



Bob Aaron bob@aaron.ca

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Small-town lawyer has some big ideas

Following the lead of Scottish solicitors may ruffle some real estate feathers

In one small Ontario town, a handful of lawyers practise real estate law, and a similar number of real estate agents market and sell real estate. When a local house, farm or cottage is sold, the agents may receive \$5,000 or \$10,000 in commission, while the lawyers who handle the transaction typically charge just a few hundred dollars in legal fees.

Last week, one of my lawyer colleagues in this town called me to discuss if any legal barrier prevents the local lawyers banding together to offer their clients a bundled package of services, including listing and selling the property, negotiating the transaction, arranging the mortgage, and providing the legal work at the end.

Under the Ontario Real Estate and Business Brokers Act, anyone acting as a salesperson or broker in buying or selling real estate must be registered under the legislation. There is, however, an exception in the Act in favour of lawyers. Where a lawyer acts as a real estate agent or broker as part of his or her law practice, no registration under the Act is necessary. Nor are there any special Law Society rules covering lawyers selling real estate beyond the thousands of written and unwritten rules which govern the conduct of lawyers every minute of our lives.

I told my colleague from rural Ontario that I saw no legal barrier to the lawyers in his town selling real estate, but I cautioned that it would not make him and his colleagues terribly popular with local real estate agents who have traditionally monopolized this field.

In explaining his plans, he said that he wanted to set up a system similar to the way real estate is sold in Edinburgh, Scotland, and other cities in the United Kingdom.

In Edinburgh, the market for buying and selling real estate is controlled not by real estate agents but by lawyers (solicitors) under the banner of the Edinburgh Solicitors Property Centre (ESPC). Properties are sold by solicitor estate agents who operate individual Solicitor's Property Shops in their law offices, and collectively operate the Solicitors Property Centres.

The ESPC and its members control about 92 per cent of property sales in Edinburgh, and offer their customers a free weekly newspaper with a circulation of 58,000, a Web site listing (<http://www.espc.co.uk>) of every available property, mortgages, property insurance, movers and an on-site architect.

Last year the ESPC sold almost 14,000 resale houses with a total value of more than \$2.8 billion. These sales are in a city with a population of about 450,000 (plus suburbs of an additional 725,000). Listings of sales and rentals are also available at the five ESPC offices throughout Edinburgh and its suburbs.

The main ESPC showroom in Edinburgh is open every day and averages 8,000 visitors a week. It has become very much the place to go for house-hunters, and the place to have a house displayed for sale. The only way to participate is through one of the 220 member law firms. Typically, lawyers in Scotland charge a one-time listing fee of about \$325 and a commission of one to 1.5 per cent on the sale of properties. Legal fees are extra.

Elsewhere in Scotland, there are seven other cities with Solicitors Property Centres. All told, they handle some 68,000 residential sales a year, representing about half of the total sales in all of Scotland.

Lawyers also sell properties in England and Wales, where an estimated 160 law firms have real estate divisions some of them sizable.

The Scottish model has just been successfully transplanted to New Zealand. Last year, the laws of the country were changed to allow lawyers to sell real estate. Under the auspices of the New Zealand Law Society, local solicitors established REAL (Real Estate Available from Lawyers). Vendors are charged 2.9 per cent commission on the sale of their properties.

REAL's 410 member law firms provided start-up funding for the agency, but they do not legally own it. Profits are directed to a charitable trust. REAL obtains listings when member lawyers refer clients who wish to sell a property. It is a member of the Real Estate Institute of New Zealand, which signalled a "competition welcome" response to the REAL launch last July.

My colleague in rural Ontario says that if the Scottish model is transplanted to small-town Ontario, the public will be well-protected. Every participating lawyer will be covered by the Law Society's compulsory insurance.

Lawyers are required to have a post-graduate legal degree, involving the study of areas like contracts, property law and real estate law. Lawyers are governed by strict ethical standards and trust account regulations. As well, clients have access to a compensation fund in the event of dishonest behaviour.

By contrast, many homes and condominiums in this province are legally sold on behalf of builders and developers by sales people who are, in some cases, unlicensed, unregulated, and sometimes untrained and uninsured.

In small-town Ontario, my colleague feels that lawyers can provide competent and effective services in selling real estate, and if Scotland and England are any example, they may be able to do it much more cheaply than the existing real estate industry.

Watch this space for further developments.

Bob Aaron is a leading Toronto real estate lawyer.

Please send your inquiries and questions to bob@aaron.ca or call 416-364-9366.

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