

Should Your Lawyer Review the Draft Offer before You Sign?

Signing your Offer is serious business. Like any contract, it becomes a firm and binding legal document once it is accepted (unless there are outstanding conditions) with rights, duties and obligations to be performed by both parties on a specific date. Therefore, you must be certain that you can and will live up to these obligations well before signing it.

When buying a resale residential property, there is no "cooling-off" period (except for new condominiums) during which you can cancel the purchase after the offer is accepted. It is in your best interests to take the draft offer to your lawyer for review and comment, before it is signed.

Many real estate agents claim that it is unnecessary for buyers to see a lawyer before signing the Offer. After all, they argue, the Offer is a standard pre-printed agreement with "boilerplate clauses". Even the typed-in clauses, such as conditions, etc., are standard precedent clauses used extensively by real estate offices and sanctioned by the Ontario Real Estate Association. What more can a lawyer possibly add?

You should know that the standard Offer is slanted slightly in favour of Sellers, and therefore may have some minor shortcomings for buyers, especially in oddball situations. In most situations this will not be a problem. But given the potential consequences of a poorly-drawn Offer, and the dollar amounts involved, I encourage you to have the draft, unsigned Offer reviewed by your lawyer. Your lawyer and I are partners, in a sense, in protecting your best interests during the purchase of your home.

Sometimes it is said that lawyers want to review the draft, unsigned Offers because it allows them to bump up their fees. This comment is unfair and untrue since this initial contact with a lawyer will cost less than you might think - if anything. Most reputable lawyers do not charge for time spent reviewing and commenting on the draft Offer, or making minor changes or suggestions. After all, your lawyer will have to read the Offer in its entirety before processing it anyway.

I do not view real estate lawyers as "deal-breakers". The role of your lawyer at this stage is to amend clauses that may not be in your best interests and to raise issues that have either been overlooked or are still unclear in your mind. I take great pride in my ability to write Offers that protect your best interests but it is like the old adage - "Measure twice, cut once".

Do not expect your lawyer to pass judgement on two questions, however: (a) the purchase price, and (b) the ultimate decision as to whether to proceed with the transaction. Realtors know the market much more intimately than do real estate lawyers and it is my role to advise you on market conditions and values and purchase price. Your lawyer's expertise is in the legalities of contract law.

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Your home will probably be the largest single purchase you will have made to date, and it is essential that your best interests in this purchase be protected. With you, your lawyer and myself working in partnership, the chances are excellent that your purchase will be uneventful.

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