

Helpful Legal Information for MAHCP Members

Buyer and Seller Beware

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The housing market in Manitoba has been particularly hot in the last few years which has spawned two disturbing trends in relation to Offers to Purchase. The first is with regard to the sale of property. In a “seller’s market” homes will generally sell quickly and often for more than the asking price. Therefore there is the temptation to “go it alone” and sell one’s house without utilizing the services of a real estate agent. While it is understandable that an individual wants to save the cost of paying a commission, keep in mind that realtors do serve a purpose. In addition to knowledge about the value of a property and marketing the home, a realtor is familiar with the Offer to Purchase form. **It is important to keep in mind that an Offer to Purchase is a legally binding contract and failure to fulfill one’s obligations under the contract may have serious legal consequences.** I am not suggesting that one always must use an agent but I would recommend that in those circumstances where the seller does not have an agent that the individual have his or her lawyer review the offer before acceptance. While this will cost a little more, there may in fact be significant cost savings as the lawyer will not have to spend additional time trying to correct problems created by an imperfect offer.

Keep in mind that one’s house is generally one’s greatest and most valuable asset. The sale of your home requires great care and should not be treated lightly.

If you do not have an agent, your lawyer can explain to you that you will not receive the net proceeds on the possession date (usually approximately

two weeks after possession), what a realistic possession date would be, what terms and conditions you should and should not accept, etc. Also, the clauses in an Offer to Purchase form are there for a reason and each should be fully understood before you sign the agreement.

The second concern is that a seller’s market is also very problematic for a purchaser. Again, if you do not have an agent (as, for example, when you are buying from a private seller) you may not be familiar enough with the Offer to Purchase to know what information should be filled in and what conditions you should impose.

One of the biggest concerns for purchasers when the market is hot is that offers are made without proper inspections and often without imposing any conditions at all. **In Manitoba, “caveat emptor” or “buyer beware” applies on the contract to purchase a home.** Except in certain specific circumstances, a Vendor is not required to disclose problems with the house. The Offer to Purchase states that the Purchaser relies on his or her own inspection of the property and not upon any representations made by the Vendor except those set out in the Offer. Again, a house is usually a most expensive purchase a person makes and the proper care should be taken. At the very least, have your lawyer assist you with the Offer so that you can make a properly informed decision with regard to your purchase.

As you know, Inkster Christie Hughes LLP offers a legal assistance program to the members of MAHCP. Under this plan you receive reduced rates on a number of specific legal matters such as the purchase or sale of a home, Wills, Powers of Attorney, Health Care Directives, separation agreements, divorces as well as a reduction on general legal rates.

This paper is intended as an introduction to the topic and not as legal advice. If you require specific advice with respect to your situation, you should contact a lawyer.

This series of articles will continue in future editions of the MAHCP News. If there is a topic that you would be interested in, please contact Wendy at 772-0425.