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## Cottage deals need special expertise

Last month I reviewed an offer to purchase a waterfront cottage near Kirkfield, Ont. The property was listed by a real estate agent in the Kawarthas and the offer was prepared by a Toronto agent.

After I read the offer, I told the would-be purchaser that it was one of the worst cottage-area offers I'd ever read.

Here are some of the things which were wrong with the document:

- The offer contained a warranty that there was no *significant* evidence of contamination of the drinking water. I assume significant in this context meant that anyone drinking the water wouldn't get *significantly* sick or worse.
- There was no warranty that the septic system had been properly installed and was in working order. The clause only stated the seller's belief that this was true.
- There was no reference to whether the dock and boathouse were built with permits from the provincial government, which owns the lake bed.
- Many Ontario lakes are surrounded by a 66-foot shore road allowance owned by the Crown or the local municipality. Unless closed and deeded to the adjoining cottagers, those road allowances may be used by any member of the public. In the offer I reviewed, there was no mention of the ownership of the shore road allowance.
- The offer contained a reference to the lot size of 2.45 acres and water frontage, but the registered Reference Plan showing the lot shape and measurements was neither attached nor provided to the buyer.
- As well, there was no requirement for a land survey report to verify that the building was actually sitting within the lot boundaries, and not on the shore road allowance or a neighbour's land.
- Overland access to the cottage was available by means of a shared roadway over adjacent land. The problem with the access was that the right to use it expired in 2017. Unless renewed at that time, there would be no guarantee of road access and getting to the cottage would have to be by boat only.
- There was no requirement for a well-driller's certificate. The water might be drinkable, but if the flow volume was inadequate, the well would be useless.

The Kirkfield offer reminded me of a recent decision of the discipline committee of the Real Estate Council of Ontario (RECO), the governing body of real estate agents.

The committee report was published on the council's website, [www.reco.on.ca](http://www.reco.on.ca). [[http://www.reco.on.ca/publicdocs/20081209\\_27516.pdf](http://www.reco.on.ca/publicdocs/20081209_27516.pdf)]

Peter Mazurkiewicz is a salesperson with Homelife Response Realty Inc. As agent for the purchasers of a rural property, he prepared an offer which was conditional only on a home inspection.

The MLS listing for the property disclosed that it had a well, as well as a water supply system and a septic tank.

Mazurkiewicz did not insert conditions into the offer with respect to testing the quantity or quality of the drinking water or the condition of the septic system.

Shortly after closing, the new owners discovered that the water supply was polluted and a malfunction in the sewage disposal system posed health and environmental risks.

In fact, it may have been installed incorrectly without a building permit.

The RECO discipline committee ruled that Mazurkiewicz acted unprofessionally in failing to insert into the offer any clauses regarding a water potability test, a well certificate regarding water flow rate and a requirement for either a waste disposal certificate or an inspection of the septic system by a qualified person.

Mazurkiewicz was ordered to pay a penalty of \$10,000, and Homelife Response Realty was ordered to pay a penalty of \$5,000.

When I told the buyer of the Kirkfield property about the Mazurkiewicz case and the clauses that should have been in the offer, he submitted a counter-offer which was not accepted, and the deal died.

Offers to purchase city homes and country homes are totally different. If you're buying a cottage, make sure that your real estate agent and lawyer have experience in recreational real estate.

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