

DEAL OR NO DEAL? CAVEATS AND PLOS

by John B. Martens

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What rights are available to a purchaser of land when the vendor refuses to close? This situation arises in both residential and commercial real estate transactions more often than most would expect.

The law provides special remedies for parties who have an interest in land as a result of a purchase and sale agreement. Under Manitoba law, a purchaser of property may file a caveat in the Land Titles Office on the title to property which is the subject of a purchase and sale agreement. A caveat is often filed when the vendor refuses to proceed with the contract or refuses to recognize that a binding contract exists.

At the purchaser's request, the caveat will be registered by the Land Titles Office on title to the property. However, after the caveat has been filed, the owner of the property, in this case the vendor, if it is of the opinion that the purchaser does not have a valid interest, may request the Land Titles Office to issue a 30-day notice. After a 30-day notice is served upon the caveator, it has 30 days to commence a Court action to enforce the caveat, failing which the caveat will be removed from title by the Land Titles Office upon the request of the owner.

What happens when the purchaser is served with the 30-day notice? Court proceedings to protect the interest in land must be initiated by the purchaser within 30 days of being served with the 30-day notice. If the purchaser commences a court proceeding, it will also seek a Pending Litigation Order ("PLO") which is then filed in the Land Titles Office. This creates a charge on the property much like a caveat. Although similar to a caveat, a PLO must be removed by order of the court or consent of the parties and cannot be removed by a 30-day notice.

What is the effect of a caveat or PLO? Both a caveat and PLO give warning to the public that the caveator has an interest in the property. Most purchasers and financiers will require that all caveats and PLOs be removed from title to property before it is transferred and before financing is approved. The effect of the caveat is therefore to prevent any dealing with the property in question without taking into account the alleged interest.

What if a caveat or PLO is improperly used? If a caveat/PLO is improperly used, for example, to tie up property when the caveator really has no interest in the property, the owner of the property may seek damages for the unreasonable placement of the caveat/PLO.

How does an owner contest a PLO? If an owner wants a PLO off title to the property, it must either come to an agreement with the caveator for removal of the PLO or apply to the court. At the hearing, the Court will determine whether the purchaser has an interest in the property sufficient to maintain the PLO. The right of the purchaser to maintain the PLO on the property will, among other things, depend on whether or not the vendor has bound itself to a contract. Although at first glance an accepted offer to purchase may appear to be binding, it will be important to consider what terms and conditions are contained within the contract. At times, the dispute between the parties as to whether there is a binding contract will depend on whether or not the contract was subject to conditions to be fulfilled by the parties, or subject to conditions to be fulfilled by a third party, which are out of the control of the parties involved. This will involve examining the contract and determining the obligations of each party. For example, did the parties agree on a deadline to obtain zoning from the municipality?

All of this to say that there are legal remedies available for purchasers when a vendor fails to proceed with a contract of purchase and sale. It is important to remember, whether you are the vendor or the purchaser, that the contract between the parties will, in the majority of cases, be the most definitive document available. It is therefore extremely important that the terms of the contract clearly state what the parties have agreed upon.

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