

Lawyers benefit from battle over multiple listing service

Online services lets lawyers act as 'quarterback' for real estate transactions

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FOCUS ON REAL PROPERTY

As the federal Competition Bureau battles with the Canadian Real Estate Association (CREA) over the Multiple Listing Service (MLS), lawyers have an opportunity to return as the "true quarterback" of the sale or purchase of a residential property, according to Ontario lawyer Mike Forcier.

"Lawyers could be negotiating the contract and finding out what the client wants from the very beginning. And with the Internet, there's already a huge wealth of information out there on homes for sale. But people need someone to decipher the details - and who better to do that than a lawyer, who has the specialized knowledge to deal with closings and negotiations," says Forcier, a 53-year-old sole general practitioner in Owen Sound, Ont., who focuses mainly on real estate and family law.

"We should embrace this chance, not fear it."

He's certainly doing the former.

Seven years ago, he helped launch Propertyshop.ca, an online service in which residential property owners sell their own real estate while relying on a lawyer to provide the legal work and advice.

Backed by seven lawyers, some of whom nine years ago formed a company called Lawyers Web Property Shop Ltd. that now runs the website, Propertyshop.ca currently has 64 Ontario solo and small-firm lawyers - including veteran real estate practitioner and Law Society of Upper Canada bencher Bob Aaron - who charge, on average, between one and one-and-a-half per cent of the property sale price to provide advice on such matters as conditions for sale and purchase, zoning, legal title and title insurance, negotiating the Agreement of Purchase and Sale, and conducting legal searches required for opinion on title. Lawyers pay \$1,000, plus HST (as of July 1) in Ontario, to

join the online service.

Through an agreement with Ottawa real estate agent Joe Williams - whom The Ottawa Citizen recently dubbed the city's "most hated realtor" for eschewing the standard commission - Propertyshop.ca clients only pay \$109 plus HST, unless the buyer has an agent and the commission is negotiated, to have their homes listed on the MLS. The MLS controls about 90 per cent of residential real-estate transactions in Canada. The only additional charge is \$380 (plus HST), paid to Propertyshop.ca, which includes a listing on the website, photos and description of the property for sale, and two signs: a large custom-made one for the lawn (with the price listed) and a "talking" one featuring a three-minute pre-recorded information message on the property which prospective purchasers can obtain by calling a local or toll-free number.

There's also a back end to the site in which lawyers can enter an ID number and obtain the vendor's name, a legal description of the property, download an agreement of purchase and sale, "and draft an offer in minutes," adds Forcier.

Based on a \$250,000 sale with a one-and-a-half per cent commission, a lawyer with Propertyshop.ca would earn \$3,750 rather than the typical \$500 to \$600 in legal fees.

While the idea of a lawyer charging a fraction of a real estate agent's standard five per cent commission to complete a transaction might seem novel in Canada, Forcier discovered that it's quite common in Scotland where solicitors charge a one to one-and-a-half per cent commission on a property sale with no realtor involvement.

"I've never understood why, in a real estate deal, the most important document - the Agreement of Purchase and Sale - is negotiated by a realtor," says Forcier, who characterizes Canada's real estate industry as "one of the last great cartels." "I think real estate agents overcharge and there's too many of them," he states, adding that unlike the five to six years of training lawyers must complete before practising law, real estate agents only need to complete an eight-to-ten-week course (with the first section dealing with "dressing as a professional and how to figure out your commission.")

"Most realtors don't like me."

He says that meanwhile, lawyers left to handle the legal work in a transaction do "almost nothing."

"All we do is a bunch of clerical work - taking information from one form and putting it into another. But we're the ones who have to make everything right.

"With a growing number of private deals, lawyers are working harder, and unlike realtors, are not getting paid more. So when people are used to paying five per cent commission to a real estate agent, they will gladly pay one or one-and-a-half per cent to a lawyer."

As lawyers reduced their residential real estate rates over time, Pallett Valo LLP, the Mississauga

firm where Ray Mikkola is a partner and head of the commercial real estate law group, opted to not offer legal services for residential real estate transactions.

"To do a good job, you need to spend some time, and we decided we couldn't do it at a reduced rate," explains Mikkola, who worries that if other lawyers get more actively involved in listing and selling real estate now, they might lose referrals from realtors for traditional legal work involving a transaction, since lawyers could be seen as competitors. That would hit sole general practitioners in rural and remote communities the hardest.

"There is a shortage of lawyers in smaller areas, because it's hard to make ends meet," explains Mikkola, a member of the executive of both the Ontario and Canadian Bar Association's real property sections.

"One way lawyers pay rent and staff is to have a steady stream of residential real estate transactions."

However, those lawyers could also diversify into selling real estate and benefit if the Competition Bureau is successful in challenging what it has characterized as CREA's "anti-competitive rules" regarding the MLS, which accounted for \$149 billion in sales last year - an amount "bigger than Canada's petroleum industry," according to the Vancouver Sun.

Despite amendments made earlier this year to CREA rules that eliminated the requirement of a full-service realtor as part of any MLS listing (CREA still allows Canada's more than 100 local real estate boards the flexibility to set their own rules), the Competition Bureau stated in a March 22 news release that the 99,000-plus-member association continues to "deny consumer choice and stifle competition" by not removing "the existing roadblocks to real estate agents who list properties on the MLS from offering innovative services and pricing options to consumers."

CREA's rules "restrict the ability of consumers to choose the real estate services they want, forcing them to pay for services they do not need," said Melanie Aitken, a lawyer who serves as Canada's Competition Commissioner and is a past bencher of the Law Society of Upper Canada. (In a recent interview, she told Bloomberg that Canadians paid \$7.5 billion in fees to real estate agents last year.)

On June 30, the Competition Tribunal will hear motions for leave to intervene in Commissioner of Competition v. Canadian Real Estate Association, in which Aitken's office has asked the tribunal to prohibit CREA "from directly or indirectly imposing the MLS Restrictions on the use of the MLS and related trademarks when licensing those trademarks to member real estate boards."

The Ottawa-based National FSBO [For Sale By Owner] Network Inc. and lawyer and former licensed real estate agent Lawrence Dale, co-founder of the Toronto discount brokerage, Realtysellers (Ontario) Ltd. (whose operations were suspended in 2006 over access to the MLS system), and who is also part of a \$100-million lawsuit against CREA and the Toronto Real Estate

Board, are both seeking intervenor status in the case, which is expected to be heard in the fall.

Ultimately, the issue is about giving consumers freedom of choice, says Alan Silverstein, director of legal engagements and new initiatives for Telus's automated software mortgage program, Assyst Real Estate.

"There's no question that the MLS belongs to realtors. But people should be able to decide whether they want full or limited service from a real estate agent," says Silverstein, who is certified by the Law Society of Upper Canada as a specialist in real estate law.

"The public wants to pay based on getting value for service. But I don't think that a property that sells in 24 hours is worth a five-per-cent commission."

As for lawyers getting more involved in selling homes, Silverstein points out that under s. 5 (1) (g) of the Ontario Real Estate and Business Brokers Act, they're already allowed to trade in real estate (although a lawyer cannot split a commission with a broker on a sale or a purchase).

Meantime, Forcier hopes to soon have 200 Ontario lawyers signed up with Propertyshop.ca.

"The big difference between real estate agents and sole practitioners is that they are organized by big brands - RE/MAX, Century 21 - and we're independents," he says.

"So we've organized a way to help lawyers cooperatively and give consumers better service at a lower price using a lawyer.

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