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As if lawyers need extra work *Two-lawyer rule for registering deeds is overkill*

Question: How many lawyers does it take to register a deed transferring the ownership of a parcel of land?

Answer: For the past 212 years, the answer has been "one." Next year, the answer will be "two."

Ever since the province of Upper Canada introduced land registration in 1795, one Ontario lawyer could represent both a buyer and seller and register a transfer or deed from one to the other.

Of course, Law Society rules prevent a lawyer from acting for both sides where there is a conflicting interest between the clients, but as far as the government was concerned, anyone lawyer or not could represent both sides of a transaction and register a change of ownership.

Now, all that is about to change and the public will be forced to bear the brunt of the cost. In the wake of the passage of Bill 152, its fraud-buster legislation, the Ontario government is about to introduce a sea change in public accessibility to the land registration system.

Starting early in the New Year, only lawyers will be able to register a document to transfer land ownership. From a public perspective, however, the more significant rule change will require that virtually every ownership change must have one lawyer acting for the seller and a separate, independent lawyer acting for the buyer.

The policy reason for implementing the two-lawyer rule is the belief that having two lawyers involved in every title transfer will significantly reduce the occurrence of title fraud and the number of claims to the government's Land Titles Assurance Fund.

At the same time, the government has downloaded a significant component of the insurance risk from the Assurance Fund to LawPRO, the Law Society's own insurance company. Starting in the spring of 2008, title fraud claims where a lawyer has been involved either as a participant or a dupe will be referred to LawPRO instead of the government's fund.

As a result, every Ontario real estate lawyer will now have to contribute an additional \$500 a year to underwrite the new insurance risk.

Normally, most real estate transactions involve two lawyers. Many however, typically use only one lawyer. Some of these include transfers:

- from one spouse to another (either in a separation context or for any other reason)
- between parent and child
- to or from an owner to his or her own corporation for tax or other purposes
- in estates between an estate trustee and the beneficiaries
- in remote locations where the closest real estate lawyer is hundreds of kilometres away from the first one
- where the money changing hands is nominal, such as for a condominium locker
- between neighbours to correct a boundary problem
- for estate-planning purposes
- where both parties have been long-time clients of the same lawyer

Under the government's proposed rules, transfers or deeds in virtually all of these types of transactions will soon require two lawyers effectively doubling legal costs for the parties involved.

Is the rule change justified? I don't think so.

There are about 2.2 million land registrations every year in Ontario. Over the past 10 years, there has been an average of about 10 fraud-related claims a year to the Land Titles Assurance Fund. Not all of them are successful, and no decisions (if there were any) have been published on the fund's website since 2004.

The government has not provided any statistical or anecdotal evidence to support its position that a two-lawyer rule will eliminate or reduce real estate fraud. In the meantime, a significant segment of the public involved in real estate transactions will be inconvenienced and saddled with significant additional legal costs.

To me it's like killing a fly with a sledgehammer.

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