

CONDITIONS

Many buyers believe that if they make a real estate transaction conditional on anything, they can get out of the deal easily if they change their mind. This is a dangerous assumption. Interpreting conditions and demonstrating good faith in exercising conditions have been and continue to be the subjects of many legal proceedings.

The conditions most often included in an agreement on behalf of a buyer are:

- a. being able to obtain satisfactory financing to complete the purchase; and
- b. conducting and being satisfied with a physical inspection of the property by a qualified home inspector.

Condition – Inspection of Property by a Home Inspector
This Offer is conditional upon the inspection of the subject property by a home inspector at the buyer's own expense, and the obtaining of a report satisfactory to the buyer in the buyer's sole and absolute discretion. Unless the buyer gives notice in writing delivered to the seller not later than ___p.m. on the ___day of _____, 20___, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the buyer in full without deduction. The seller agrees to co-operate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the buyer and may be waived at the buyer's sole option by notice in writing to the seller within the time period stated herein.

Usually these conditions are valid only for a short time, anywhere from three to seven days. Having a property "off the market" for a week probably won't materially affect the value of the property. Conditions are beneficial because they allow a buyer to make inquiries about a property before deciding to proceed. The waiving of a condition indicates the buyer is committed to completing the transaction.

When a buyer is not satisfied with the results of a home inspection and wants to terminate a transaction, my advice to sellers is to let it go. If you fight it, you'll be dealing with an unwilling buyer. It is better to find a buyer who really wants your property.

Many sellers are understandably upset when a buyer cancels a transaction because of a home inspection. Some sellers want to see a copy of the inspection report; others want to see proof that the buyer is acting in good faith. These are the signs of approaching litigation.

The case of *Marshall v. Bernard Place Corporation* is an excellent example of how to draft a condition; the case also explains how the language of conditions may be interpreted in court. It unfortunately illustrates that no legal position is guaranteed, and that most legal cases result in victories mainly for lawyers, not their clients.

This particular case involved the purchase of a renovated midtown Toronto home. Asking price: \$1,510,000. Deposit: substantial — \$150,000. The agreement of purchase and sale contained a home-inspection condition:

This Agreement is conditional upon the inspection of the Property by a home inspector of the Buyer's choice and at the Buyer's sole expense, and receipt of a report satisfactory to him, in his sole and absolute discretion. Unless the Buyer/Cooperating Broker gives notice in writing, delivered to the-Seller/Listing Broker on or before Wednesday August 19, 1998, that this condition is fulfilled, this Agreement shall be null and void and the deposit shall be returned to the Buyer without interest or deduction. The Seller agrees to cooperate in providing access to the property for the purpose of this inspection at reasonable times upon reasonable notice given by the Buyer. This condition is included for the sole benefit of the Buyer and may be waived at his sole option by notice in writing to the Seller/Listing Broker within the time period stated herein.



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The inspection was conducted, and the buyers were not satisfied with the report. They advised the seller on August 17, 1998, in a timely manner, that they would not remove their condition, and they asked for the return of their deposit. The property was off the market for about seven days while the inspection was being conducted. The inspection report showed only minor deficiencies; they could have been repaired for about \$1,000. The seller argued that the buyers were not acting in good faith in conducting the home inspection and were thus in breach of the agreement. The seller told his salesperson not to return the deposit, and the matter proceeded to litigation.

Many lawyers were very interested in this case. Most home inspections recommend repairs that will cost between \$500 and \$1,000, all for minor deficiencies. Most lawyers would probably tell you the seller had a very good legal position. But this is not what the judge determined, and his judgment was confirmed by the Ontario Court of Appeal.

The court based its decision on the wording of the clause. The wording gave the buyers the "sole and absolute discretion" to make a decision based on inspection report. If the buyers had not conducted a home inspection at all but had merely stated that they were not satisfied with the condition of the home, the court may have said they were acting in bad faith. The sellers seemed to have an excellent legal position. The case went on for four years of legal proceedings – pleadings, motions, examinations, production of documents, trial and appeal - and cost more than \$100,000 in legal fees. It probably also stressed out both buyers and seller for the entire four-year period. All of this, when the property was "off the market" for only seven days. Or was it a case of it's "the principle of the matter, not the money"?

If you're a seller, and the buyers are attempting to cancel a transaction because they're not satisfied with condition, my advice is to let it go.

Get another offer from a buyer who is willing to conclude the transaction. And don't get too fussed up about the wording of a condition. Some sellers try to remove, the words "sole discretion" because of the Marshall decision. Others demand a copy of the inspection report. In my view, it's not necessary to spend time on this kind of negotiation. You need to find buyers who want to complete the transaction.

A willing buyer will give you a peace of mind from the time you sign the agreement right through to the closing of the transaction. Why waste time on buyers who are looking for a way out of the deal? If they can't find an excuse in the wording of the condition, they'll look for another excuse. You don't need the aggravation.

What, if your property is "sold subject to an inspection condition" and then the condition is not waived? Will there be negative remarks from other salespeople? Will they think there must be "something wrong with the property" and thus make it more difficult to sell? Believe me, it's easier to overcome, skepticism from potential buyers than it is to deal with a legal proceeding.

If you are a buyer, be very careful when you review conditions and when you try to satisfy them. Don't assume your sellers will be accommodating. Act in good faith, and always use professional home inspectors. Do not call your uncle to take a quick look at the property. If you follow these two principles, sellers will have every hard time trying to keep your deposit if the house doesn't pass an inspection.

Sellers, if you want to see a copy of any inspection report the buyers receive, say so in the home-inspection condition in the agreement. You're not automatically entitled to see reports prepared and paid for by the buyers.

This article is a part of a great book called "Put the Pen Down!" By Mark Weisleder. Please visit him at www.markweisleder.com (905)454-9606 mark@markweisleder.com

We all have to live somewhere and it makes a good sense to own a home in Canada. A home used as your primary residence is a great investment. The sale of a family's primary residence is tax free, meaning you will pay NO TAX on the next 40 years of appreciation value of your home. Owning home builds your equity and paying your mortgage is a way to save money.

If you consider buying or selling a home please call me.



MARKET STATISTICS & COUNTS

SALES OF HOMES SUMMER 2014 VAUGHAN

VAUGHAN - PATTERSON DETACHED HOMES



VAUGHAN - PATTERSON SEMI DETACHED



VAUGHAN - PATTERSON TOWNHOMES



Market Watch



Annual Growth in Home Sales Continued in August

September 4, 2014 -- Toronto Real Estate Board President Paul Etherington reported 7,600 sales through the TorontoMLS system in August 2014. This result was up by 2.8 per cent compared to 7,391 transactions reported in August 2013. Year-to-date sales through the end of August amounted to 65,454, which represented an increase of 6.5 per cent compared to the same period in 2013.

"The last full month of summer ended on a high note. As we look toward the fall market, I expect that demand for ownership housing will remain strong. Home buyers will continue to benefit from a diversity of affordable home ownership opportunities throughout the GTA. The fact that sales were up for all major home types in August suggests that first-time buyers and existing home owners remain very active in today's marketplace," said Mr. Etherington.

The average selling price in August 2014 was \$546,303 – up 8.9 per cent in comparison to the average of \$501,677 reported in August 2013. The year-to-date average price through August was \$562,504, which represented an increase of 8.5 per cent in comparison to the same period in 2013.

"The number of listings in August was down in comparison to last year, while the number of sales increased. This means that sellers' market conditions remained in place with a lot of competition between buyers. This is why we continued to see strong price growth last month. Looking forward, if sales growth continues to outstrip listings growth, the average selling price should continue to increase on a year-over-year basis," said Jason Mercer, TREB's Director of Market Analysis.

Average Price Grow from summer 2013 to summer 2014:

Detached Homes	\$146,660
Semi-Detached Homes	\$46,542
Townhomes	\$57,400

TESTIMONIALS

We just purchased our first home and we would like to sincerely thank our amazing Real Estate Agent Katya (Kateryna Borysenko) for all of her help. She is very organized and punctual, and made herself available to talk, meet up, answer questions and show us properties on a short notice despite her busy schedule. She followed up on every e-mail, phone call and last minute question promptly. She always came prepared to the showings with the info we needed. In the end, Katya's preparation and experience, and her negotiation skills were crucial when we entered a bidding war for our dream house; we won the bidding war and still had a deal under asking price at the end. We couldn't be happier with Katya as our REA. Results matter and we recommend her professional service with great confidence!

Sincerely, Mike and Nadia

Sept 08, 2014



Dear Katya, I would like to thank you for the amazing service in assisting me in selling my house and finding me the perfect new home. I appreciate your patience, knowledge and the very pleasant personality. I will highly recommend you to anybody that wants to sell or buy a new house. Thank you from the bottom of my heart.

Dahlia

Sept 05, 2014

"We sold our home with Kateryna and our experience with her was simply the best. She understood our needs, went above and beyond to make the entire process easy and comfortable."

Joseph P.

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So thanks for continuing to pass this newsletter on to people you care about.

Kateryna Borysenko