Condition or Covenant?

by
PETER RAMSAY

Licensees may recall the discussion of the *Aldred v. Colbeck*[27] case in the *Real Estate E&O Insurance Legal Update 2011* course. This case discussed the failure to investigate and disclose an underground oil storage tank and the responsibility for remediation costs. Other litigation resulted from that fact pattern.

This section features the case of *Gulston v. Aldred* (2010).[28] Participants will also cover:

- the potential buyer suing the seller for return of the deposit money because a condition to the contract had not been fulfilled or waived within the time period specified; and
- the seller arguing the remediation clause was a covenant, not a condition, and the potential buyer was obligated to complete the transaction.

Introduction

Although many terms in a Contract of Purchase and Sale of real property follow standard forms, there are some situations that call for the addition of non-standard clauses. A licensee can help buyers and sellers to avoid unnecessary and costly disputes by learning some basic contract drafting principles. In this section, we discuss the difference between two kinds of contract language—"conditions" and "covenants."

Contracts for purchase and sale of real property often contain "subject clauses." A "subject clause" is an example of a type of contract language that is called a "condition" or a "condition precedent." *A condition is a future event or action on which the existence or the extent of a contractual obligation depends.*

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continued . . .

[27] *Aldred v. Colbeck*, 2010 B.C.S.C. 57.
[28] *Gulston v. Aldred*, 2010 B.C.S.C. 241.

agreements, to litigating with respect to estate matters, damages, land use, labour, and employment cases in the British Columbia Supreme Court, the Court of Appeal and the Supreme Court of Canada.

The Real Estate Council of British Columbia mentions in the *Professional Standards Manual* that:[29]

> *The ideal subject clause is one whose criteria are so clear that it is completely obvious whether the criteria for satisfying that clause are met.*

Although the contract exists, the effectiveness of all, or some of, the obligations included in the contract are contingent: *if* certain conditions are fulfilled, *then* certain obligations under the contract become binding. A typical "condition" might read as follows:

Seller Taking Buyer's Property in Trade Clause[30]

Subject to the Seller entering into an unconditional Contract of Purchase and Sale with the Buyer for the purchase of the Buyer's property described as (describe property) by (date) .

This condition is for the sole benefit of both the Buyer and the Seller.

In contrast, "a covenant does not depend on a future uncertain event or action. A covenant is an enforceable promise; it is an obligation on one party to a contract to *do* something or to refrain from doing something. If the seller or the buyer defaults on a covenant, the rest of the obligations under the Contract of Purchase and Sale remain binding (including the obligation to complete the transaction)." A typical "covenant" might read as follows:

> *"The Seller shall repair the washer and dryer at the Seller's expense no later than 3 days before the Completion Date."*

If a party to a contract breaches a covenant, then the non-defaulting party has several remedies. If a party breaches an essential term of the agreement then the non-defaulting party may elect either to:

- treat the contract as being at an end; or
- seek monetary damages (but not both).

A term is considered essential if its breach goes to the root of the deal, i.e., if the breach would deprive a party of substantially all of the benefit it is expected to receive from the transaction. For example:

"the Seller shall provide good title to the Buyer except for the encumbrances set out in Schedule A."

If the breach is of a non-essential term then the only remedy available to the non-defaulting party is an action for damages. For example:

"the Seller shall remove the two derelict cars from the property before the Completion Date."

[29] Real Estate Council of British Columbia, "Subject-to Clauses – General Information," *Professional Standards Manual*, 2010, 7th Edition, online at http://www.recbc.ca/licensee/psm.htm

[30] Real Estate Council of British Columbia, "Trades," *Professional Standards Manual*, 2010, 7th Edition, online at http://www.recbc.ca/licensee/psm.htm

A court may decide to compel the defaulting party to perform its obligations, but such cases are rare. A court will order the defaulting party to perform its obligations only if the non-defaulting party cannot be compensated by an award of monetary damages, and if doing so does not harm innocent third parties.

Certain terms are considered essential because of past decisions by judges. Other terms are considered essential based on the interpretation of the agreement itself. For example, if an agreement contains wording to the effect that, "time is of the essence in this agreement," then every deadline set forth in that agreement is an essential term. If one party misses a contractual deadline, the other non-defaulting party may elect to treat that agreement as being at an end instead of seeking damages.

The Case

A recent case, *Gulston v. Aldred*[31] illustrates the kinds of disputes that can arise in connection with the confusion between a condition and a covenant.

FACTS OF THE CASE

On March 2, 2008, Ms. Aldred (the seller) entered into a Contract of Purchase and Sale (the "Contract") to sell a property in West Vancouver to Mr. Gulston (the buyer) at a purchase price of $1,570,000. The standard Contract of Purchase and Sale form was used, which includes a "time is of the essence" clause. The deposit was held in trust by a brokerage, whose licensee agreed to act for both parties under a Limited Dual Agency Agreement.

The day after signing the contract, Ms. Aldred learned that there was a decommissioned underground oil storage tank on the property. Ms. Aldred quickly disclosed this information to Mr. Gulston. On March 4, 2008, the parties entered into an addendum to the contract, in which Ms. Aldred agreed to remove the oil tank and to remedy any soil contamination caused by the oil tank, in accordance with current environmental standards.

At some point in mid-March, it became clear that Mr. Gulston could not complete on the agreed date. The parties signed several addendums to extend the completion date, to increase the deposit, and to allow for bridge financing. In early April, Ms. Aldred retained Digger Dick's Contracting Ltd. to remove the oil tank and to remediate any contaminated soil on the property. The parties signed a final addendum on April 28, 2008, in which the parties agreed to change the completion date to August 29, 2008.

The April 28, 2008, addendum also included the following clause, which became central to the legal action between Mr. Gulston and Ms. Aldred:

> THE SELLER SHALL, AT THE SELLER'S EXPENSE, REMEDY THE SOIL CONTAMINATION CAUSED BY THE UNDERGROUND OIL STORAGE TANK IN COMPLIANCE WITH CURRENT ENVIRONMENTAL STANDARDS AS OVERSEEN BY THE MUNICIPAL AUTHORITIES AND OBTAIN A CERTIFICATE OF APPROVAL FROM THE MUNICIPAL AUTHORITIES ON OR BEFORE MAY 29, 2008. (Emphasis added.)

LICENSEE PERSPECTIVES

One of the failings of a licensee is that they sometimes come to believe that they have an absolute knowledge of laws. Old King Canute thought that he had enough knowledge of tide movements that he could command the tide to ebb and flow at his convenience. He drowned trying to prove it. Don't be a King Canute. Send your client to a legal advisor for advice on an amendment that is anything more than a very simple change. The law is always much more complicated than it seems.

{ STEWART HENDERSON }

[31] *Gulston v. Aldred*, 2010 B.C.S.C. 241.

A very experienced lawyer once told me, that you don't write contracts for the parties, you write them for a judge because if the two parties want to close on that contract, it doesn't really matter if there are problems with the contract. Technically it does matter but if the parties want to close, we know that contract is going to close. However, if one of the parties gets cold feet, the first thing they do is look at the contract to see if there's an out and if the contract hasn't been drafted properly, the judge will find that. So really the only person you need to know, or worry about, is the judge because it is he or she who will discuss or decide the validity of your contract.

In a letter dated May 28, Digger Dick's confirmed that remediation had been completed and Mr. Gulston was immediately provided with this letter. On June 4, 2008, the District of West Vancouver completed its Underground Fuel Storage Tank Removal or Abandonment in Place Disposition Form (the "Certificate of Approval" referred to in the April 28 addendum).

On June 22, 2008, Ms. Aldred started a lawsuit against the former owners of the property, for misrepresentation and the costs of remediating the contaminated soil. On June 23, 2008, Digger Dick's filed a lien against the property in the sum of $166,463.07. Communications between the lawyer for Mr. Gulston and the lawyer for Ms. Aldred also began on June 23, 2008. In this letter, Mr. Gulston's lawyer asserted that Mr. Gulston would complete the purchase of the property on October 31. Further, the letter stated that:

> *Ms. Aldred failed to discharge her contractual covenant to have the soil remediation completed by the time specified in the contract . . . given that the breach of the contract was occasioned by your client failing to meet the contractually defined time for completion of soil remediation, our client has a title interest in the Mathers Property.*

On August 19, 2008, the lawyer for Mr. Gulston informed Ms. Aldred, through a letter sent to her lawyer, that Mr. Gulston did not intend to complete the purchase of the property. A number of reasons were given, including the following:

> **(d) There is no contract between the vendor of the above referenced property and Mr. Gulston. The vendor failed to complete the soil remediation within the time specified in the expired contract.**

Mr. Gulston did not complete the purchase of the property on August 29, 2008. Ms. Aldred immediately relisted the property and in January 2009 sold it to another buyer for $1 million (resulting in a loss of over $500,000). Ms. Aldred also claimed the deposit of $105,000.

In the lawsuit brought by Mr. Gulston against Ms. Aldred, Mr. Gulston argued that he was entitled to the return of his $105,000 deposit because a condition to the contract had not been fulfilled or waived within the time period specified. Mr. Gulston argued that Ms. Aldred's obligation to obtain a certificate from the District of West Vancouver relating to the soil remediation, on or before May 29, 2008, was a condition rather than a covenant. Because Ms. Aldred failed to satisfy this condition precedent on the date set out in the addendum of April 28, 2008, Mr. Gulston was under no obligation to complete the sale and would be entitled to the return of his deposit. Alternatively, if the clause was a covenant, Mr. Gulston argued that he was entitled to treat the contract as being at an end, because Ms. Aldred had missed the deadline for supplying the certificate (recall that the contract contained a "time is of the essence" clause).

Ms. Aldred argued that the remediation clause in the April 28 addendum was a covenant not a condition. While it was true that she had not performed the clause by the date specified, Mr. Gulston was still obligated to complete the

transaction. Mr. Gulston failed to complete the contract by the completion date, and therefore he forfeited the $105,000 deposit, and was liable for damages for breach of contract.

The judge agreed with Ms. Aldred. She based a large part of her reasoning on the distinction between a condition and a covenant. Ms. Aldred's remediation obligations under the April 28 addendum meant that she was positively and unconditionally required to remove the underground oil storage tank from the property, and to remediate any soil contamination caused by the oil tank. In the judge's view, she was also positively and unconditionally obligated to obtain a certificate from the municipal authorities certifying that the soil had been remediated on or before May 29. She retained Digger Dick's to carry out the first obligation and she ultimately performed the second obligation (even though the performance was a few days after the date set out in the April 28, 2008 addendum). The judge found that the inclusion of these positive obligations did not make the contract conditional upon anything. Nor did she find that Mr. Gulston could rely on the "time is of the essence" clause to avoid his obligations under the contract. In a later hearing to assess damages, Ms. Aldred received damages for the loss on the sale of the property, debt financing expenses, and mental distress totaling more than $600,000.

Analysis

Principles to Be Take From the Case

In this case, the judge focused on whether Ms. Aldred's remediation obligation was conditional on any event or action. But there is an argument to be made that the remediation clause did indeed include a condition.

Notice that the remediation clause in the April 28 addendum contains two parts. The first part is clearly a covenant:

> THE SELLER SHALL, AT THE SELLER'S EXPENSE, REMEDY THE SOIL CONTAMINATION CAUSED BY THE UNDERGROUND OIL STORAGE TANK IN COMPLIANCE WITH CURRENT ENVIRONMENTAL STANDARDS AS OVERSEEN BY THE MUNICIPAL AUTHORITIES. . .

The second part reads as follows:

> . . . AND OBTAIN A CERTIFICATE OF APPROVAL FROM THE MUNICIPAL AUTHORITIES ON OR BEFORE MAY 29, 2008.

The second part is ambiguous. On the one hand, there is no specific language that makes performance under the contract conditional on obtaining the certificate of approval on or before May 29. That is consistent with this contractual term being a covenant. On the other hand, a contract cannot impose an obligation on a party whose performance depends entirely on the actions of a third party. A reference to the actions of a third party is usually associated with a condition rather than a covenant.

This ambiguity could have been avoided if the licensee drafting the April 28 addendum had understood more clearly the distinction between a condition and a covenant.

If the parties had intended the second part of the remediation clause to be a covenant, it should have read something like this:

> . . . AND TO *USE COMMERCIALLY REASONABLE EFFORTS TO* OBTAIN A CERTIFICATE OF APPROVAL FROM THE MUNICIPAL AUTHORITIES ON OR BEFORE MAY 29, 2008. (emphasis added)

In this revised version, the obligation clearly refers to the actions under the control of the seller (the use of **commercially reasonable efforts**) rather than to the actions that can be performed only by the municipality.

If the parties had intended the second part of the remediation clause to be a condition, it should have included specific language to that effect. The judge in *Gulston v. Aldred* set out some useful examples of clauses that courts have been asked to consider and which have been determined to be conditions rather than covenants:

Turney v. Zhillka[32]

"Providing the property can be annexed to the Village of Streetsville and a plan is approved by the Village Council for subdivision."

Mill Creek Development Ltd. v. P&D Logging Ltd.[33]

"THIS OFFER IS subject to the following Conditions Precedent being satisfied or waived. . . . These Conditions Precedent are for the sole benefit of the Purchaser."

Edgington v. Mulek Estate[34]

"This Option shall not be exercisable by the Purchaser unless 100% per cent [sic] of the leases of Suites in the Building demised and leased by the Lease have been assigned by the Lessee named in the Lease. . . . "

Georgina Island Development Inc. v. Neale and LeBlanc[35]

[Clause not quoted but paraphrased as "subject to the consent of the Georgina Island Indian Reserve Band Council" and "conditional on the plaintiff obtaining all necessary consents and permits from all third parties."]

Hutchingame v. Johnstone[36]

[No express clause; court found "an implied term of the agreement that the vendors would assign their leasehold interest in the foreshore to the purchaser providing that the Crown's consent could be obtained."]

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[32] *Turney v. Zhillka*, 1959 CanLII 12 (S.C.C.), [1959] S.C.R. 578 at 582., online at http://www.canlii.org/en/ca/scc/doc/1959/1959canlii12/1959canlii12.html

[33] *Mill Creek Development Ltd. v. P&D Logging Ltd.*, 2008 B.C.C.A. 531 (CanLII), 2008 B.C.C.A. 531 at para. 4., http://www.canlii.org/en/bc/bcca/doc/2008/2008bcca531/2008bcca531.html

[34] *Edgington v. Mulek Estate, 2008 B.C.C.A. 505 (CanLII)*, 2008 B.C.C.A. 505 at para. 6., http://www.canlii.org/en/bc/bcca/doc/2008/2008bcca505/2008bcca505.html

[35] *Georgina Island Development Inc. v. Neale and LeBlanc*, 2008 CanLII 30302 (O.N.S.C.), 2008 CanLII 30302 at paras. 3-4., http://www.canlii.org/en/on/O.N.S.C./doc/2008/2008canlii30302/2008canlii30302.html

[36] *Hutchingame v. Johnstone*, 2007 B.C.C.A. 74 (CanLII), 2007 B.C.C.A. 74 at para. 3., http://www.canlii.org/en/bc/bcca/doc/2007/2007bcca74/2007bcca74.html

The judge also turned her attention to the argument that Ms. Aldred had breached an essential term of the agreement. If the judge had agreed with Mr. Gulston then Mr. Gulston would have had the option of treating the contract as being at an end. The judge observed that if a party requests the other party to extend the time, for the performance of an obligation under an agreement, then a court must examine whether it is fair for a party to rely on a "time is of the essence" clause. In this case, the judge determined that Mr. Gulston had affirmed the contract, after the deadline of May 29 for delivering the certificate of approval from the municipality. Therefore, it would be unfair to permit Mr. Gulston to rely on the "time is of the essence" clause.

The judge found that Mr. Gulston had affirmed the contract in two ways. First, in the June 23 letter, Mr. Gulston's lawyer asserted that Mr. Gulston had a title interest in the property. Second, Mr. Gulston's conduct was inconsistent with an election to treat the contract as being at an end. In July, a contractor engaged by Mr. Gulston performed some yard work at the property, including mowing the lawn, sweeping the steps, and trimming a hibiscus tree. Mr. Gulston would not have decided to have someone take care of the garden at the property if he had decided to treat the contract as being at an end.

summary

Gulston v. Aldred is an example of litigation that resulted—in part—from wording in a contract of purchase and sale that created confusion between a condition and a covenant. Understanding the difference between a condition and a covenant can help licensees who draft unique terms in a contract of purchase and sale. Understanding this distinction also allows licensees to spot situations in which the sellers and buyers are also confusing these two concepts. A licensee who can help sellers and buyers understand and navigate such fundamental terms will also add considerable value to their clients in any transaction.

OTHER CONTRACT ISSUES

Limited Dual Agency

The Real Estate Council of British Columbia also states under Limited Dual Agency in the *Professional Standards Manual*:[37]

> *Whenever a brokerage attempts to act for more than one party involved in the same trade, a potential conflict can arise. While the law does not prohibit acting for more than one party, brokerages wishing to act for more than one party must obtain the informed consent of both parties before acting on their behalf.*
>
> *In this context, informed consent means that the brokerage must disclose to both parties, in a timely manner:*
>
> - *the nature of the conflict of interest that would arise if the brokerage were to represent both parties; and*

[37] Real Estate Council of British Columbia, "Limited Dual Agency," *Professional Standards Manual,* 2010, 7th Edition, online at http://www.recbc.ca/licensee/psm.htm

› *what is being proposed by the brokerage and the implications to both parties of giving their consent.*

The above disclosure must occur before the brokerage begins to act for both parties and before any potential conflict of interest has arisen. The Real Estate Council of British Columbia also mentions in the *Professional Standards Manual* that:[38]

> Limitations to an agent's usual duties and obligations have been developed to permit an agent to represent clients who have competing interests. When acting as a limited dual agent for a buyer and seller, the agent's duty of full disclosure is modified to allow the agent to keep information confidential from one side against the other in three areas:
>
> - the price or other terms a client is willing to accept or pay (other than what is contained in the offer);
> - the motivation of either client; and
> - either client's personal information.
>
> The agent is also required to deal impartially with both clients, including disclosing to the buyer any known defects about the physical condition of the property.
>
> Brokerages entering into limited dual agency agreements with clients often do so by using the Limited Dual Agency Agreement made available by their real estate board. In order to avoid potential misunderstandings, and prior to acting as a limited dual agent, brokerages should review with each party the limitations placed on an agent's usual fiduciary duties by this agreement.
>
> Additionally, brokerages and their related licensees must keep in mind that the limited dual agent is still the agent of both parties and, subject to the limitations agreed to by the clients, must ensure that full disclosure respecting the subject matter of the contract is made to both clients. In addition, any action taken by the agent in regard to the trade must be consented to by both parties.
>
> As a limited dual agent, a brokerage and its related licensee should remember the key elements to correct conduct:
>
> - impartiality;
> - disclosure; and
> - consent.
>
> Brokerages and their related licensees have a duty to treat the buyer and the seller impartially, and other than the exceptions set out in the Limited Dual Agency Agreement, licensees must make full disclosure to both the buyer and the seller.
>
> Remember, the test of what is material is an objective one and if such information is not disclosed, the agent may face disciplinary and/or civil action.

[38] Real Estate Council of British Columbia, "Duty of Disclosure by a Limited Dual Agent," *Professional Standards Manual,* 2010, 7th Edition, online at http://www.recbc.ca/licensee/psm.htm

ocean city realty v. a&m holdings ltd.

One of the leading cases regarding disclosure is the decision of the BC Court of Appeal in *Ocean City Realty v. A&M Holdings Ltd*.

In that case, the Court of Appeal stated that:

> *The duty of disclosure is not confined to these instances where the agent has gained an advantage in the transaction or where the information might affect the value of the property or where a conflict of interest exists. The agent certainly has a duty of full disclosure in such circumstances, especially if they are commonly occurring circumstances which require full disclosure by the agent. However, they are not exhaustive.*
>
> *The obligation of the agent to make full disclosure extends beyond these three categories and includes, "everything known to him respecting the subject matter of the contract which would be likely to influence the conduct of his principal, or . . . which would be likely to operate on a principal's judgment." In such cases, the agent's failure to inform the principal would be material non-disclosure.*

The Court of Appeal emphasized that an agent cannot arbitrarily decide what would likely influence the conduct of his or her principal and thus avoid the consequence of non-disclosure. If the information pertains to the transaction with respect to which an agent is engaged, any concern or doubt that the agent may have can readily be resolved by disclosure of the facts to his or her principal. This fundamental common law duty of an agent to his or her principal is now included at section 3-3(1)(f) of the Council Rules.

The Practice of Adding New Terms on a Subject Removal Addendum

The Real Estate Council of British Columbia also mentions in the *Professional Standards Manual,* under the heading of **The Practice of Adding New Terms on a Subject Removal Addendum** (This section added April 2010), that:[39]

> *A licensee seeking an amendment to a Contract of Purchase and Sale on behalf of the buyer must first confirm with the other parties that any discussions about the proposed change will not terminate the existing contract. During the ensuing discussion over the proposed amendment, the licensee must emphasize to all parties that the original Contract of Purchase and Sale remains binding on them until any amendment is finalized.*
>
> *The licensee should prepare the amendment on a separate form. This should be done and signed by the parties to the Contract of Purchase and Sale prior to the removal of the subject clauses, which are then removed on a separate addendum. If, at the time the amendment is to be signed, the time for the removal of the subject clauses is in danger of expiring, then a further amendment to the contract may be included on the same form extending the time for subject removal. An example of a Contract of Purchase and Sale Amendment form is included below.*

[39] Real Estate Council of British Columbia, "The Practice of Adding New Terms on a Subject Removal Addendum," *Professional Standards Manual,* 2010, 7th Edition, online at http://www.recbc.ca/licensee/psm.htm

For those licensees who use the preprinted Contract of Purchase and Sale Addendum form to make amendments to the Contract of Purchase and Sale, they should ensure that it contains the following clause:

> *"All other terms and conditions in the said Contract of Purchase and Sale remain the same and in full force and effect. Time shall remain of the essence."*

Licensees must alert their clients that there are risks to consider when amending the terms of an already accepted contract on a Subject Removal Addendum form. Both the buyer and the seller should be advised to get independent legal advice so that they understand their options.

Time is of the Essence

One other point concerning the "time is of the essence" clause in contracts and the issue of delay:

a. if an obligation is extended at the request of a party, then the court will no longer simply assume that a "time of the essence" clause renders this obligation to be an essential term of the contract;

b. the court will "look behind" the obligation to see whether it is fair to enforce it as an essential term; and

c. if a client wants to extend the time for performance of an obligation and wants the later date to be strictly enforceable, it would be wise to include a "time is of the essence" statement in the addendum modifying the agreement.

The Take-Aways

As a representative to either the buyer or seller, it is fundamental to keep the following points in mind:

1. Caution should be taken when drafting "subject clauses" particularly when a non-standard clause is prepared. Language should be used which makes it clear whether the clause is:
   a. A condition (or condition precedent), for example, "subject to the following condition precedents being satisfied or waived."
   b. A covenant, for example, "the seller shall repair the following items at the seller's expense . . ."
2. Covenants are promises which can be enforced by a lawsuit. Breach of a covenant could also excuse the non-defaulting party from their obligations under the Contract of Purchase and Sale. Conditions that are fulfilled, operate to make the contract binding.
3. Although it was not an issue in *Gulston v. Aldred*, the facts disclose the potential for further problems for a licensee. A licensee (or a brokerage) who represents both the seller and the buyer is a dual agent. Fiduciary obligations are then owed to both parties. When a sale becomes complicated (as it did in *Gulston* where there were a number of addendums) there is a danger that a licensee cannot properly advise both the seller and the buyer as to their options. A signed Limited Dual Agency Agreement will not modify the fiduciary obligations of the licensee to have no competing loyalties and to fully disclose information (except the three types of information listed in the Limited Dual Agency Agreement). When such conflicting obligations are foreseeable or arise, the licensee (or brokerage) can no longer act for either party.

NATURE OF THE RELATIONSHIP

The Real Estate Council of British Columbia also mentions in the *Professional Standards Manual* that:[40]

> **Where a limited dual agency relationship has been agreed to, it is not possible for the agent (brokerage) to fulfill all of its duties to both parties. As a result, the duties are limited to require the brokerage to deal with the buyer/tenant and seller/landlord impartially. The duty of full disclosure is limited so that the brokerage is not required to disclose what the buyer/tenant is willing to pay for the property or the motivation of the seller/landlord. The brokerage must also not disclose personal information about the parties, unless authorized to do so in writing.**

4. **Affirmation**

   In the context of a collapsing deal, a client may be faced with a situation in which the other party is in breach of the agreement such that your client has the option of treating the agreement as being at an end. Note that your client must EITHER treat the contract as being at an end OR continue to work with the other party. If they do the latter, either expressly or by their conduct, they may be considered to have "affirmed" the contract. It will be considered unfair for them to treat the contract as being at an end, after affirming the agreement by word or action. It is suggested by Mike Mangan in BCREA's *Legally Speaking,* entitled "Object Quickly," that:[41]

   "Where a licensee's client wishes to walk away from a standard form contract because the other side fails to do something on time, a licensee best warn the client as follows: object quickly and clearly, get legal advice immediately, and in the meantime, refrain from doing anything that might be considered consistent with the contract."

5. The Real Estate Council of British Columbia also warns against the licensee offering legal advice where he/she is unauthorized to do so. Under the heading "Unauthorized Practice of Law by Licensees," the *Professional Standards Manual* adds:

   For example, licensees who are drafting complex sales documents (for example, in the sale of a business or in the sale of a condominium requiring extensive remediation work), giving advice to sellers or buyers as to how to structure the transaction, or expressing an opinion as to the sufficiency of the terms of a Contract of Purchase and Sale to the buyer or seller, may be giving legal advice, and therefore, practising law contrary to sections 1(1) and 15 of the *Legal Profession Act*.[42]

resources

LINKS

› Real Estate Council of British Columbia, "The Practice of Adding New Terms on a Subject Removal Addendum," *Report from Council*, April 2010 Volume 45, No. 5 at www.recbc.ca/pdf/rfc/2010/april2010

[40] Real Estate Council of British Columbia, "Agency," *Professional Standards Manual,* 2010, 7th Edition, online at http://www.recbc.ca/licensee/psm.htm
[41] Mangan, Mike, "Object Quickly," *Legally Speaking,* (British Columbia Real Estate Association, Vancouver, April 2011) number 445.
[42] Real Estate Council of British Columbia, "Unauthorized Practice of Law by Licensees," *Professional Standards Manual,* 2010, 7th Edition, online at http://www.recbc.ca/licensee/psm.htm