

Question 6 - Requisition Letter

1. Do you regularly send out a requisition letter?
Yes / No / If not, why not?

Results

97% of respondents indicated that they regularly send a requisition letter.

WG comment:

It is good practice to send a requisition letter. Requisitions are not merely a means of communication between two parties but a process by which matters requiring attention, such as defects in title, are investigated and properly dealt with in a timely fashion in order to fulfil the requirements of a purchase contract to the parties' satisfaction. The letter is simply the ultimate act of the requisition process.

2. Do you send out a requisition letter on a builder deal? (Yes/No)

Results

62% of respondents indicated they sent a requisition letter on builder deals.

WG comment:

This is again a good practice to send a requisition letter. In the situation where the builder has provided a "Title Memorandum or Title Advice Statement" which fully addresses all of the issues which would have been addressed in a requisition letter, then the need is greatly reduced and perhaps negated.

3. Which describes the most common amount of time between the requisition date (R/D) and you receiving the agreement of purchase and sale ("APS")?
 - a) APS received more than 2 weeks before R/D
 - b) APS received 1-2 weeks prior to R/D
 - c) APS received less than a week prior to R/D, or
 - d) APS received after R/D

Results

48% indicated having 2 or more weeks, however, 52% indicated having less than 2 weeks and none after the requisition date.

WG comment:

The due diligence process is crucial in all transactions in order to permit the lawyer to undertake all inquiries to best protect the client. The committee suggests advising the client in writing of the possible lack of time to properly conduct any necessary due diligence in the event that the requisition date is looming. Real estate agents should be alerted to the pressure and risk involved in not providing the lawyer with sufficient time to undertake the necessary due diligence.

4. Do you provide a copy of the parcel PIN with your requisition letter? (Yes/No)

Results

59% of respondents indicated that it was their practice to provide a copy of the PIN with the requisition letter.

WG comment:

This is simply a wonderful courtesy extended to the other side and saves time and expense which is beneficial to all. Real estate lawyers typically are a congenial and helpful bar, and this is one of those practices which cement goodwill.

5. Do you requisition the deletion of expired covenants on title? (Yes/No)

Results

87% of respondents indicate that they did requisition the deletion.

WG comment:

This is good practice which will save you time and enhance your reputation. When the property is resold, the next purchaser's lawyer may likely requisition the deletion and you will be required to spend time to debate the issue or satisfy the requisition. If another lawyer is then acting for the vendor, you will likely be blamed for sloppy practice or negligence.

6. Do you requisition a declaration of possession for a residential resale property (non-condo)? Yes / No - rely on title insurance / No - other

Results

84% of respondents indicated that they did request a declaration of possession.

WG comment:

Declarations of possession are only of value in the Registry system and where there is a problem with the boundaries of the property. There is no adverse possession for condominiums or in the Land Title system, unless acquired before conversion. Most Ontario properties are now in the Land Titles system.

7. If acting for the vendor, do you:
a) sub-search the parcel PIN to identify any issues, or
b) wait for the requisition letter?

Results

57% of respondents indicated they waited to receive the requisition letter.

WG comment:

This practice underlines the importance of delivering a requisition letter and in a timely fashion. Vendor's lawyers should monitor for a time if by which they have not received the letter, they proactively do a sub-search to confirm there are no issues. The practice of including a copy of the PIN is that much more valuable in this situation.

If you do not conduct a subsearch, you might consider asking the vendor if they have or had a mortgage/charge, if they have ever been sued or if they had any disputes over their property.

8. If acting for the vendor, do you:
- a) sub-search executions against the vendor, or
 - b) wait for the requisition letter?

Results

63% of respondents indicated they waited to receive the requisition letter.

WG comment:

Depending on when and if the requisition letter is received, it is a good preventative practice to undertake a search to ensure your client's transaction is not delayed because of a similar name or other execution unknown to your client or the other side's tardy delivery of a requisition letter.

9. Do you use a computer program to generate your requisition letter? (Yes/No)
- a) If yes, which one?

Results

69% of the respondents indicated using a computer program to generate their requisition letter. Those who indicated a program, referred to Conveyancer or LDD's Realiweb.

10. Do you prepare a tailored requisition letter which only requisitions the specific issues of the transaction and the property, or, do you use a generic requisition letter with all possible issues noted?

Results

66% of respondents tailor their requisition letter to the actual issues to be addressed.

WG comment:

The popular view is that a requisition must identify a specific non-permitted title defect to be valid. The case of *Stykolt v. Maynard* [1942] 3 D.L.R. 654 is often cited for this proposition. The letter may be short if there are few items to address. A laundry-list of possible/speculative concerns is of little value and typically will only lead to a "Satisfy yourself" response.

11. Do you typically review the survey for a residential resale property (non-condo) and make requisitions as applicable? (Yes/No)
- a) If this is not your regular practice, when do you review a survey?

Results

59% of respondents indicated they did review a survey and requisition appropriately. Many who responded that they did not review a survey indicated it was because surveys are seldom available.

WG comment:

Lawyers' searches only address the quality of title (interests), while the survey addresses the quantity of what a client is purchasing (boundaries). It is good practice to review a survey with clients. If there is no survey, clients should be advised of the information they are not getting and how it limits their and your due diligence efforts. Title insurance does provide some relief for clients in the event of an issue, but it is not a substitute for an up-to-date survey.

12. In which County or district do you practice in (optional)?

Results

Responses were received from the following jurisdictions: Algoma, Brant, Carleton, Durham, Elgin, Hastings, Kent, Middlesex, Thunder Bay, Toronto and York – 11 of the 47 possible jurisdictions.