

EXPERT ADVICE

Buying and Selling Property



Katrina R. M. Hanlon
Associate

Gittens & Associates
The Storehouse
8 Kenna's Hill, St. John's
khanlon@gittenslaw.com
709.579.8424
www.gittenslaw.com

PURCHASE AND SALE AGREEMENT:

It is important for people involved in purchasing or selling real property to realize that if they sign a purchase and sale agreement before their real estate lawyer has had a chance to review it with them — they are in fact handing the lawyer a *fait accompli*. Their real estate lawyer is, in effect, restricted to only assisting them in complying with the terms and conditions already stated in the purchase and sale agreement.

An example of the kind of ambiguity that can create problems for a purchaser or a vendor often occurs when the purchaser



is using a bank or private lender to finance a transaction. Lenders do not want to finance transactions where there might be a potential lawsuit affecting the property being purchased. As such, they will require the purchaser to obtain a survey of the property and a real property report.

SURVEYS:

A survey is a description of the dimensions and directions of the boundaries of the property. It illustrates whether or not there is any encroachment by the property onto neighbouring properties or by nearby properties onto the subject property.

REAL PROPERTY REPORTS:

A real property report illustrates where the structures are located on the property and would show outlines of any houses, decks, sheds, garages, fences, driveways and easements, etc. If any of these structures are extending onto neighbouring properties, are located in an easement or are blocking a right of way, there is a potential for problems with neighbours, public utility companies or municipalities.

AVOIDING CONFLICT:

Ensuring that none of these potential problems are affecting the property you are purchasing is an important aspect of any purchase and sale transaction. Resolving these problems can become an issue where the vendor's and purchaser's interests differ, especially when attempting to close the transaction.

When making an offer to purchase, it is in the purchaser's interest that the vendor provide a current survey and real property report. A vendor would be more inclined to provide the survey and real property report in their possession. Such a survey and real property report may be out of date and not offer a true reflection of the current state of the property.

To avoid any unpleasant surprises (cost of obtaining a new survey and real property report could be anywhere from \$800 to \$1,500) this issue should be negotiated and dealt with to the satisfaction of both parties before the purchase and sale agreement is completed.

OUR RECOMMENDATION:

The above is just one example of a problem that can be avoided by careful negotiations. It is important to understand your contractual rights and obligations resulting from the execution of the purchase and sale agreement. We encourage you to have in depth conversations with your real estate agent. We also encourage early engagement of a real estate lawyer to aid in your comprehension and the drafting of the purchase and sale agreement. When you have a real estate professional and a competent real estate lawyer working together it will save you money and prevent unnecessary delays. ■

ABOVE Katrina R.M. Hanlon,
Stephen P. Orr, Joleen Mitchell,
Ernest Gittens, Billie Taylor