

Local

Real estate deal not always a deal

By Steve MacNaull

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The latest twist in Kelowna's red-hot real estate market sees vendors weaselling out of deals to get more money.

"When there's a whole lot of money at stake, people start looking for loopholes," said Westside lawyer Paul Hergott, of Hergott Law.

"In the past, a developer or homeowner who is selling would never collapse a deal if the buyer was one day late transferring the money or taking off that last subject. But now, if the developer or vendor stands to make an extra \$100,000 with another buyer, they are exercising that loophole."

Hergott tells of a case in which a Westside landowner agreed to sell waterfront property to a buyer for \$1.5 million and the buyer put down a \$100,000 down payment.

Over the next year, prices soared. The landowner pulled out of the pact by refunding the down payment and sold to another buyer for twice the price.

"The original buyer took the case to court, but lost the property," said Hergott.

"If you get burned, there's always the option of a lawsuit, but it's expensive and you may not win."

The key is to have a binding contract and ensure subjects, such as financing, selling another property and satisfactory house inspection, are taken off by the deadline.

However, even that may not work when it comes to an entire development.

Many developers price units in a complex competitively and sell them all in a one-day pre-sale.

However, if construction doesn't start for a year and it takes a year or more to build, the developer may find that higher material and labour costs turn the project into a money loser.

That's happened twice in Kelowna.

The Conservatory in North Glenmore sat idle after pre-sales. Prices escalated, and the developer refunded deposits to buyers and put the units up for sale again at a higher price.

The project is now under construction and nearing completion.

The original Icon highrise development sold 60 per cent of its units in 2004 and then bowed out in 2006 by refunding deposits, claiming it was too expensive to go head.

A new developer has picked up the Icon option.

"Developers don't do it (back out) very much, even in a market like Kelowna, because it's a very bad public relations move," said Royal LePage real estate agent Bart Dyck, who has helped market projects such as the 12-storey Downtown Lofts.

"It may be happening a little more in single-family home sales, so it's important to have a contract and know the subjects."

Hergott is happy his purchase of a condominium at the Westside Aria project went smoothly.

He put down a deposit and signed a purchase agreement in the summer of 2006 to buy a unit for \$287,000.

The condo was just recently finished and turned over to him when he paid the remainder.

However, the condo is now worth \$380,000, which is what he has it priced at for sale.

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