

Schedule “A” Interpretation



By Brian Madigan LL.B.

The standard form agreement of purchase and sale in Ontario has changed. There is a standard four pages of fine print plus fill in the blanks, followed by a Schedule “A”.

It is the schedule that is to be “your deal”. Otherwise, the rest of the document is the same as everyone else’s deal except for the fill in the blanks clauses, that is the parties, the property, the price, the deposit and the closing date

First, let’s have a look at exactly what the interpretation clause says. Reproduced below is the relevant wording contained in the standard form Agreement of Purchase and sale currently in use in Ontario.

“24. AGREEMENT IN WRITING. *If there is a conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto shall constitute the entire Agreement between the Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.”*

Actually, the wording is rather poor. First, the description of the clause in the heading, namely “Agreement in Writing” really gives no indication of its contents. It combines the elements of several clauses contained in commercial contracts:

- Entire agreement provision
- No representations provision
- No collateral agreements provision

These clauses are the basic exclusionary provisions contained in most standard commercial agreements.

However, this particular clause is a little different. It is broader than that. At the outset, it deals with interpretation. There is now, a standard form document.

Basically, it should apply to everyone. Don't change it! If you want to add anything, go to the Schedule. Also, if you want to have something specific to your agreement, then go to the Schedule.

This is a similar approach to the standard form construction document CCDC. The purpose of that agreement is to start out with the basic form of document. Everyone bidding on a construction contract will know what that is. If you want to make changes, then add them in a schedule. This way it's easy to find. The change from the standard form is clearly outlined in the Schedule. So, in the tendering and bidding process, you just see what changes were made.

This approach is now somewhat the same. Everyone expects the standard wording. If there is to be a change, then it will be noted in the Schedule.

The next issue, is whether there is a binding agreement "ad idem" between the parties, if one makes a simple change to one of the regular and expected provisions in the agreement? The standard part runs some four pages of mostly fine print.

According to the *Real Estate and Business Brokers Act*, agents are to use current forms. So, are current forms expected? Are they the norm? What happens if someone uses last year's form? What happens if the buyer uses one form and the seller uses another?

Today, these forms can be printed or available in software packages. The wording in the clauses change over time, including the very important Title clause which sets out what you are bargaining for in the deal.

Realtors should be cautioned about the risks associated with alteration in the first four pages. Here, changes could be made by insertion, deletion by white out, or strike-out. Once photocopied, the changes may no longer be apparent. Are they still binding?

Clearly, the better course of action would be to make any changes in a Schedule. This way, they will be apparent and come to the attention of the other party. They will, of course, be binding without having to make an application to Court

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