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### 1. Protocol Self-Study Module

The Law Society of Manitoba has produced a [Protocol Self-Study Module](#) designed to help practitioners understand the process and benefits of closing real estate transactions using the [Western Law Societies' Conveyancing Protocol](#). The module incorporates the [revisions](#) to the Protocol approved in March 2009.

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### 2. Buyer Beware!

*Fitzhenry v. Vaccaro*, 2009 MBQB 97, which contains an extensive review of the rights and responsibilities of the parties to a purchase and sale contract, is a must read for real estate lawyers. After considering the application of the doctrine of *caveat emptor*, the issue of what constitutes fraudulent misrepresentation, patent and latent defects, and the plaintiff's onus to prove fraudulent intent, Justice Sinclair dismisses the claim against the defendant vendor on the basis of *caveat emptor*. The purchasers had done their own inspection of the 80-year old house, but had not asked the defendant directly about water damage despite signs of recent basement renovation. The court comments:

While fraud can arise from an act of concealment, vendors should not be held to a situation of almost absolute liability just because they undertake cosmetic improvements to a house for the purpose of sale, and a purchaser refrains from asking the question uppermost in his mind. That then would amount to imposing a warranty on vendors when none was asked. Not every painted baseboard or replaced panel can result in a finding of fraud.

In determining provisional damages, Justice Sinclair also reviews the case law on both general and punitive damages, and the plaintiff's obligation to mitigate.

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### 3. Mortgage Dealer Act Amendments Introduced

The Manitoba government introduced [amendments](#) to *The Mortgage Dealers Act* on April 20, 2009 which would broaden consumer protection by expanding the regulation of the mortgage industry to include individuals and independent businesses that work with consumers to find mortgages. The new amendments would require independent mortgage brokers (who are not covered by the

existing legislation) to be licensed and to disclose any fees or commissions they receive for a referral. The amendments would also rename *The Mortgage Dealers Act* to *The Mortgage Brokers Act* to reflect the expanded scope of the legislation.

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#### **4. Residential Tenancies Act Changes Proposed**

[Bill 12](#), *The Residential Tenancies Amendment Act*, received first reading April 6, 2009. The proposed changes are described in the [explanatory note](#) to the bill, and include damage deposits for pets and changes to the authority of the Director of Residential Tenancies.

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#### **5. Real Estate in a Recession**

A recurring theme of several recent Canadian publications is how the economic downturn is impacting real estate practice. While the recession does not appear to have hit as hard here as in other markets, the following articles offer some good advice for surviving a slowdown.

- [Real estate in a recession](#) by Susan Goldberg, from the April-May edition of the *National* magazine
  - [Powers of sale: good deals, bad karma, hard work for the lawyer](#) by Kevin Marron, from the May 2009 edition of *Canadian Lawyer*
  - [Tenant Exit Strategies](#) by Joseph Grignano and [Buying Time: Rent Relief Agreements](#) by Jennifer Williams, both Real Estate (April 2009) bulletins posted on the Blakes website
  - [What am I Entitled to? - Damages for Breach of Contract in a Falling Market](#), posted February 19, 2009 on the McCarthy Tétrault website
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#### **6. RESP Dispositions on Death**

Author Laura West discusses the common misperception that a registered educational savings plan (RESP) operates like a trust in [Issues Arising Upon the Death of a Subscriber of a Registered Educational Savings Plan](#), recently posted on CLE BC's [Practice Points](#). The article also outlines the issues that need to be addressed regarding the disposition of RESP assets upon the subscriber's death.

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#### **7. FINTRAC Compliance Requirements**

The recently posted [Practice Points](#) article [Real estate developers and FINTRAC reporting requirements](#) by Mark V. Lewis summarizes the requirements imposed on real estate developers to comply with amended regulations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. The regulations, designed to prevent money laundering, impose record keeping and reporting requirements on developers and brokers.

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