upgrading. The following clause could prove useful:

> This agreement is subject to the purchaser having 10 days from the date of acceptance of this offer to obtain written confirmation from the Halifax Fire Department that the building and equipment installed therein meets all governmental requirements and standards. If they are

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II. (h) Fire Inspection (cont'd)

not met, the purchaser shall so notify the vendor in writing within the 10 day period and then either party shall be at liberty to declare this agreement null and void. In addition to the inspection by the Fire Department, consider whether you should have any inspections carried out by the Health Department.

II. (i) Health Inspection

The Health Act (ICS:) gives health inspectors authority similiar to that of the Fire Marshall. Section 28 (1) allows a member of the Board of health, a medical health officer or an inspector appointed by the Board, without warrant and at reasonable times, to enter and examine any land, house, building, etc.. They are also permitted to place an crder against properties ordering certain deficiencies to be rectified (s.35) and can order the building to be evacuated for health reasons (s.34). Accordingly, before purchasing the building, you may at least wish to obtain confirmation frcm the Health Department that there are no outstanding orders against the property.

You can probably make this decision based on the type of building your client is buying. If the building is old, **rundown**, **vacant**, etc., this check may become more important.

If you wish an inspection, the health inspector will inspect for cleanliness of tenants, pest control, proper garbage disposal systems, etc. It may well be that your client can determine these for himself, though, by merely inspecting the building. However, health . . ./22. . .

II. Health Inspection (cont'd)

inspections may become more vital should your building not be hooked into municipal services but rather have its own water and disposal systems. The inspector will, among other things, test for potability of water, proper sewage disposal and test to ensure that the septic system is working properly. The clause in your agreement to allow a health inspection will be very similiar to the clause for fire inspections.

II. (j) Chattels

Almost without exception, if you are buying land and building, you will also be buying the stoves, refrigerators, washers, dryers and any other equipment (e.g. snowblowers, lawnmowers, ladders, vacuum cleaners, carpet shampooers, etc.) which may go with the building. Make sure to include in your agreement a detailed list of ALL chattels to be purchased. (Sometimes you find a tenant who owns his own appliances.) Try to get serial numbers if at all possible. It may also be wise to include a list of chattels not being purchased if, in fact, some are to be removed from the property on Or before date of closing. Once the chattels have been identified, the appropriate searches should be carried out to ensure that the chattels are not encumbered by any chattel mortgages, conditional sales contracts, etc. Also consider whether you should insert a clause in your agreement indicating that all chattels will be in proper working order at date of closing. The following clause could be used in your agreement .

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II. (j) Chattels (cont'd)

> The purchase price shall include all fixtures, improvements, equipment now attached to-or forming part of the property and also the chattels set out in Schedule "A" attached hereto. The vendor warrants that he has a good and marketable title to the chattels and agrees to provide at date of closing a Bill of Sale conveying title to the chattels to the purchaser free and clear of all encumbrances. The vendor warrants that all chattels are in good working order at date of this agreement and will be in good working order at date of closing.

Often the mortgage company will want you to certify title not only to the land but also to the chattels which form the security of the chattel mortgage. It is highly unlikely that you will be able to "search the title" to the chattels but merely determine from the Registry that there are no valid encumbrances existing against them. **Be sure that you explain this to the mortgage company and confirm with** them prior to closing that the certification, not as to title, but as to the "no encumbrances" will be sufficient for their purposes. Sometimes you may discover that the vendor does not own certain chattels but they are leased. It is important to obtain copies of all the current leases to determine the payments, etc.. If the lease is nearly at an end, you may wish to (or have your client do it) check with the leasing company to determine what is to happen to the

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II. (j) Chattels (cont'd)

equipment once the lease expires. Also, make sure your client can assume the leases.

Lastly, don't get caught by tenants' fixtures. Without going into a long discussion about fixtures, (Does anyone really know what they are?) suffice it to say that if a tenant affixes a chattel such that it becomes a fixture, then it is a fixture. However, the tenant reserves the right to remove that fixture at the termination of his tenancy and make it a chattel once again. In residential situations, items which have been made fixtures for "domestic convenience and utility" may be severed at the termination of the tenancy for example, dishwashers, shelving, etc.. This emphasizes the extreme importance of attaching lists to the agreement of all items which go with the property. Don't be caught thinking that any particular item is a fixture and therefore must remain. If it is a tenants' fixture you could be embarrassed at date of closing when it is on a truck bound for Alberta.

II. (k) Names/Signs/Telephone Numbers

Many apartment buildings are known by particular names (e.g. Park Victoria, South Park Apartments, etc.) Ask your client if the name of the building is a valuable part of what he is buying. If so, prior to the sale, ensure that the name is registered and can be transferred to your purchaser .

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II. (k) Names/Signs/Telephone Numbers (cont'd)

Section 3 of the Partnership and Business Names Registration Act (ICS.) provides for the issuance of certificates of registration for particular business names. This will prevent any other person from registering the sane or a resemblance of that same naare and taking advantage of any goodwill which may be associated with the name. The name can be transferred to the new owner by the new owner filing the appropriate documentation at the Companies Office: Consider the following clause:

> The vendor warrants that he is the legal registered owner of the name, Downtown Towers, and has the right to transfer the name to the purchaser. This Agreement is subject to the vendor, at date of closing, providing to the purchaser all necessary documentation for the transfer from the vendor to the purchaser of the naare, Downtown Towers so, that the purchaser may be the registered owner of the name under the Partnership and Business Names Registration Act, R. S. N. S., 1967, c. 225.

Ask your client if the telephone number is a valuable part of what he is buying. If so, have him contact the telephone company and ensure that the number can be transferred over to the new owner. You may wish to insert a clause in the agreement to require the vendor to assign the telephone number and execute any documentation necessary to bring about the change. The following clause could be used:

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II. (k) Names/Signs/Tele hone Numbers (cont'd) This Agreement is subject to the purchaser being able to retain the existing telephone number of the property as listed in the 1986 Halifax-Dartmouth Telephone Directory and the vendor agrees to execute any documentation necessary to bring about the change.

If the business name is in existance, it is likely displayed on scne sort of sign. Simply because the sign is presently in existance does not mean that it will be permitted to remain there. Even if the zoning allows the existance of the building and an occupancy permit has been issued, a building permit must have been issued for the sign itself and the sign must comply with the relevant by-laws.

III. "THE BUSINESS END OF IT"

III. (a) Financial Records

One of the very most important aspects of purchasing any rental property is the determination of how the income from the building will match expenses required to generate it. Inccme will be derived primarily from the rentals collected from the units and this will be affected not only by the rental per unit but also the vacancy rate of the building at any particular time. Expenses extend not only to items such as heat, taxes, etc. but also to items such as snow removal, equipment maintenance and the like. These figures may be the

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III. (a) Financial Records (cont'd)

determining factor as to whether the building should be purchased and accordingly, care must be taken to ensure that the information is correct. Many vendors often have two sets of books, one for the Income Tax Department and/or potential purchasers and one which reflects the "actual state of affairs". Some information can be verified by the solicitor or accountant but the majority of it may not be capable of verification. Therefore, the clause in your agreement should consider two things. Firstly, allow the purchaser adequate time to have the information verified. Secondly, recognizing.that all information cannot be verified, consider a warranty whereby the vendor warrants that the financial information provided is in fact, correct.

If you are considering taking a warranty, consider who you are taking it from. If your vendor is moving to El Salvador following the closing, the warranty may not be worth as much as the pen you used to draft the agreement. If the vendor is a company, consider having the principals of the company included in the warranty. The vendor may wish a time limit within which the warranty must be enforced and this would not appear to be an unreasonable request (you can't hang on forever!) .

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III. (a) Financial Records (cont'd)

when drafting warranties for your agreement, consider the law of merger. The law of merger respecting warranties is set out in Fraser-Reid et al. v. Droumtsekos et al., (1980) 1 S.C.R. 720. The general rule is that acceptance of the deed is prima facie completion of the agreement of purchase and sale and the agreement becomes merged in the conveyance. However, this general rule is not applicable to independent covenants which are not intended by the parties to be merged in the conveyance. The deed is merely a transfer of title, not a presumption that the purchaser intended to surrender his rights under the agreement. The proper question, then, is whether the facts disclose a common intention to merge the warranty in the deed. If there is no proof of such intention, there is no merger. In order to guard against merger, many drafters will insert a clause in the warranty stating that the warranty does and is intended to survive the closing. Certainly this will prevent having to search for intention (or the lack thereof) if the warranty is called upon after closing. The real danger area is in inserting the warranty into the agreement but at the same time allowing the purchaser a period of time to confirm the details of that which has been warranted. It is unclear exactly what the intention would be in a situation like this and you may find your warranty merged in the closing. To alleviate the problem, state in the agreement that the warranty will indeed survive the closing notwithstanding the fact that the purchaser has been afforded the opportunity to confirm the details independently. Consider the following clause:

. . ./29.

III. (a) Financial Records (cont'd)

This agreement is subject to the purchaser or his representative being able to make all inspections which the purchaser may wish of the financial records and statements of the vendor in relation to the business. If the purchaser is not satisfied with the financial records and statements, he shall so notify the vendor in writing within 10 days of receipt of the financial records and statements and then either party shall be at liberty to declare the agreement null and void. The Vendor covenants, represents and warrants that the financial records and statements of the vendor relating to the business verify and correctly and accurately reflect and disclose in all material respects, in accordance with generally accepted accounting principles, the financial position of the business as at the date hereof and all financial transactions relating to the business have been accurately recorded in such records and statements. The vendor further acknowledges that the purchaser is relying upon said covenants, representations, warranties in connection with the financial records and statements. Notwithstanding that the purchaser has been afforded the opportunity to **check the financial statements and records,** this warranty will and is intended to survive the closing .

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III. (a) Financial Records (cont'd)

Once the financial information is together, advise your purchaser to seek his accountant's advise in order to determine if in fact, it is "a good deal" for your client and to ensure that the transaction is structured to your purchaser's best advantage.

III. (b) Tax Implications

When your purchaser speaks with his accountant, also have him consider allocation of purchase price. The parties may be happy with the purchase price but not necessarily how much of it will be allocated to the cost of land, cost of the building, cost of chattels and equipment and cost of inventory (e.g. soap, etc.) if, in fact, there is any. Once the figures are decided, write then directly into the agreement. Failure to allocate, or even reasonably allocate, these items may lead to the Income Tax Department arbitrarily breaking them down for your client, possibly in such a way which may penalize either or both of the parties. With regard to financial records and allocation of the purchaser price, unless you have some expertise in the field of income tax, let the accountants make the decisions, don't "play accountant". Remember, better safe than sorry. The following clause would seem appropriate:

. .

III. (b) Tax Implications (cont'd)

'the parties agree to allocate the purchase price of

Four Hundred Thousand Dollars ($400,000.00) as follows:

Cost of Land	$100,000.00
Cost of Building	293,000.00
Cost of Chattels	7,000.00
	$400,000.00

Also ask your client to speak to his accountant as to whether he should incorporate a company to purchase the property or whether title should be taken in the husband and/or wife's name. There may be distinct tax advantages or disadvantages in how title is taken, depending on the property being purchased and the financial situation of your client. Again, let the accountant make this decision. The liability question is also a consideration in the event that a lawsuit is generated from the ownership of the property.

III. (c) Rental Information and Rent Review Commission

Before drafting the agreement, attempt to collect as much rental information as possible. The purchaser should know for example, the names of the tenants occupying each unit, how much rent is paid and whether it is paid monthly, weekly, etc. , are there any written leases or are they month to month, year to year, etc., how many

security deposits have been taken, their amounts and when they were taken, who pays the utilities, and what are the approved rents. You may wish to attach the rental information as a schedule to your agreement and subject it to the same verification and warranty procedure as the financial information. Some things to watch out for:

- The Residential Tenancy Act (N. S.) now provides tenure for tenants who have rented for five years or more. You may wish to advise your client if any tenants do have tenure and advise him that it may be difficult to remove that tenant should it became desireable. On the other hand, good tenants are often hard to cone by and, thus, this may not present a

problem for your client. To extend this one step further, your client may wish to know the "tenant history" of the building. For instance, how often does the building turn over tenants; or, are there any problem tenants in the building who do not pay their rent regularly, frequently complain to the tenancy board over nothing or simply disrupt the running of the building. In short, is your purchaser buying a problem?

Occasionally, your purchaser may wish to purchase the building empty (e.g. for purposes of renovation, etc.). If this is the case, ensure that there is a clause in your agreement requiring the vendor to terminate all tenancies prior to closing and requiring vacant possession of the property at date of closing. Likely, though, your

. . . ./33. . .

III. (c) Rental Information and Rent Review Commission (cont'd)

purchaser will wish to purchase the property fully rented-up or at least with sane guarantee that a certain percentage will be rented at date of closing. (One of the age-old tricks is for the vendor to take his longstanding tenants with him to fill his new building). It may not be possible to obtain a guarantee of a certain percentage so give thought to a clause requiring the vendor to give the purchaser credit on the adjustments for a specific number of months rent for whatever number of units under a stipulated number which are not rented at date of closing. For example, if the agreement called for 15 out of 20 units to be rented at date of closing and only 13 were rented, the vendor would give the purchaser credit on the adjustments for X months rent for the two unrented units. If 15 were rented, no adjustment would be necessary. Consider the following clause:

If at date of closing, at least 15 units are not rented, the Vendor agrees to deduct from the purchase price a sum equal to nine hundred dollars ($900.00) (being three months rental) multiplied by the number of units not rented under the number of 15. For greater clarity, if only 13 units are rented at date of closing, there would be a deduction of one thousand eight hundred dollars ($1,800.00) from the purchase price. If 15 or more units are rented at date of closing, there would be no deduction.

../34 . .

III. (c) Rental Information and Rent Review Commission (cont'd)

For the purpose of this clause, "rented" shall mean that there is a valid and existing lease and that notice to quit has not been received.

Often the rents being charged equal those that have been approved by the Residential Tenancy Board. To determine this, your purchaser should confirm the approved rents for each of the units. He, as prospective purchaser, will not be able to do so without authority from the vendor. Accordingly, in addition to inserting the approved rents into the rental information in the agreement, also require the vendor to provide written authorization to the purchaser in order to access the lent Review records and determine the approved rents. If the approved rents are less than represented by the vendor, your agreement should allow the purchaser to walk away from the deal if he wishes. If the approved rents are less than are being charged to the tenants, inquire as to whether they can be increased up to the rate being charged. Remember you will need approval fran the Rent Review Commission for any increase. Should your purchaser charge rents which are higher than the approved rents, he may be subject to rebating the difference back to the tenants should they became nasty and complain to the Board. Take some comfort in the fact that your purchaser will

III. (c) Rental Information and Rent Review Commission (cont'd)

not be responsible for rebating any excess charged prior to his purchasing the building. This will fall to the former owner. Should your purchaser discover that the approved rents are more than those actually being charged, tread cautiously. Often, owners to protect their investments, will apply for a yearly statutory increase whether or not they actually charge it to their tenants, whether it be to keep their longstanding tenants or whatever. Therefore, ensure that your purchaser determines the rents actually being charged as this will obviously affect the income from the building. Also, don't assume that, simply because the approved rent is higher, that it can actually be charged to the tenant. Check any written leases as they may well contain a clause which governs rental increases irrespective of the Rent Review Commisison. The following clause could be used:

The vendor acknowledges that the rental information attached hereto as Schedule "B" is relied upon by the purchaser and the vendor warrants and represents that the information is accurate and correct. The vendor shall also, within 3 days of acceptance of this agreement, provide to the purchaser written authorization to allow the purchaser to access the records of the Rent Review Commission respecting the property along with copies of all written leases. The purchaser shall have 10 days from date of

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III. (c) Rental Information and Rent Review Commission (cont'd)

receipt of the authorization and leases to confirm that the approved rents are as represented and approve the content of the rental information and written leases. Should the purchaser not be satisfied with any of the information or material provided, he shall so notify the vendor in writing within the 10 day period and, then, either party shall be at liberty to declare this agreement null and void.

III. (d) Notice to Tenants

One way or another, each of the tenants will eventually have to be notified that the ownership of the buildning has changed hands and that their rent should now be payable to the new owner. In fact, Section 5 (6) of the Residential Tenancies Act (ICS.) requires the landlord to provide the tenants with the landlord's name and address or the name and telephone number of the person responsible for the premises. This can easily be accomplished by inserting a clause in the agreement requiring the vendor to give written notice to all tenants of the change in ownership, informing them of the new owner (or his agent) and advising that all future rentals and inquiries are to be directed to that party. The following clause may help:

III. (d) Notice to Tenants (cont'd)

The vendor agrees to provide to the purchaser at date of closing written notices directed to each of the tenants that the ownership of the property has been transferred, setting out the new owners' name, address and telephone number and directing that all future rental payments be made to the new owner.

III. (e) Maintenance Contracts and Warranties

The cost of repair and maintenance of equipment may figure very heavily on the expense side of the equation, sometimes so much so that the purchase price of the building and equipment is not a viable alternative. Maintenance contracts for repair of stoves and refrigerators, air conditioning systems, fire alarm systems, heating systems, etc. and for things such as lawn mowing, snow removal, etc. should all be thoroughly investigated by the purchaser. The purchaser should ensure that all contracts are in good standing, determine the terms of them and also ensure that they are transferrable to the new purchaser. It is better for the purchaser to check all of this information himself rather than relying on the vendor to provide the information, as sooner or later, the purchaser will have contact with those pa~ticular individuals anyway. Of course, a clause should be included in the agreement allowing the purchaser to check all contracts and void the deal if the contracts are not as represented. .../38. .

III. (e) Maintenance Contracts and Warranties (cont'd)

Warranties on the various chattels should be treated in a similiar fashion. Again, the purchaser should obtain copies of all of the warranties and determine the details of same. Make sure the warranties are valid, have not been breached and are still in effect. Suggest that your client check this information directly with the manufacturer or whoever is to honour the warranties. Ensure that they can be transferred to the new purchaser. Be sure to insert the appropriate clause in your agreement to allow this. For example:

> The vendor shall provide to the purchaser within 3 days of acceptance of this offer, copies of all maintenance contracts, warranties and guarantees on chattels and equipment and the purchaser shall have 15 days from date of receipt thereof to determine that they are valid, subsisting and assignable. Should the purchaser not be satisfied, he shall so notify the vendor in writing within the 15 day period and then either party shall be at liberty to declare the agreement null and void. At date of closing, the vendor agrees to assign all assignable contracts, warranties and guarantees to the purchaser.

III. (f) Employees

In many multiple unit dwellings, there are employees which have been

III. (f) Employees (cont'd)

hired to carry out certain functions. Be sure to determine the arrangements which the vendor had with the employees. The most canon employee is the superintendant who resides on the premises. Often, the superintendant will carry out certain functions and be paid, at least in part, by a reduction in his monthly rental. He may have a written lease for the reduced rent which is not tied to his term of employment such that should he be terminated he may still be entitled to remain in the apartment at the reduced rent. If the purchaser wishes to retain his services, make sure that the purchaser knows on what terms and should the purchaser wish him terminated, insert a clause in the agreement requiring termination by the vendor of the employee and. his lease prior to closing.

Also be careful of outstanding amounts owing to Workers Compensation and Labour Standards, if applicable. For example, the following clause could be used:

The vendor agrees to terminate on or before the date of closing, the employment of all employees working in, about, or in connection with the property. The vendor shall also provide at date of closing, letters of clearance from the appropriate bodies stating that there ./40.

I I I . (f) Employees (cont' d)

are no outstanding claims against the property under the Workers' Compensation Act or Labour Standards Code. The vendor also agrees to terminate any leases which any employee may hold respecting the property, on or before date of closing and provide written releases from the employees if necessary.

Occasionally, there may be employees who require scene sort of license from one of a million Provincial bodies. If the purchaser wishes to retain these employees, ensure that they are in fact licensed or capable of qualifying for the particular licensing. Again, if the purchaser does not wish to retain the employee, have him terminated prior to closing.

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III. (g) Health Services Tax

If there are chattels or equipment involved in the purchase, ensure that the purchaser is advised of the payment of sales tax under the Health Services Tax Act. This, again, stresses the importance of allocating the purchase price referred to earlier. Should the figure for chattels be high, this may put a real cramp in your purchaser's pocket book.

III. (h) Electrical Power

The Power Corporation Act (ICS.) creates a lien in favour of the Power Corporation for unpaid power bills against "all the property real, personal or mixed, used in connection with the business. . .".

This would seem to be especially important where the landlord is responsible for the tenants' electricity although, irregardless, the landlord will require some power for entryways, hallways, laundry rooms, etc.. The lien is "subject only to municipal taxes" and applies to power supplied for a period not exceeding ninety days.

This lien need not be registered at the Registry of Deeds and it may

. . . ./42. .

III. (h) Electrical Power (cont'd)

be wise
to obtain a letter of clearance from the Power Corporation indicating that there is nothing outstanding. A clause in your agreement could require the vendor to provide such a letter at date of closing. For example:

> The vendor shall deliver to the purchaser, at date of closing, a letter of clearance from the appropriate governing body that there are no outstanding claims against the. property under the Power Corporation Act. Should the vendor be unable to provide said letter at date of closing, the purchaser's solicitor shall be entitled to hold back from the purchase price, an amount equivalent to that owed by the vendor to the power company, said amount to be determined by corresponding with the power company. This sum will be held in trust by the purchaser's solicitor until the vendor provides the letter of clearance, at which time the holdback monies will be released.

III. (i) Bulk Sales Act

The odd time or two, you may find that there is inventory included in

the purchase (e. g. soap, toilet paper, etc.). Consider satisfying the requirements under the Bulk Sales Act (ICS.) which require the purchaser to obtain from the vendor a statutory declaration containing the names and addresses of all creditors and the amounts they are owed. Violation of the Act results *in* the sale of the *inventory* being deemed fraudulent and void.

III. (i) Bulk Sales Act (cont'd)

The agreement should also contain a clause listing all inventory to be included, providing for a Bill of Sale free and clear of all encumbrances at closing and also adherence to the Bulk Sales Act.

IV. MISCELLANEOUS

IV. (a) Sewer and Water Laterals (Duplex)

This item appears in miscellaneous as it pertains solely to the purchase of duplexes. It is an item that would never cross your mind unless and until you get caught on it. (Guess Who?). A couple of years ago we purchased half a duplex in Fairview. The closing took place without incident. A few months later, we discover that there is one sewer and water line servicing both units with the lines passing under the adjoining unit's lard.

The Engineering Department of the appropriate municipality may be able to tell you if this **exists if the hone is relatively new and**, if so, consider obtaining a right of way frcm the neighbour to allow use of the lines and also to establish what happens in the event the lines require repair.

IV. (b) "Just in Case"

At one time or another, anyone who has ever drafted an agreement has been left with that nagging fear of "Have I missed anything?". It may ..../44. .

IV. (b) "Just in Case" (cont'd)

be that the vendor may have some information that is unknown to you or your purchaser but that would absolutely dissuade your client from buying the property. For example, the vendor may know the ccnstruction of a rock-crusher will be commencing next door six months after he sells the property. To guard against buying where the vendor has not disclosed all relevant or pertinent information, insert the following clause:

The vendor covenants, represents and warrants that he has no information or knowledge of any facts relating to the property which, if known to the purchaser, might reasonably be expected to deter the purchaser from completing the transaction contemplated herein. The vendor further acknowledges that the purchaser is relying on these covenants, representations and warranties in the completion of the transaction contemplated herein.

V. CONCLUSION

As you can see, there are a million and one little bits and pieces which you may wish to consider when your client decides to buy a multiple unit building. These considerations will be dictated by the particular building being purchased .

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V. Conclusion (cont'd)

Two parting comments:

The preceding pages provide you with some ideas with respect to the types of clauses which may be appropriate. The key to that sentence is "which may be appropriate". Resist the temptation to "be a slave to precedent". Think about what you are trying to do in the context of your particular situation and draft the clause accordingly. Also use common sense when drafting the agreement, remembering that it will have to be a document that both parties will sign. If you present the vendor with an agreement of a length equivalent to that of War and Peace, it will never in a million years be accepted . Protect your client but remember "you're not being marked by the yard".

Secondly, if in the course of making all of the appropriate inquiries, you uncover a defect in the transaction, for example, improper zoning, rent not properly registered, etc., and your client still wishes to proceed notwithstanding your advice, make sure you cover your **rear.** Ensure that both your client and the lending institution are aware of the defect and the repercussions that could potentially flow fran it. Obtain written confirmation from the lender that you are to proceed in spite of the problem and make sure your final report is subject to it. Also have your client sign a written acknowledgement authorizing you to proceed despite your advice to him. This may save your life someday .

. . . ./46. .

V. Conclusion (cont'd)

Above all, remember there is nothing more gratifying than, not only having your client praise you for the job you have done but knowing in your own mind that you have provided the very best of service. Don't get caught having to give back the lobster and the scotch.