

TALES FROM THE TRENCHES™

BY BARRY C. MCGUIRE

April, 2013

Cornerstones Program

[Cornerstones](#) is a grant program initiated by the City of Edmonton where property owners can get up to \$24,000 to create a legal suite or modify an existing suite so that it meets City bylaws and the Program guidelines. Once the suite is completed, inspected, approved and then rented according to the Program guidelines, the grant funds of up to \$24,000 are forgiven over a five-year period at 1/60 of the grant amount per month.

Sweet!

As you might predict, this was an extremely popular program, and the City ran out of funds. It was so popular, in fact, that the City of Edmonton has launched a second edition of this Program that is scheduled to run through to 2016. For all you folks who don't live in Edmonton, call or e-mail your local municipal representative and ask them to institute a Cornerstones-like program in your city or town.

Okay, here's where it gets a little sticky. Once the suite is completed and approved, the City of Edmonton registers a caveat against the property title claiming an interest pursuant to the Cornerstones Agreement that every program participant is obliged to sign.

Once that caveat is on the title it has to be dealt with just like any other caveat. In three recent transactions, investors were refinancing a Cornerstones property, selling a Cornerstones property, and buying a Cornerstones property. Issues came up all over the place

Cornerstones Refinancing:

The City of Edmonton caveat protects the grant and is therefore a financial charge against the title. Our members know that any first mortgage lender wants to be well, first on the title. That means that the caveat has to be 'postponed' to the new first mortgage. The City understands this, therefore in the Cornerstones Agreement, the City agrees to postpone their interest to a new first mortgage.

Firstly though, because the caveat is a financial charge, the new first mortgage lender has to be advised of the caveat and approve it. Since our investor and their mortgage broker did not know this had to be done, the process of getting the first mortgage lender's approval only started once [RMLO Law LLP](#) received mortgage instructions, searched the title, and saw the caveat. No lender based in Toronto knows anything about the Cornerstones Program. The underwriters needed an explanation and time to get their head around exactly what the Cornerstones Program is all about.

In the end, between an extremely long lender underwriting, lost documents, mortgage revisions from a 'Step' type mortgage to conventional mortgage for a lower principal amount, redrafting of documents, and then final approvals, it took three months to get this refinance done!

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Cornerstones Purchase:

In our second scenario, our investor was purchasing a property with an existing Cornerstones Suite. He wanted to take over the existing Cornerstones Agreement. Again, during the initial mortgage application process neither our member nor the mortgage broker understood that the new lender would have to approve the existing Cornerstones Grant and caveat protecting same. This lender approved and took less time than the refinance lender.

Next, we had to deal with the City of Edmonton bureaucracy and obtain a Transfer Agreement for the existing Cornerstones Agreement. As a new buyer you have to agree to takeover and honour the existing Cornerstones Agreement. Only then will the City of Edmonton supply the required Postponement Agreement.

A Postponement Agreement moves the Cornerstones Caveat into second place priority on the title behind the new first mortgage lender. When a lender says "first," they mean first in priority on the title. None of this happens fast; it's very time-consuming.

Cornerstones Sale:

In our third scenario, our member was selling to another member a property in which he had constructed a Cornerstones basement suite. The usual caveat was on the title protecting the Cornerstones Agreement.

This situation was slightly different in that the member buying wasn't sure whether they wanted to take over the Cornerstones Agreement or have the seller pay it off. The seller didn't care. If the buyer took over the Cornerstones Agreement, the seller would credit them the remaining grant amount on the Statement Of Adjustments.

If the buyer did not want to take over the Cornerstones Agreement, then the seller would pay it off and get the caveat discharged from the title. Seller didn't care because it cost him the same amount of money either way. The buyer spoke with his lender who had the usual lender trouble understanding what the heck was going on! "What is this Cornerstones Program? To us this looks like a restrictive covenant and a financial encumbrance and we won't allow it."

At the time of writing, this scenario is still ongoing.

So, there are lots of issues with the Cornerstones Program. Here's another issue that everyone should consider. Yes, the Cornerstones caveat is a financial encumbrance. Therefore, there needs to be specific negotiation about taking it over or not. Typically, when a buyer takes over and assumes a financial encumbrance, they get a credit on the statement of adjustments. That reduces the cash to close. However, because the Cornerstones Program is a grant that is paying itself off at 1/60 of the grant amount each month, maybe the buyer shouldn't get a credit as the grant amount is self-eliminating. Maybe the seller was able to get a better price because of the legal Cornerstones suite so the buyer should get a credit. Big negotiating point, there is no right answer.

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Lessons Learned:

1. Buying, selling, or re-financing with a Cornerstones suite, there are lots of issues.
2. Buying and re-financing, you have to get your lender involved. Do it early.
3. You have to understand the program so you can sell/explain it to your lender.
4. Be aware, sorting out issues takes more time. Write your deal with extra time to solve problems.
5. Cornerstones Program folks are friendly and helpful. They provide Transfer Agreements and other information. Visit them at Sustainable Development, Housing & Economic Sustainability, 11th Floor, HSBC Building, 10250 - 101 Street, Edmonton, AB, T5J 3P4 or email the Secondary Suites Coordinator, secondariesuites@edmonton.ca.
6. For postponement agreements and other legal questions the Cornerstones Program use the City of Edmonton legal department. Contact the delightfully named and very helpful solicitor Kismet Fung at kismet.fung@edmonton.ca or 780-496-7208.
7. Buying, selling, or re-financing, call your lawyer. Are they familiar with the Program? If not, call me.

HAVE QUESTIONS? WE HAVE ANSWERS!
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AND BE SURE TO VISIT WWW.BARRYMCGUIRE.CA
TO FOLLOW OUR BLOG AND PODCAST!

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