# Dealing With Small, Private Lenders Can Be Very Complicated

It is usually a straight-forward matter to act for a client who is purchasing a home from a vendor who has a mortgage on title. The purchaser's lawyer obtains a written "undertaking" from the seller's lawyer, to pay out the current mortgage and discharge it from title. This allows the purchaser to obtain their own mortgage and register that new mortgage on title.

But sometimes a "undertaking" to pay out and discharge is not enough. If the seller's mortgage is from a small, private lender, like a family member, a friend or even a small company, the purchaser's lawyer will want more, because unlike "Big Banks and Trust Companies", small lenders are not as heavily regulated and so cannot as easily be held to account.

In such cases, as a safeguard, the purchaser's lawyer should insist that the small lender (not its lawyer) sign a written pre-authorization, to discharge its mortgage upon receiving funds from the purchaser.

Our Oshawa Staff Office recently had this situation, acting for a purchaser. The seller had borrowed money from two private lenders - one from Ontario and one from Alberta, but only one mortgage was registered on title to cover both loans. To complicate matters even more, one of the lenders (an Alberta company) did not have a lawyer.

Just prior to closing, we were advised that the seller's lawyer was only acting for Ontario company. The Ontarian corporation sent a signed pre-authorization for the mortgage discharge, but the Alberta company insisted on receiving the funds before signing.

The Seller's lawyer then pressured our office to send the funds, but we refused. So, it became a game of "chicken"! Ultimately, we prevailed and the deal closed on time.

Finally, our client was better protected from the possibility of a future lengthy court battle to clear the mortgage from their title.

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