

TALES FROM THE TRENCHES™

BY BARRY C. MCGUIRE

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REAL RULES OF REAL ESTATE REAL PROPERTY REPORTS AND REALTORS

This is such a great learning Tale. It illustrates so many real estate investment teaching-points and the consequences of ignoring the Real Rules of Real Estate. The RRRE are understandable, fair to all and protective. Here is the Tale told in our investor's own words (edited for clarity).

I'm going to buy a house.

Mistake 1: for some reason, we used the seller's realtor that later we find out is the seller's mother. From the beginning, she didn't want to give us the Real Property Report (RPR) and insisted on giving us title insurance instead.

When we met to sign the offer, she brought an offer to purchase form where the standard RPR clause (4.11) which states the seller should provide the buyer with an RPR and evidence of municipal compliance or non-conformance were scratched out already. Fortunately, I learned from Barry that RPR is very important, and it cannot be replaced by title insurance. They are two completely different products.

With our insistence, she refused to write up a new offer but added "the seller should offer RPR and compliance before the closing day."

Mistake 2: My lawyer asked me why I want buy title insurance if the seller can give me RPR. And he told me with title insurance no RPR is OK; and with RPR, I don't have to buy title insurance. Title insurance only protects me during the possession process; it's not valid after the purchase.

So I have to verify this by calling First Canadian Title. At that moment, I know I made a huge mistake to choose a lawyer just because he can speak my first language. I thought my English is not good enough and find a lawyer who can speak my first language can make me understand better.

Now, one day before the possession day, the seller's lawyer gave my lawyer RPR showing the property to be non compliance, because the city said the RPR survey shows the building was not set back enough from the regulations (one side over 0.3m and another side over 0.05m). So the development and building permit has to be applied. Plus the seller had added a fence and deck, no permits for the deck.

Tomorrow is the closing day and we have to decide to take the risk or give up. So we decided to give up the deal. But the realtor (the seller's mom) said that there must be a problem with the new survey because when her son purchased this house the 2006 RPR has no problem. She didn't want offer RPR from the beginning just because they get new fence. If we cancel this deal she will not give my \$5000 deposit back. My lawyer said in this case she have to give the deposit back.

Is there any chance she can keep the deposit? And how long should she give me the deposit back if she has to?

Talk about a lot of red flags on this deal! At the time of writing, this process was still ongoing...

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Here are some corrections to what our investor's lawyer said:

- a. Title Insurance is not a substitute for an RPR and vice versa. They are complementary but completely different products. They protect and inform about different things.
- b. Title insurance does last past closing, in fact for as long as you own the property.
- c. Typically, Title Insurance does not cover fence issues or any situation where there is not enforced removal.

Your starting position as a buyer should always be that you want the RPR and compliance.

It's essential if you are planning an addition or building new. If you don't get compliance problems fixed when you buy, they will bite you when you sell.

Consider making receipt and review of both the RPR and compliance a condition of your offer.

A typical clause would look like this: "Subject to seller providing RPR and compliance satisfactory to buyer on or before (insert date)." This gives you a chance to identify and deal with issues well before the closing date.

Lessons Learned:

1. **Don't use the same realtor.** In a 'Dual Agent' situation, my opinion is that the realtor cannot properly represent buyer or seller. Especially don't use the same realtor when they are related to seller. It's just impossible to be the completely unbiased agent that you need your realtor to be.
2. **Use your own regular realtor for personal as well as investment properties.** Don't call the realtor on the sign; get your own realtor to call.
3. **Don't worry about whether the professional speaks your language.** You can always get an interpreter. The key is to use a lawyer, realtor, accountant, mortgage broker, or other professional who understands investment real estate, likes dealing with investment real estate, and even better owns investment real estate him/herself. There are lots of investor professionals who fit this description.

LET US HELP YOU BUY & SELL REAL ESTATE IN ALBERTA!

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