

DEAL MAKERS AND DEAL BREAKERS

There is a prevailing sentiment among some realtors that they are the deal makers, while the bankers and the lawyers are the deal breakers; especially the lawyers. True, there are some lawyers out there who cannot resist tinkering or renegotiating (presumably with the notion of securing some additional advantage, real or perceived, for their clients) but it is not really fair to categorize all lawyers as "deal breakers."

Similarly, the banker who turns down the prospective purchaser isn't trying to break the deal either. Often what is perceived as "deal breaking" is nothing more sinister than a professional in a related sphere doing his or her own job.

Realtors, at least the successful ones, make deals - no doubt about that. It is a special skill requiring knowledge of finance, market conditions, human nature, the law of contract, real estate law, the laws of probability and the law of the jungle. Putting deals together that stay together is what earns realtors the "big bucks."

The difficulty associated with the job is also why it doesn't happen on a daily (or, for some, even a weekly or monthly) basis. Putting deals together is hard, often frustrating, work. It is no wonder that realtors get angry when a deal falls apart and those big bucks turn into big frustrations. It is tempting to look for someone or something else to blame.

Solid deals, however, cannot be broken. They may be breached by one or the other of the parties failing to come through on a contractual promise (usually it is the purchaser who fails to come up with the money) but breaching a contract and breaking one are not the same thing. If the deal is solid, it can withstand attack. It is the shaky deals that are prone to being broken.

The usual reason why a deal is broken is because there wasn't really a deal there in the first place. If you fail to deal with allocation of values in the sale of a business, for example, there is no binding contract. If both vendor and purchaser think the purchaser is paying GST there is no deal when there is no GST payable.

If the purchasers qualify for a \$90,000.00 mortgage and they're trying for \$110,000.00, the deal is hardly "made". Who is responsible, then, when the "deal" falls apart - the parties who never really put the deal together in the first place or the lawyer or banker who found the loose thread and started to pull on it?

If you don't want deals to fall apart, then see to it that they are put together properly. If you don't understand something, then get help from someone who does understand, whether it be a realtor, a text book or a lawyer. If you have a problem concerning GST, then call the GST office.

When it comes to real estate, nobody knows all the answers (although I have run into a few people who certainly think they do). Don't be afraid to ask questions. Often, it is better to look a bit silly by asking a foolish question than it is to look very silly by making a foolish mistake and blowing a deal.

Everybody in the real estate industry makes a living by the deals that go through. Very few profit when deals come apart. Contrary to popular belief, lawyers do not make money when deals unravel. They often end up eating their time and disbursements, they lose out on the full fee and the client often ends up unhappy or going to another lawyer for any courtroom work.

Accounts that are rendered are often unpaid and it is not uncommon for the realtors involved, the other solicitor and the banker to end up resenting the lawyer. However, good solicitors must be honest with their clients, the realtors and the banks.

If there's a fatal flaw in the contract they have a duty to point it out so that it can be remedied. If that ends up "breaking" the deal then the lawyers must necessarily have to wear the tag "deal breakers", deserved or not.