

THE LEGAL EDGE

Current developments in the law which may affect you or your business

DRAFTING THE HOME PURCHASE AGREEMENT: WHAT YOU NEED TO KNOW:

Protect your client by the use of conditions: If your client has any concerns whatsoever that he or she will be unable to complete the transaction, you must protect them as well as yourself in the written offer by the inclusion of conditions. A condition is a contractual term that will allow your client to back out of the Agreement without cost if a specified event does not occur. The most common conditions for the protection of purchasers are conditions with respect to obtaining the necessary mortgage financing, sale of a current property and satisfactory passing of a home inspection. However, other conditions may be warranted, and given the potential for a negligence claim if the proper conditions are not included, this issue must always be expressly considered.

Make sure a survey is available: If no survey is available, your client may be looking at a charge of anywhere between \$600 and \$1,000 to obtain a new survey. It is possible to avoid producing a survey but it will require the purchase of title insurance. In every transaction, this issue should be considered and the cost to obtain a survey if one is not available should be a negotiated item.

Obtain warranty that appliances will be in good working order on closing: A common complaint that lawyers hear from Purchasers who have just taken possession is that one or more of the appliances they acquired with the property do not work. Obviously one

way to avoid this is to check each appliance with your client as you are viewing the property, including the air conditioning unit. In addition, include a clause in the agreement that all appliances being acquired will be in good working order on closing. From the Vendor's perspective, claims under this warranty should be limited to being made within 72 hours after closing.

Hold back for payment of final utility accounts: The general rule for detached homes is that the meter for all utilities is read on closing and the vendor is responsible for payment of the final billing which is forwarded to their new address. If the vendor does not pay the final bill upon receipt of the invoice however, the unpaid balance may constitute a lien against the property. An easy way to avoid this problem is to include a clause in the Agreement requiring the Vendor's lawyer to hold-back \$500.00 from the closing proceeds to be available to be applied to the final utility bills.

If any promises are made, include them in the offer: If any promises are made by either the vendor or purchaser in negotiations, it is important to include them in writing in the offer. As I'm sure you are aware, a standard agreement includes a clause to the effect that any collateral verbal representations not set out in the agreement are not binding. As such if anything is said by the other side that is important to your client, get it in writing in the Agreement.

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This article is for general information only. A lawyer should be consulted regarding specific circumstances.