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Real estate lawyers do not "waste" client's money

The way I see it, legal fees are the best consumer bargain in the entire real estate transaction

Last week I received an email from a Star reader who had just bought a \$588,000 home in Scarborough and wanted to know if I could refer him to a real estate lawyer "with the lowest fee in the business."

"I'm seeking the least expensive legal representation I can find," Richard wrote. "Now burdened with a large mortgage, I do not have the spare finances to spend on bloated real estate lawyer fees."

Richard told me that he contacted a number of real estate lawyers to obtain competitive quotes, and then sent me the details of the lowest quote he received. The quote included the lawyer's base legal fees, plus out-of-pocket expenses, title insurance and HST.

But Richard was still not happy and wanted something cheaper.

"I feel the disbursement and title insurance amounts should not exist as charges at all, nor should they be chargeable amounts to a potential client like myself," he wrote. "I told the lawyer in our first meeting that I chose to decline the title insurance.

"I've read your article on title insurance," Richard wrote to me, "and the brochures provided on the topic by the real estate lawyer, and I still reach the conclusion that the coverage is not necessary nor worth it."

It appears from Richard's viewpoint that the lawyer should either absorb all the client's out-of-pocket charges, including title insurance, which would leave the lawyer little or nothing at the end of the day, or else the lawyer should just not "waste" money on "needless" items like registering the deed, searching the title, or checking that the seller has paid any outstanding taxes and mortgages.

I pointed out to Richard that title insurance actually saves some search expenses that the lawyer might otherwise have to incur, so that the net cost is actually much lower than the policy premium. The lawyer he spoke to was going to use an insurer that did not provide what is known as legal services coverage. This coverage protects the purchaser even if a mistake occurs on closing that is not covered by an itemized risk in the policy.

This includes many of the risks normally beyond the scope of a lawyer's due diligence, including fraud, forgery, survey errors, and errors made by municipalities and utility companies in providing information to the lawyer.

Richard changed his mind about title insurance after I explained it to him, but he was still after the cheapest lawyer in the business. "My file is straightforward," he wrote to me. "I only want to pay (the quoted legal fee) to have the entire legal paper work completed. . . . I feel the quote I received is still far too high and not justifiable."

The way I see it, legal fees are the best consumer bargain in the entire transaction. Typically, they are far less than the land transfer tax, the annual property tax, or the property's fire insurance, and are a tiny fraction of the real estate commission paid by the buyer. Yes, the buyer. Make no mistake: the seller writes the commission cheque, but it's the buyer's money.

Of course, legal fees charged by real estate lawyers do vary, but over a relatively small range. I believe costs should not be the only factor in choosing a real estate lawyer.

An informed consumer will often ask questions about:

- The lawyer's experience.
- Whether the lawyer offers "the personal touch."
- Staff experience.
- The percentage of the law practice devoted to real estate.
- Whether the lawyer could be elsewhere on the day of closing.
- Whether the buyer will actually get to meet the lawyer in person on and before closing.
- Whether the purchase transaction is processed in their office or will the work be outsourced to a third party.
- The lawyer's ability to "quarterback" the transaction and to stick-handle the players if the transaction starts to go sideways.

Whatever the fees are, it's always a good idea to make sure that the lawyer will be accessible throughout the process and especially on closing.

And no, I didn't give Richard any lawyer names.

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