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## **Cratered Deals: What to do When Deals Fall Through**

Jeffrey W. Lem  
*Davies Ward Phillips & Vineberg LLP*

**Safeguarding Real Estate Transactions –  
Protecting Your Clients from the Dangers of Litigation**  
November 18, 2009



The Law Society of  
Upper Canada | Barreau  
du Haut-Canada

Continuing Legal Education

# **CRATERED DEALS: WHAT TO DO WHEN DEALS FALL THROUGH**

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## **A. REPORTING**

### ☐ **REPORT TO CLIENT**

- Pre-closing Title Report and Requisition Letter
- Remedies Report

### ☐ **REPORT TO INSURERS**

- Title Insurers
- Lawyers' Professional Indemnity Company (LawPro)
- Excess E&O Insurers

## **B. PRE-CLOSING SALVAGE AND MITIGATION**

### ☐ **EXTENSIONS**

- Maintaining Time of the Essence

### ☐ **REMEDiation**

- Committee of Adjustment, Building Department
- Declarations of Possession, Quit Claims

### ☐ **VENDOR & PURCHASER/RULE 14 MOTION**

- *Vendors and Purchasers Act*
- Rule 14 Motion

### ☐ **TITLE INSURE OVER**

- Positive Coverage

### ☐ **HOLDBACKS, ESCROWS**

- Escrow Agreement

☐ **COMMUNICATIONS**

- Requisitions and Replies
- Conceding Anticipatory Default, *Kwon v. Cooper*

**C. THE CLOSING DATE**

☐ **ASCERTAIN NATURE OF THE DEFAULT/REMEDY**

- Close and Sue
- Close and Abate
- Do Not Close

☐ **TENDER**

- Waiver of Tender
- Necessity of Tender/Anticipatory Breach

☐ **NOTICE OF DEFAULT**

- Election for Specific Performance
- Double Default *King v. Urban and Domicile Developments*
- Document Registration Agreement

**D. POST-CLOSING**

☐ **REGISTRATION ON TITLE**

- The New "Hybrid" Caution -- Section 71 or Section 128, *Land Titles Act*
- Land Transfer Tax
- Certificates of Pending Litigation -- *Semelhago v. Paramadevan*

☐ **OTHER**

- Deal with the Deposit
- Final Reporting

## E. SELECTED READINGS

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D'Alimonte, Silvana M., "Anticipatory Breaches and What to Do About Them", *Special Lectures 2002, Real Property Law: Conquering the Complexities* (Toronto, The Law Society of Upper Canada, 2002).

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