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October 2, 2010

OREA is up to date with 1980s technology

Virtually all agreements of purchase and sale for homes or condominiums in Ontario are prepared on standard forms published by the Ontario Real Estate Association (OREA). Unfortunately, those forms have a great number of shortcomings which do not promote the interests of the public who rely on real estate agents for protection.

Both form 100 for freehold land and form 101 for condominiums set a deadline of 6 p.m. on the day of closing.

OREA is no doubt aware that web access to the Teranet land registration system, through which title documents are registered, closes at 5 p.m. Since no transactions can be closed between 5 and 6 p.m., setting a 6 p.m. closing deadline is problematic.

The forms themselves allow notices to be given to the opposite party by fax transmission, but not by email. In this respect, OREA is right up to date with 1980s technology.

In the same vein, most agents deliver signed offers to each other by fax, and by the time a fourth or fifth signback is exchanged, the final document is totally illegible.

With the widespread use of computer scanners, surely OREA could come up with some technology for agents to attach a scanned signature to their purchase agreements and exchange legible versions until a deal is finalized.

The title search paragraph also creates problems. Each agreement contains a blank for inserting a deadline date for the buyer s lawyer to search title and raise any objections. This is called the requisition date.

Whatever date is filled in, however, is rendered meaningless by the subsequent text which extends the requisition date until five days before closing.

The paragraph defining the requirement for the seller to provide good title is a masterpiece of incomprehensible drafting. A 135-word sentence is followed by a 149-word sentence. Advocates of plain-language wording would have a field day with this section.

The forms have some notable omissions. Although there are other warnings in the freehold form, nowhere is there a caution warning a purchaser of the consequences of not obtaining a land surveyor s report, which I have repeatedly stated in this column is the single most important document in the entire purchase transaction.

Nor is there any acknowledgment in the condominium form that the purchaser has been shown the location of the parking space and locker. The vast majority of my condominium purchaser clients tell me on the day before closing that they have never been shown the locations of those units.

Another clause details the seller s warranty that he or she has no knowledge of urea formaldehyde insulation (UFFI) in the property. OREA, however, has never bothered to insert a paragraph dealing with whether the property has ever been used as a marijuana grow op or meth lab, which are much more common and present problems far more serious than UFFI ever was.

Perhaps the worst section of the agreements is the property assessment clause. This one states that the Province of Ontario has implemented market value assessment (it actually happened in 1998) and that properties may be re-assessed annually. The reassessment of properties has not been undertaken annually since the end of 2003, so the statement in the OREA offer is factually incorrect. (Assessments now take place only every four years, with phased-in increases every year.)

The objectionable part of the paragraph is an agreement that the buyer and seller will not sue each other, or the broker or salesperson, for any change in property tax as a result of a re-assessment of the property.

In my opinion, a client s waiver of liability for an act or omission of his or her real estate agent is highly improper when it s contained in an agreement supposedly between buyer and seller alone. It s probably unenforceable in any event.

This raises the question of who OREA is trying to protect with its agreements its agent members and brokers, or the public whom they serve. It s a question worth considering.

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