



Protecting your Clients in a Crisis

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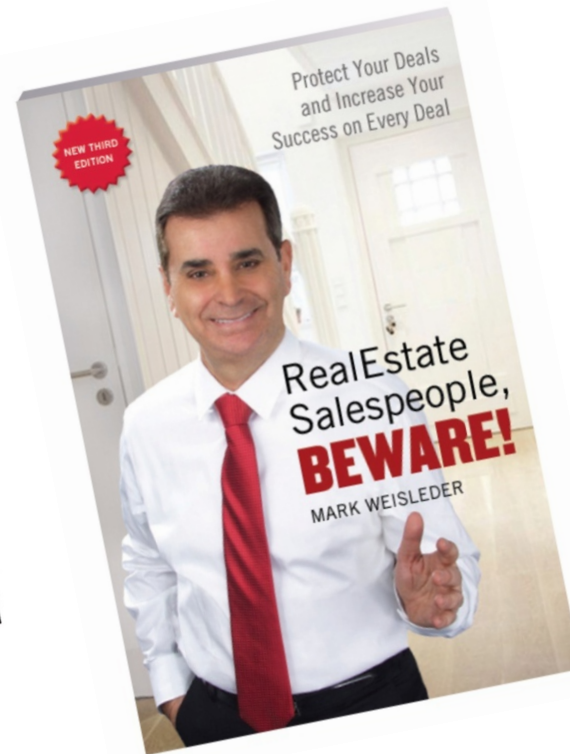
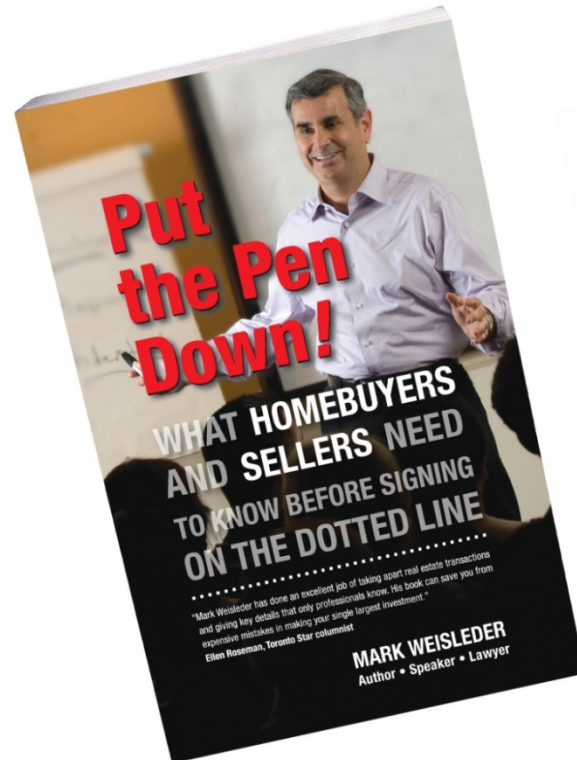
Mark Weisleder: Background

- ❖ Real Estate lawyer – 35 years experience
- ❖ Best selling author
- ❖ Guest Real Estate Advisor - CTV News, BNN, Global News, City TV, CBC radio, Newstalk 1010
- ❖ Columnist – Toronto Star, REM Magazine
- ❖ Senior Partner – Real Estate Lawyers.ca LLP

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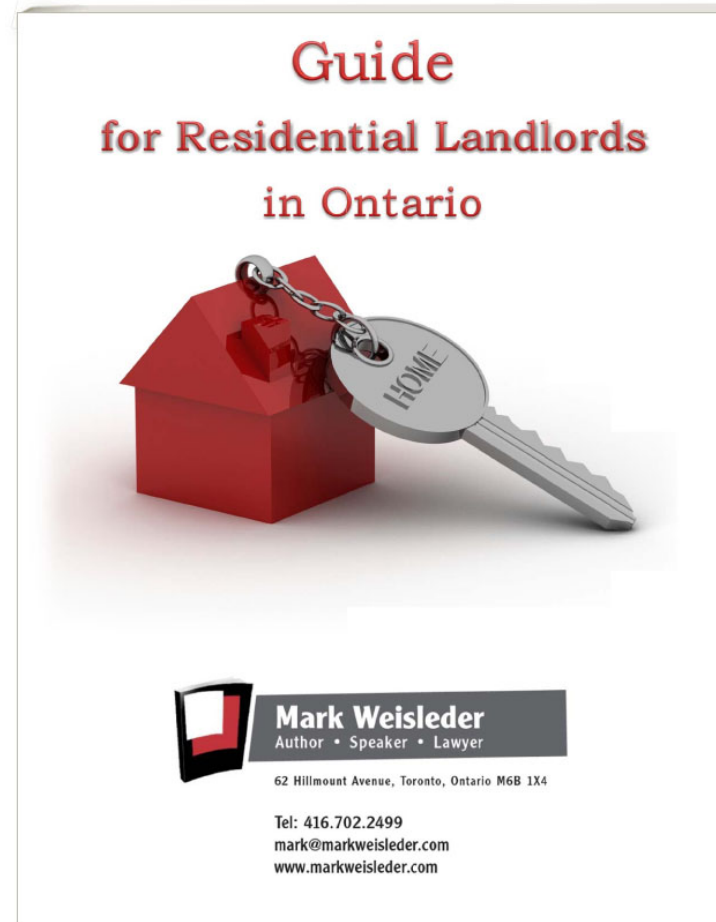
Mark Weisleder: Books Published



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LLP
Real Estate Lawyers.ca
“Real Estate Transactions Made Simple”

Mark Weisleder: Books Published



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Why Choose Real Estate Lawyers.ca LLP?

- Remote signings worldwide from 7am-midnight 7 days a week
- No need to take time off work or travel to sign paperwork
- All across Ontario (ie: GTA , Barrie, London, Niagara, Ottawa)
- Commissions are sent next day by EFT to brokerage (no cheques)
- Clients pay closing balance by bill payment no cheques required
- Deposits can be made directly to our trust account (no cheques)
- Agent and client advised immediately that deal closed
- Client provided closing report on the day of closing
- Lockbox provided for sellers to leave keys for buyers
- Mark available for legal support and advice



Can a buyer cancel a deal due to Covid-19

- Answer is no
- Similar to mini market crash of 2017
- The only way a deal could be cancelled is if the government registration system completely closes down
- Or if lenders cannot fund mortgage loans
- Both of these not likely to occur

When Buyers Cannot Close

- Deposit stays in trust account – until mutual release signed
- Seller can re-sell and sue for difference in price
- Seller can sue for deposit even if they re-sell for more
- Do not re-list until you receive letter from seller lawyer

Are You Entitled to Commission?

- If buyer cannot close
- Listing brokerage cannot sue seller for commission
- Buyer brokerage can sue buyer if there was a signed BRA
- If seller refuses to close
- Listing brokerage can sue seller for commission
- If buyer and seller sign mutual release
- Brokerage can only sue for commission if they have not signed the mutual release
- Brokerage does not need to sign mutual release, but must follow mutual direction regarding the deposit

Deposit Release Clause

- This clause can also be used to return the deposit if a condition is not waived for any reason by the buyer.
- Prevents seller from refusing to release the deposit when condition not satisfied
- The Seller agrees that in the event the Buyer does not waive the conditions within the dates and times as set out in this Agreement and its amendments, the Seller and the Buyer give the Deposit Holder, the Brokerage or other Party holding the deposit an irrevocable direction to release the deposit to the Buyer, without the necessity of a Mutual Release by either the Buyer or the Seller.

Should Parties Settle or Sue?

- Always better to settle – avoid costs of litigation
- Current deal is usually best deal seller will get
- Possible solutions
- Extension – further deposit, interest on balance due on closing
- Vendor take back mortgage
- Reduction in the purchase price
- Putting property back on the market without a release

Avoid Closing Issues

- Do not buy and sell on the same day
- Buy first and obtain bridge financing
- Then you only pay interest if sale cannot close
- Easier to establish damages and move on

Clauses to Consider in Times of Crisis

- Can our firm receive deposits under agreement of purchase and sale?
- First you need to enter Real Estate Lawyers.ca LLP in Trust on the Agreement of Purchase and Sale same as the entity receiving the deposit. Real Estate Lawyers.ca LLP is a Bill Payee with all banks and credit unions. The buyer simply logs into their online banking platform, adds Real Estate Lawyers.ca LLP as a payee and pays the deposit which goes right to our trust account the next business day. Please note that an account number is required which is the client file number which is provided by our office. Simply email deposits@RealEstateLawyers.ca should you require any assistance.

Clauses to Consider in Times of Crisis

- The Buyer shall pay the balance of the purchase price, subject to the usual adjustments by wire transfer.
- The parties acknowledge and agree that all closing documentation can be signed electronically and forwarded by email or fax in accordance with the *Electronic Commerce Act*, 2000, S.O.2000,c.17
- The parties agree that the keys to the property shall be left in a lock box at the property and the code to the same is to be provided to the Buyer's lawyer in escrow pending closing of this transaction.

Clauses to Consider in Times of Crisis

The parties herein acknowledge and agree that they are required to close this transaction notwithstanding any impacts of COVID-19, save and except the closing of the Land Registry Office(s) and all financial institutions. In the event the closing cannot occur due to a shutdown/disruption of the Land Registry System and/or banking system, then the closing date shall be automatically extended to the fifth (5th) business day following the date upon which said systems have returned to operational status and can clear funds accordingly.

Clauses to Consider in Times of Crisis

Buyer and Seller acknowledge that due to measures taken by the Provincial Government in response to the current COVID-19 pandemic, there could possibly be a delay at land registration that would affect the actual registration date from the date herein contemplated. In such event, the Buyer and Seller hereby agree to extend the completion date of this transaction until the next possible date following the scheduled date of completion that registration could actually be effected, with no additional charges being made to the Buyer. Notwithstanding the foregoing, in the event the Buyer's title Insurer has provided "gap coverage" to the Buyer, and all closing funds have been paid to the Seller's Solicitor in trust, keys may be released (possession transferred) to the Buyer with title transfer and registration to take place at a later date. In such circumstances all expenses and risk related to the property shall be the responsibility of the Buyer from the date of such escrow closing.

Can You Revive a Dead Agreement?

- Consider following amendment:
- “Whereas the agreement dated XXX (the « Purchase Agreement ») was terminated due to (the conditions not being waived in a timely manner or due to acceptance being completed after the irrevocable date)
- Whereas the parties have agreed to novate and revive the Purchase Agreement in accordance with the terms of this amendment :
- The parties agree as follows :
- The Purchase Agreement is hereby restated and novated on the same terms and conditions, subject to the following changes:
- All deposits paid to date shall be credited to the purchase price
- All conditions in the Purchase Agreement are deemed to have been fulfilled or waived (if required)
- The new closing date shall be XXX (if required)
- All other terms and conditions of the Purchase Agreement shall continue in full force and effect, and time shall continue to be of the essence.
-

Chattel Fixture Clause

- Seller agrees to leave on closing all chattels specified in the agreement and all fixtures including but not limited to any window coverings, curtains, blinds, drapery tracks, light bulbs, mirrors, shelving, TV brackets, broadloom where laid, area rugs, carpets, ceiling fans, or anything that is secured by a nail into the wall. All chattels and fixtures shall be in good working order on closing.

Key Condominium Clause

- Seller agrees to deliver to buyer on closing 2 complete sets of keys, garage door openers and FOBs for complete access to the condominium unit, the building, parking garage, mailbox, all common areas and the locker unit for the property purchased. If the seller fails to provide any key, garage door opener or FOB, then the Seller shall immediately pay the Buyer the actual replacement cost of any such key, garage door opener or FOB or the Buyer shall be given a credit for this amount on the final statement of adjustments.

Key Clause Homes

- Seller agrees to deliver to buyer on closing 2 complete sets of keys and garage door openers for complete access to the building, parking garage, mailbox, all interior and exterior doors, including any padlocks for the property purchased. If the seller fails to provide any key or garage door then the Seller shall immediately pay the Buyer the actual replacement cost of any such key or garage door opener or the Buyer shall be given a credit for this amount on the final statement of adjustments.

Rental Clauses

Buyer acknowledges that if there is an existing hot water tank, water treatment system, furnace, HVAC, alarm system and/or propane tank that may be subject to a rental agreement, lease agreement or conditional sales contract, (the Rental Agreements”) notice of which may be registered against title to the property, then the Buyer shall, upon closing and thereafter, be solely responsible for all future costs and other obligations related to the Rental Agreements. In the event the obligations under any such Rental Agreement are not effectively assumed and/or transferred to the Buyer on closing, the Buyer agrees to indemnify the Seller in respect of all such obligations and to reimburse the Seller for any payment or payments made by the Seller under the Rental Agreements for the period after closing. This provision shall survive and not merge on closing.

Holdback Clause

“The parties agree that the amount of \$ shall be held back on closing (the “Holdback Amount”) by the buyer/seller solicitor in trust to ensure that all work to be completed by the seller according to the Agreement has been completed in a good and workmanlike manner/ and that the seller has provided to the buyer a letter from a licensed electrician/plumber/ contractor that the work has been completed (the “Certificate”). If the Certificate is not provided on or before closing, then the buyer shall submit an estimate to properly complete the work, and the seller shall either complete the work at their expense within 30 days after closing or the payment shall come from the Holdback Amount. If the Certificate is provided before closing or within 30 days after closing in accordance with this section, then the Holdback Amount shall be released to the seller.”

Residential Tenancies Act

- Can you evict a tenant in advance if you want to sell your home?
- Answer is no
- Can only evict if you find a buyer willing to move in on closing
- Best is to find the tenant another place to live, pay compensation and move them out before you list
- Not easy anymore to do this
- Will be more difficult if Landlord and Tenant Board not conducting hearings

Residential Tenancies Act

- If you have a Buyer
- 3 possibilities
- Buyer can accept the tenant
- Buyer can ask for vacant possession to rent to someone else
- Buyer can move in on closing
- If buyer accepts the tenant, just say so in the agreement
- If buyer wants vacant possession to rent to someone else, agreement must be conditional on making deal with tenant
- If buyer moving in on closing, clause to consider

Residential Tenancies Act

- “The buyer agrees that they or their immediate family intends to move into the property on closing. In this regard, the seller agrees to provide the applicable 60 days’ notice to the tenant using Form N12 under the Residential Tenancies Act, on behalf of the buyer. The buyer agrees to provide whatever support information may be required to demonstrate that the buyer or their immediate family will in good faith be moving into the property on closing and to indemnify the seller for any damages the seller suffers if the buyer does not remain in the property for at least one year after closing. In the event that the tenant disputes the notice as given, then the parties agree to extend the closing of this transaction to a period not more than 60 days, in order to effect the eviction of the tenant. In the event that vacant possession cannot be obtained prior to closing, as extended, for any reason, then the buyer shall have the right, but not the obligation, to complete the transaction and accept the tenant, or cancel the agreement and have any deposit returned, without interest or deduction.”

Rules for Showings

- Consider the following:
- limiting showings to 2-3 people
- Requiring masks and plastic gloves from everyone who enters
- Warning to anyone with any Covid-19 symptoms not to enter the home under any circumstances
- Obtaining a waiver of liability from everyone entering the home
- Consider similar rules if thinking of conducting an open house, if this will be permitted

Rules for ID Verification

- Goal is to limit time with potential client
- Consider everyone wearing mask
- Take photo of ID, fill in everything later; or
- Have potential client participate in video chat
- Show picture ID front and back
- Send photo of both
- Have client scan and send both
- Have capability to verify picture is similar to actual government issued ID (may be app that does this)

Principles of Disclosure

- Patent defects do not have to be disclosed
- Material latent defects must be disclosed
- If they make a home uninhabitable or dangerous
- Ans Seller must know about this
- Examples
- Foundation Problems
- Major leak not repaired
- Mold behind the walls

Principles of Disclosure

- Agent must follow lawful instructions of seller
- Agent must disclose if they have their own buyer client – provided seller agrees
- To protect a buyer from stigmas:
 - Google the property address on the internet
 - Talk to the neighbours
 - Insert clauses

Clause to Protect Buyers

- The seller represents and warrants that during the time the seller has owned the property, there has been no murder, suicide, illegal grow operation, natural death or shooting at the property and to the best of the seller's knowledge and belief, there was no murder, suicide, illegal grow operation, natural death or shooting at the property prior to the seller taking ownership. This warranty shall survive and not merge upon the completion of this transaction.

Thank You

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