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Oklahoma Financing ©

It's the holiday season and most people are on vacation. You are very motivated to sell your house as you have bought another at a great price. Your realtor thinks that you have bought it well below market and that your current home should sell reasonably soon, so you rush to get your current place ready for sale.

In spite of the great weather few buyers come to see your place. Finally you get an offer from Eddie Oklahoma for almost the asking price. The only condition is the home inspection which you know is quite common. The home inspection reveals some minor items that you are willing to rectify. Perhaps it can all be fixed in a weekend of work with some help from your buddies. Eddie informs you that he does not want you to proceed with your repairs, but would rather receive \$20,000.00 after closing as a decorating and repair payment.

Although Eddie is asking for a lot of money, you know realistically the house is probably not worth more. He asks that you sign a confidential amendment to the agreement that requires you to pay him the decorating deposit after closing. Eddie explains that this type of creative financing scheme is very common; besides, he does not have the required down payment for the mortgage. "It's a win/win situation" he tells you. Adhering to this proposal will not only allow you to sell your home near the asking price, but will allow you to get the new home.

The clock is ticking and it sounds like a good deal for you, but you can't help but feel insecure and almost suspicious of the seemingly harmless kickback scheme. What should you do?

You don't want to lose out on the new house, so you go along with it. When signing the closing documents at your

lawyer's office you mention that you will be paying the seller for the repairs after closing. There is silence in the room, and you wish that you could take back what you said. Your lawyer informs you that unfortunately she cannot act under the circumstances and immediately resigns. She regretfully informs you that this seemingly harmless arrangement is an Oklahoma Scheme and constitutes fraud.

By signing the agreement for higher than the selling price you are participating with the purchaser in representing a higher price to the lender she explains. Eddie will get a mortgage for over 100% of the purchase price, which constitutes fraudulent misrepresentation, and you may be considered an accessory to the fraud because you signed the agreement.

You are shocked to learn that the Canadian Criminal Code strictly prohibits obtaining credit by a false pretence or a fraud, and may result in imprisonment. The penalty may also apply to accessories to the fraud, meaning that your seemingly innocent actions will not go unnoticed or unpunished.

To make matter worse, if Eddie does not get his financing and the deal does not close, you will be unable to obtain help from the court to enforce the contract. The clean hands doctrine prevents a person who has acted illegally or morally wrong to get the court's help when complaining about the actions of someone else.

What can you do to prevent this situation?

1. Enlist the services of a reputable real estate agent.
2. Be prepared to walk away from deal that makes you uneasy.
3. Get a lawyer involved early in the transaction, especially if selling privately.

When in doubt about this or other real estate matters, don't hesitate to call your lawyer.

For more information about this or any other real estate law related topics please do not hesitate to contact John Poletes at 416-482-1902, or e-mail him @ john.poletes@bellnet.ca