

Legal Steps in a Typical Home Purchase[†]

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Legal Steps in a Typical Purchase

For most first-time homebuyers, the purchase of your first home is an exciting time. However, many homebuyers are surprised by the amount of legal “red tape” and new information they’re faced with in considering their purchase. For many, the most significant financial transaction up to this time may have been the purchase of a vehicle. In such a situation, it is a relatively straightforward and simple exchange of money for property.

As you may already know, buying a home is a bit more complicated, but it’s my view that the lawyer’s job is to make your home purchase just as simple. Because this is probably one of the most significant financial events of your life, it is important that you are well informed about the whole transaction. As a lawyer my job is not only to protect my client’s legal and financial interests, but also to answer any questions the client may have and help the client make sense of all the new information they are faced with.

Before writing the Offer:

Be sure that the subject conditions satisfy all your concerns. If in doubt, you may wish to speak to your lawyer.

If you are buying *and* selling, consider the legalistic problems including what you need to do if you are depending on the money from your sale to use on your purchase. Consider that the person selling you your new home will not allow you to register the title until your money is placed in trust with your lawyer. To accomplish this, you should consider taking out a short term loan for ten days or two weeks before the closing date (interim financing).

After the Offer is accepted and the conditions are removed:

Your Real Estate Salesperson will send instructions to the lawyer of your choice. Please check with the lender of the mortgage first to make sure the lawyer you choice is approved to do the lender's mortgages.

Your lawyer will search title and check the taxes and any charges on title that won't be discharged by the vendor (such as Statutory Building Schemes, Easements or Utilities Right of Ways).

Your lawyer will contact you to find out who is to be shown as the registered owner and whether title is to be in joint tenancy, such that on the death of one owner the property passes to the survivor, or as tenants in common, where if one owner dies that owner's interest in the property passes through his or her estate.

Upon receipt of mortgage instructions from the bank, your lawyer will prepare the purchase and mortgage documents. Most lenders require a real property report and survey certificate showing where the house is situated on the lot. Check with the vendor to see if they have one which will be acceptable to the lender. If you cannot find one, your lawyer will order one at your cost (approximately \$500.00 for a residential lot).

You will also need to arrange fire insurance showing the lender as first loss payee on your policy.

You will attend at your lawyer's office to sign documents and will be advised of the amount required to complete the purchase. In Alberta, in addition to the balance of the purchase price, you will need the following amounts prior to closing:

Property Tax Adjustment

Calculated on a calendar year and paid in the middle of the year. You will get a credit if you close before the taxes are paid and you will need to pay for the balance of the year if you close after the taxes are paid.

Utility Adjustments

Typically, the utilities are not adjusted between the buyer and seller. Both parties are responsible for the connection / disconnection of their own utilities as of the proposed date of transfer and possession.

Mortgage Adjustment

If you are not obtaining your own mortgage but assume an existing mortgage, the amount of money that you must pay is variable. The amount owing to the mortgage company changes from day to day as the interest owing to the mortgagee changes each day and payments are made. For every dollar the mortgage is reduced from the amount put down on the offer, you must come up with another dollar out of your pocket. The amount you put down on the offer will be close, but is seldom exact. In addition, some mortgage companies require that they look after the real property taxes on your home. You may be required to reimburse the seller for the money that the mortgage company holds in its tax account for application to your taxes in the following year.

Disbursements

Disbursements are those charges that third parties make and are paid for by your lawyer who is reimbursed. They include:

Land Titles disbursements

Land Titles charges \$1.00 for every \$1,000.00 your house plus your mortgage is worth, together with a \$35.00 base charge. For example, if you buy a \$100,000.00 home and borrow \$75,000.00 on a new mortgage, the Land Titles charge will be \$210.00.

Other Disbursements

Other disbursements include, the Land Titles charges for searches, getting copies of easements, etc. registered against your title, courier charges, tax searches and other like matters. Your budget should include \$75.00 to \$125.00 for these matters.

Legal Fees

There is nothing mysterious or secret about a lawyer's fee. In deciding what fee to charge, your lawyer will take into account the following factors:

- the extent and character of the services to be rendered;
- to labour, time and trouble involved;
- the character and importance of the matter;
- the amount of money or value of property involved; and
- the results achieved.

The conveyance of your home is a routine matter and the lawyer should be able to quote the flat fee for the services involved regardless of the amount of work. During your first appointment with your lawyer, you should openly discuss and settle the amount of your fee.

Other Costs

Also, check with your lender to see whether there are tax account holdbacks, interest adjustment holdbacks, processing or appraisal fees that may reduce the amount actually received from the lender. The cash to close the transaction and the above amounts must be delivered by certified cheque to the lawyer's office before the transfer can be sent to the Land Titles Office. The time required for this is usually ten to fourteen days.

Closing

Upon registration of the transfer of land on closing, the mortgage proceeds, if any, will be advanced to your lawyer, and the balance owing to the vendor will be paid to the vendor's lawyer on an undertaking to clear any mortgages or other charges not assumed off title.

Once any charges are cleared off title, you will receive a certified copy of title showing you as registered owner.

Possession of your new home is not usually given until the later of the time the funds are received by the vendor's lawyer or the date set out in the purchase agreement. Please make your moving plans accordingly.

And last, but not least, enjoy your new home!

Provided Courtesy of:
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