

# TALES FROM THE TRENCHES™

BY BARRY C. MCGUIRE

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## CONDITIONS, LOST DEPOSITS, AND COLLAPSED DEALS

In other [Tales from the Trenches](#) I've talked about the importance of accomplishing sufficient diligence on any property purchase to say that you have done 'Due Diligence.' It's worth repeating here because it's so important. The notion of doing or accomplishing your own Due Diligence is what allows you to make a buying decision. Will you buy or not buy? In this Tale, a deal falls through because of a lack of diligence regarding financing conditions.

Our would-be investor was purchasing the property from a fellow member of the Canadian [Real Estate Investment Network \(REIN\)](#). The transaction was using the standard [Alberta Real Association](#) MLS contract, which includes some buyer terms. A couple of those terms required the seller to provide certain information to the satisfaction of the buyer. When our buyer went to apply for financing, the lender made those buyer terms part of the seller's financing conditions.

Now, one issue that affected our buyer's view of the diligence he had to perform was that the seller was also a very reputable REIN member. Now, the standard contract specifically says that buyers and sellers are totally responsible for accomplishing their own diligence. But when I was talking to our buyer after the transaction went sour, he said: "you know, I was kind of relying on the fact that everyone knows the seller and everyone thinks he's a good guy and..."

What happened was that the lender issued a commitment letter that incorporated requiring the seller to provide the information as set out in the contract. Our relatively inexperienced buyer heard from his broker that getting mortgage approval was, "looking good." He translated that into, "I've got a mortgage approval," and he removed his financing condition.

Then, as the process moved forward, the seller provided information that the lender deemed inadequate and the loan was refused. Our buyer was unable to get replacement financing and he lost the deal. He also lost his \$5,000 deposit. The buyer was lucky that the seller was able to resell the property at a slightly higher price, which meant the seller wasn't going to sue the buyer for losses over and above the \$5,000 deposit. The buyer was also lucky that it was such a small deposit, but a loss is still a loss.

### Lessons Learned:

1. Doing sufficient Due Diligence is completely on the shoulders of buyers and sellers individually and at their own cost.
2. Don't remove your financing condition until you have a written, unconditional mortgage commitment from the lender.
3. Even with that written, unconditional mortgage commitment, ask your lender/broker: "Is my commitment unconditional?" "Is there anything else I have to do?" "Please confirm I can remove my financing condition." And, do that in writing with your lender/broker so there is a record of your correspondence.

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