TALES FROM THE TRENCHES™
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Mortgage Madness a.k.a. Lender Lessons.

The general rule is that a lawyer should only act for one client. Residential real estate is an exception to the rule. When we here at RMLO Law LLP act for you as a buyer, we are also usually the lawyer for the bank.

Over 40 years of acting for buyers and banks, we have picked up a lot of tips. Here are five of the best:

1. Banks love plain-vanilla. Just like vanilla ice cream is, by far, the best-selling flavour, banks do mostly plain-vanilla deals and that's what they're good at. Anything out of the ordinary has real potential for timing or approval difficulty. Three, time sucking, stressful examples are non-resident borrowers, secondary financing issues, and RRSP loans. I could write 10 pages on each of these. For now, it's just important that you know any non-resident, secondary financing or RRSP component takes way more time and way more effort with a much bigger chance of application failure or excessive cost. Leave yourself at least twice your usual amount of time to get financing approved and then twice the amount of time to close.

2. A signed but conditional mortgage commitment doesn't mean you have a mortgage. Look carefully at borrower conditions, mortgage broker conditions, and lawyer conditions in the mortgage commitment you sign. Satisfy yourself that all those conditions can be removed. Then, remove them or confirm others have removed them!

3. Never remove the ‘subject to’ conditions in your real estate purchase contract without an unconditional mortgage commitment. Even when you think you have satisfied all conditions, confirm with your mortgage broker or lender. Get them to tell you, “Yes, you are unconditional, quit bugging me!”

4. “I'm going to be on the title, but I don't want to be on the mortgage” or, “I'm okay with being on the mortgage, but I don't want to be on the title.” Either version comes up a lot when members are applying for a new mortgage, especially in a JV situation. The rule is that if you are on the mortgage, you are on the title. Yes, you might be able to make amendments after the deal is closed but, when placing the mortgage initially, if you are on the title you are on the mortgage; if you are on the mortgage, you are on the title.

5. As investors, we sometimes like ‘creative deals.’ When writing real estate deals and applying for mortgages, ‘creative’ raises concerns about mortgage fraud. Whether it be secondary financing, rebates or fix and flip issues, if you fully disclose to your bank and they agree with your plan it can't be mortgage fraud. Get approval on the basis of full written disclosure acknowledged and approved by the lender.

HAVE QUESTIONS? WE HAVE ANSWERS!
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