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# What actually breaks deals between signing *and closing.*

*A working list of the failure modes that surface between firm and close in Ontario real estate, with the early signal and practical handling for each.*

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The most stressful period in a real estate transaction is rarely the negotiation. It is the gap between firm and close.

Once an agreement of purchase and sale becomes firm, the transaction takes on a different character. The negotiation pressure releases. The contract becomes the rulebook. Both sides shift from positioning to execution. And quietly, in the background, every assumption baked into the deal starts being tested by reality. Some of those assumptions hold. A meaningful number do not.

What follows is a working list of the failure modes that actually surface in this window in Ontario residential and small commercial transactions. Each one is described with the early signal, the underlying mechanic, and the practical handling pattern. None of this is legal advice. It is a description of patterns that recur often enough that they should be planned for, not hoped against.

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## 1. Financing changes after the deal goes firm.

This is the most frequent cause of distress between firm and close. It is also the most often misunderstood, because most buyers assume that a mortgage commitment means the financing is settled.

A mortgage commitment is conditional. It is conditional on the appraisal coming in, on the buyer's employment and income remaining as represented, on the buyer not taking on new debt during the gap, and on the lender's underwriting team not finding something on a final review that they did not flag earlier. Any one of those conditions can fail in the weeks between firm and close, and when one does, the lender can adjust or withdraw the commitment with very little notice.

The early signals are usually visible to a careful agent. An appraisal that is delayed past its expected delivery is not always benign. A lender that goes quiet for several days after asking for a routine document is sometimes preparing to ask for something less routine. A buyer who mentions, in passing, that they have started a new job or signed a car lease has changed the file in ways the lender will check.

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The practical handling is to keep the financing file warm through to closing. That means confirming with the buyer's mortgage broker or banker, in writing, that the commitment remains in place after the appraisal is delivered, after any document requests are satisfied, and again in the final week. It also means being honest with the buyer that any change in their employment, income, or credit during the gap can compromise the closing. People generally understand this when it is explained. They do not always think of it on their own.

For a sophisticated buyer of a higher-end property, the practical safeguard is to confirm financing is fully unconditional well before the firm date. Lenders do not always volunteer this. The agent or the buyer has to ask.

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## 2. Title and registry surprises.

The Land Registry in Ontario is unforgiving in one specific way: it records what was registered, accurately, but it does not always record everything that is true about the property. Encroachments, easements, work orders, open building permits, registered notices that the seller forgot about, and historical title clouds all surface in the title search performed by the buyer's lawyer in the weeks before closing.

By the time these surface, the deal is firm. The contract typically requires the seller to deliver clear title, but "clear title" is a defined term in the agreement, and the negotiation over what is and is not a title defect can become contentious quickly when the closing date is in motion.

The early signals are present at the listing stage if anyone is looking for them. A property with a prior addition that was never permitted will often have an open permit on file with the municipality. A property that backs onto a watercourse or a conservation area will frequently have easements or registered restrictions. A property in an older neighbourhood with mature trees may have shared driveway easements that were never formalized. Pulling the parcel register and reviewing it before the offer is submitted, not after, is the difference between identifying these issues early and discovering them three weeks before closing.

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When a title issue does surface late, the practical handling depends on the issue. Some can be resolved with a holdback at closing and a post-closing remediation plan agreed in writing. Some require the seller to discharge a registered notice or remove a work order. Some are material enough that the buyer has a legitimate basis to refuse to close on the existing terms and the deal has to be renegotiated, often under time pressure.

The pattern worth naming: the buyer's lawyer is the one who finds these issues, but the buyer's lawyer is not engaged on the file until after the deal is firm. The work of identifying registry risk early belongs to the agent, the seller's lawyer, or both. When that work is skipped, the cost of the surprise is paid in the gap.

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### 3. Status certificate issues on resale condominiums and pre-construction.

For any condominium transaction, the status certificate is the document that determines whether the building's finances and governance are in a state the buyer can live with. It discloses special assessments planned or pending, lawsuits the corporation is involved in, the reserve fund balance and study findings, and the rules and bylaws that the buyer will be subject to.

In a typical resale condo transaction, the buyer's lawyer reviews the status certificate during the conditional period and the buyer either waives the condition or walks. In a transaction where the status certificate condition is short, or where the buyer has waived the condition for competitive reasons, surprises that surface after the deal is firm have very limited remedy.

The patterns that recur: a special assessment that is being discussed at the board level but has not yet been formally voted on does not appear in the status certificate. A reserve fund that is technically funded to legal minimums but is years behind on a major capital project will not necessarily flag in the certificate language. A lawsuit that the corporation has just been served with may not be disclosed if the certificate was issued the week before service.

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For pre-construction, the status certificate equivalent is the disclosure statement, which is governed by different rules and operates on a different timeline. The early-occupancy period creates additional exposure: a condominium corporation that is still in turnover from the developer may experience reserve fund and governance issues that surface only after the buyer has taken occupancy but before final closing.

The practical handling is to read the status certificate or disclosure statement carefully, to ask specifically about pending matters that may not be reflected in the document, and to budget for the possibility that something surfaces in the gap. For a sophisticated buyer, requesting an updated status certificate close to closing, where the agreement permits, is sometimes worth the cost.

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## 4. Insurance refusal or material premium changes.

Property insurance is generally treated as a closing-day formality. In a meaningful number of files, it is not.

Insurers in Ontario have tightened underwriting on a range of issues over the last several years. Knob and tube wiring, aluminum wiring, oil tanks (active or decommissioned), prior water damage claims, prior fire claims, properties on private septic, properties in flood-mapped areas, and properties with certain roof age or material profiles have all become harder to insure or significantly more expensive to insure than they were three to five years ago.

The early signal is when the buyer's insurance broker comes back with questions instead of a quote. Questions about the age of the electrical panel, about prior claim history, about the location of the oil tank or whether it has been removed, or about flood mapping are not casual. They mean the underwriter is looking for a reason to decline or to load the premium.

When an insurance issue surfaces late in the gap, the practical handling depends on the severity. A premium that has come in higher than expected is usually a closing-day inconvenience, not a deal-killer, though for a tight buyer it can be both. A refusal to

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insure is more serious. Most lenders require property insurance as a condition of funding. A refusal to insure that cannot be replaced with another carrier means the lender will not fund. A lender that will not fund means the buyer cannot close.

The earlier this conversation happens, the better the chance of resolving it. Asking the buyer to start the insurance conversation with their broker the week the deal goes firm, not the week before closing, is a small change in process that prevents most of these failures.

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## 5. Pre-construction occupancy and final closing economics.

**P**re-construction transactions have a structural feature that resale transactions do not: the gap between interim occupancy and final closing. During this period, sometimes weeks and sometimes many months, the buyer occupies the unit and pays interim occupancy fees to the developer, but the unit is not yet legally transferred and the buyer's mortgage has not yet funded.

The economics of this period are frequently misunderstood at the time the buyer signs the original agreement, which is often years before occupancy. By the time interim occupancy arrives, the assumptions baked into the original deal have to be tested against current reality. Several variables can shift in ways that affect whether the buyer can complete:

The interim occupancy fee, which is a function of the unit price, the developer's prevailing interest rate, and the estimated property tax allocation, can be higher than the buyer projected. Final closing adjustments under the standard Tarion-prescribed format include development charges, education levy adjustments, utility hookup fees, Tarion enrolment fees, HST rebate assignments, and other line items that, in aggregate, can add tens of thousands of dollars to the closing cost beyond the original purchase price.

HST treatment is its own subject. The new home HST rebate is assigned to the developer at closing, but the rebate is only available where the buyer or an immediate family member intends to occupy the unit as a primary residence. A buyer who intended to

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occupy when they signed but is now planning to rent or sell on assignment loses the rebate, which can change the closing math by tens of thousands of dollars.

The early signal is the buyer who arrives at occupancy without having reviewed the original agreement and the interim occupancy projection in the previous six months. The practical handling is to walk through the closing math with the buyer well before occupancy, to confirm the HST treatment matches the buyer's actual intended use, and to flag any line items in the standard form that have shifted materially since the agreement was signed.

For investors holding multiple pre-construction units, this work compounds. A portfolio of five units approaching occupancy is five different closing-economics conversations, often with five different timelines, and the cost of getting any one of them wrong is significant.

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## 6. Counterparty stress.

**T**he deal that fails is sometimes not the deal you are working on. It is the deal on the other side.

A seller closing on a replacement purchase whose own financing has fallen through cannot deliver the property on the closing date. A seller in the middle of a separation where one spouse decides at the eleventh hour that they will not sign the closing documents creates a closing failure that has nothing to do with the buyer or the property. An estate sale where the executor's authority is later questioned by a beneficiary can stall a closing for weeks. A corporate seller whose authorizing minutes are missing or improperly executed can hold up a closing until the corporate records are cleaned up.

The early signals are not always available. Counterparty stress is, by definition, on the other side of the table. But several patterns are visible if anyone is looking. A seller who is unusually slow to respond to routine requests in the weeks after the deal goes firm is sometimes carrying something. A seller whose lawyer is unusually slow to respond is

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sometimes carrying something. A seller whose property is being sold in an estate or a separation context is more likely to encounter execution issues than a seller whose circumstances are conventional.

The practical handling is to keep the file moving on the buyer's side regardless. If the seller cannot deliver on the closing date, the buyer's lawyer will need to be in a position to respond quickly, whether that means agreeing to a short extension, demanding specific performance, or pursuing damages. The buyer's position is always stronger when the buyer's own file is fully ready to close on the original date and the failure is documented as the seller's. A buyer who is themselves running late on financing or insurance has weakened their own remedy.

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## What this list is, and what it is not.

This is a description of failure modes, not a forecast that any particular deal will fail. Most transactions close on or near their original closing date. Most of the issues described above never surface. The point of writing them down is that the ones that do surface tend to surface in the same window, with the same warning signs, in transactions handled by agents who were not looking for them.

The work of preventing these failures is not glamorous. It is the work of pulling the parcel register before the offer is drafted, of confirming the financing commitment is genuinely unconditional, of reading the status certificate carefully and asking what is not in it, of starting the insurance conversation in week one of the gap rather than in the week of closing, of walking through the pre-construction closing economics before occupancy rather than at it, and of keeping the file ready to close on the original date regardless of what the other side is doing.

A real estate practice that takes the gap between firm and close seriously will find that most of these failure modes are preventable, identifiable early, or manageable when they surface. A practice that treats the firm date as the end of the work, rather than the midpoint, will find them harder to handle.

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The contract is the rulebook for the gap. The work in the gap is what determines whether the closing happens on the original date, on a renegotiated date, or not at all.

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*This piece is a written observation from the practice. Not legal advice. Legal opinions stay with your lawyer.*