

THE UNREPRESENTED VENDORS

For decades, Vendors being unrepresented by solicitors has made it easy for any risk in the sale and purchase transaction to be shifted to the Vendors. It has now been taken for granted by some legal practitioners that come into practice within the last decade or so to assume that such risk is rightfully to be borne by the Vendors.

There is no justification to demand that the Vendors should give an undertaking to the Purchaser's financier that the Vendors shall refund all monies released by the said financier in the event that the transfer and/or charge cannot be registered for whatsoever reasons. Such reasons would include the negligence of the Purchaser's solicitor.

Contrary to such proclamation that normal banking practice requires the Vendors to give such an undertaking; such requirements have been abandoned for many years. Banks no longer insist on such unreasonable undertakings.

There is also no justification to insist that the Vendors shall refund the sale price to the Purchaser in the event that the instrument of transfer cannot be registered without the fault of either parties.

With due respect, the Registrar of Titles or Land Administration is under an obligation to register your instrument of transfer when a registrable instrument is presented for registration. In the event that such instrument cannot be registered, it has to be due to the default of either the transferor or the transferee; it cannot be a situation that neither is at fault.

Then again, some would argue that it could be a situation of frustration of the contract. Would it be just and fair to provide in 1 badly drafted paragraph that in all situation of frustration, the Vendors shall refund the sale price notwithstanding that the Vendors shall have redeemed his existing loans, completed the sale and even delivered vacant possession? I suppose what goes around, comes around. Someday, an unlucky Vendor is going to pay for it big-time; whatever legal fees saved by that Vendor would be repaid with interest by this unlucky Vendor; no thanks to the broker who cleverly advised him on an easy way to save legal cost.