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Seller's bills can haunt new owner

Sometimes lawyer to lawyer letters can solve problem

Small claims courts can be another option

Cleaning up a mess left by the previous owners of your home is one thing, but cleaning up their financial mess is an entirely different matter.

I recently received an e-mail from a regular reader of this column who wrote:

"I purchased my current home in May, 2003, and have been hoping since that you would write an article on an issue that has been concerning me. After closing the sale of my house, it surfaced that the previous owners had water and property taxes outstanding for a few hundred dollars.

"As the new owner of the property, the local municipality billed me for these costs owed by the previous owners. I settled them (on the advice of my lawyer) and forwarded him the receipts and proof that these were monies owed by the previous owners."

The writer then complains that he has not been reimbursed, and his lawyer was not helpful in recovering the money owed by the previous owners.

The issue of outstanding water or taxes crops up from time to time after the purchase of both new and resale homes.

Typically, where there is a final water bill, the seller of a property will receive an account after the last meter reading. On closing, the seller gives the buyer a written undertaking to pay the final water bill. If it is not paid, the city will attempt to collect from the new owner. Most sellers honour their promise, and problems rarely arise.

In the case of taxes, the amounts in arrears can be much higher than a utility bill. It is very easy to verify the tax account with the municipality, but the charges for a tax search often add an unacceptable amount to the lawyers' disbursement bill. The City of Toronto, for example, charges an outrageous \$65 for a tax certificate, which provides account information that was once available for free by telephone.

As evidence of payment of tax arrears, real estate lawyers and the three major title insurance companies in Ontario typically accept a tax receipt, verbal confirmation from the tax department, a municipal tax certificate or a sworn statement by the vendor as to the payment of taxes. One title insurer will also accept the vendor's undertaking to pay tax arrears, but this practice is considerably riskier and open to abuse since there is no independent verification.

So what are the alternatives for a homebuyer like my correspondent who gets zapped by the sellers' arrears?

Sometimes, a gentle reminder by the buyer directly to the seller, or a letter from one lawyer to the other, will produce the desired results. When that doesn't work, the new homeowner can always resort to the small claims court or the title insurance company.

In most cases, the title insurance company will step up to the bat, pay the arrears, and go after the vendors themselves or absorb the loss.

Gas and electricity arrears are the personal responsibility of the prior owner, and, like phone and cable TV bills, do not form a lien on the house to be paid by the new owner.

In the case of new homes, the utility connections are usually quite recent and there are usually few, if any, arrears.

New freehold homes are taxed as vacant land until the purchaser closes, so the entire year's taxes may only be a couple of hundred dollars and the risk of a buyer getting stuck with significant unpaid taxes is very slim.

There may be a nasty surprise many months down the road when the re-assessment bill arrives, but it all belongs to the new owner.

From time to time, a significant arrears problem can arise with high-rise condominiums, especially if the builder fails to pay back taxes owing from the date of first occupancies by the original buyers.

This was the case recently with a downtown Toronto project at 500 Queens Quay W. where the city has claimed tax arrears and penalties of more than \$550,000 dating back to 2000. The problem was complicated by the fact that it can, and often does, take months or even years for the Municipal Property Assessment Corp. to apportion the assessment fairly to the developer for the pre-occupancy period, and among all the units after occupancy.

Buyers of resale homes should always discuss responsibility for ongoing taxes with their lawyers at the time of closing. The allocation is shown on what's called the Statement of Adjustments, and purchasers should make sure they understand the maze of calculations.

The issue of tax adjustments and reassessments is infinitely more complicated on the purchase of new homes and condominiums.

Purchasers should consult with their lawyers on closing to be doubly certain they understand who is responsible when that whopping big catch-up bill arrives unexpectedly a year or two down the road.