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Time real estate industry started e-mailing offers

It happened again this week. A fax arrived from a local real estate office advising me that a client had bought a property.

A copy of the offer accompanied the fax cover sheet. The next three pages looked like someone had randomly sprinkled black powder across a standard Toronto Real Estate Board agreement form.

Except for the title, Agreement of Purchase and Sale, virtually nothing was legible - not the address, nor the parties, nor the closing date, nor even the price. Nothing.

The only thing that it was possible to tell for certain was that the original offer to purchase had been faxed back and forth so many times that the progressive deterioration in quality rendered the document totally illegible.

Due to the nature of facsimile technology, each time a fax transmission is resent by fax machine, it loses clarity.

When the process is repeated with documents containing tiny type face, deletions, amendments, and initials, the end result is an illegible document.

Consider this typical scenario: A selling agent prepares an offer, and faxes it to the purchaser at her office for signature (this is the first copy).

The purchaser signs it, and faxes it back to the agent (second generation).

The selling agent faxes it to the listing agent (third copy), who faxes it to the vendor for signature (fourth copy).

Even if it is accepted without change or sign back, by the time the parties see the final accepted offer - and worse, by the time their lawyers see it - the document has gone through fax machines six, seven or eight times and it looks like a Rorschach ink-blot test.

The risk to the parties is that the lawyers, and maybe the parties themselves, have no idea of the exact terms of the contract they're trying to close.

On-the-ball real estate offices will retype the final accepted offer without signatures on to a new form but this is time-consuming, and is not risk-free if the document is illegible.

Imagine a court trying to interpret an illegible contract years later if the deal goes south before closing.

When fax technology became popular in the mid-1980s, the real estate industry was uncertain as to whether it was legal to sign contracts by fax.

Eventually, fax clauses allowing offer and acceptance to be made by fax alone became a part of standard form real estate contracts.

The legality of faxed contracts was not finally settled until the case of *Rollings v. Willann Investments Ltd.* reached the Ontario Court of Appeal in November, 1989.

The Rollings received an offer to buy their property. Willann had a pre-existing option to purchase the property on the terms of any other offer.

The Rollings delivered notice of the new offer to Willann by fax. Willann failed to reply until after its 72-hour time limit, and the Rollings accepted the third party offer.

The court ruled that notice of the third party offer to Willann by fax transmission instead of personal delivery was sufficient.

Sometimes a real estate offer is faxed up to eight times and looks like a Rorschach ink-blot test. The Willann response was out of time and the third party got the property.

Writing for the appeal court, Justice Sydney Robins said, "Where technological advances have been made which facilitate communications and expedite the transmission of documents, we see no reason why they should not be utilized. Indeed, they should be encouraged and approved."

This reasoning applies to the use of e-mail in real estate today. Canada's real estate industry should be ahead of the technology curve, not wallowing 15 years behind it.

The answer to the ink-blot problem is the use of e-mail to send and receive clear copies of agreements of purchase and sale. No matter how many times the offer is sent back and forth, the clarity of an electronic offer will remain exactly the same.

Today, virtually every real estate broker and agent is equipped with Internet access, e-mail, and word processing programs that prepare agreements of purchase and sale. Once an offer is prepared for a purchaser to sign, it can be sent to the vendor as a Word or WordPerfect e-mail attachment or it can be saved as an Acrobat PDF file and forwarded in that format.

Adobe Portable Document Format (PDF) is a popular standard for electronic document distribution worldwide.

Adobe PDF is a universal file format that preserves all of the fonts, formatting, and graphics of any source document, regardless of the software program used to create it.

Anyone with a free Acrobat Reader program can view and print PDF files exactly as they were originally created. They look the same when they are received as they do when they are sent.

This is important because standard form offers are highly dependent on familiar wording and formatting.

Other inexpensive programs on the market use Word or WordPerfect to create standard form offers.

How is a purchaser's signature attached to an electronic document?

It can be typed at the end of the document, or an actual signature can be scanned by computer and inserted into the document in the usual place. Secure signatures can also be attached using free encryption software, widely available on the Internet. Look for PGP format (Pretty Good Privacy).

The purchaser can also hand-sign or even fax an authorization to the agent authorizing him or her to submit an electronic offer on specific terms.

The offer can be accepted by the vendor in a separate, electronically signed document, or the vendor can make a counter-offer by separate document or by amending the original

e-file and sending it back.

On Oct. 1, the Electronic Commerce Act, 2000 received Royal Assent in this province.

It has detailed provisions authorizing electronic contracts and allowing electronic signatures to have the same effect as signatures in ink.

On Jan. 1, 2001, the federal Personal Information Protection and Electronic Documents Act becomes law.

It describes the characteristics of secure electronic signatures and allows the federal government to make regulations prescribing technologies and processes for their use.

One hopes that the real estate industry will soon jump on the electronic bandwagon and make illegible faxed contracts a thing of the past.

Concluding contracts by e-mail is a fact of life and there is no reason why real estate cannot be bought and sold without using paper.

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