Oklahoma Offer

By Brian Madigan

What is an Oklahoma Offer!

Actually, it's a simple form of real estate fraud. There are variations depending upon how many parties are involved and who is the intended victim.

So, let's look at two examples, in the first the victim is the vendor and in the second, the mortgage company is the intended victim.

Vendor as Victim

In this case, the purchaser and his agent seek to defraud the vendor.

An Oklahoma Offer may be defined briefly as any Offer whereby the vendor takes back a mortgage that is unsecured by the value of the property.

Let's assume Bill wants to purchase Dominic's house which is valued at $250,000. The problem is that Bill doesn't have any money.

Bill intends a first going on at $200,000 and expects Dominic to take back a $50,000 second. The problem is that the vendor doesn't really realize how large the first is going to be.

The usual and correct words in an Offer should be "the purchaser agrees to arrange a first mortgage of **not more than** $200,000".

However, in the Oklahoma Offer it says "the purchaser agrees to arrange a first mortgage of **not less than** $200,000".

The trick is to catch the unsuspecting vendor who is not paying attention. Here, the purchaser might arrange a $225,000 first. The vendor, Dominic takes back a $50,000 second, but really needs the property to be worth $275,000 if his mortgage is to be secured.

In all situations, the first and the second will add up to more than the value of the property.

So, if the purchaser defaults, the first mortgagee is OK, but the vendor, Dominic (second mortgagee) is not.

Mortgage Company as Victim

This next situation is a slight variation on the same scheme. This time, Bill needs to work along with Dominic. They agree to say that the sale price is higher than the actual sale price. So, the mortgage company will lend more money at favourable rates. In the case of a standard first mortgage, the mortgage would not exceed 75% of the value of the property. Or, they might try to simply circumvent the CMHC high ratio insurance fees. In any event, the intended victim would be the mortgage company.

The Criminal Code

Section 362 of the Criminal Code makes it an offence punishable by up to 10 years in prison to obtain credit by a false pretence or fraud. A mortgage is considered as credit under the Criminal Code. Anyone who knowingly assists in the misrepresentation is a party to the offence and subject to the same penalty.

So, in the latter case, both Bill and Dominic (and their agents) would be liable. In the first case, just Bill and his agent would be liable. Dominic was just an innocent party.

The Reality

In my experience, the Oklahoma Offer is a thing of the past. I have been involved in thousands of real estate transactions and the last actual Oklahoma Offer (subject to litigation in the late 1970’s) was negotiated between the parties in 1972. Since then, too many professional are aware of the scam, and none of these deals actually close.

The second variation, perhaps better known as an Oklahoma swindle is plain and simple mortgage fraud. And, it is as common today as it ever was. However, sophisticated mortgagees are increasingly using their own (and reliable) appraisal firms. This approach catches most cases ahead of time.

The first situation is more important for real estate students and agents since it is always in the real estate courses, even if it doesn't occur frequently in practice.

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