



ERRORS & OMISSIONS

A periodic update from the
Lawyer's Professional Indemnity Company

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New directions for real estate fees

The next time your client asks you not to pay real estate fees on closing think twice.

In the case of *Family Trust Corp. v. Morra et al.* 60 O.R. (2d) 30 the vendor directed the solicitor to pay the agent its commission out of the proceeds of sale. The solicitor then received a verbal direction not to pay the agent and the agent was not paid. The agent then sued the lawyer for the amount of the unpaid commission.

At trial the agent was successful. It was held that the receipt of the proceeds of the sale after the lawyer had received the direction created an equitable assignment of the right to the commission which the agent could enforce against the lawyer personally.

The appeal was allowed. It was held that there was no consideration from the agent for the vendor's direction. Conse-

quently the vendor was free to change the direction and the solicitor was bound to comply with the new instructions.

In that particular case the agreement of purchase and sale was not under seal. The appeal indicates, "In the subject case there was no consideration from the agent for the client vendor's irrevocable direction to his solicitor. As a consequence, in law, if not in morality, the client was free to withdraw his direction and the solicitor was bound to comply without incurring liability to the plaintiff."

In the recent case of *Re/Max Garden City Realty Inc. v. 828294 Ontario Inc.*, 8 O.R. (3rd) 788, there was a printed black circle on the agreement which resembled a seal and the word seal was printed underneath. The lawyer agreed to be bound by a new direction from his client and did not pay the proceeds received on the closing of the sale to the agent. The court held that the parties intended that the black printed circle be deemed a seal, the equitable assignment was under seal and therefore enforceable. The lawyer ended up owing \$40,000.

The moral of the story is protect yourself from "sealing" your fate by becoming involved in this kind of dispute.

Did you know?

More than 80 per cent of members are claim free. How will you stay that way? Watch for our new video to be released in the spring.

File in Section 5

Don't play roulette with Family Support Plan writs

The *Family Support Plan Act* allows child and spousal support payments to be deducted at source. The Director of the Family Support Plan has the ability to register a writ of execution against anyone in default.

The difficulty is that the amount stated in the writ may not necessarily be the amount required to lift the execution.

The problem is that the Director of the Family Support Plan has the right, **at any time**, to file a statutory declaration advising that the execution registered does not reflect the actual amount owing and to substitute a writ of execution in the correct amount. In addition, the Sheriff, who receives notification that *the writ is to be paid off*, has an obligation to immediately contact the Director of the Family Support Plan, and not to discharge the writ until he has given the Director an opportunity to file the new statutory declaration.

There have already been occurrences where the execution indicated amounts of \$2,000 or \$3,000 and by the time the dust had settled, and the Director had filed the new statutory declaration, as much as \$40,000 was found to be owing.

If you act for a purchaser, ensure that you search executions early and ascertain the exact amount owing by contacting the Director of the Family Support Plan. If you act for a vendor, and this type of execution is mentioned in the letter of requisitions, ensure that there will be sufficient funds to discharge the execution, again by checking with the Family Support Plan office.

Do not undertake to discharge an execution filed by the Plan unless you have made prior arrangements with their office.

Philip M. Epstein