

Lawyers may kill deals not in client's best interest

Nov 22, 2008 04:30 AM

From time to time, lawyers get accused by real estate agents of being "deal killers." I was reminded of this recently in an email from Paula Riopelle, a real estate lawyer in Orleans, Ont.

She was responding to my Nov. 1 column, "[Agents should never brush off the need for a survey.](#)" In it, I argued that title insurance is not a substitute for an accurate survey prepared by a professional land surveyor.

Riopelle echoed my concern that some homebuyers are receiving poor advice.

"My clients have been telling me at alarming rates," she wrote, "that their realtor said they don't need a survey when title insurance will suit them just fine. This is troubling to me, as they are advising clients about issues for which they are not qualified to provide advice.

"I find it extremely frustrating that in their efforts to close the deal and collect their commission cheques, the interest of the client takes the back seat." She added, "A few real estate agents have also told me they're tired of lawyers 'killing their deals' when a status certificate is reviewed, or other similar issues the lawyer will have warned the client about."

Unfortunately, some real estate agents position themselves as adversaries to their client's real estate lawyer in purchase or sale transactions.

The [website](#) of Scarborough law firm Fleury, Comery LLP contains a memo to the firm's clients noting, "Sometimes our clients find themselves being urged to sign an agreement before consulting their lawyer because 'lawyers kill deals.' "

The memo concludes by saying "Yes, lawyers are deal-killers. We kill bad deals."

Most real estate agents are conscientious and serious about their obligations. "The good agents," Riopelle says, "aren't worried about us properly advising clients about issues that we discover about a property or issues disclosed in a (condominium) status certificate – they, too, want their clients to be satisfied."

I know what she means. As many as half the status certificates that I review for Toronto condominium transactions reveal that the offer and listing contain the wrong unit or level number, or the wrong maintenance fees.

As well, a high percentage of the resale offers that I see for Toronto freehold homes contain clauses which are unnecessary or which duplicate the printed form but compromise the protection of one or both parties to the agreement.

Sometimes, however, the realtors in these transactions become upset when the issues are raised by the lawyer.

Better agents, and of course the clients, appreciate that kind of legal advice.

Several years ago, in his column in *REM (Real Estate Magazine)*, the late Albert Teichner – a veteran B.C. realtor – urged lawyers and realtors to work together.

"In the home stretch," he wrote, "the realtor and lawyer should work together as equals in a team effort atmosphere. Only then will everybody win and benefit: the realtor, the lawyer and above all, the client."

In the course of a real estate transaction, if a real estate agent advises that title insurance is a replacement for a land survey, or that the lawyer doesn't need to advise on the content of the agreement, it might be worthwhile to ask who is protecting the client's interests.

Above all else, the lawyer's duty in a real estate transaction is to protect the client's interests – even if it means the client will abort the transaction or arrange to correct any matters which require amendment. And even if it means the lawyer won't get a fee on an aborted transaction.

Calling a lawyer a "deal killer" betrays a fundamental misunderstanding of his or her role in a real estate transaction.

Bob Aaron is a Toronto real estate lawyer whose column appears Saturdays. He can be reached at bob@aaron.ca.