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Trouble Free?

Putting an offer in and buying a cottage is a lot different from a home purchase in the city.

Today Bob Aaron begins a new column on real estate law. Aaron is the president of the Ontario Real Estate Lawyers Association and a director of the Law Society of Upper Canada. He has practised real estate law in Toronto for the past 28 years.

The Victoria Day weekend is the traditional start of the cottage season in Ontario, as thousands of Ontarians head north - or east or west - to open up their summer retreat.

Many others will be making the trip on this or coming weekends looking to buy the perfect hideaway, and yet few realize that purchasing a cottage property is much more complicated than any city property purchase.

Today, cottagers paying as much or more for a country home as their city residence expect year-round roads, plenty of safe drinking water, a toilet that flushes and a sewage system with capacity for a dishwasher.

Recently, I had the opportunity to review a proposed offer for a cottage property.

Had it been for a small home in Toronto or its suburbs, the offer would have been perfect. It allowed for a home inspection, a condition on financing, a survey, a reasonable title search period, interest on the deposit and not much else.

Unfortunately, the person who drafted it left out all of the most critical issues of recreational property buying - issues that could easily turn a happy experience into a costly nightmare.

If you're buying cottage property, each of the following is a potential time bomb. Make sure they are properly dealt with in your offer.

ROAD ACCESS: Few cottage agreements of purchase and sale make reference to the issue of how you are going to get there. A cottage is useless if there are no legal means of access except, perhaps, a parachute.

When looking to buy a cottage, always ask if there is a road, if it is open year-round, and if there is any cost to use it.

Find out who owns the land underneath the road, whether there is a registered and permanent right to use it, and who pays for maintaining and repairing it.

If the cottage is on an island, or is not accessible by any open roadway, you will need a place to park a car and dock a boat.

SHORE ROAD ALLOWANCES: Shore road allowances are Crown reservations or "holdbacks" of a strip of land 66 feet wide along the shores of many lakes and rivers in Ontario. They lie between the cottage lot and the water's edge, and are usually owned by the local municipality or the Crown.

The road allowance, if it exists, is a public highway - even if it is not used as one - and the public may use the allowance for picnicking, boating, swimming or just passing through.

Many waterfront lots have boathouses, docks or even the cottage itself built on the road allowance, and these exist on land not owned by the vendor.

A survey prepared by an Ontario land surveyor is critical in cottage purchases. If you're paying big dollars for a cottage, you want to make sure the land it is sitting on is not owned by the government.

Many bitter court cases have been fought over the shore road allowance, including a landmark 1995 Court of Appeal case, which upheld the public right to use the beach front adjacent to private property in the village of Grand Bend.

WATER: Unlike urban properties, most cottages draw their drinking water from a lake or well. Before buying a cottage, a purchaser can have the water quality tested at a local public health laboratory.

Water quantity should be verified by a well driller's certificate, which is often on file with the Ministry of the Environment.

FLOOD PLAIN: Cottages built within the flood plain areas of local conservation authorities may have been constructed illegally. Verification is a must.

WATERFRONT: Many boathouses and docks have been constructed on the bed of a lake which may not be owned by the cottager.

The lake bed may be regulated by the municipality, the Ontario government, a conservation authority, the Coast Guard, or a waterway authority such as the Trent-Severn authority.

Checking on the legality of docks and boathouses - existing or proposed - is always a good idea.

ZONING: If the cottage is going to be used as a ski chalet or year-round residence, it is as important to make sure that the zoning permits winter use, and that the roads will be ploughed.

SEPTIC SYSTEMS: In the old days, a pit was dug in the ground and a little hut with one or more seats was stuck on top of it.

Today, a certificate of approval must be obtained before constructing a septic system, and a use permit issued before it can be activated.

A copy of these permits is almost as important as a deed or survey to cottage buyers.

Unfortunately, no records exist for many old cottages and the purchaser may have to take a calculated risk that the system will, sooner or later, have to be replaced.