

**CANADIAN BAR ASSOCIATION
RESIDENTIAL REAL PROPERTY SUBSECTION – SOUTHERN ALBERTA
(the “Subsection”)**

**COMMITTEE ON THE ISSUES OF AIR CONDITIONING UNITS AND WINDOW WELLS ON REAL PROPERTY
REPORTS FOR PROPERTIES IN THE CITY OF CALGARY**

NOVEMBER 11, 2015

INTRODUCTION

There is, generally, a variance in practice amongst practitioners in the City of Calgary as to whether, and when (if at all), a Real Property Report must be updated to show (i) air conditioning units and (ii) window wells. The current provisions of the Alberta Real Estate Association’s form of residential purchase contract (the “**Contract**”), and particularly Section 4.11 thereof, is ambiguous on these issues. Therefore, the Committee, as described below, was formed to address these two issues with a view to providing recommended practices that lawyers dealing with conveyancing transactions in Calgary, Alberta may apply.

THE COMMITTEE

An open invitation was presented to all members of the Subsection to participate in the Committee. All members of the Subsection that volunteered for the Committee were accepted as part of the Committee.

The Committee met on October 21, 2015 at the offices of the Law Society of Alberta, located at 500, 919 – 11th Avenue SW, Calgary, Alberta. The following persons were in attendance for the meeting:

Khalil Haji, KH/Dunkley Law Group
Lubos K. Pesta, Q.C., Walsh LLP
Kathleen Davis, KSD Law
Peter Ridout, Ridout Baron, Barristers & Solicitors
Abraham A. Fares, Fares Law Firm
Jim Reich, Reich Law
Blake Nichol, Blake Nichol Lawyer
Jocelyn Frazer, Practice Adviser for the Law Society of Alberta
Tami Fric, Caron & Partners LLP
Ryan Mackay, Mackay Real Property Law

The issues of (i) air conditioning units and (ii) window wells were considered as separate and distinct issues and the Committee’s recommendations are summarized below.

AIR CONDITIONING UNITS

Motion

After much deliberation a motion to adopt the following recommendation was tabled by **Lubos K. Pesta** and seconded by **Khalil Haji**. The motion was passed with unanimous approval of the Committee.

Recommendation

An air conditioning unit must be shown on a Real Property Report, regardless of its location on the subject property, UNLESS the seller can demonstrate that the said air conditioning unit existed on the subject property prior to June 1, 2008.

Rationale

- The interests of the Seller in the transaction include (i) avoiding unnecessary additional transaction costs relating to ordering a new Real Property Report and (ii) the ability to pass on a Real Property Report which does not show an air conditioning unit but in all other respects complies with Section 4.11 of the Contract.
- The interests of the Buyer in the transaction include the elimination of risk relating to closing in the face of improvements which are non-compliant and/or contradict the representations and warranties given by the Seller in the Contract.
- A change to the City of Calgary bylaw which “grandfathers” previous improvements should not, in and of itself, void an otherwise sufficient Real Property Report.
- An air conditioning unit is a permanent structure and is an Improvement as described in Section 8.1 of the Alberta Land Surveyors’ Manual of Standard Practice.
- The City of Calgary does not require a permit for air conditioning units installed prior to June 1, 2008 and the setback requirements relating to air conditioning units apply only to air conditioning units installed after June 1, 2008. Therefore, the risk to the buyer that an air conditioning unit which was installed prior to June 1, 2008 would be deemed non-compliant by the City is non-existent.
- Lawyers should act reasonably with regard to evidence presented by the Seller purporting to establish that the air conditioning unit existed prior to June 1, 2008. Lawyers may consider the types of evidence that the City of Calgary would accept when determining whether an air conditioning unit shown on a Real Property Report requires a permit.
- If an air conditioning unit was added to the property by the Seller after the date of the Real Property Report but before June 1, 2008, then in addition to providing evidence as recommended above to demonstrate that the air conditioning unit was installed prior to June 1, 2008, the Seller should state that the air conditioning unit was added, including the date it was added, on their statutory declaration.

WINDOW WELLS

Motion

After much deliberation a motion to adopt the following recommendation was tabled by **Lubos K. Pesta** and seconded by **Kathleen S. Davis**. The motion was passed with unanimous approval of the Committee.

Recommendation

In general, a Real Property Report does not need to be updated to show the existence of window wells.

Rationale

- The interests of the Seller in the transaction include (i) avoiding unnecessary additional transaction costs relating to ordering a new Real Property Report and (ii) the ability to pass on a Real Property Report which does not show window wells but in all other respects complies with Section 4.11 of the Contract.
- The interests of the Buyer in the transaction include the elimination of risk relating to closing in the face of improvements which are non-compliant and/or contradict the representations and warranties given by the Seller in the Contract.
- In the majority of instances, window wells would have been installed at the time of construction of the home, and therefore, would have been part of the original development permit. The instances where window wells have been added subsequent to the construction of the home are presumed to be minimal.
- The setback requirements for window wells apply only to window wells installed after June 1, 2008. However, the ability of the Seller to demonstrate that a window well existed prior to June 1, 2008 is far more difficult than for an air conditioning unit.
- It is not clear whether a window well falls within the definition of an Improvement pursuant to Section 8.1 of the Alberta Land Surveyors' Manual of Standard Practice.

ADOPTION OF RECOMMENDATIONS

These recommendations having been circulated to the Subsection, a meeting was held on November 9, 2015 at the monthly meeting of the Subsection, to discuss further.

With **38 members** of the Subsection in attendance at the meeting, a motion to adopt the recommendations of the Committee, as set forth above, was tabled by **Khalil Haji** and seconded by **Lubos K. Pesta**.

The motion was passed with **unanimous approval** of the Subsection and is, accordingly, adopted by the Subsection.