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Paperwork may be lacking in cottage sales

Buyers sometimes take unusual risks

I was reminded again last week that buying cottage country real estate is completely different from buying city property, and that purchasers and their legal advisers may have to accept risks they would be unwilling to tolerate in an urban context.

Two clients of mine were interested in buying a waterfront cottage in Tay Township on Georgian Bay. They did not have their own real estate agent, and asked the listing agent to prepare an offer for them at a price that had already been agreed upon by the parties. The agent worked for the local office of a large national franchise.

My clients faxed the draft offer to me and asked for my comments. The document called for payment of the balance of the purchase price by cash or certified cheque on closing. It was conditional on financing, and stated that the agent did not represent the purchasers but owed them a duty of honesty and fairness.

The rest of the offer was the printed form there were no other typed clauses.

After a quick read-through of the offer, I sent the agent a two-page list of additional clauses that I wanted to be inserted into the offer.

The changes I wanted made to the document were:

- Delete the clause allowing the option of paying the purchase price in cash. The sellers could be forced to accept a satchel full of \$100 bills, which they would not be able to deposit into their bank due to money-laundering legislation.
- Insert a warranty that the deck and dock were owned by the sellers and not sitting on land or the lake bed owned by the provincial government.
- Provide documentation that the dock was built with appropriate government approval.
- Provide proof that road access to the cottage was by way of a public roadway.
- Provide a survey showing exactly what was being purchased.
- Confirm that there was no government-owned, 66-foot shore road allowance along the waterfront.
- Allow purchasers access for inspection purposes.
- Provide proof that the septic system had all necessary permits and was operating properly.

When my list came back to me from the real estate agent, virtually all the suggested clauses, including the right to pre-closing inspection, had been deleted.

I called the agent, but knew I was in trouble right away when he refused to delete the purchasers' right to pay the purchase price in cash.

We all use that clause up here, he told me.

The conversation went downhill after that, so I gave up and contacted the sellers' lawyer.

I had somewhat more success with him, but his answers gave my clients very little comfort.

I was told that I had an unrealistic view of what municipal records are likely to exist. I learned that there was apparently no evidence that the cottage, deck, docks or septic system had been built with the appropriate permits, so the purchasers would have to take their chances.

It turned out that the vendor never checked the legal status of the septic system when he purchased the property, and had no idea whether a permit had been issued or not.

In cottage country, I found out, this is a common occurrence, and buyers often close cottage deals on being assured only that the

septic system works rather than on getting proof that it was legally and properly installed. An illegal system, of course, can work perfectly, even if it contaminates the nearby lake or ground water.

Fortunately, the cottage was on a municipal water supply, so it was not necessary to obtain proof of water quality through a laboratory analysis, or water quantity by way of a well-drillers certificate.

I was assured by my colleague, who acted for the vendor, that there are no 66-foot government shore road allowances in Tay Township or Simcoe County and the purchasers would own right up to the shoreline.

But when I finally got the survey four days later I discovered that a 66-foot deep swath of the front lawn was actually owned by Canadian National as part of an unused railway right of way, and the cottage owners had no rights to buy the land.

The undisclosed railway line was the final straw, and my clients backed out of the deal. A title insurance policy could hardly compensate them for the lack of a survey in this case, or their inability to own 66 feet of the lawn between the cottage and the lake.

The lesson of the story is that in dealing with cottage country real estate, buyers will typically want more warranties and documentation than sellers are willing or able to give. And for fear of raising questions which are too uncomfortable to answer, some agents may not discuss questions of water quality and quantity, road access, septic permits, building permits, surveys, docks, boathouses and shore road allowances with their purchasers.

All of this underlines the importance of both sides of a cottage transaction having legal advice before any documents are signed, not to mention how important it is for real estate agents to be candid with potential purchasers about what they are and are not selling.

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