

Lawsuits. Thousands in damages. How a real estate transaction went wrong and how to avoid common pitfalls

Some simple but important guidelines can help keep real estate transactions from falling through or ending up in the courts.

Updated 5 hrs ago | April 22, 2024 [🔖](#) [🔗](#)



Some simple guidelines, like getting everything in writing, can keep real estate transactions from falling through or ending up in the courts.



By **Clarrie Feinstein** Business Reporter

It was a real estate transaction gone wrong. One full of “poor communication,” “verbal agreements” and “heightened emotion,” real estate lawyers say — a recipe for disaster.

Typically disputes can be settled amicably, but some cases can go wayward and serve as a warning.

Such was the case in 2020, when a seller sold his Toronto property for \$1.78 million to a couple living abroad at the time, in what started out as a seemingly innocuous transaction that would eventually lead to lawsuits and thousands in damages.

In this case, the seller agreed to sell the property if it could be leased back to him for a year, however “nothing formal was agreed upon,” a March court decision, said.

Months later the couple tendered and the seller refused to close the transaction.

Due to the pandemic, the couple had decided to move into the home and would not lease the property out to the seller.

The seller, in turn, said the couple had been 24 hours late with their \$100,000 deposit and his realtors ought not to have accepted it as he gave instructions that the deposit not be accepted “beyond the deadline prescribed.”

The couple then sued the seller for the return of the \$100,000 deposit and for damages for breach of contract. The court ruled that, as the seller did not “immediately protest to the purchasers” or tell them that the agreement of sale “had lapsed or was void,” the couple were entitled to the return of their deposit and costs of \$26,875.

But their troubles didn’t end there. In 2022, the seller sued the couple, his realtor and others, claiming damages for himself of \$240 million and punitive damages of \$100,000 plus the return of the \$100,000 deposit. His motion was dismissed by a judge in March.

Real estate transactions fall through all the time from sellers and buyers backing out of deals to conditions not being met for various reasons. The hope is disputes can be settled, but sometimes tensions escalate and lawsuits are involved. It can become an ugly process and one buyers and sellers want to avoid, real estate lawyers say.

Have everything in writing

The agreement of purchase and sale is the most important document in a real estate transaction, said real estate lawyer Avi Charney, and founder of Charney Legal, based in North York.

“It’s the most binding document,” he said. “Anything that’s important should be added into this document. Have a lawyer draft it and make it binding.”

In Ontario, the document is around three to four pages and includes the standard terms but schedules can be attached with additional terms. In this case, a schedule should have been included about leasing out the property for a year back to the owner, he said.

There’s a standard clause in the agreement of purchase and sale that realtors in Ontario use called the Agreement in Writing clause. This clause gives certainty to both the buyer and seller that the written agreement contains all of the terms and conditions as agreed between the parties, and there are no terms outside of the written agreement, said real estate lawyer Daniel La Gamba, and one of the founding partners of LD Law, based in Toronto.

“This case turns on the fact that the seller tried to rely on a verbal agreement,” he said. “But it must be in writing to be valid.”

‘No leeway when it comes to timelines’

“The governing principle in real estate transactions is: time is of the essence,” La Gamba said. “If a party relies on the contract, they have to make sure they’re meeting all the necessary timelines stipulated in the contract.”

If a seller is ready to close but the purchaser is “even a minute” past the deadline, the seller can then hold the purchaser in breach of the agreement, declare the transaction void and sue for damages, he said.

“Timelines in real estate are very important whether you’re paying a deposit or fulfilling a condition,” he said.

In the 2020 case, there was “poor communication” from the seller, Charney said, in that they didn’t mention to the purchaser immediately that the lateness of the deposit was a problem. It was only done weeks later, after the purchasers had a home inspection done and decided to no longer lease out the property.

Retain good legal counsel

Home sales can be “fraught with emotion” and buyers and sellers can get “entrenched in their positions whether right or wrong,” said James Cook, partner at Toronto law firm Gardiner Roberts LLP. In the 2020 case, there was “heightened emotion” that could have been tempered with objective real estate litigation counsel, he added.

“It’s better to have dispassionate counsel say to you, you don’t have grounds to stand on here,” he said. “In court, it’s a contract that is read dispassionately.”

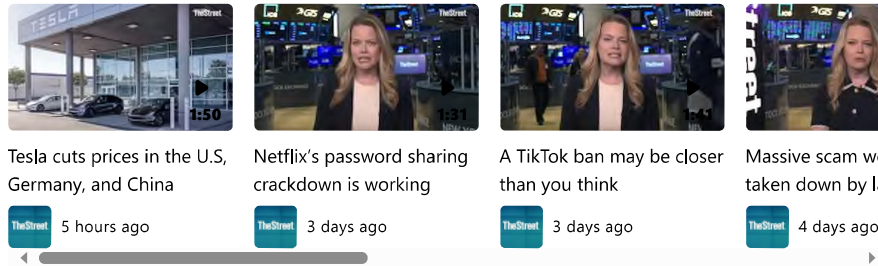
When people don’t retain legal counsel early in the process it can expose them to significant costs, Cook said. The agreement of purchase and sale can become a complicated document, and it’s better to have experts guide the process.

“Real estate litigation is not for the faint of heart, it can get very expensive really quickly,” he said. “The quicker you get someone to look at things the better to prevent further escalation.”

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