

The Working Group on Lawyers and Real Estate

2022 Annual Review Release

A request was received to modify the Vendor's Closing Certificate. The issue raised is that the undertaking by both parties is one sided. The suggestion to avoid any confusion is to remove the words struck out below. If the Statement of Adjustments is wrong for any reason, the parties agree to readjust. Likewise, the Purchaser's Undertaking and Direction Re Title had similar wording.

The revised documents are dated August 18, 2022, and we encourage all users to update their software programs to use the revised documents.

For your convenience, I copied and pasted the relevant sections below with the suggested changes.

Purchaser's Undertaking and Direction Re Title

UNDERTAKING

If the Statement of Adjustments delivered in this transaction is inaccurate or incomplete ~~in the Purchaser's favour~~, and if the Vendor has delivered a reciprocal undertaking to readjust, then I/WE UNDERTAKE to the Vendor and the Vendor's Lawyer to readjust and to make any appropriate payments forthwith for any such inaccurate or incomplete item.

Vendor's Closing Certificate

- 7. ADJUSTMENTS:** If the Statement of Adjustments herein is or becomes inaccurate or incomplete ~~in the Vendor's favour~~, the Vendor shall readjust and make any appropriate payments forthwith, provided the Purchaser has delivered on closing a reciprocal undertaking.

The Undertaking and the Vendor's Closing Certificate are for the purchaser and vendor, respectfully, to sign agreeing to the provisions. One party cannot create a liability for the other. That is why both parties are asked to sign to agree to any necessary re-adjustment. If an adjustment is in one parties' favour, it means that they gained an advantage they are not entitled to and which the other party should be able to have corrected. The committee did not see anything wrong with the wording but to avoid any confusion, simplify the undertakings and create reciprocity, have agreed to modify the undertaking and the certificate.

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August 18, 2022