

TALES FROM THE TRENCHES™

BY BARRY C. MCGUIRE

“FORECLOSURES, CREATIVE DEALS, AND COURT.”

This Tale is about taking good notes when you appear in court as the buyer of real estate in foreclosure. My client was a creative kind of guy and he found a property in Alberta where the mortgage payments weren't being made. The seller was still living in the home but trying to sell and get out from under the foreclosure. After some conversation, my client put together a creative deal that the seller and the seller's lawyer both liked. Now, in addition to being in foreclosure, the seller was in way more financial trouble and he had actually filed for bankruptcy.

A professional called a bankruptcy trustee is the one in charge of sorting out the bankrupt's affairs. In this case the seller had hired the bankruptcy trustee, but sometimes they are appointed. Now the trustee was in total charge of all of the bankrupt's financial situations. Here's a point to remember; as much as the bankrupt hired the trustee, the trustee is working for the creditors, all those people that the bankrupt owed money to. The trustee's job is to gather in all of the assets of the bankrupt and sell them for as much as possible, distributing the money amongst the creditors.

Some trustees are pretty reasonable to deal with and others aren't. When my client contacted the seller's bankruptcy trustee and told him about the deal, the trustee had no interest because there wasn't any equity in the property. If there isn't anything coming out for creditors, most trustees don't care. The trustee provided a letter indicating that he knew about the proposed deal and had no objection to it going ahead. Remember, if there is a trustee in place, you have to go through them and get their comment good, or bad.

Next step was to go off to court to get the judge to approve the deal. The foreclosure lawyer already had a court date set where he wanted to move on to the next step in taking away the property from the seller. So, that was the day my client showed up in court. He went by himself without a lawyer. Having some experience with foreclosures, he knew that he had the right to stand up in court. He made sure the foreclosure lawyer knew he was there and when this foreclosure (number 19 out of 50 on that day's court docket) was called, he stood up. The judge said, "And you are?" My client introduced himself and said that he had an offer to purchase that he would like the court to consider.

After some discussion, the judge approved my client's offer and gave an order accordingly. During the whole process my client had his notebook out and took very careful notes. Sometime later the foreclosure lawyer sent us his hardcopy version of the judge's order. I sent it to my client and he said, "That's not even close to what the judge said." Reading from his carefully taken notes, he gave me the details on what the judge really said. I replied to the foreclosure lawyer with a request for a revised order, and with some argument he reluctantly agreed that my client was right. In due course, a corrected order arrived and the transaction proceeded.

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LESSONS LEARNED:

1. If a bankruptcy trustee is involved, make sure to deal directly with them.

You must run a proposed solution by the bankruptcy trustee and get their agreement. Bankruptcy trustee often don't care or want to get involved unless there is some equity that they will claim on behalf of creditors.

3. If you are making an offer in a foreclosure, you are allowed to go to court and speak.

If you are confident and informed, you don't need a lawyer for this appearance. See the next two points below. But if you do need a real estate lawyer in Alberta, my law firm can help. Contact [RMLO Law LLP](#) in Edmonton as soon as possible.

4. Make sure the foreclosure lawyer knows you are coming to court to support your offer to purchase.

Tell him/her you would like to be introduced and you are prepared to speak to the court. Sit as close to the front of the court as you can. If s/he forgets or isn't helpful, when your matter is called, stand up. The judge or master should recognize you. You can say who you are and why you are there and you will have your chance to speak.

5. Take really good notes of the court proceedings to protect yourself.

If you don't, you might be put to a further court application to stop the foreclosure from going ahead on the basis of the wrong order. This would involve ordering expensive court transcripts in order to prove what really happened and most likely retaining an expensive lawyer to help you with the application because it's tough to do on your own.

**FOR ALL YOUR ALBERTA REAL ESTATE LEGAL NEEDS,
CONTACT BARRY MCGUIRE TODAY!**

EMAIL B.MCGUIRE@RMLO.COM

RMLO Law LLP

Suite 101, 10301-109 ST Edmonton, AB T5J 1N4

Phone: [780.431.1444](tel:780.431.1444) Fax: [780.431.1499](tel:780.431.1499)