

TALES FROM THE TRENCHES

BY BARRY C. MCGUIRE

March, 2010

DEVELOPER = ISSUES

I received a fantastic e-mail recently that so clearly sets out various diligence issues. The e-mail was so good that it is absolutely worth reproducing it for everyone to read.

Dear Barry,

Right now I owe you a 20 million dollar thank you....I don't know how I will accomplish that, but on a new level I know I really do appreciate the advice you give in 'Tales from the Trenches'. You might be interested in my story:

Last Friday I put in an offer to purchase on 3 lots from a developer. They use a non-standard purchase contract. That especially prompted me to remember one of your Tales From The Trenches. So, I added one line: 'offer is subject to purchaser's lawyer's approval'. Another red flag, the representative at the developer's office has a real estate licence but he had a big challenge writing up the sale. Anyway, we got it done and I sent the contract to my lawyer for review.

Just before my appointment to pay my deposit and remove conditions, my lawyer called with a myriad of issues with the contract.

The vendor was listed incorrectly.... I had been told that the builder who originally had purchased the lots now was selling, and the developer was acting on his behalf. The builder's name was listed as the seller. This was not necessarily the case. The builder has a contract with the developer, but I'm not sure he is the legal owner of the land.... probably isn't.

The developer told me the builder has folded. In fact, they, or another company with a similar name, filed a lawsuit against the developer in December. How do I know this? My lawyer searched the title and said it showed a certificate of lis pendens. My lawyer explained means, 'lawsuit pending'. I understand that these properties are possibly tied up in this lawsuit.

The developer's purchase contract said that I would waive my rights under the Canada Interest Act and pay 18% interest if I didn't pay on time. My lawyer told me this was not a good idea; there are often delays that might not be my fault, plus, it's a crazy rate of interest.

The last one is the worst, though. As far as I understand from my lawyer, the title is heavily encumbered by mortgages, which I would be signing that I would be responsible for. One is for \$20,000,000. My lawyer said that the developer's contract should have but did not state that the developer was responsible for paying off all of his development financing

So I won't be removing my conditions until all this is sorted out. Would still love purchase these lots, but am reconsidering....

So I thank you for making me stop and think before I signed a contract on these three properties without the condition written in. In appreciation...

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SUMMARY:

1. 'Subject to my lawyer's approval' is always a good protection clause
2. Watch for signs. A non-standard contract and inexperienced/incompetent representative emphasize the need for more diligence.
3. Developer contracts are never, 'standard'. They always need review.

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