The Standard Real Estate Purchase Contract

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THE STANDARD AREA RESIDENTIAL REAL ESTATE PURCHASE CONTRACT

I INTRODUCTION

In the majority of cases involving the sale and purchase of residential property, the buyer and seller will have completed and executed some form of agreement prior to consulting their respective lawyers. As a consequence, the possibility of adequately addressing certain routine problem areas in the agreement or amending it to suit the facts of any particular purchase transaction is difficult if not impossible for the lawyer.

Generally speaking, in the sale of residential property the form of purchase contract most commonly used is a printed "standard form" document prepared and recommended for use by the Alberta Real Estate Association (AREA). This chapter contains a checklist for the review or preparation of a residential purchase contract and a detailed review of the standard AREA agreement with discussion of potential problem areas.

It should be noted that AREA has a standing Standard Forms Committee which continually reviews proposals for change to the purchase contract emanating from changes in practice or law. As a result, the "standard contract" is being continually fine tuned, with smaller or greater changes being made each year. These materials include the latest form of the contract available and in use at the date of printing, which bears the date of August, 2008. It is imperative that the reader keep potential changes to the standard form in mind in reviewing these materials, note the date of the contract being utilized in any transaction, and examine it for deviations from the form included in this guide.

II COMMENTARY

The Alberta Real Estate Association standard **RESIDENTIAL REAL ESTATE PURCHASE CONTRACT** (August, 2008 version) (hereinafter "contract") will be discussed in detail in this commentary.
Unless otherwise indicated, the clause numbers in this review correspond with the clause numbers in the contract.

Clause #

n/a Parties

The contract should reflect the name(s) of the seller exactly as it appears on the title. If there are several owners, then for the contract to be enforceable all of them must be parties to the contract. People tend to be fairly casual when it comes to filling in the buyer's name, and often for reason of mortgage financing approval or otherwise additional parties are added to the transaction at closing. While the seller may not be happy about the substitution of another buyer, particularly where the transaction contemplates seller financing or the assumption of an existing CMHC mortgage, section 154 of the *Land Titles Act* guarantees the assignability of all contracts for the sale and purchase of land. As a result the seller's "approval of any assignment of the contract by the buyer" reserved in the financing schedule (in cases where the contract involves either seller financing or the assumption of a CMHC mortgage) is likely not enforceable.

1.1 and 1.2 Identifying the Property Sold

While this would appear to be a fairly straight forward part of the contract, mistakes or discrepancies here could have fatal consequences for its enforceability. Condominiums, in particular, cause a lot of problems in that the legal unit number does not usually match the municipal address number on the door to the unit. Since the contract makes provision for a Parking Unit, this blank needs to be filled in if the offered price is to include the parking title. Please note that the contract now contemplates that the Condominium Property Schedule will be attached for all condominium transactions, and parking stall,

storage locker and other details have been moved into the Schedule.

1.3 and 1.4 Chattels and Fixtures

Disputes over what is and what is not included in the Purchase Price is one of the most common complications arising in residential closings due to these two clauses not being paid sufficient attention when the contract is written up. To simply indicate "stove, fridge and dishwasher" in clause 1.3 leaves a lot of uncertainty and room for the seller to maneuver if he is going to swap appliances prior to the closing day. A particular problem relates to security systems, which, although often specifically listed in these clauses as being included in the price and notwithstanding that they are usually affixed to the property are actually leased and may involve monitoring contracts which are prepaid and non-assumable by the buyer. (see also comments with respect to state of title in clause 1.5 and on clause 6.1 (b) relating to chattels having to be in normal working order and free of liens)

1.5 State of Title

This clause contains a description of the types of encumbrances and liens which the buyer is obliged to assume and those which the seller has to discharge on closing. The reference in clause 1.5(a) to "those (obligations) implied by law" is to section 61of the *Land Titles Act*, RSA 2000, Ch.L-4. Note that 1.5(b) obligates the buyer to accept easements which do not affect the "saleability" of the property, which is substantially different from the word "marketability" that was used in prior contracts. This likely makes it more difficult for buyers to walk away from deals due to an encumbrance not being to their liking. It is rare for a buyer to search the title to the property at the time of making an offer to purchase, and even rarer for the buyer to pull copies of the encumbrances. As a result, encumbrance disputes usually arise only at the time of closing. Note that clause 6.1(b) requires all fixtures and chattels to be free and clear of all encumbrances. A buyer's lawyer should likely conduct searches at Personal Property Registry to verify that the appliances included in the sale are not leased or otherwise encumbered and consider requesting a bill of sale for the chattels from the seller's lawyer. This is not, however, standard practice unless many chattels are included (such as in a multi-unit or apartment transaction).

2 The Transaction

2.1 This is a motherhood clause which requires the parties (and by extension their agents and lawyers) to act cooperatively, reasonably, diligently and in good faith.

2.2 Purchase Price and Method of payment

There are several matters worth noting in this key clause of the contract.

Firstly, the contract sets out the method of payment of the purchase price which includes a standard lawyer's trust cheque. This clause makes it unreasonable for any seller's lawyer to impose a trust condition that the buyer's lawyer's trust cheque be certified.

Assumption of Mortgage

The contract uses the "plain language" qualification of "approximate principal balance", which indicates that some margin of error is to be expected. The old non-plain language contracts used the words "more or less". While it is uncertain whether both of these terms mean the same thing, it is clear that a significant difference in the assumption figure stated may permit the buyer to rescind the contract. (see *Garfreed Construction Company Ltd.* v. *Blue Orchid Holdings Ltd.* et al, 1976) 15 O.R. (2d) 22) In the event of an assumption of mortgage being involved in the transaction the contract also contemplates that a Financing Schedule with more mortgage details be attached to the contract and the Financing Schedule box be ticked off in clause 7.5. Errors in the maturity date, interest rate, payment amount and a significant discrepancy in the principal balance set out in the schedule could all result in the buyer demanding an adjustment to