

TALES FROM THE TRENCHES

BY BARRY C. MCGUIRE

September, 2011

FOLLOW-UP IS ESSENTIAL

Three in one. It doesn't happen often, but this Tale from the Trenches on credit woes comes from the same set of circumstances as the first two Tales in this series.

Now, remember that my client is a very successful businessman, holding eight investment properties —each with substantial positive cash flow. His mortgage broker set up each of the mortgages for the existing eight properties so the broker is very knowledgeable about the client and his borrowing profile.

When my client calls his mortgage broker to advise he wants to refinance one of his properties, the broker says, "no problem." There isn't any reason to think there would be a problem, because together they have done eight financing deals already and it's always been smooth sailing. The usual data is collected by the mortgage broker and my client forgets about it for a month and a half. Then, as a careful, 'almost type A guy' he calls his mortgage broker because he suddenly realizes he hasn't yet signed a commitment letter for the refinance.

His mortgage broker hums and haws and says the bank wants a little more information, and then the issue of the mysterious \$200 credit blemish and a caveat on title are raised and discussed. There was lots of back-and-forth on both these issues with the lender but, in the end, the refinance is approved and the commitment letter is signed. It looks like issues are resolved and my client thinks to himself that he is glad he started the process three months before he needed the funds, because it took almost 2 months to get to this stage.

Now, the reason for the refinance is to obtain funds for a new, unconditional purchase. The sellers are [CMHC](#), who can be tough to deal with. A week or so after the mortgage commitment is signed, my client calls and says, "Barry, do you have mortgage instructions from the lender?" "No," I reply, "nothing yet."

My client calls the lender who says they have, in the usual way, sent the mortgage instructions to us here at [RMLO Law LLP](#) by e-mail. My client passes that information on to me; I check but there is no e-mail to me or any of my partners or staff. My client calls the lender who says they will resend the e-mail; I check, nothing! We went back and forth with this e-mail dance three or four times. In the end, it took ONE MONTH for us here at RMLO to receive actual e-mail mortgage instructions from the lender, ONE MONTH, unbelievable!! I'm not saying the lender didn't send e-mails; I'm saying we didn't get the e-mails.

Now, if you are mathematically inclined, your addition tells you that so far it has taken two months to finalize the refinance approval and then one more month to get us mortgage instructions, which is a total of three months. The closing date for the new property is at about the three-month mark. By the time we actually got the mortgage instructions, the closing date for the new property had passed and my client was on holidays. He was extremely fortunate to have a big line of credit and he could write a cheque to close the new property. What if he didn't have that line of credit or some other access to cash? He would have been, that's right, screwed!

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LESSONS LEARNED:

1. Starting early and leaving yourself lots of time is ultra-important but not foolproof.
2. Follow-up promptly on any diligence issue; don't leave it hanging.
3. Always have a backup for financial commitments: LOC, friends with cash, something.

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