Real estate law: the ins and outs of buying your first home

Purchasing a home can be better than renting, especially for newlyweds looking to make an investment. But buying a house can take a toll on your money, time and emotions. So here's a helpful guide to assist you in understanding the legal matters involved in your purchase.



The agreement of purchase and sale

A written agreement is required when you wish to purchase a home or lot of land. If you're buying a property sold through a real estate agent, the agreement will be drafted by the agent on a standard form agreement. For private sales—where the services of an agent are not used—you'll need a lawyer to prepare the agreement. Some standard clauses, which are inserted for your protection, include:

Financing. In most cases, a buyer either assumes an existing mortgage or arranges new mortgage financing to assist in the purchase of the new property. A clause that details the amount, rate and term of the mortgage should be set out in the agreement. Also, the number of days it will take to obtain written commitment from the mortgage lender should be specified.

House inspection. It's probably in your best interest to retain the services of a qualified professional to inspect the condition of the property. If so, a clause should be inserted in the agreement that allows a qualified professional to inspect the entire house for problems.

Items included in the purchase price. A clause that details items included in the price is important. Many things will be negotiable with the seller, such as appliances, wood stoves, blinds, drapes, tracks and security systems. This list is not exhaustive, but if you're worried that the seller may take or remove an item, you should specify that it must remain with the property. Also ask whether the furnace and hot water heater are owned or leased. If you're assuming the existing lease of a furnace, hot water tank or other equipment, ensure that the assumption documentation is signed and completed before the time of closing.

Questions to consider when drawing up an agreement

Purchase agreements are known by many different names, but all serve as contracts for the agreed purchase and sale of a property between buyer and seller. Here are some items to consider when outlining the specific terms and conditions of your agreement:

What about UFFI? Some houses have been insulated with Urea Formaldehyde Foam Insulation. This insulation is toxic in some situations. Insert a clause specifying that the property does not and has never contained UFFI. The clause should also note that the warranty survives after closing.

What if the property has a well and a septic system? Your mortgage lender requires a certificate stating that the well water is safe for human consumption. This usually means that the water is free from coliforms. You may wish to include the right to test for high mineral content in the water—which may potentially cause health problems—in the agreement. You might also include a clause stating that the well and septic system are in good working order, and will supply the needs of you and your family.

Are there any restrictions on the use of the property? It's wise to insert a clause in all agreements noting that the agreement is subject to the property conforming to all municipal zoning, bylaws and restrictive covenants. Restrictive covenants are a set of rules that apply to the use of the property, and most new subdivisions have them. Review restrictive covenants prior to signing the contract to ensure there are no unacceptable rules or conditions.

When is the closing date? The closing date is the date the buyer and seller agree to complete the transaction. You can't change the closing date after the contract is signed without the seller's consent.

What about a location certificate or survey? If you're getting a mortgage, your mortgage lender will require a location certificate or survey from a qualified land surveyor. The certificate indicates the location of the house in relation to the metes and bounds description of the property.

Do I need insurance? The mortgage lender requires you to obtain an insurance policy prior to the closing. The insurance should be effective 12:01 a.m. on the closing date. Consult an insurance agent after signing the agreement and get advice on the most appropriate coverage.

How about utilities? Arrange for utilities to be connected in your name. The utilities should be under your name effective the date of closing.

Who should be named in the deed? You can take title as either a joint tenant, tenants in common, or sole owner.

- *Joint tenancy* is a form of ownership that gives each owner an undivided one-half interest in the property. The result is that if one joint tenant dies before the other, the property automatically remains with the surviving joint tenant.
- *Tenancy in common* means that the tenants (in common) have separate land interests. Each tenant has the ability, subject to partition rights, to convey at any time his or her half interest in the property.
- With *sole ownership,* title is placed under one person's name alone.
- If you're purchasing property with a common-law spouse, remember that there's no statutory framework that governs the status of your property if your common-law relationship ends. Common-law couples, therefore, should consider addressing ownership concerns with a separate arrangement, such as a *cohabitation agreement.*

Adjustments, legal fees and disbursements

On closing, there may be a number of adjustments to the purchase price, including:

Tax adjustment. As the buyer, you're responsible for taxes on the portion of the year that you own the property. In other words: from the closing date to the end of the year.

Fuel adjustment. If you heat your house with oil, gas or propane, an adjustment for these fuels at the time of closing normally is made. Usually it will be adjusted for a full tank because partial tanks are difficult to gauge.

Deed transfer tax. Most provincial municipalities charge a "welcome" or "transfer" tax. You should determine the applicable welcome or deed transfer tax of the municipality before purchasing the property.

GST/HST. Most used residential houses are exempt from GST/HST. However, you may wish to specify that the property is not subject to GST/HST in the agreement. New houses, lot sales by developers, and newly renovated houses are some examples when GST/HST is payable. A GST/ HST rebate may be available.

Tax. Your principal residence is exempt from capital gains tax while capital property is subject to it. Consult your lawyer or tax advisor to discuss income tax implications.

Title searches. Your lawyer conducts a title search of the property to determine outstanding mortgages, liens or other encumbrances registered against the property. He or she will make arrangements to have these removed at closing time. You then receive a certificate of title from your lawyer stating that you have clear and marketable title to the property, subject to your mortgage, restrictive covenants, easements or other agreed upon encumbrances.

Finally, before the closing date, your lawyer will advise you how much money is required to complete the transaction and then schedule an appointment on or before the closing date to sign your mortgage (and related closing documentation) and review closing adjustments in detail. Your lawyer will send the agreed-upon balance to the seller's lawyer in exchange for the deed, keys and related closing material.

Please note, real estate law is governed by the jurisdiction where the property is situated, so laws, as well as policies and practices, will vary depending upon the province and/or municipality you live in. If you're

thinking about buying or selling residential property, you'd be wise to consult with both a local real estate agent and a lawyer.