



AULD BREWER MAZENGARB & MCEWEN

Lawyers and Notary Public

A Deal's a Deal, right?

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Agreements for Sale and Purchase look pretty standard; they are printed, short-ish and seem to have only a few options to complete. People enter into them, and comply with them, everyday! Yet, it is not uncommon for certain standard provisions to come into effect (or not come into effect) in a way that gives unpleasant surprises – whether to the purchaser or the vendor (or both!).

Let's look at two of the areas where the deal can go astray.

Lawyers Approval

Purchasers often make Agreements conditional on The Lawyer approving the Agreement thinking that it can be used like a cooling off period. However, this approval is limited to matters that are peculiar to lawyers. Things like the form or content of the Agreement, items that affect the title (easements, restrictive covenants) or the fact that the cross-lease plan doesn't reflect the buildings that are in place. If the purchaser changes their mind about the purchase, can't satisfy the settlement obligations (like being able to raise funding to complete the purchase or sell another property) or finds a building defect, the lawyer's approval can't be used to get out of the deal. If a purchaser wants flexibility about these matters, there are other conditions that can be used. Of course, the more conditions, the less attractive the offer to the vendor...

Deposit

Agreements will usually require the purchaser to pay a deposit. At one level, a deposit is a sign of commitment to the deal and good faith by the purchaser. But really, it is putting the purchaser's money next to their signature. If the purchaser can't pay the deposit, the vendor can charge default interest from the date the deposit is due until it is eventually paid and can even, after giving the purchaser three days written notice to pay, cancel the Agreement. Yet, even a 10% deposit can be a significant amount of money for the purchaser to raise – especially before any other property is sold.

And, if the Purchaser defaults on settlement, once the Agreement's default procedures are completed, the vendor can (usually) retain the deposit. But that's not all – the vendor may still be able to sue the purchaser for any damages that exceed the amount of the deposit.

On the other hand, if the vendor defaults on settlement (yes, this happens too), once the Agreement's default procedures are completed, the purchaser may sue the vendor or cancel the Agreement and require the vendor to repay the deposit together with default interest on that deposit. Of course, by then, sometimes the deposit has gone to pay real estate agent's fees.

Much of this unpleasantness can be avoided by treating this transaction for what it is – our biggest financial decision. Give these and similar issues as much attention as finding that right house and take appropriate professional advice. That way, you are more likely to get a good and a done deal.



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