



MINUK  LAW

PREVENTION IS 9/10ths OF THE LAW

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ALARM SYSTEMS

The purpose of including clauses in a real estate contract that pertain to taking over an alarm system is to establish the responsibilities, rights, and obligations of the buyer and seller regarding the alarm system during the transfer of property ownership. These clauses help address various aspects of the alarm system, such as ownership, maintenance, monitoring, and any associated costs. Example Clauses:

- **System to be removed.**
 - The seller, at the seller's expense, will buy out the existing monitoring (or other agreement) for the alarm system currently located on the Property and have the system removed before Completion Day. The seller will repair any damage caused by the removal of the alarm system.
- **System to remain in property but not monitored.**
 - The seller, at the seller's expense, will buy out the monitoring or other agreement for the alarm system currently located on the Property before Completion Day. The alarm system will remain intact but no longer will be monitored.
- **System and monitoring to be assumed by buyer.**
 - The buyer will assume the alarm system and any existing agreement for the system, including monitoring charges as of Completion Day.

BACK-UP OFFER

Seller is bound to another offer

For use in situations where the seller is currently bound to a purchase contract and has been presented with another that they would like to accept. Insert a seller's condition in **Clause 8.3** of the Agreement, as follows:

Seller's Clause

- **Seller**
 - This contract is subject to the seller obtaining a written release from all obligations under a previously accepted Purchase Contract number _____, before _____m on _____, 20____ (Condition Day).

Buyer's Clause

- **Buyer in 8.3**
 - The buyer acknowledges that the seller has accepted this offer as a back-up offer and this contract is subject to the seller obtaining cancellation in writing of Purchase Contract number _____ before _____m on _____, 20____ (Condition Day).

- Notwithstanding anything to the contrary in this contract. During the condition period, the parties agree during the condition period as follows:
 1. The seller shall not extend the Condition Day of any prior written and accepted contract in which a release from all obligations is required as a seller's condition for this contract.

CONTRACT SUPERSEDES ANOTHER CONTRACT

To be used in cases replacing a particularly messy contract.

- This contract supersedes contract # _____ dated _____.

ESCALATION CLAUSE (To be used in multiple offer situations)

Real estate sales activity in Alberta has continued to increase. As the market continues to thrive, so does the possibility of transactions that involve multiple offers.

The process for handling multiple offer situations is currently determined by the seller. This means, it's the seller's choice whether they disclose multiple offers to all potential buyers, to select potential buyers, or to none of the potential buyers.

It is important for realtors to help their buyer clients understand the purpose, advantages, and disadvantages of an escalation clause when they anticipate their offer to be among multiple offers. An escalation clause in a real estate contract is a provision allowing for an increase to the buyer's offer price, activated only if a competing offer is submitted that is higher than the buyer's original offer.

For example, a contract could state that the buyer is willing to pay a specified amount over the highest offer to a maximum specified purchase price, but only if the seller receives another offer at the same time which is higher and provides proof of the higher offer. If there turns out to be no competing offers, the buyer's original asking price remains.

In the event of multiple offers on the property, the buyer offers an escalation clause as follows:

1. The buyer offers to increase the purchase price by a specified amount above any bona fide competing offer, up to a maximum purchase price of \$[insert maximum purchase price].
2. The specified amount to be added above the competing offer shall be \$[insert escalation amount]. However, the buyer's escalated offer shall not exceed the maximum purchase price.
3. The seller agrees to provide the buyer with written verification of the competing offer, including all relevant terms and conditions, to validate the use of the escalation clause.
4. In the event that the buyer's offer is escalated, the seller shall have the right to accept the buyer's escalated offer or provide the buyer with an opportunity to submit a revised offer within a specified timeframe.

5. If the buyer's offer is accepted, the purchase agreement shall be amended accordingly to reflect the escalated purchase price.
6. The buyer acknowledges that the seller's acceptance of another offer is at the seller's sole discretion, regardless of the buyer's escalation clause.
7. The buyer understands that the use of an escalation clause does not guarantee the acceptance of their offer and that the seller may choose to accept a competing offer based on other terms, conditions, or factors.

ESTATE SALE / PROBATE

In order for an estate to be sold, *the seller of the estate must have certain information in place. The following clauses offer optional terms or conditions allowing the seller time to obtain the required information.*

▪ **Completion Day Delayed**

Where the buyer and seller are willing to proceed with a term regarding the estate issues:

- The buyer acknowledges that the seller of the Property is an estate, and a Grant has not yet been issued by the Courts. The seller acknowledges that the persons signing this contract have applied for a Grant and that anyone entitled to a share of the Property has consented to this sale. The buyer and seller agree that if a Grant has not been obtained by the Completion Day, then: The Completion Day will be delayed until the seller is able to provide a Grant and a Transfer of Land.

▪ **Buyer Tenancy**

- The buyer acknowledges that the seller of the Property is an estate, and a Grant has not yet been issued from the Courts. The seller acknowledges that the persons signing this contract have applied for a Grant and that anyone entitled to a share of the Property has consented to this sale. The buyer and seller agree that, if a Grant has not been obtained by the Completion Day, the buyer will take possession on a tenancy basis, with rent paid to the seller as determined by the amount of monthly interest the buyer would pay on their mortgage or at the agreed rate of \$_____ per month.

▪ **Buyer condition**

Where the buyer desires to have the issuance of a Grant made a condition of the contract:

- This contract is subject to the seller receiving before ____ ____m. on _____, 2016 (Condition Day) the following:
 1. A Grant from the Surrogate Court,
 2. Assurance from the lawyer for the estate that everyone entitled to a claim has waived or released their claim against the Property,

HAZARDOUS MATERIAL, SAFETY, HEALTH OR ENVIRONMENTAL ISSUE

Many hazardous or safety issues can exist in a real estate property. *These can include:*

- asbestos (insulation, tile, etc.)
- urea formaldehyde foam insulation (UFFI)
- radon
- pests (termites, bed bugs, vermin, etc.)
- environmental problems (oil spills, creosote contamination, underground storage tanks, erosion, etc.)

The following *clauses offer options for seller disclosure of the issue and a buyer condition regarding the issue.*

▪ **Seller disclosure of issue**

- The Seller discloses that the Property contains _____.

Note: the clause can be customized by the addition of details of the extent of the issue, where it is specifically located on or in the Property, etc. The more detail provided; the more clarity will result.

▪ **Buyer confirmation of acceptance of risk**

- The Seller discloses that the Property contains _____.

The buyer accepts the property in this state and any related risk.

▪ **Seller disclosure on corrective measures**

The seller discloses that _____(describe issue, example: asbestos insulation in the attic of the main residence on the Property) has undergone the following corrective measures (or remedy)_____ (describe).

- The seller has provided the following documents to prove this disclosure: _____(describe)

▪ **Specific issues do not exist.**

- The seller represents and warrants that the Property does not contain _____(describe).
- The seller discloses that although _____(describe issue) was known to have existed on the Property, the Property has undergone the following corrective measures (or remedy) _____(describe). The seller has provided the following documents to prove this disclosure: _____(describe)

- **Buyer condition regarding the issue**
- This contract is subject to the buyers satisfaction with an inspection of the Property for _____ (describe the issue), before _____ .m. on _____, 20____ (Condition Day).
- The seller will cooperate by providing access to the Property on reasonable terms.

HOLDBACK

A holdback occurs in a real-estate transaction when the buyer identifies a condition (typically a renovation or repair) that they want to be completed at the seller's expense. The holdback is typically a pre-determined dollar amount withheld from the seller until the condition named in the agreement has been completed. Make sure you are very clear about the dollar amount of what you are holding back and for what purpose you are holding back funds.

These could be for an RPR that is not completed, a house that is not cleaned, a house that still has items in the garage, roof repairs, getting electrical work completed, seasonal holdbacks for cement or landscaping in the winter, and many others. The more certain you can be on the amount of the holdback, what exactly needs to be completed, and what happens to the holdback money if the work is not completed will make the transaction easier.

If you are missing the RPR and compliance or the RPR is out of date, a hold back for an RPR, and compliance is an option. If you simply hold back enough for the cost of the RPR and compliance, what do you do if there is an actual issue? What if the house was built on the wrong property, a deck in the wrong location, a detached garage needing to be torn down? Therefore, it is very important to have the RPR and compliance well in advance of closing. Lawyers are left in a very difficult position when we do not have the RPR and compliance.

For example:

- The seller, at the sellers expense will [work to be done]_____ before ____am/pm on _____. This will be done by ___[a licensed - type of contractor]___ and the seller will provide the buyer with a copy of the receipt(s) by such date. The seller and buyer agree that the receipt is evidence of completion of the term. The buyer will instruct the buyer's lawyer to holdback \$_____ from the payment of the Purchase Price until the receipt is provided. If the receipt is not provided by the agreed date, the holdback funds will be paid to the buyer. If the client is the seller - add this: Despite the warranties contained in this contract, the Seller's liability for __[event]__ shall be limited to the Holdback.

In the case of numerous repairs, each should be itemized, and a value attributed for each item. For example:

Professional cleaning: \$500.00

Repair to main bathroom sink \$200 etc...

Another example is as follows:

1. The seller, at the seller's expense, will undertake the following repairs ("Work to be Done") before [insert time] AM/PM on [insert date]. This will be done by a licensed [insert type of contractor]. The seller agrees to provide the buyer with a copy of the receipt(s) for the completed work on or before the agreed date. The receipt(s) shall serve as evidence of completion of the term.
 - a. [Item 1]: The seller shall complete [description of work] at an estimated cost of \$[insert amount]. The holdback amount shall be reduced by the actual cost of [Item 1] upon receipt of the corresponding receipt.
 - b. [Item 2]: The seller shall complete [description of work] at an estimated cost of \$[insert amount]. The holdback amount shall be further reduced by the actual cost of [Item 2] upon receipt of the corresponding receipt.
 - c. [Item 3]: The seller shall complete [description of work] at an estimated cost of \$[insert amount]. The holdback amount shall be further reduced by the actual cost of [Item 3] upon receipt of the corresponding receipt.
2. The buyer shall instruct the buyer's lawyer to initially hold back the total amount of \$[insert total holdback amount] from the payment of the Purchase Price. The holdback amount represents the sum of the estimated costs for all listed items. The holdback amount will be reduced by the actual costs of each item as per Clause 1.
3. If the receipt(s) for the completed work are not provided by the agreed date, the holdback funds shall be paid to the buyer within [insert number of days] days following the agreed date.

Once the items above are completed, add the following clause to the agreement:

▪ **General Notice for Satisfaction of Holdback Terms**

This clause is to used where a holdback has been imposed by the buyer and should also be used where a professional cleaning clause is being imposed by the buyer. Example Clause:

- I, the BUYER / SELLER, have satisfied the following terms and serve notice that all funds being held in trust as a holdback are releasable under the terms of the purchase contract.: *LIST THE TERM FROM THE ORIGINAL CONTRACT HERE LIKE YOU WOULD ON A WAIVER*

▪ **PROFESSIONAL CLEANING**

Professional Cleaning clauses are often inserted into real estate contracts mainly because, a Professional Cleaning clause ensures that both the buyer and seller have a clear understanding of their responsibilities regarding the cleanliness of the property at the time of closing. It establishes a standard for the condition in which the property should be presented and an amount associated with the holdback where the Vendor fails to meet the condition. Example Clause:

- The seller, at the seller's expense will have _____ (detail what needs to be cleaned) professionally cleaned before (_____.m. on _____, 20____). The cost of the cleaning shall not exceed \$_____. The cleaning will be done by _____ (options include: professional cleaner of the seller's or buyer's choice, a named cleaning company, etc.) and the seller will provide the buyer with a copy of the receipt. The seller and buyer agree that the receipt is evidence of completion of this term. The buyer will instruct the buyer's lawyer to hold back \$_____ from the payment of the Purchase Price until the receipt is provided. If the receipt is not provided by the agreed date, the holdback funds will be paid to the buyer.

*[Send the **General Notice for Satisfaction of Holdback Terms** clause when this condition has been complied with.]*

▪ **Property Inspection - seller imposed limits.**

Property inspection reports are detailed assessments conducted by professionals to evaluate a property's condition, including its structure, safety, functionality, and overall state. They are crucial in real estate transactions to assess a property prior to buying or selling, providing key information and benefits. Example Clause:

1. This contract is subject to the buyer obtaining a property inspection, conducted by a licensed home inspector, before _____.m. on _____, 20____. (add one of the following options)
2. If the inspection identifies defects in the Property that are estimated to exceed \$_____ to repair, the buyer will have a valid reason to not waive the buyer's condition.
3. Quotes to determine the estimated cost of repair are to be obtained by a contractor of the buyer's choice.
4. The seller will cooperate by providing access to the Property on reasonable terms.

REAL PROPERTY REPORT (RPR)

In Alberta, RPRs are commonly used to provide information about the boundaries and improvements on a property. They are typically required in real estate transactions to ensure that the property complies with local zoning bylaws and regulations. Some common problems associated with real property reports in Alberta include:

1. **Encroachments:** An encroachment occurs **when a structure, fence, or other improvement extends beyond the boundaries of the property**. This can create legal and practical issues, such as disputes with neighbors or violations of setback requirements. A real property report should identify any existing encroachments or potential encroachment issues.
2. **Non-compliance with Zoning Bylaws:** Zoning regulations define how land can be used and what **types of structures can be built on a property**. A real property report should

indicate whether the property complies with the applicable zoning bylaws. Non-compliance may restrict or limit future use or development plans.

3. **Easements and Rights-of-Way:** Easements and rights-of-way are legal rights granted to individuals or entities to use or access a portion of the property for specific purposes, such as utility lines or access to public roads. A real property report **should identify any existing easements or rights-of-way that may** affect the property's use or development.
4. **Building Setbacks: Setback requirements define the minimum distance between a structure and the property boundaries or other structures.** Real property reports should indicate whether the existing improvements comply with setback regulations. Non-compliance may require adjustments or potential legal issues.
5. **Survey Accuracy and Completeness:** Real property reports must be accurate and complete, providing a clear representation of the property's boundaries and improvements. Errors or omissions in the survey can lead to disputes, confusion, or future legal issues.
6. **Land Title Discrepancies:** Real property reports should align with the information registered on the property's title. Any discrepancies or inconsistencies between the real property report and the land title should be resolved and clarified to ensure accurate representation of the property.

Problems with the RPR are the single most common reason for delays and disputes on closing. When Realtors have a Seller sign an Exclusive Representation Agreement, the Seller warrants, at **Clause 11.1** of the Exclusive Representation Agreement (Designated Agency) and **Clause 10.1** of the Exclusive Representation Agreement (Common Law Agency), that their Property complies, even though the Seller has no updated Real Property Report and/or Compliance to support the warranty. This could pose a problem for the Brokerage and the Agent where the client has not properly been advised of the requirement to obtain an RPR.

Please note that pursuant to **Clause 10.1** and **10.2** of the Alberta Real Estate Association Residential Purchase Contract, the Seller must provide a current Real Property Report and Compliance Certificate to their Lawyer within a **reasonable period of time** to allow the buyer and buyer's lawyer to review prior to closing.

Generally, sellers are unaware they are contractually bound to provide the Real Property Report and Compliance, and that if they don't have them, by the time the Lawyer is contacted, the Lawyer is left with little or no time to obtain them. This may pose many unfavorable consequences to the Seller.

It is clear from the wording of the Purchase Agreement that a Seller is responsible for providing a current Real Property Report and Compliance Certificate. One of the reasons we often do a holdback is for not having a Real Property Report completed or there is a RPR but a minor change and need to get an update. In one example what if the law office holds back \$5,000 for what appeared to be a minor issue but is now a \$20,000 issue. The realtor says it is a lawyer issue even though they were supposed to have one under the listing contract. What is your level of risk? Example Clause:

▪ **Option 1 PREFERRED (Term)**

- Seller to provide a current, Real Property Report with municipal compliance to the buyer for the buyer to review by _____.

▪ **Option 2 (Condition)**

- This contract is subject to the buyer's satisfaction of a Real Property Report review, conducted by their lawyer, before _____ .m. on _____, 20 _____ (Condition Day). The seller will cooperate with the review by providing the buyer with an RPR (or a photo copy) showing the current improvements on the Property, according to the Alberta Land Surveyors Association Manual of Standard Practice, with evidence of municipal compliance or non-conformance and confirming the sellers warranties about the land and buildings.

Updated RPRs with compliance assure the parties that they will not be at risk of losing any of the permanent improvements because they do not comply with municipal set back requirements or encroach on a utility right of way or an adjoining parcel. As long as the RPR shows the current and most recent status of the property with evidence of municipal compliance, it is valid and reliable if no new amendments are made.

RPRs along with evidence of compliance confirm that the building location warranties which the seller gives in the sales agreement are true. While some argue that this objective could be accomplished by title insurance as well, there are several clear advantages to RPRs. The industry has therefore adopted them as the standard default requirement in the residential real estate purchase agreement.

TITLE INSURANCE

Title Insurers have been successful in taking over the majority of mortgage refinance work. However, Title Insurers are mainly interested in easy mortgage refinance work that poses little or no risk to them. Whenever a mortgage refinance has issues such as title ownership, dower, matrimonial disputes, unusual encumbrances on title and the like, the matter is referred to a lawyer.

Many Lawyers argue that Title Insurance has many benefits over Real Property Reports and Compliance such as being cheaper, faster and easier to use and thus the Area Purchase Contract should be amended to allow for Title Insurance.

There is no doubt that Title Insurance has a place in real estate, however, Real Property Reports and Compliance provide many benefits to the Buyer that Title Insurance does not, for example:

1. The Real Property Report shows the location of the house, garage, decks, fences and other improvements on the Property in relation to the Property lines. If the Buyer wishes to make additional improvements or landscaping to their Property in the future, they can rely on the Real Property Report to be certain that the improvements and landscaping will be completed on their Property.
2. Real Property Reports show utility Rights-of-Way on the Property. Once again, if the Buyer wishes to make any improvements or do landscaping on their Property, the location of the Utility Rights-of-Way need to be known.

3. Real Property Reports disclose encroachments onto the Buyer's Property from adjoining Property.
4. Compliance tells the Buyer if there are any building location bylaw or safety code infractions.
5. The Buyer knows when he goes to sell his Property, he has no issues with the municipality.

These benefits are not provided with Title Insurance. With Title Insurance, a Buyer is left not knowing if there are any compliance issues with a municipality and whether some remedial steps will need to be taken in the future to protect their property.

▪ **Seller to pay cost of title insurance. RPR is not provided.**

- The seller will contribute up to \$_____ towards the cost of a Title Insurance Policy for the benefit of the buyer and the buyer's lender (if financing is obtained). The policy is to be secured by the buyer. A Real Property Report will not be provided.

If choosing to strike out sections of the standard AREA Purchase Contracts, then please obtain legal advice.

▪ **Seller to pay cost of title insurance. Existing RPR is provided.**

In circumstances where the seller has an existing Real Property Report that does not reflect the current state of the property, the RPR should be updated. If the seller does not want to update the RPR and the buyer is willing, title insurance could be used in addition to the existing RPR. In cases where an RPR is not current and title insurance will be obtained, legal advice is recommended.

- The seller will provide an existing Real Property Report dated _____, which does not reflect the current improvements on Property.
- The seller will contribute up to \$_____ towards the cost of a Title Insurance Policy for the benefit of the buyer and buyer's lender (if financing is obtained). The Policy is to be secured by the buyer. An updated Real Property Report will not be provided.

If choosing to strike out sections of the standard AREA Purchase Contracts, then please obtain legal advice.

Common Practical Solutions When Closing.

When closing a residential real estate deal in Calgary, several common problems can arise. While the specific issues can vary from transaction to transaction, here are some general challenges that buyers and sellers may encounter during the closing process:

1. Financing Issues: Difficulties in securing financing or delays in obtaining mortgage approvals can be a common problem. Buyers may face challenges in meeting lenders' requirements or unexpected changes in their financial circumstances. Sellers may

experience issues if the buyer's financing falls through, leading to potential delays or even the cancellation of the deal.

2. **Title and Ownership Discrepancies:** Discrepancies or issues with the property's title can cause delays or complications during closing. This includes errors in the legal description, liens or encumbrances on the property, or outstanding judgments against the seller. Resolving these title issues often requires additional time and legal assistance.
3. **Property Condition:** Problems discovered during the final walk-through or inspection can create complications. If significant issues arise, such as undisclosed damages, defects, or repairs needed, it may lead to renegotiations or delays in closing. Buyers may request repairs or financial concessions from the sellers before proceeding with the purchase.
4. **Contractual Obligations:** Failure to meet contractual obligations can be a source of contention. For example, if either party fails to adhere to agreed-upon timelines or conditions, it may lead to disputes and potential delays in closing. This could include incomplete repairs or failure to provide necessary documentation.
5. **Disagreements on Closing Costs:** Disputes over the allocation of closing costs can arise between buyers and sellers. These costs typically include legal fees, land transfer taxes, title insurance, and other expenses. It's important for both parties to clearly understand and agree upon the distribution of these costs to avoid conflicts during closing.
6. **Delayed Completion of Conditions:** Many real estate contracts include conditions that need to be satisfied before closing. This could involve inspections, appraisals, or obtaining required permits or documents. Delays in completing these conditions can postpone the closing date.
7. **Non-Disclosure or Misrepresentation:** If the seller fails to disclose material defects or provides inaccurate information about the property, it can lead to disputes and potential legal issues. Buyers may have the right to terminate the deal or seek compensation if they discover misrepresentations during or after the closing process.

Here are some practical solutions to the common problems that can arise when closing a residential real estate deal in Calgary:

1. Financing Issues:

- Buyers should obtain pre-approval for a mortgage before starting the home buying process to ensure they have a clear understanding of their budget and can address any potential financing hurdles early on.
- Sellers can request proof of financing from potential buyers to minimize the risk of the deal falling through due to financing issues.

2. Title and Ownership Discrepancies:

- Working with a knowledgeable real estate lawyer can help identify and resolve title issues promptly.

- Buyers should conduct a thorough title search and obtain title insurance to protect against any unforeseen title defects.

3. Property Condition:

- Sellers can consider getting a pre-listing inspection to identify and address any major issues before listing the property. This can help prevent surprises and potential renegotiations during the closing process.
- Buyers should conduct a final walk-through to ensure the property is in the agreed-upon condition and address any concerns with the seller before closing.

4. Contractual Obligations:

- Both buyers and sellers should carefully review the contract and ensure they fully understand and can meet all the specified obligations and timelines. Seeking legal advice during the contract negotiation phase can help clarify expectations and minimize disputes.

5. Disagreements on Closing Costs:

- Buyers and sellers can negotiate and agree on the allocation of closing costs before closing. Clearly outlining the responsibilities for each party in the purchase agreement can help avoid disagreements later on.

6. Delayed Completion of Conditions:

- Buyers and sellers should communicate effectively and proactively work towards completing all necessary conditions within the agreed-upon timelines. Maintaining open lines of communication with all involved parties, such as inspectors, appraisers, or contractors, can help expedite the process.

7. Non-Disclosure or Misrepresentation:

- Sellers should provide full disclosure of any known defects or issues with the property, ensuring they complete the Seller's Property Disclosure Statement accurately.
- Buyers should conduct thorough inspections and due diligence before closing, seeking professional opinions and reports to identify any undisclosed issues. If problems are discovered, they can negotiate repairs or request appropriate compensation.