



Bob Aaron bob@aaron.ca

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No-fee mortgage marketing plan has costs

A new mortgage marketing scheme of the Bank of Nova Scotia has been withdrawn and revised after lawyers complained the program encouraged consumers to close their real estate transactions without the advice of a lawyer.

The brochure, distributed in recent months through some branches of Scotiabank, reads: "Heads Up! HomeFree No Fee is here."

Apparently designed as a marketing response to incentives like the TD Canada Trust 3 per cent cashback incentive, the HomeFree No Fee program advertised no legal fees or disbursements, no land transfer tax, no survey fee, no high-ratio mortgage insurance fee, and (apparently) best of all, "No lawyer involved!" (The exclamation mark is theirs, not mine.)

The catch, of course, is that consumers pay the higher, posted rate for mortgages throughout the term of the loan, instead of taking advantage of a negotiated rate which could be between three-quarters and one percentage point lower than the published rates at the time the loan is advanced.

Hugh Cameron, a BNS spokesman, tried to distance the bank from the promotion by Stephen Elliott, one of its mortgage managers. Even though the flyer displays the familiar Scotiabank logo, he said, it is not the policy of the bank to encourage consumers to dispense with legal advice or the services of a lawyer.

The flyer produced by Elliott was a test program in the Toronto area. It contained "wrong information," according to Cameron, and is "being withdrawn."

A new brochure promotes "peace of mind at closing," and avoiding the "worry of meeting the closing costs."

In a sample calculation contained in the new flyer, a consumer signing a high-ratio mortgage of \$166,250 against a purchase price of \$175,000 would save \$2,979. This amounts to about 1.8 per cent of the loan, considerably less than the 3 per cent cash refund offered by the competition.

Under this scenario, if the homebuyer qualifies for the government's land transfer tax rebate as a first time buyer of a new home, the value of the HomeFree rebate drops to \$1,504, or less than one per cent of the mortgage amount. On a five-year mortgage, the borrower would probably be better off if he or she could negotiate an up-front annual discount of up to one percentage point off the bank's posted rates.

Banks do not pay customers' legal fees, disbursements and transfer taxes without making up for it in interest rates. In today's mortgage market, nothing is free.

Under the HomeFree program - both the old version and the corrected one - the paperwork portion of the transaction is processed by Canada Closing Centres Inc., a venture operated by the Mississauga law firm of Goodman and Griffin.

Partner Mike Griffin told me last week that his closing centre operation handles the administrative or paperwork portion of the transaction while the legal advice component is provided by his law firm. Together, the combined operation is, he said, a mobile law office and marketing entity which helps the bank package its closing services and mortgage products.

Each transaction is protected by title insurance through Stewart Title, Chicago Title, and soon - TitlePLUS. Clients of the law office/closing centre meet with a lawyer and are provided with legal advice when the final documentation is signed.

"The marketplace is wrong saying that real estate lawyers are just paper-pushers," says Griffin. He emphasized the importance of always using lawyers for the "value-added" services they bring to the transaction.

And just what are those value-added services? Back in 1996, Toronto lawyers Sidney Troister and Kathleen Waters conducted an extensive study on the role and duties of real estate lawyers in Ontario. Their published report, Real Estate Conveyancing in Ontario: A Nineties Perspective, explained the role of the lawyer by highlighting the word "quarterback" to illustrate his or her function in a transaction.

Traditionally, lawyers provide a title opinion and protect the client from the hundreds of laws that affect the use and enjoyment of real property in Ontario. But in their analysis Troister and Waters also concluded that the lawyer assesses the terms of the agreement, takes charge of the transaction, explains the nature and extent of the property being purchased, guides the transaction to completion, and advises the client of the risks and responsibilities that flow from the agreement itself.

The lawyer advises about the documentation, the survey, the owner's property rights, the title insurance policy, and the obligations of the borrower. And if necessary, the lawyer goes to bat for the client if the transaction starts to head off the rails. In today's complicated world, a lawyer's advice and guidance are indispensable for the most costly purchase and the largest debt most people will ever make.