

But for the Plan

(When Your Deed is in the Name of a Stranger)

Mr. and Ms. Del Grande purchased a house in 1981, and lived there happily until retirement, at which point they decided to downsize. So they signed two Agreements of Purchase and Sale – one to sell their house and one to buy a new home in a smaller community.

Then a shocking development...they found out that they did not have title to the house in which they had lived for over 30 years!

When their purchaser took the offer to his bank for mortgage pre-approval, the bank did a quick search of title and found that the 1981 deed to the property was in the name of two strangers.

With apparently no house to sell, to pay for the new house that they had committed to buy, "panic" would be a good word to describe how the Del Grandes were feeling when they visited our Brampton Staff Office to discuss the messy details of their dilemma with Kathleen Howes, an experienced Real Estate lawyer.

It was immediately apparent to Kathleen that the problem was one of "conveyancing" rather than "ownership". But there were more than a few complications to resolve.

Kathleen discovered that back in 1981 the lawyer for the Vendor had erroneously given to the Del Grande's lawyer a deed for registration in the name of the two strangers, who had earlier signed an offer to buy the house, but whose deal fell through. Believe it or not, back in 1981, mistakes like these were not uncommon, as all document exchanges took place in person, very quickly, in a very hectic registry office.

When the Del Grande's lawyer later became aware that she had registered the wrong deed she then registered a second deed, from the Vendor to the Del Grandes, but that did not fix the mistake because the Vendor no longer had title to convey; only the strangers did!

With time running out, and the Del Grandes afraid that they would not have funds to buy their new home, Kathleen quickly gathered and registered statutory declarations from the lawyers who had acted in 1981, explaining the error that had been made. But because the property had not yet been transferred from the Registry system to the Land Titles system (government officials who were in charge of doing that, several years ago, likely decided not to touch this messy one, and instead just wait until the property was sold, to let the lawyers sort it out), the Land Titles Office was still not satisfied and required a court order to clear up the problem.

So, the clock still running but just in time, Kathleen brought an Application in the Superior Court of Justice for a "vesting order" and a Declaration that Mr. and Ms. Del Grande had owned the property since 1981. Their sale and their purchase closed in time, and the lawyer who had acted for the Del Grandes in 1981 paid for all of Kathleen's fees and conveyancing expenses.

*... Submitted by Kathleen Howes,
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