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OREA forms continue to confuse lawyers and consumers

When does a real estate deal close when the deed is registered, when the keys and money change hands or when the seller moves out of the house?

This question was raised by London, Ont., lawyer Lorne Campbell in response to my [Oct. 2 column](#) discussing the [Ontario Real Estate Association](#) (OREA) standard purchase agreements forms

The forms set a 6 p.m. deadline for completion, but the land registration system shuts down at 5 p.m. I referred to the 6 p.m. deadline as problematic.

Responding to my criticism, Campbell emailed me to share his opinion that completion of the transaction under a standard OREA agreement is more than simply registering the deed. A proper reading of the form, he wrote, shows that completion involves both registration of title and giving vacant possession.

In Campbell's view, a proper interpretation of the OREA form is that both aspects of the transaction registration and giving vacant possession must be completed by 6 p.m.

The exact wording of the form is that the agreement shall be completed by no later than 6 p.m. on (the date of completion). Upon completion, vacant possession of the property shall be given to the buyer . . .

If Campbell is correct, this means that under the OREA agreement, ownership and closing funds could be exchanged at, say, 1 p.m., but the seller still has until 6 p.m. to move out of the property. If the seller fails to move out by 6 p.m., or at all, the buyer is the registered owner, the buyer's purchase price has been delivered, and the buyer has the keys, but can't move in.

The problem is caused by what I see as confusing wording in the OREA form which seems to use the terms completion and closing interchangeably. The term completion is never defined in the OREA form, and the contract does not say whether the deal is completed on registration of the deed or when the house is empty.

The practical problem resulting from this lack of clarity is that buyers and sellers don't really know when the deal is finally closed and they may have different views of when the buyer can actually move in and when the seller has to be out.

Deputy judge Susan Carlyle struggled with this problem in the 1993 Small Claims Court decision in *Foord v. Smith*. On the day of closing, the funds and keys were exchanged and the deed registered at 4:24 p.m. When the buyers and their movers showed up at 6 p.m. (the deadline in the contract), the sellers refused access to the London, Ont., house. The movers were again denied access at 9 p.m. and had to return on another date.

After finally moving in, the buyers successfully sued the sellers for \$1,791 for hotel bills and extra charges by the movers. The sellers' argument that they had until midnight to move out was rejected by the judge.

A three-judge panel of the Ontario Divisional Court dealt with a similar situation in *Cooper v. Mysak* in 1986. At the time, the standard contract set a date but not a time deadline for closing.

When the lawyers for both parties met at the Land Registry Office on closing, the purchaser's lawyer refused to hand over funds and close the transaction because the tenant was in the process of moving out and the property was not yet empty.

The seller successfully sued the buyer for his losses because he was ready and willing to close and the purchaser failed to do so.

Until the Ontario Real Estate Association changes its forms, Ontario law interprets the OREA contracts to say that sellers don't have to deliver vacant possession of the property until 6 p.m., even though they no longer own the house and may have spent the sale proceeds on their new house purchase.

To me, that makes no sense at all. It's time OREA rewrote its contracts to say that when the deed is registered, and keys and money are exchanged, the house should be empty.

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