

## CLIENT MEMO ON PURCHASE OF HOUSE

### GENERAL

This memorandum is prepared to help you understand the usual problems of a normal purchase of a residential property. For any unusual matters we will advise you specifically for your purchase.

Purchasing a new home should be a happy event. We will make every effort to do our part in obtaining a good title for you and minimizing the problems inherent in a modern day real estate transaction. There are today a very large number of statutes, which affect purchase of a home, and it has become a complex matter.

In our observation the service provided by each lawyer varies in quality and efficiency. For a major purchase of your lifetime it is important that you concentrate more on worry free purchase rather than finding the lowest possible fee.

### AGREEMENT OF PURCHASE

Many offers are signed by purchasers without the benefit of legal advice. We recommend that you consult with us before you sign the offer.

Offer to purchase signed by both parties is a binding legal contract. Many purchasers do not consult their solicitors prior to signing. Once signed, it cannot be changed except by consent of both the purchaser and the seller. If you wish to change any term of the purchase agreement you should ask the real estate agent. If we need to negotiate any changes we will charge additional fees and we cannot assure you that the other party will necessarily agree to change the terms.

**You should bring in the signed agreement of purchase (offer to purchase) to us as soon as possible.** There are time limits on searches to be done and making requisitions to the vendor's solicitors. These can affect your legal interests in obtaining a good title.

## **SURVEY**

A survey showing the location of the building on the land is needed to check with the municipality that the building is properly located on the lot with respect to the side yard and set back requirements. If you are borrowing money from a bank or a trust company you will find that they will not permit a closing to be done without a proper survey and approval of sitting by the municipality.

**You should see the survey and check that there are no additions to the house since the survey was prepared. If the survey is more than 5 years old you should consider having a more up to date survey. If you did not obtain the survey with the offer you should ask your real estate agent or obtain it from the vendor as soon as possible. It is his or her duty to ensure that survey is included in the purchase agreement. Any requisition based on the survey must be submitted within required time limits prescribed in the agreement of purchase.**

## **LOT AND PLAN NUMBER**

The offer to purchase should contain lot and plan number. They provide the proper legal description of the property, which is used for search of title. If the agent did not include the Lot and Plan number of the property you should obtain that from him as soon as possible. We will also ask the vendor's solicitor for this if required. It is also possible to obtain the lot and plan number from the assessment office of the municipality.

**The lot and plan numbers are usually shown on the top of the first page of the offer.**

## **TIMING**

You should allow for about a month's time for the proper searches to be conducted and for the proper exchange of the documents and information between our office, title searching office, office of the mortgagee (bank or lender) and the utility companies. If you try to close a purchase in a hurry your legal interests could be compromised. A proper closing requires cooperation of several parties including municipal offices, banks, and the vendor's solicitors. In our experience the banks and the municipalities will not usually expedite their usual time frames to accommodate urgent closing.

**If you close in a rush there will be additional costs of courier and legal fees for the extra time required to close in a rush because it takes extra time to deal with parties on the phone.**

## **MORTGAGE**

**If you are borrowing from a bank or a trust company you should make sure that the "INSTRUCTIONS TO SOLICITOR" prepared by them reach our office at least 3 weeks prior to closing.** If you can, you should pick up the instructions and bring them to us personally. If you wish to have these sent by courier please authorize the bank to send these by courier at your expense, which can be deducted from, the mortgage proceeds. It will be your responsibility to make sure that the bank's instructions reach us.

**When shopping for a mortgage you should not only look for good interest rate but also other terms, which are favourable to you such as the prepayment privileges.** From the amortization schedule we prepare you will see that paying a few more dollars than the minimum required can make a big difference in the later years to pay off the mortgage and save you considerable sums of money.

## **MECHANICAL APPLIANCES**

If you are buying appliances from the vendor you should have a clause put in the offer to the effect that they will be in good working condition on the date of closing. You should also make sure that the furnace, air conditioning, automatic garage door openers and other such mechanical items are in good working condition.

## **UTILITIES**

We will write to the gas and electricity authority to change the name of the customer to your name. Since the account is yours they will need your authorization. **Please call the utility companies about a week before closing and ask them to take the meter reading and change the account to your name. At that time you should also ask if there are any arrears outstanding from the vendor's account. If there are any arrears please inform us immediately.**

You should make your own arrangements for the new telephone line to be installed. If the house you are purchasing is heated by oil the vendor will charge the cost of a full tank of oil in the statement of adjustments. When you close the transaction you should check that the tank is left full.

On closing we will obtain an undertaking from the vendor that they will remain responsible for the payment of utilities until closing. If they fail to fulfil that undertaking we will be pleased to deal with it as a separate matter and the fees for that are not included in the normal purchase transaction.

## **TENANTS**

If at the time of inspecting the house you find that there are tenants living in the premises you should let us know. We will need additional papers to be drawn up. The deposit amount and the monthly rent will be adjusted between the purchaser and the vendor in the statement of adjustments. If you are going to continue with the tenants we will need to ask the vendor to ensure that the premises are vacated legally in time for you to occupy the house.

## **KEYS**

Normally keys will be delivered on the legal closing of the transaction by the vendor's solicitor to us at the Registry Office. In a new subdivision you should pick up the keys at the site office. They will not be delivered before all the closing formalities are fully completed. **You should not take the keys directly from the vendor before the closing and if you plan to do so you should discuss it with us.**

**You should not plan to move into the house before 4:30 p.m. on the day of closing unless special arrangements are made.**

## **SEARCHES**

For a normal purchase of house we will search the title, write to utility companies (hydro, and consumers' gas), ask for by law compliance and check on the payment of taxes, obtain draft deed and statement of adjustments from the vendor and check it, and attend on closing and report to you.

If there is an existing mortgage to be assumed we will check that on the statement of adjustments and no other formality is required. However, if there is a new mortgage we will for additional fee quoted attend to submitting all the paperwork to your mortgage (lender) and register their mortgage.

## CLOSING

On the closing date we will sub search title again and obtain the deed, other documents and keys for you at the Registry Office. For properties south of Steeles Avenue the closing is done in Toronto and for those north of Steeles Avenue it is in Newmarket.

**You should try to avoid a closing on Friday if you can. Fridays in summer months and at the end of the month are particularly bad.** With a large number of closing on such days it becomes difficult to search the title and carry out the legal formalities satisfactorily to protect your interests.

If you are selling a house and buying a new one with the funds of the old one we will need to make detailed arrangements to close the sale first and send the funds to the appropriate registry office for the purchase of the new house. You do not need to borrow money if the closing is on the same day. We will do some additional paperwork and arrangements for a modest amount of extra fee to assist you to do this so that the need for bridge financing is avoided.

**Most offers of builders who are building in a subdivision will have a clause in the purchase agreement requiring you to move in the house even if the exterior and some parts of the interior have not been finished.**

If you have signed such an agreement you may have to move in and pay the full amount on closing and sue in the court later. If the price of the house has gone up and you do not close on the closing date, the vendor can resell the house to someone else. Some protection can be obtained by checking if the municipality has granted occupancy certificate. The municipality will not be concerned about the cosmetic aspects of the building but only the safety and the building code compliance.

## TITLE INSURANCE

It is now possible to purchase title insurance on your property. It guarantees title against any problem during the term of your ownership. It covers a wider range of items than a legal opinion.

It is recommended that you get it.

## EASEMENTS

When you are looking at the property you should carefully check with the vendor or the real estate agent to find if there is any easements affecting the property. An easement is the right of other people to use the property. Easement can exist for the use of a common driveway, a pathway in the country property which others can use, the right of the hydro or other utility company to bring the wires through the property or the right of the municipality to take sewers through the property or similar obligation which and restricts your full rights of ownership.

**If you are aware of any easements you should let us know. If we find them on title we will advise you.**

## **NEW HOME WARRANTY**

When you move into a newly built home, government provides special protection. Your deposit up to \$20,000 is protected if the builder goes bankrupt. The government warranty provides protection against deficiencies of workmanship and materials for up to one year from the date of closing and structural defects up to 5 years after closing.

**Prior to the expiry of one year from the date of closing of a newly built home, you should send out the list of all the deficiencies in writing to New Home Warranty Plan at the following address:**

**NEW HOME WARRANTY PROGRAMME  
600 Eglinton Avenue East  
Toronto, M4P 1P3  
Tel. 488-6000**

If you need any assistance in enforcing your legal rights under the purchase agreement we will be glad to assist you and we will bill you separately for this service.

**If you are moving into a newly built home there will most likely be a clause in the agreement permitting the builder to postpone the date of closing if the building is not ready. You should prepare for alternate accommodation for this purpose. The new home warranty plan has been extended to provide you with compensation for extended delay in closing by the builder.**

## **COMMUNICATIONS**

We will need to communicate with you to carry out the purchase agreement. **Please let us have the phone numbers from you and your spouse. If you have a telephone in your car or have access to a fax number please let us know.**

You should be in touch with our office about 2 weeks prior to closing to check that all the matters are proceeding normally. A meeting should be arranged a day or two before closing to sign all the documents. We will need a **certified cheque made payable to our office** for the balance due on closing including our fees and disbursements. We will in turn provide a certified cheque to the Vendor or his solicitor on closing.

Most of the questions of routine nature will be dealt with by our legal secretaries or law clerks to keep your legal costs low but if there is any matter involving legal evaluations you should ask the secretary to arrange a meeting with the lawyer. The staff in the legal office has a very important role in assisting you in completing your file expeditiously and at a lower cost than what it would take the lawyer to do. You should provide full cooperation to them.

If your purchase is to be completed in a hurry you should be ready to carry the important letters yourself. In the alternative we will use the courier service and charge that cost to you. If you carry the letters and obtain the replies it will help you to solve your problems with personal care, which the courier cannot provide. Our staff cannot provide any courier service as their hourly rate with overhead, which amounts to about \$50 per hour.

## **MEETING BEFORE CLOSING**

If you have any legal questions regarding the closing please discuss those on the phone before the meeting so that the time and the cost for the meeting to sign the documents can be minimized.

At the meeting before closing will be for signing the documents and to bring in your certified cheque. We will discuss the delivery of keys to you, and explain the documents to be signed.

## **STATEMENT OF ADJUSTMENTS**

A Statement of Adjustments is prepared by the vendor's solicitor to adjust over payments or under payments made for items such as municipal taxes, insurance, tenants and common expenses for condominiums etc. Expenses which are prepaid by the vendor are adjusted as of the date of closing on a daily basis and charged to the purchaser who will take benefit of those prepaid items after the date of closing.

On the right hand column of the statement of adjustment are the amounts charged by the vendor such as the purchase price and other prepaid items. On the left hand column are the amounts deducted from the purchase price such as the deposit and the amount of mortgage assumed and the like. At the bottom it shows the balance due on closing to the vendor.

The Statement of Adjustments is prepared by the Vendor's solicitor and if you wish to see it before closing please arrange to pick it up from our office and review it on your own and try to understand it to minimize our time in explaining it to you. You should try to avoid reviewing it on the phone to minimize the time and cost to you. An undertaking will be provided by the vendor to readjust these items. We will provide you with a copy of the Statement of Adjustments with our report.

The balance due on closing is taken from the Statement of Adjustments and shown on our statement of accounts along with our fees and disbursements. This statement of account shows the total amount we need from you for the closing.

We will also prepare the Statement of Trust Funds to show you the funds received by us from you or your lender and the amounts disbursed by us on your behalf. Any net difference will also be shown for the amount owed by us to you or you to us. This should be settled when you pick up the report.

## **STATEMENT OF ACCOUNT & FEES**

A purchase transaction today has become a complex matter involving many statutes. If you wish we will quote a fee to you for the basic purchase and the mortgage. You are asking us to search the title and look for problems and if we do find them we need to solve them. Most problems are capable of being solved given time and your decision but we will bill separately for problems, which are not a part of a normal purchase transaction.

**Please ask for our memo on legal fees which sets out the fees we charge for the year in which your closing is taking place. We revise it every year. It is very important for clients to understand that for legal services you get what you pay for. If the amount of fees is the only criteria you will find that the work is not done satisfactorily and complains result from it.**

Disbursements are those costs, which we need to spend on your behalf to carry out proper searches to obtain clear title for you. Each municipality has different amounts charged by them for these searches. These searches including the title search costs amount to about \$ 400 to \$ 500 on a typical purchase.

The cost of the Land Transfer Tax is very onerous now and has been increased without much opposition from public. It is levied as a percentage of the value of the house and for an average house it is now between \$ 1,500 and \$ 2000.

All fees quoted are approximate and we will send you the final and detailed account of fees and disbursements to you after closing. If you wish to review the estimated statement of account of fees you should pick up a copy of the estimated statement from our office and review it. There are some disbursements such as the courier and sub searching costs, which are incurred on the day of closing. We will keep a margin of some miscellaneous costs in our estimated account for the payment of these items. If there is a refund, we will write you a cheque which you can pick up with the report and if you owe us the difference we will advise you on the phone and you should bring in the cheque and **pick up the report within a week of receiving a call from our office advising that the report is ready.**

## **REPORT**

With the assistance of our computerized systems we are able to provide the final report to you within usually about a week or two of the date of closing. The report will contain documents, which are very important and valuable to you. Our file will be retired in about three months after closing and may be destroyed after a few years.

You should pick up the report personally and give us the cheque for balance due if any and if we owe you the money we will give you a cheque at that time minus the amount needed for the follow up. If you ask for the documents to be mailed we will be pleased to do so but we cannot be responsible for the mail service and if they do not reach you we will bill you about \$ 50 if we need to make a duplicate copy of the report and documents.

## **SUGGESTIONS AND REFERRALS**

Legal practice is a business and we wish to improve our service and client base by providing you with a satisfactory service. We will try our best. We have competent staff to assist in your transaction.

**We welcome your suggestions to improve our service.**

A good long-term solicitor-client relationship can be advantageous to both parties. Such a relationship cannot be established overnight with a single transaction. If you are pleased with our service **we will appreciate your referring our name to your friends and relatives.**

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