

The Essentials of the Agreement of Purchase and Sale

Presented by: Raymond H. Mikkola BA LLB
Ontario Bar Association: Young Lawyers'
Division

Essentials of the Agreement of Purchase and Sale

- The Purpose(s) of the Agreement
- Tips for Drafting the Agreement
- Conclusion

1. The Purpose(s) of the Agreement

a. To create legal obligations

- Agreement void unless reduced to writing
- Identify parties
- Identify the property
- Identify the purchase price
- Identify the closing date
- Beware of LOI's, MOU's, etc....

Purpose(s) of the Agreement (cont'd)

b. To give effect to the client's instructions

- Reflect the “business deal”, or to help to create it
- To advocate for your client
- To ensure a smooth(er) closing

Drafting the Agreement

Embrace the challenge

Drafting the Agreement

Listen carefully to client's instructions, make notes, and read all available information (listing, survey, appraisal report, lender's commitment letter)

Drafting the Agreement

Make liberal but careful use of precedent (single purpose precedent, definitions, references to repealed statutes, boilerplate)

Drafting the Agreement

Be bold!

Drafting the Agreement

Seek assistance when drafting special clauses
(tax driven clauses, estate planning driven
clauses, land development related provisions)

Drafting the Agreement

Send draft to client and client's advisors (only as directed) for review and approval

Conclusions

The “devil is in the detail”

The standard is high

Learn from experience