

TALES FROM THE TRENCHES

BY BARRY C. MCGUIRE

September, 2011

LENDERS ARE NOT REASONABLE

Our next Tale From The Trenches is the second in a series about my client with the credit reporting issue. He runs a very detail oriented business and is a type A, or close to type A, personality—both in his business and personal affairs. With that kind of mindset, he had contacted his long-time mortgage broker three months before he needed his refinance funds.

Our member with high income, eight extremely positive cash flow properties and great credit scores had a third problem on what should've been a simple refinance. Again, it involved his lender. Lenders can be unreasonable.

Not all the time but sometimes lenders can be *extremely* unreasonable. And, guess what, don't think that because you are a great customer with sweet logic on your side, they are going to cave in and retreat from their unreasonable position. Stop me if you've heard this definition of the Golden rule; "He who has the gold makes the rules." Or, as Peter Kinch has often pointed out, if you play in the lender's sandbox, it's the lender's sandbox rules.

Okay, so what was unreasonable? During the approval process the lender pulled a copy of the title of the refinance property. They noted a caveat by the City of St. Albert.

The caveat said that St. Albert had a financial charge against the property pursuant to a grant under their secondary suite program. Basically, if you take St. Albert's grant money to fix up and make a legal secondary suite, you have to rent at less than market rent for five years. A key clause in the agreement says that the City of St. Albert will postpone their caveat to any new first mortgage financing. In other words, they understand that if a lender is giving you a first mortgage, the lender has to be first on title. Therefore, St. Albert agrees to postpone or move their caveat so that they are second on title. This is a standard clause well understood in the financial service industry.

What did the lender say? You guessed it; they want the caveat removed from title, not postponed. Our member gets them a copy of the agreement and points out the relevant clause. That doesn't seem to be good enough, so our member goes directly to the City of St. Albert and gets an official letter confirming that they will postpone their caveat to the lender's new financing. Still not good enough.

The arguments went back and forth throughout the approval process. The lender never provided any logical reason why a postponement wasn't good enough. In fact, they never did officially back down from this position although they issued the commitment letter and sent mortgage instructions without mentioning the caveat. Here at [RMLO Law LLP](#), we did get the official postponement document from the City of St. Albert and we registered on title because that's the way it's done. The lender's mortgage is now in first position and the city of St. Albert caveat is in second position.

But the point is, lenders can be unreasonable. Talk to Patrick Francey about his refinance of a Grande Prairie multifamily unit. Through diligence and extremely hard work, Patrick and his partner Jared Hope maintained a 3% vacancy rate through the horrible downturn in Grande Prairie when the average vacancy rate was 15%.

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The unreasonable lender based their numbers on 15% and nothing Patrick and Jared could do would convince them otherwise.

How about our member that specializes in condominiums? He always puts down a deposit of 30% and manages the heck out of his properties. As you can expect, the properties are always excellent positive cash flow. In the recent downturn his favourite long-time lender cancelled our member's most recent mortgage application because lender's head office policy had changed. They were simply no longer lending on condominiums. Unreasonable? You bet!

LESSONS LEARNED:

1. Lenders are sometimes unreasonable.
2. Logic may not help you to change lender policy.
3. Maintain relationships with more than one lender; always have a backup.

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