

No E-mails Permitted



By Brian Madigan LL.B.

Just in case you were wondering, e-mails are not permitted as official communication of Offers and related documents. That is the case under the *Real Estate and Business Brokers Act, 2002* and it is confirmed by agreement between the parties.

Here is the specific clause in the standard form agreement of purchase and sale:

“3. NOTICES: *Seller hereby appoints the Listing Brokerage as Agent for the purpose of giving and receiving notices pursuant to this Agreement.*

Only if the Co-operating Brokerage represents the interests of the Buyer in this transaction, the Buyer hereby appoints the Co-operating Brokerage as Agent for the purpose of giving and receiving notices pursuant to this Agreement.

Any notice relating hereto or provided for herein shall be in writing.

This offer, any counter offer, notice of acceptance thereof, or any notice shall be deemed given and received, when hand delivered to the address for service provided in the Acknowledgement below, or where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

FAX No. (For delivery of notices to Seller)

FAX No. (For delivery of notices to Buyer)”

The rules related to communication may be summarized as follows:

- The listing broker is “agent for the seller
- The co-operating broker is “agent” for the buyer
- A single broker may not represent the buyer as well as the seller
- An address for service is provided for the seller and the buyer in the Acknowledgement
- Delivery to the address, but not specifically the person is acceptable
- A fax number, if provided may be used for electronic transmission

You will notice that there is no provision for e-mail delivery and exchanges. The

problem here is that facsimile transmissions are antiquated and outdated methods. The document deteriorates significantly when transmitted by fax.

So, let's consider the following sequence:

- Bob, the agent for Bill the buyer, drafts an Offer
- Bob faxes it to Bill
- Bill faxes it back to Bob
- Bob faxes it to Ray, the seller's agent
- Ray faxes it to Sid, the seller
- Sid makes a change, and faxes it to Ray
- Ray faxes it to Bob
- Bob faxes it to Bill
- Bill agrees to the change, and faxes it to Bob
- Bob faxes it to Ray
- Ray faxes it to Sid

The deal is now done, so Sid faxes it to his lawyer Joe to complete the deal on his behalf. Joe finds it virtually impossible to read. It is blurry, out of alignment and illegible. And, why not? It's been faxed 11 times, and that was a simple Offer with one small change.

It is now relatively commonplace to send a scanned copy of the document. This document at least has the quality of the first fax copy. It does not deteriorate with transmission. It is conveyed by e-mail and is available instantly by others at the other end. Fewer and fewer offices, although obviously not real estate brokerages no longer maintain fax machines. Communication is strictly over the internet by e-mail.

However, when it comes to submitting Waivers and giving Notices, it is important to ensure that all such communications are sent by fax, for legal compliance, unless hand delivery is available as an option.

Don't run the risk that your waiver or notice is "out of time".

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