

Demystifying condominium purchases with better communication

Condominium ownership has a unique set of rules and responsibilities. Helping your clients understand what they are getting into can reduce your risk of a malpractice claim. Start off on the right foot at the beginning of your relationship by sending a detailed retainer letter setting out what you will or will not be doing and what the client is responsible for.

Beyond being your professional responsibility, reviewing condominium documents with your client and explaining the nuances of condominium ownership will help ensure your clients understand everything they should about their condo purchases. Some of the issues you can highlight for your clients for resale condominium purchases appear below.

Status certificate

The status certificate is one of the most important documents in a condominium transaction. Most offers are conditional upon review of a status certificate and it is critical to review it with your clients to their satisfaction. If the status certificate is unsatisfactory and the offer is conditional on its review – point out the option of terminating the deal. If it is not current (e.g., more than 30 days old), it may be missing up-to-date information and should be updated before closing. Insurance documents for the condominium, copies of the declaration, rules and by-laws, the budget for the current year and other documents respecting the condominium should be delivered with the status certificate.

Some key status certificate issues include:

- whether the dwelling unit, parking and/or locker(s) match the agreement of purchase and sale;
- arrears or contemplated increases in common expenses;
- existing or contemplated special assessments against the unit;

- litigation involving the condominium corporation;
- insurance maintained by the condominium corporation;
- amount in the reserve fund;
- the reserve fund study and its possible impact on the reserve fund; and
- auditors' comments on the financial statements.

Condominium declaration, rules and by-laws

These documents make up the condominium constitution and often cause the most confusion.

Before closing, it is good practice to review the condominium plans with your client to confirm the location and elevation of the unit meet the client's expectations. Review the location of the parking and locker spaces to ensure the numbers posted in the parking garage correspond with the condominium plan and/or agreement of purchase and sale. Determine whether the parking/lockers are units or exclusive use common elements. Discuss the boundaries between the unit and common elements and advise clients of their maintenance and repair obligations pertaining to each. Also draw their attention to the costs that are included in common expenses versus those they must pay directly (e.g., utilities, cable, etc.).

An opportunity to provide value added services

- Highlight lifestyle or use restrictions (e.g., pets, use of the unit for business, or the ability to sell/lease parking/lockers separately from residential unit);
- Recommend that your clients obtain insurance for personal effects and liability

as well as for upgrades and improvements to the unit;

- As owners, your clients have a say in decisions of the condominium corporation through voting. To be able to vote, they must be on record and the property manager for the condominium corporation needs to be notified of the change of ownership;
- Any changes to the common elements, including exclusive use common elements such as balconies or yards, require approval from the board of directors. If the unit being purchased has been upgraded, enquire whether the changes were approved;
- Elevator bookings and move-ins need to be arranged in advance; and
- Recommend title insurance with a condominium endorsement, and ensure that the policy includes the correct legal descriptions for the dwelling unit, parking and lockers.

Send a reporting letter after the transaction has been completed and set out any specific discussions you had with your client. On top of giving your clients a summary of the work you did for them, a reporting letter can be your best defence in the event of a claim.

Attending to these details may seem obvious but it is easy to let one or two slip through the cracks. A checklist can be a valuable risk management tool to enable effective communications with clients, and to create a record of those communications. The Working Group on Lawyers and Real Estate has developed various draft documents, including a Master Chart to help document client discussions about resale condominium purchase transactions. Visit lawyersworkinggroup.com to see the documents and provide input. ■

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We are introducing New Condo Select (NCS), as an addition to our New Home Program (NHP). Selected new condo developments will be available under NCS and will qualify for a streamlined title insurance application process.

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¹ Underwritten by Lawyers' Profession Indemnity Company.

² Except for OwnerEXPRESS policies and Quebec policies.

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E&O claims exposure when mortgage advance goes to fraudulent third party

On October 7, after becoming aware of a new exception to coverage in certain title insurance policies, LAWPRO sent an email alert warning real estate practitioners about potential exposure to claims from their private lender clients where a mortgage advance goes to a third party. We have already seen seven E&O claims against lawyers involving residential lender policies from three different title insurers active in Ontario. Given the value of the mortgages involved, these claims carry an exposure of almost \$2 million. See the AvoidAClaim blog post "Warning re: Claims exposure where private mortgage advance goes to third party" for more details (including the actual exception clauses).

These exceptions highlight a key obligation placed on all real estate lawyers: as your client's trusted legal advisor, you need to understand and clearly communicate what is and is not covered under the title insurance policy you recommend. Each transaction is unique and requires an analysis to recommend the title insurance that ensures your client has

adequate protection. Title insurance policies are not all the same. Knowing the differences of each title insurance policy (including the exclusions and exceptions) can help protect you and your clients.

TitlePLUS title insurance policies **do not** contain this type of exception, as a matter of course. To help you avoid becoming a victim of fraud, the TitlePLUS application has built-in fraud prevention measures to ensure you ask the right questions of your client.

LAWPRO encourages all lawyers to make title insurance recommendations after a consideration of the specific circumstances of the transaction and a review of the provisions of the title insurance policy.

If you have any questions about the TitlePLUS policy and underwriting requirements, contact the TitlePLUS Customer Service Centre via email at titleplus@lawpro.ca or call 1-800-410-1013. ■