

Real Property Reports and Compliance

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REAL PROPERTY REPORTS AND COMPLIANCE

I. INTRODUCTION

Sellers want to sell, Buyers want to buy, and Mortgage Companies want valid enforceable security. The Lawyer's roll is to manage the risks for each of the parties and ensure that each party receives what they bargained for. Risk should remain with the client, but all too often, a Lawyer will assume their client's risk solely to expedite the real estate closing. Nowhere is this assumption of risk more prevalent than with Real Property Reports and Compliance.

Real Property Reports and Compliance issues consume way too much of a Lawyer's energy and time which are rarely recovered in fees from their clients. Resolving Compliance problems is the cause of most disputes between real estate Lawyers. The frustration level for Lawyers and their staff, time spent on files and time lost (i.e. lost fees) would all be greatly reduced if real estate Lawyers could come to a general consensus on how to handle Real Property Reports and Compliance issues.

The first part of this Paper endeavours to highlight why Real Property Reports and Compliance issues arise. The second part of this Paper then:

- (a) reviews some common Real Property Report and Compliance issues faced by Lawyers; and
- (b) endeavours to advise what the general practice between Lawyers is.

It is hoped that this topic will inspire Lawyers to look at their own practice and create a meaningful debate with fellow Lawyers which will eventually result in a Province wide consensus on how to handle the issues respecting Real Property Reports and Compliance. Consistent practice will benefit both Lawyers and our clients.

II. THE REAL ESTATE PURCHASE CONTRACT

The Real Estate Purchase Contract sets forth the Sellers and Buyers agreement respecting the real estate transaction including Real Property Reports and Compliance. Unfortunately, there is no one form of Real Estate Purchase Contract in use in Alberta. The Alberta Real Estate Association has a suggested Contract for Real Estate Agents practicing in the Province of Alberta. This Real Estate Contract is amended and updated from time to time. Not all Real Estate Agents use the most up-to-date form of the Alberta Real Estate Association Purchase Contract. In addition, the Alberta New Home Warranty Program, Builders, Agencies such as Com Free, Lawyers, stationery stores, etc. all have their own forms of Real Estate Purchase Contracts. It is absolutely essential that each Real Estate Purchase Contract be carefully reviewed to ascertain what the Seller and Buyer's obligations are respecting Real Property Reports and Compliance. As these rights and obligations vary from Contract to Contract, so varies the responsibilities between the Seller's and the Buyer's Lawyers. Varied Real Estate Purchase Contracts is the first major problem that leads to a lack of consistent practice between Lawyers.

The Alberta Real Estate Association made amendments to their Residential Real Estate Purchase Contract in January 2006. The clauses of this newly amended Contract which relate to Real Property Reports and Compliance are as follows:

- 4.3 The Seller or the Seller's Lawyer will deliver normal closing documents including, where applicable, a real property report pursuant to clause 4.11, to the Buyer or the Buyer's Lawyer upon reasonable conditions consistent with the terms of this Contract. The Buyer or the Buyer's Lawyer must have an opportunity to review the real property report, where applicable, prior to submitting the transfer documents to the Land Titles Office and a reasonable period of time before the Completion Day to confirm registration of documents at the Land Titles Office and to obtain the advance of proceeds for any New Financing and Other Value.
- 4.4 If the Seller fails to deliver the closing documents according to clause 4.3, then payment of the Purchase Price and Interest will be postponed until the Buyer has received the closing documents and has a reasonable period of time to register them.