



THE FIRST-TIME HOMEBUYER

This edition of the Landry McGillivray “ADVISOR” is intended to help you, the first-time homebuyer, understand what will occur during a new home purchase and hopefully also help the transaction close as smoothly as possible. It is intended as general information only. A lawyer should be consulted by every homebuyer prior to making a purchase.

AGREEMENT OF PURCHASE AND SALE

In the majority of cases, your lawyer will not see the Agreement of Purchase and Sale until after it has been signed by you and the Vendor (Seller). This Agreement is normally in standard form and drafted by the real estate agent. This Agreement forms the basis upon which you agree to purchase the property. You should not hesitate to make an appointment to go over the terms of the Agreement or any aspect of it which may be unclear to you. In fact, it is recommended that you consult your lawyer prior to signing the Agreement of Purchase and Sale. Landry McGillivray offers a free initial consultation to review agreements of Purchase and Sale.

It is essential that you adhere to the terms of the Agreement, and all time limits specified in it. Should you anticipate any difficulties with these deadlines, advise your lawyer immediately. It is most important that you advise your lawyer when your financing has been confirmed or declined within any relevant time limits.

TITLE

Your lawyer will ensure that you acquire clear title to your new property and that there are no liens or encumbrances. Under the new Nova Scotia Land Registration Act, the government guarantees ownership of each parcel of land that is registered under the new system. Each property in the province has to be converted or “migrated” to the new land registration system before it can be sold. This process and its costs is normally the responsibility of the Vendor.

Should any difficulties arise with respect to title or migration of the property, your lawyer will advise you. Should such a problem not be rectified, the agreement may be null and void and your lawyer will arrange for your deposit to be returned to you.

The Parcel Register for your property will disclose any registered building restrictions or easements over the property and your lawyer will bring these to your attention.

The land registration system guarantees that you have a good and marketable title to your new property, but does not guarantee that the dwelling is within the boundaries of the lot nor the quality of construction. Lawyers do not certify that the building is suitable for the uses you intend, however, if you request it, your lawyer will check the applicable zoning for the area.

THE SURVEY

The title search does not determine that the house, driveway, garage, etc. are located on your lot. A survey or location certificate is required to confirm that these things are within your lot boundaries. If you are obtaining a mortgage, your lender will require a copy of the location certificate before advancing funds to you.

Often, the previous owner will have a location certificate which will satisfy the requirements of the mortgage company. It is important to note that if the survey certificate is not prepared for you, then there is no contract between you and the surveyor. Should the survey prove to be incorrect, you may have no recourse against the surveyor who prepared it.

MUNICIPAL TAXES AND LIENS

Provincial legislation gives municipalities in Nova Scotia lien rights against properties for outstanding taxes or betterment charges. Betterment charges arise from certain improvements such as sidewalk construction. If there are unpaid taxes or betterment charges, the municipality has the right to sell the property to recover the taxes or charges owed by the landowner. Your lawyer will order a tax certificate from the appropriate municipality to determine whether there are any outstanding taxes or betterments.

On closing, the current year's taxes will be apportioned between the purchaser and vendor. If the vendor has paid the full year's taxes applicable to the period following closing. Your lawyer will prepare these adjustments for you and review them with you prior to closing.

NEW HOME CONSTRUCTION

If the house purchased is newly constructed or has yet to be built, many special considerations apply including H.S.T., lot approval, permits, water and sewage approvals, rebates, warranties and Builders' Lien Act holdbacks among others. If you are thinking about building or buying a new home, consult your lawyer very early in the process.

MORTGAGE

Most purchasers require mortgage financing. This is the purchaser's responsibility to arrange. Once your mortgage application has been approved by the mortgage company, it will forward the necessary documents and instructions to your lawyer in order that it may be prepared prior to closing. Your lawyer will review the terms of the mortgage with you at the closing and will arrange to have the mortgage funds advanced to the law firm on the date of closing, and then disburse funds on your behalf.

FIRE INSURANCE

As purchaser, you must ensure that the property is adequately protected against fire and other perils. You should have the insurance in place effective the day of closing.

If you are obtaining a mortgage, you must obtain insurance coverage at least equal to the amount of the mortgage company's requirements and the mortgage company must be named under the loss payable clause in the insurance contract.

Your lawyer will need written proof of home insurance before the closing can take place. It is your responsibility to provide this well before closing.

UTILITIES

You should contact the appropriate authorities to ensure that the power, phone and water remain connected and are changed over into your name. You do not want to move in without the benefit of water or lights in the home.

JOINT TENANCY AND TENANCY IN COMMON

The purchaser has a choice as to the manner in which title to the property is taken. The most common means of taking title for married couples is as "Joint Tenants". As Joint Tenants, should one spouse die, the title to the property passes to the survivor immediately upon death, without estate complications.

The title to the property may, if you wish, be taken as "Tenants in Common," whereby each person may deal by will with his or her one-half share as he or she wishes. Should one owner die, the property does not pass automatically to the other. Instead it is dealt with under the directions of the deceased's estate. For tax, credit or other reasons, some purchasers take title in the name of one individual only. Many business and professional people choose this option so that the property is not at risk of being attached by judgments arising out of business failure. Your lawyer will discuss this with you prior to the closing if you wish.

THE CLOSING

The closing takes place on the date set out in the Agreement of Purchase and Sale unless changed by agreement between the parties. You should arrange through your real estate agent to inspect the property the day before closing and advise your lawyer of any problems.

On or before the day of closing, it will be necessary for you to meet at your lawyer's office to sign the mortgage documents, and to review the adjustments. The Vendor will be responsible for providing the keys and Deed to the property. This transfer of funds, Deed and keys will be done between the two law firms involved.

After the Deed is received and recorded at the appropriate Land Registration Office, it will be forwarded to you along with a final report. You should receive this approximately three months after the closing. All necessary documentation will also be forwarded to your mortgage company.

FEES AND DISBURSEMENTS

Shortly before closing, your lawyer will advise you as to the exact amount of money required from you to complete the transaction. Your lawyer will require the closing funds in the form of certified cheque or bank draft made payable to the law firm in trust. In addition to the purchase price, there will be other expenses associated with your purchase, including the following:

1. Municipal deed transfer tax - the amount varies, depending upon the Municipality in which the property is located. In Halifax, the rate is 1.5% of the Purchase Price.
2. Location Certificate - if necessary.
3. Oil adjustment (if oil heated) - for a full tank of oil.
4. Recording fees - The normal transaction will require the recording of two (2) documents, a Warranty Deed and a Mortgage.
5. Legal fees as agreed with your lawyer.
6. Municipal tax adjustments - depends on the amount of municipal taxes, the portion of which is prepaid and the time of year of the closing.
7. HST - on legal services and disbursements.
8. Law firm disbursements and charges for photocopies, administration fee, courier, etc.

We trust the foregoing will assist first-time homebuyers and help make their purchase an enjoyable experience.