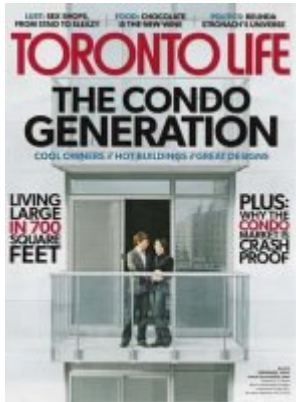


Want to Change the Use?



By Brian Madigan LL.B.

Let's assume that you want to change the use of the property. What does the agreement say about that? The standard form agreement of purchase and sale says:

“9. FUTURE USE: Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.”

So, what does that mean? The buyer takes the property “as is”. The present owner’s use is the use that is being conveyed. If the buyer wants a change, that’s fine, but it would have to take place later at the buyer’s own risk.

For protection, where a change in use is in the minds of both parties, and the property is priced accordingly, the buyer will need to include a provision in the agreement that makes the new use a condition. There’s not much point to a warranty. The buyer needs to have this proposed use a condition, so that he may withdraw from the agreement unless it is satisfied.

For example, a home owner may have a nice bungalow on a corner lot, worth \$500,000. But, the owner realizes that it is a prime site for condo development, and moves the price to \$2.5 million, which is the “going rate” for condo developments.

If the price is \$500,000, then the developer takes his chances, but if the price is \$2.5 million, then he will include a clause that the deal is conditional upon a successful rezoning of the property to permit the development and construction of a certain minimum number of condominium dwellings.

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