Six Legal Mistakes
(And How to Avoid Them)
Part One

REIN™ BC - May 14, 2011

Mark Warkentin
Linley Welwood LLP
mark@linleywelwood.com
604 850 6640

Linley Welwood LLP

As a lawyer, I have seen literally thousands of deals cross my desk. Some contain common mistakes that are easily avoided. Here are some top mistakes, and how to avoid them.

1. Poorly Drafted Contract

If your contract is too complex, or you don’t understand it, you will have trouble. The deal, and the language expressing it, should be as simple as possible. When you start out, try to stick to simple deals that are within (or just a little outside) your comfort zone. As you get more sophisticated, your deals can naturally become more complex. Deals involving rent to own, quick turn, development and zoning problems, and excessive leverage may be too complex for a rookie. Another test is that you should understand all the terms of your deal. If you cannot explain it to someone else (including me!), then you don’t understand it, and you should not proceed. Drafting contracts is a skill that takes some time to develop. When you are starting out, you should definitely make use of your realtor in drafting the contract. If you are at all doubtful, consult a lawyer about how to draft it, or make your contract subject to review by your lawyer. Make use of your lawyer as part of your education at first, and as you get more sophisticated you will get a feel for when you need legal advice and when you don’t.

2. Deal collapses over financing

As a real estate investor, your two most important skills are 1) finding good deals; 2) finding money. I am always surprised when purchasers find a good deal, but have no idea how to come up with the money. They end up scrambling around, working their way down to 2^{nd}, 3^{rd} and 4^{th} tier lenders, asking for extensions, and eventually running out of time. The solution is to work ahead on financing. If you have the ability, set up lines of credit ahead of time. Meet with your banker or mortgage broker, tell them about the types of deals you want to do, and get an idea of what is possible. Better yet, pre-qualify yourself. If you are planning a joint venture, line up your JV partners ahead of time with a soft commitment that if a good deal comes along, they will be interested. Better yet, get a refundable cash deposit from them, to be used if they give final approval to an actual deal. Finally, even with financing lined up, you need additional financial margin. There will always be surprise expenses, increased costs, etc. You don't want to lose a deal because you are 5% short of funds. Have some additional cash or credit available for peace of mind and emergency use.

3. Deal collapses over obvious deficiencies

The common mistake here is writing up a deal without doing any due diligence at all. Of course your deal should contain the usual subjects like inspection, but smart investors will do a lot of their due diligence as early as possible. Unless it is a very hot market, take time to look for obvious problems before you even write your offer: does it comply with zoning, does it show well on walk-through, is it fully-tenanted, are rents under-valued, does the property qualify for the financing you plan to use, and a big one—are you quite sure based on your own research, that your purchase price is at or below market value. Once you write an offer, you start the clock running to subject removal, putting yourself under time pressure, which starts to cost you in time, money, and emotions. If your lawyer is working on the deal, there will be legal fees. Disappoint the realtors too many times and they won't want to work with you. Waste your money on getting a appraisal and you will be out hundreds or thousands of dollars. A better approach is to do enough due diligence before you write the offer, so that you are comfortable to close on the deal as long at the subjects are cleared. Most times your due diligence subject should not be there to help you make up your mind, but rather to provide an exit if a negative surprise comes up.

Linley Welwood is focused on business law:

- Real Estate Transactions
- Joint Venture Agreements
- Incorporations
- Shareholders Agreements
- Commercial Borrowing and Lending
- Wills
- Commercial litigation

L W Linley Welwood LLP

www.linleywelwood.com
604 850 6640