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Will Refusal to Use the Protocol Affect Your Bottom Line?

As the real estate market moves into high season, you can expect to see more offers containing the parties' express agreement to close based on the Western Law Societies Conveyancing Protocol. Manitoba real estate brokers have recently received their 2010 Continuing Education materials which teach and encourage agents to begin writing offers based on Protocol closings. The Protocol closing procedure - with its various advantages to the parties and the agents - will then be a term of the contract rather than an elective mechanism to be negotiated between counsel. If your office is not prepared to close on that basis, you'll need to decline the retainer. Rest assured another lawyer will be happy to take it on.

Disgruntled clients are also beginning to call the Law Society's Claims Fund and voice their annoyance with lawyers who refuse or don't know how to close transactions on Protocol. A recent borrower-claimant argues his lawyer had a duty to advise him of what he called "Protocol insurance" as an alternative to title insurance. Since he was refinancing with a lender that dispenses with both a new BLC and title insurance where the Protocol Solicitors' Opinion is given, the client claims his lawyer should indemnify him for the \$150 he paid unnecessarily for title insurance.

For a quick refresher on how to close with the Protocol, have a look at the [Conveyancing Protocol Self-Study Module](#) on the Law Society's website. For more detailed information about the Protocol and a list of lenders see [Western Law Societies Conveyancing Project](#).

Tenant Appeals Denied: MBCA

The Manitoba Court of Appeal recently denied leave to appeal two decisions of the Residential

Tenancies Commission in [Manitoba Housing Authority v. Horvat](#), 2010 MBCA 43 and [Manitoba Housing Authority v. Pipoli](#), 2010 MBCA 42. In each case the tenant failed to establish the requisite question of jurisdiction or law warranting the attention of the court. In *Horvat*, the court rejected the tenant's assertion that the Commission had denied her the opportunity to present evidence concerning mould accumulation in her bathroom sink. The court noted that the tenant had submitted video evidence directly relating to the sink, and that the Commission had clearly taken that evidence into account. In *Pipoli*, the tenant claimed compensation for property his landlord had disposed of in breach of *The Residential Tenancies Act*. He disputed the amount of compensation awarded by the Commission. The court found "the determination of value of property clearly involves factual considerations. The issue of appropriate compensation is one of either fact alone or, at best, mixed fact and law. It is certainly not a question of law alone as would be required for leave to be granted." (para.9)

Sewage Ejector Regulation Amendment Proposed

As [announced](#) April 16, 2010, the province is proposing amendments to its [Onsite Wastewater Management Systems Regulation](#) that are aimed at addressing concerns about the province's phase-out of sewage ejectors. The current regulation, introduced last fall, prohibits the installation of new sewage ejectors and eliminates existing ejectors at the time of any property transfer. Under the proposed amendments new sewage ejectors would be restricted, but existing sewage ejectors meeting regulatory requirements, located on a minimum lot size of 10 acres, and not located within environmentally sensitive areas, can be retained at the time of property transfer.

Condominium Act Amendments Introduced

The Manitoba government [introduced](#) amendments to [The Condominium Act](#) on May 12, 2010, designed to "strengthen protection for condominium owners and streamline the rules for developers" with respect to phased condominium development. [Bill 35](#), *The Condominium Amendment Act (Phased Condominium Development)*, is part of the first phase of a comprehensive review of *The Condominium Act* and part of Manitoba's new plan for stronger consumer protection.

Administering Insolvent Estates

The paper [Insolvent Estates](#), from CLE B.C.'s [Practice Points](#), deals with the intersection of bankruptcy and insolvency law with estate planning and the administration of estates. Authors Michelle Isaak and Shelley Fitzpatrick discuss the procedures governing the administration of an insolvent estate, the priorities of creditors in an insolvency, the treatment of specific assets, and what to consider when deciding whether to act on an insolvent estate.

Recent Blog Posts

Property and succession lawyers may be interested in the following articles from [Slaw](#):

- In [Is It Ethical to Draft a Will for a Client You Have Never Met in Person?](#) Nicole Garton-Jones points out that the Ethics Committee of the Law Society of B.C. is currently considering whether it is ethical for a lawyer to draft a will for a client whom he or she has never met in person. She argues that using web-based technologies to deliver legal services increases access to justice for a large segment of the population which would otherwise not be served, and urges the benchers not to restrict lawyers' ability to provide affordable legal services. She notes that the Law Society of B.C. previously approved her firm's proposal to deliver simple estate planning services to clients entirely over the internet through a secure online portal.
- Elder mediation is a potential solution to the issues and disputes anticipated to arise as greater numbers of older adults face life transitions, incapacity and end of life decisions according to Nicole Garton-Jones in her article [2010 World Summit and Symposium on Elder Mediation](#). She includes links to the slides from two presentations she made to the recent summit on Elder Mediation: [Elder Mediation - Planning for Incapacity](#) and

[Elder Mediation - A General Overview of Ethics.](#)

- In [Huge Canadian Mortgage Fraud...](#) David Bilinsky discusses the potential \$30 million mortgage/real estate fraud in Alberta, first reported by [CBC news](#) on May 4, 2010.

Powers of Attorney: Brandon

Last fall's popular CPD program, [Improving Your Powers of Attorney](#), will be repeated in Brandon on June 21, 2010, from 1:00 - 3:00 p.m. at the Victoria Inn. Presenters Heather Dixon and Cynthia Hiebert-Simkin will cover current issues affecting this growing area of practice and offer practical tips for improving your powers of attorney.

Fees on Estates: MBA

The [Wills and Estates Law section](#) of the Manitoba Bar Association will meet at 12:00 noon on June 2, 2010, at the Law Society classroom, 219 Kennedy Street. Presenters John Delaney and Sharon Tod will discuss executors' fees, legal fees on estates, and the recent decision in *Thomson v. Triethart*. Contact the [Manitoba Bar Association](#) for further information.

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