

# TALES FROM THE TRENCHES™

## BY BARRY C. MCGUIRE

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September, 2015

### REAL PROPERTY REPORTS AND SELLERS

Most places have some sort of a property description document that is prepared by a professional land surveyor. In Alberta, it is a 'Real Property Report' (RPR), which is what we used to call a 'survey' or a 'building location certificate.'

Land surveyors have extensive post-secondary education that trains them to prepare that document. The surveyor uses his/her training and sophisticated instrumentation to draw the boundaries of a particular property. Then, within those boundaries, s/he locates and draws in representations of all the improvements to the property. Very quickly you can see the house, the garage, the hot tub, decks, fences, planters, and all other improvements. Each of those improvements is measured for its own dimensions and its relationship to the boundaries of the property. How far is the house from the side boundary? How big are the side yards? How close is the garage to the alley?

Why is this important to you as a seller? Well, let's go back to when you were a buyer. Alberta is different from most other provinces in Canada. In Alberta, the standard [Alberta Real Estate Association](#) (AREA) contract is used by most realtors. That contract says that the seller will provide the buyer with a current RPR and evidence of municipal compliance. Most other provinces say that if the seller has an RPR, he has to give it to you, but if he doesn't have it then it's up to you as a buyer to decide whether you want to get an RPR as part of your diligence.

When a seller says, for example, that s/he does not have a current real property report because the new garage is not on that old RPR and would you as buyer accept Title Insurance in lieu of an RPR? The answer is NO! When you are buying, stick to your guns. Get that current RPR and compliance if you possibly can.

Remember, we were talking about why this is important to you as seller. When you are selling, the obligation is on you to provide a current RPR and compliance. So, if you got these documents when you bought and **if you have made no changes** to the outside footprint of the property, then, no worries. Almost always, you can simply pass along what you got when you bought to your new buyer when you sell.

But, what if you didn't get an RPR when you bought, or if you accepted an RPR that showed some difficulties with the property or if, after you bought, you added to the outside footprint of the property? Now, as seller, you have a problem. You are faced with the standard seller's obligation to provide a current RPR and written evidence of municipal compliance. If you didn't get this when you bought, you have to be very careful when you sell.

#### **What to do? Here are two examples of how this affected sellers.**

In example number one, our investor accepted an RPR when he bought that did not show a small deck at the rear of the property. He kept the property for three years and then sold it. He did not modify the standard AREA contract and simply promised to provide a current RPR and written evidence of municipal compliance.

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The buyer's lawyer quite rightly said, "this RPR doesn't show the deck. Please have the RPR updated and then submit it to the city for compliance." The city, of course, noted that there were no permits for the deck and that some of the construction was offside city bylaws. By the time permits were applied for, the deck corrections made, and the RPR re-submitted to the city for compliance, this was a \$2,500 bill!

In our second example, our seller got a nice new RPR and compliance when they bought. Six months after taking possession, they added fencing to the property. Instead of simply signing the contract with the standard RPR clause, they called me to discuss the situation. My advice was to delete the standard RPR clause (currently 4.11 in the AREA contract) and to delete some of the warranty clauses (namely 6.1.d, e, and f). Then, add these words to the terms section (currently 7.6) of the contract: "Seller will only supply and buyer accepts that RPR dated March 25, 2009."

Here's the thing. I totally get it that RPRs and compliances are not something anyone deals with every day, not even me. So, expecting anyone to remember what RPR information they received when they bought and balance that off against the intricacies of contractual RPR obligations three years after they bought is simply asking too much. So, what can you do?

Fortunately, this is an easily solvable problem. The trick is, you just have to remember that it's an issue.

**When you buy, mark on your file in big, bold, multi-colored, felt pen, "RPR! When selling, do *not* sign offer to purchase or listing contract without reviewing RPR and compliance issues with lawyer."**

### LESSONS LEARNED:

1. A good review of an RPR with your lawyer will make sure you don't get into trouble.
2. If you got an RPR and compliance when you bought, but you don't want to review with your lawyer, then at least:
  - a. Amend the offer to purchase to delete any RPR requirement clause (currently clause 4.11).
  - b. Delete the warranty sections that relate to the RPR, (currently, 6.1.d, e, and f).
  - c. Then, add these words to the terms section (currently 7.6) of the contract. "Seller will only supply and buyer accepts RPR dated..... and compliance dated..."
3. Do not offer Title Insurance as a solution to problems. Keep that in your back pocket to use as a supplementary negotiating tool if the buyer does not want to accept your old RPR.

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