



Bob Aaron bob@aaron.ca

July 26 2003

## Beware of extra costs for mortgage paperwork

The Ontario Bar Association (OBA) has sounded a consumer alert to warn homebuyers of new programs instituted by several of the major banks, which can significantly increase the costs of borrowing for home mortgages.

Deborah Rogers, incoming chair of the OBA Real Property Section, raised a number of concerns in a phone call last week about several pilot programs in which title insurers or third-party technology providers assume the mortgage-processing functions on behalf of specific lending organizations.

Under these programs, certain lenders outsource the administration and processing of paperwork involved in providing mortgages to homebuyers. Instead of doing the work in-house, the banks can achieve significant savings by hiring third parties to do it.

Ultimately, Rogers said, the consumer winds up absorbing the cost of the downloading.

Rogers, who practises real estate law with Weir Foulds LLP in Toronto, said instead of dealing directly with the banks involved, lawyers for homebuyers are required to work with these suppliers.

Last week I was acting on the purchase of a new condominium for a first-time buyer who had arranged a mortgage with ING Bank of Canada. It was only when he came into my office the day before closing to sign the mortgage documents that he discovered he had to pay a third party, CLN Highlander, a \$214 fee for doing the ING paperwork. Within 24 hours, the client had matched the rate and terms of the ING mortgage with another lender and saved the processing fee. We closed the transaction smoothly with the alternate lender.

According to Rogers, the presence and role of intermediaries such as CLN Highlander adds no value for either the client or the lawyer in the transaction. Instead, she said, it presents lawyers with a number of dilemmas.

Normally, a lawyer must act in the best interests of the client either the borrower or the lender. But when a third party is involved, the lawyer is faced with taking instructions from someone who is not a client.

As well, the lawyer has no contact with the lender. This, according to Rogers, results in potential conflict of interest and raises questions about the lawyer's ability to act in the best interests of the purchaser client.

TD Canada Trust has launched a similar project in the Ottawa area. Instead of coming directly from the bank to the lawyer, all mortgage documentation is prepared and forwarded to the lawyer by a third party, First Canadian Title Insurance. The lawyer does all the customary due diligence, registers the mortgage, and reports back.

The borrower is charged \$159 for a title insurance policy for the lender only. If the borrower wants title insurance for the purchase component of the transaction, the cost is going to be \$100 to \$200 more than if a combined purchaser and lender policy had been arranged with other title insurers.

Last month, the real estate committee of the Carleton County Law Association in Ottawa wrote a detailed letter of complaint to Kathy Gregory, a senior mortgage officer at TD Canada Trust in Toronto. The letter complained that borrowers are not told of the extra costs when quoted a "package price" for TD mortgages, and that lawyers are forced to use one title insurer - First Canadian - in contravention of Law Society regulations.

"We believe that TD Canada Trust has a legal, moral and ethical obligation to provide up-front disclosure to its customers," the letter said. Clients end up "feeling that TD Canada Trust has put something over on them" and that it "is outsourcing its mortgage administration costs on their backs."

The Carleton County Law Association letter also complained about the lack of a lender support person on mortgage files, poor training level of staff handling the transactions, and increased potential for failed closings.

In light of the backlash from lawyers and clients, Rogers reported that TD officials have indicated they will be re-evaluating the initiative.

In the meantime, Rogers provided this advice to consumers who are arranging mortgage loans:

- ☐ Be very careful about hidden costs in mortgage approvals.
- ☐ Get detailed particulars about "package price" mortgage loans.
- ☐ Ensure there will be freedom to choose any title insurer.
- ☐ Make sure all "processing" or "mortgage preparation" fees are disclosed in writing, up front.

**Bob Aaron** is a Toronto real estate lawyer. Send questions to Bob Aaron, 10 King Street East, #1400, Toronto, Ontario M5C 1C3, or by e-mail to bob@aaron.ca, phone 416-364-9366, or fax 416-364-3818.