



Utility bills and real estate closings

Changes in the market and increasing price competition among lawyers for conveyancing work have changed the way some practitioners deal with final utility bills when closing real estate deals.

It has been common practice for vendors' lawyers to obtain authority from clients to withhold out of the proceeds of sale a small amount to be applied towards payment of the final utility bill. On closing, the vendor's lawyer would give an undertaking to withhold the funds for a stipulated period, at the end of which the funds would be applied to any unpaid utility bills and the surplus remitted to the vendor. This protects the purchaser from having to pay the final bill.

The vendor's lawyer, who cannot give such an undertaking without written authority from the vendor client, is put to some expense and inconvenience in having to hold funds in trust and then checking to ensure final bills have been paid before releasing the funds. Now many lawyers acting for vendors are reluctant to hold funds in trust following closing; the vendor's lawyer wants to complete the sale, pay out the funds and close the file as quickly as possible.

The Law Society is frequently consulted about this situation.

The purchaser's lawyer rarely has the opportunity to see an offer to purchase before it has been accepted and withholding funds to cover the final utility payment is usually not part of the vendor's contractual obligations. If the vendor's lawyer is unwilling to seek authority from the vendor client to withhold funds, the purchaser's lawyer should explain to the client the risk involved in closing without an undertaking on this subject. The purchaser's lawyer would also advise that, as he or she did not have the opportunity to protect the client before the contract was formed, the purchaser, not the lawyer, must assume the risk of the vendor not paying the final utility bill.

In this situation, the purchaser's lawyer should try

to obtain on closing a personal undertaking from the vendor to pay the final utility bills and note the new address at which the vendor can be contacted in the event the final bill remains unpaid.

Model sexual harassment policy for small firms

The Law Society has adapted its model policy on employment-related sexual harassment to make it more concise and suitable for small law firms.

A 1993 survey of managing partners indicated that, while the model policy created in 1992 was very useful to large and medium-size firms, it had not gained much acceptance in small firms.

Development and effective implementation of a sexual harassment policy is an important element of a pro-active strategy to maintain a work environment free from harassment. The current law with respect to sexual harassment requires that employers exercise "due diligence" and take steps to prevent harassment. Law firms and lawyers as employers who fail to take steps to pursue "due diligence" may be liable for acts of harassment by agents, employees and partners.

Along with a policy, it is recommended that firms pursue the following initiatives as part of their pro-active strategy:

- implementation of an appropriate mechanism (advisers or complaint process) to address sexual harassment concerns internally; and
- education of firm members with respect to their responsibilities in connection with sexual harassment issues.

The model policy for small firms is available from the Law Society's Communications Department, tel. (416) 947-3465, fax (416) 947-3370

Unclaimed intangible property

Recently proclaimed amendments to the *Unclaimed Intangible Property Act* affect certain trust funds and possibly other property held by lawyers. Practitioners are strongly urged to obtain the Act and familiarize themselves with the amendments. More information will appear in an upcoming issue of the Adviser.

Electronic transfer of funds

Practitioners should not move money from a trust account by means of electronic transfer. This method of transfer, which is being promoted by some banks and financial institutions, does not provide adequate documentation for an "audit trail." Current legislation requires a cancelled cheque as proper verification for such transfers.

Threatening criminal proceedings in civil claims

Lawyers must exercise care when asserting their clients' civil claims against other parties to ensure that no connection is made between a demand and a threat of criminal action.

In a case recently investigated by the Law Society, a party was in possession of a chattel, the ownership of which was in dispute. The solicitor for the party claiming ownership wrote a letter to the party in possession demanding that the chattel be turned over, or the police would be contacted and a charge of theft laid.

The appropriate remedy in this case was a civil claim. Involving the criminal process creates the perception that it is being used as a form of extortion.

CLE negotiation program

"Negotiation & Settlement in the '90's: New Dimensions For Lawyers" is a one-day lecture-and-demonstration program being offered by the Law Society's Continuing Legal Education Department at Osgoode Hall on August 26.

The program will be presented by Gerald

Williams and the Minnesota-based Professional Education Group, Inc. Williams, a member of Brigham Young University's faculty of law, is a former member of the American Bar Association's prestigious Standing Committee on Dispute Resolution and he is a member of the Editorial Policy Committee of the Negotiation Journal.

The program was well received when last presented here in 1992. Topics include characteristics of highly effective negotiators, the four psychological factors in legal negotiation, and a video demonstration of typical legal-negotiation problems, with discussion of relevant solutions.

The admission price is \$275, plus GST. For registration information, please call CLE at (416) 947-3374 (or toll-free 1-800-668-7380, Ext. 3374).

You asked us

A solicitor is opening a new practice concentrating in real estate and commercial transactions. The solicitor wants to announce the office opening by sending pamphlets to real estate agents and banks in her community. Can she do so without being in violation of Rule 12 of the Rules of Professional Conduct?

The solicitor could proceed with her plan to distribute the pamphlets as long as the material is clearly marked as an "advertisement" and as long as it is a general mailing – as it would be in this case. Such a mailing would not constitute "steering" as described in paragraph 5 of Rule 12 and is permitted under paragraph 4 of Rule 12 which reads:

A lawyer may not solicit employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in person or otherwise, when a significant motive for the lawyer's doing so is to be retained in a particular matter, except as a public service. The term "solicit" includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful. All such letters or advertising circulars shall be clearly marked "advertisement" on each page thereof. (emphasis added)

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