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April 28 2012

Buying a cottage unlike other real estate transactions



The beginning of the cottage season is a good opportunity for a reminder that recreational real estate transactions are unlike any other property dealings.

Speaking to about 1,000 real estate lawyers at a Law Society seminar earlier this month, Midland lawyer Fred Hacker pointed out that the main difference in cottage deals is the emotional fervour that surrounds the transactions. "Buyers aren't buying a piece of real estate," Hacker said. "They're buying their sanctuary, their retreat, the focus of their family life, a lifestyle and the stuff of dreams.

"And sellers aren't just disposing of real estate; they're parting with memories, sentimental attachments, their history, and, in many cases, the best years of their lives."

With this emotional context as a background, Hacker spelled out a number of pitfalls that distinguish cottage real estate.

Perhaps the biggest issue is whether a cottage property has proper access by public road, private road, unauthorized roads across private property or Crown land, or by the use of launch ramps or marinas for properties with water access only.

Making sure the deed describes the entire property the purchaser intends to buy is another big issue. Septic beds, wells and even all or part of the cottage itself may be located on a neighbour's land due to historical sloppiness in marking property boundaries.

The critical need for a land survey is often overlooked. A survey will disclose whether the cottage is built entirely on the owner's land underneath it, whether there is a shore road allowance, and whether the water frontage has decreased due to erosion or increased as a result of land fill.

"Waterfront" properties may not extend to the water's edge, and a 66-foot shore road allowance is often owned by the municipality or a third party, with the cottage, dock or boathouse sitting on top of it. Docks or boathouses are frequently built on government-owned lake beds, usually without permits.

Previous owners may have "shored up" the water boundary to prevent erosion or to increase their lot size. Typically, the "filled lands" are not owned by the seller.

Hacker pointed out that low water levels on the Great Lakes are at a crisis point and cottage properties that once had their dock at their door now have hundreds of feet of ramps and docks as water levels recede. Cottages sitting on a bay where the water levels have dropped may see their waterfronts shrink as side lot lines are projected out towards the water, and begin to overlap each other.

As if these problems are not enough, cottagers may have to deal with contaminated soil, environmental restrictions, endangered species protection areas, development limits, aboriginal land claims, zoning bylaws, and illegal construction of cottages or septic systems without permits.

Sewage is a major issue in cottage country, and some buyers express shock when they find out that their new island cottage is not connected to municipal or any other system.

Many buyers assume that cellphone service, Internet service, land-line telephone service, cable television, garbage and snow removal, natural gas and other subdivision staples will be available at a cottage. In fact, not even hydro service is a given and electric generators or propane appliances may be necessary.

Furniture and personal effects are often sold with a cottage, but unless the offer is very well drafted, problems can arise when the agreement simply says something like "all contents as viewed."

Hacker also noted that if buyers have a principal residence elsewhere, the cottage will be subject to capital gains tax on a sale unless title is held in the name of an owner who can legally declare it a principal residence.

Hacker's main point was that the types of issues that are confronted in cottage country may vary from region to region, and are very different from those in urban real estate transactions.

If you're buying or selling a cottage this year, make sure that your real estate agent, insurance broker and lawyer have a firm grasp of the complexities of recreational property transactions.

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