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Be ready for the unexpected in real estate deals

There is no such thing as a simple transaction

Only so much can be done to repair problems after fact

Sooner or later, every real estate lawyer will experience the Deal From Hell. At one time, they would be few and far between, but lately it seems they've been occurring with increasing frequency in my office and in those of many of my colleagues.

During the last week of November, I experienced far more than my share of problematic deals. Here are a few of the nightmare real estate transactions that crossed my desk in the space of only five days. The events are real. The names are not.

There is a new townhouse project in central Toronto, at Jarvis and Wellesley Streets. The above-ground townhouses are registered as freehold title. Every townhouse title includes deeded ownership of a condominium unit parking space below ground. The combination of a freehold townhouse and a condominium-parking unit is called a parcel of tied land (POTL - pronounced like "pothole") under the Condominium Act.

Susan had purchased one of the townhouses using a standard freehold agreement of purchase and sale, but there was no purchase agreement for the parking space, which should have been prepared on a separate condominium agreement form. Nor was there any conditional clause for a status certificate for the parking space, which was not available on the closing date. A great deal of last-minute scrambling managed to put the deal back together.

Sonya was buying a new high-rise condominium unit. From the wording of the offer, she expected that she would have to pay about \$10 or \$12 a month to rent the water heater.

She was shocked when I presented her with a rental contract provided by the builder that required her to pay close to \$70 a month for the combined water heater and furnace unit. No one had ever told her she had to rent the entire heating system. She was forced to close and spend \$700 a year more than she anticipated.

Martin had agreed to purchase a new condominium unit from a seller who was buying it from the builder. Both transactions were closing the same day. The resale agreement of purchase and sale set out that Martin was getting two parking spaces a deeded underground unit and a common elements surface parking space.

The seller had been told in the builder's sales office that he could use a surface parking spot for his second car, and he mistakenly believed he had the exclusive use of the space. The seller admitted he was in breach of the contract with Martin because he could not deliver title to the second parking unit. After hours of negotiations, Martin settled for a modest price reduction of \$3,000.

Anton is thrilled with the mistake I pointed out in his own offer concerning a small commercial building. The offer had been prepared on a standard residential form instead of a commercial form. As a result, GST is included in the price instead of being added to it, as is customary in all commercial real estate purchases. His \$320,000 price drops to \$299,000 if he doesn't register for GST. We'll be watching for the fireworks when the vendor discovers the mistake.

Ray and Rosalie learned the hard way about the chain reaction nightmare that happens in every real estate law office sooner or later. They had signed all the papers and were about to move out of their house when they discovered their purchaser couldn't close because the buyer of his house hadn't received a firm mortgage commitment. The deal finally closed after two weeks of tears, frustration, and dozens of phone calls.

The message: There is no such thing as a simple, straightforward real estate deal. Have a lawyer check your

agreement of purchase and sale before you sign it.

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