

Real estate lawyers: The buck stops with you

LAWPRO is seeing far too many real estate claims where the lawyers handling the deals are making or not catching fairly basic errors. Often these mistakes result from errors made by clerks – all or most of which the lawyer could’ve and should’ve caught. Common mistakes include:

- Not catching errors in legal descriptions
- Missing executions
- Not doing searches
- Not bringing rights of way or easements to the attention of the client

We also see claims involving ILA. Sometimes there was no recognition that ILA was appropriate on the transaction, or an allegation that it was done in a haphazard way. In this case it is alleged that the lawyer giving the ILA did not take the time to understand the transaction and properly explain the impact and implications of it to the client.

Why are these errors happening?

There are many possible explanations. Real estate lawyers are under intense pressure to keep their fees low. Fee pressures may result in lawyers spending less time than they should on a matter, or delegating things that they should be doing to a clerk. Perhaps clerks do more when things get busy on days near the middle and end of the month when there are multiple closings. Some will suggest that title insurance gives lawyers a false sense of security or has made some lawyers lackadaisical about the work they are required to do on a real estate transaction.

What can be done to prevent these errors?

Real estate lawyers need to remind themselves that they are responsible for all work done on a real estate deal by their firm – including work done by staff. To be effective, efficient and profitable, you have to use real estate clerks to do the legwork on real estate deals. But take care to make sure they are doing the work that they should, that you are highlighting anything unusual on a particular deal, and that you are carefully checking their work before the deal is closed.

Meet with clients and make sure you are always present when they sign documents. It is also good practice to have the clients execute a “waiver” prior to closing, particularly when acting in a transaction that is out of the ordinary. The waiver explains the unusual issue and confirms that the clients understand and accept the issue before closing.

And be especially careful if you are delegating the work to a real estate clerk outside your office. We are aware of a real estate clerk that has gone to work for and stolen money from multiple lawyers and lenders.

Lastly, never let anyone else use your PSP. It is a violation of the Rules of Conduct and you are giving away all your responsibilities by doing so. ■

Dan Pinnington is vice-president of Claims Prevention and Stakeholder Relations, and Rosanne Manson is LAWPRO claims counsel.