

Important Information for

First Time Home Buyers



This guide focuses on important financial information to assist first time home buyers. Below, we will provide you with answers to some commonly asked questions. Additionally, we will summarize three government programs that are available to first time home buyers. Briefly, they can receive up to \$2000 for Land Transfer Tax prior to January 1, 2017 and up to \$4000 after January 1, 2017. Furthermore, they have the ability to withdraw up to \$25,000 from most registered retirement savings plans (RRSPs), and they can receive a \$750 income tax credit.

1. When should I involve a lawyer?

It is always best when contemplating buying or selling your home to have any Agreement of Purchase and Sale reviewed by your lawyer **BEFORE** executing the Agreement. Once the Agreement is signed you have a binding contract and it is often very difficult, if not impossible, for a lawyer to change the terms of the agreement. If your timelines do not allow for a lawyer to be involved before it is signed you should include lawyer approval as a condition.

2. When should I contact a lender?

First time home buyers should contact their lenders prior to commencing their search for a new home. Once you have the mortgage amount that you can qualify for you will be able to set the price range for houses to be included in your search.

3. What does a pre-approved mortgage mean?

When purchasers prepare to buy a home one of the first things many of them do is to go to their bank and see how much they can afford. This is a very wise starting point. What is commonly misunderstood is the fact that the lender must be satisfied with both the credit worthiness of the purchasers and the mortgagability of the property.

Pre-approval based on financial information only clears the first hurdle. Pre-approval will speed up the process and provide comfort that the purchasers are looking in the right price range but should not be viewed as providing a level of comfort such that a financing condition is not required in the Agreement of Purchase and Sale. A condition for financing is required unless the approval was obtained based upon the specific property for which an offer is being submitted.

4. What do I need to know to make a decision about how to take title to the property?

When you take title to a property you must provide your full names and dates of birth as well as the manner in which you wish to take title to the property. You may take title in two ways: as joint tenants or as tenants in common. The main difference is that joint tenants have the right of survivorship while tenants in common do not. If a property is taken in more than one name, as joint tenants, and one of

the registered owners dies, the property will revert to the remaining named joint tenant by right of survivorship. If the property is held as tenants in common, upon the death of a registered owner, that owner's share in the property reverts to the deceased owner's estate, which will share ownership with the remaining registered owner as a tenant in common.

5. What are the fees associated with my purchase and mortgage that I need to be prepared for?

Our fee for the completion of a real estate transaction with one mortgage is \$925 plus HST. Standard disbursements will vary depending on your purchase transaction and typically range between \$200 to \$500 and include items such as faxes, photocopies, postage, courier, long distance, tax and water certificates, and search of title. These disbursements are also subject to HST. The registration costs of the mortgage and transfer is \$73.90 each as well a title insurance premium that can range depending on the purchase price of the property. Title insurance purchased from Stewart Title for a property under \$500,000 is \$282, whereas for properties from \$500,000 to \$750,000 it is \$382.44, to provide an idea of the fees.

6. What kinds of adjustments to the purchase price should I expect on closing day?

On closing there will be adjustments to the purchase price between the Vendor and the Purchaser. The adjustments will appear on the Statement of Adjustments as credits in favour of the Vendor or the Purchaser. Standard adjustments can include property taxes and fuel heating, such as oil. Other possible adjustments include tenancies or special items included in the Agreement of Purchase and Sale. Adjustments for new homes will be different than resale homes and will vary from builder to builder and are therefore property specific.

7. What is title insurance and why should I purchase it?

Title insurance protects your ownership interest (i.e.: title) of your property from losses incurred as a result of unknown title defects or other covered matters that exist at the time of your purchase, but are unknown to you at that time. Title insurance will cover both you, the property owner, and any mortgagees. The premium for title insurance is only paid once and is valid for the duration of your ownership of the subject property. The cost of the premium is often offset by the savings from reduced searches performed by the lawyer and the insurance coverage is more expansive than just a lawyer's opinion.

Unfortunately, no lawyer can completely assure a purchaser that there is absolutely no chance of an error in government records, or that there are no undisclosed claims, or that what appears to be the signature of the prior owner or consenting spouse is a true signature or that there has been no fraud or forgery involved with the subject property. Title insurance can satisfy these gaps in the traditional lawyer's opinion on title. The coverage for fraud and forgery covers both the period prior to closing and after.

With title insurance, the lawyer is not required to complete the many searches that are normally required for a lawyer's opinion on title. As a result, the fee for the title insurance is offset by avoiding completing these searches, which each have an associated fee, and quick closings are not delayed by having to wait for responses to these search enquiries.

8. When do I require fire insurance and when should I order a policy?

Residential purchases cannot be completed without proof of fire insurance if you are obtaining a mortgage. It is mandatory that your fire insurance agent provide your lawyer with a fire insurance binder prior to closing. This binder should include the details of any mortgagees and show GUARANTEED REPLACEMENT COST.

For condominium purchasers, the condominium corporation arranges insurance for the entire condominium complex. It is still necessary for the individual unit owner to obtain insurance for their contents and for public liability. Fire insurance coverage should always be placed before closing, becoming effective on the day of closing.

9. If my home is new what should I know about Tarion New Home Warranty coverage?

Every new home in Ontario is protected by a mandatory warranty that is provided by the builder and guaranteed by Tarion Warranty Corporation. This warranty coverage is outlined in the *Ontario New Home Warranties Plan Act*. The coverage under the Act includes deposit protection, protection against defects in work and materials, protection against unauthorized substitutions and protection against delayed closings or delayed occupancies without proper notice. For condominiums, warranty coverage also includes common/shared areas of the building. The aggregate maximum warranty coverage for new homes and condominium units is \$300,000 for homes with a possession date on or after July 1, 2006. The maximum coverage for condominium common elements is \$50,000 times the number of units, to a maximum of \$2.5 million. For complete details on Tarion Warranty Coverage please see the Tarion website at www.tarion.com.

10. When will HST be payable?

On July 1, 2010, Ontario introduced a federally administered Harmonized Sales Tax (HST) that applies to most purchases and transactions. The HST applies to newly constructed homes, but in most cases does not apply to resale homes. Buyers of new homes will receive a rebate of up to \$24,000 regardless of the price of the new home. This rebate ensures that buyers of homes priced up to \$400,000 (about three-quarters of new homes built in Ontario), on average, pay no more - or possibly even less - tax than under the old Provincial Sales Tax system.

11. What do I need to be aware of if the property is on well or septic?

Well – The Agreement of Purchase and Sale should be made conditional upon the Vendor providing a current water potability certificate confirming the water is fit for human consumption and there is no significant evidence of bacterial contamination. The Vendor should also provide a warranty that the well is capable of providing adequate water supply to meet the household needs and that the pump and all related equipment serving the property are in proper operating condition.

Septic – The Agreement of Purchase and Sale should be conditional upon you determining, at your own expense, that at the time of installation: (1) all sewage systems serving the property are wholly within the setback requirements of the property and had received all required Certificates of Installation and Approval pursuant to the *Environmental Protection Act*; (2) all sewage systems serving the property had been constructed in accordance with the certificates of installation and approval; (3) all sewage systems serving the property had received all required use permits under the Act or any other legislation; and (4) that on inspection, the septic bed is in good working order. The Vendor should also provide a warranty that to the best of the Vendor's knowledge all of the above-

noted items are true. Finally, you may also want to request that the Vendor have the septic system pumped out, prior to closing, and provide written confirmation that this has been completed on closing.

12. What other actions should I take to prepare for closing?

Arrangements should be made, prior to closing, for all utility meters on the property to be read for final billing purposes, effective on the day of closing. Purchasers should contact each applicable utility company with respect to confirming the request for final meter readings and to provide the required information to set up new accounts. Please be aware that even though your lawyer will call for final readings, due to privacy legislation, each client is required to cancel or open their accounts. Purchasers should also make the necessary arrangements for television, cable and mail services.

13. On closing when should I expect to receive my keys?

Most real estate transactions are not completed until later in the day, often as late as 4 or 5 p.m. Although we strive to complete your transaction as quickly as possible, our ability to complete your transaction is dependent upon when we receive closing funds from the mortgagee, when we receive closing documents from the other solicitor and whether your transaction is part of a “chain” of closings. Accordingly, it may be prudent to book your moving company for later in the afternoon and be pleasantly surprised if the keys are available earlier.

14. What financial assistance programs are available to assist first time home buyers?

a) RRSP Withdrawal for Home Purchase – The “Home Buyers’ Plan”

In order to use RRSP funds for the purchase of a home, whether a brand new home or a resale home, you must be a first time home buyer or you or your spouse or common law spouse must not have owned a home that you occupied in the last five years. Prior to withdrawing any funds from your RRSP, you must have a fully executed Agreement of Purchase and Sale.

Under this plan, in any single calendar year up to a maximum of \$25,000 can be withdrawn from the RRSP. You have the option to withdraw a single lump sum or you can make a series of smaller withdrawals throughout the year, as long as the total amount of withdrawals does not exceed the maximum amount of \$25,000. It is important to note that before any amount is withdrawn from your RRSP, the RRSP contributions must be in the RRSP for at least 90 days, or else they may not be deductible. Any withdrawals that are made have to be repaid within a period of 15 years, and each year you will have to make a payment until the HBP balance is completely paid off. If you fail to repay an amount in a certain year then the amount will be included in your income for the year in which the withdrawal was made.

Other requirements under this Plan include the following:

Firstly, you must be considered a first time home buyer. You can access the following website and answer some questions to determine if you or your spouse qualifies:

www.cra-arc.gc.ca/tx/ndvdl/tpcs/rrsp-reer/hbp-rap/cndtns/frst-eng.html/.

You must be a resident of Canada during the period starting with the date of withdrawal of RRSP funds through to the closing date of your house purchase. You must use the home as your principal residence in Canada within one year of completing your purchase. The home must be purchased or built before October 1st of the year after the year that the withdrawal is made.

Your RRSP funds must have been on deposit for at least 90 days before they can be used under the Plan and at the time of withdrawal of your funds you must not owe any money to your RRSP for a prior borrowing from RRSP funds to buy a home. Your RRSP funds must be withdrawn within 30 days from the date of completion of your house purchase and if you make multiple withdrawals, all of the withdrawals must be made in the same calendar year or in January of the following year. The amount of withdrawals cannot exceed \$25,000 within one calendar year.

RRSP funds can be used as your down payment, for land transfer tax, legal fees and disbursements, improvements to your home, and even for the purchase of furniture and appliances for your home.

You should consult with your financial advisor before withdrawing any funds for this purpose. For full details, please visit <http://www.cra-arc.gc.ca/tx/ndvdl/tpcs/rrsp-reer/hbp-rap/menu-eng.html>.

b) First Time Home Buyers Tax Credit (HBTC)

The HBTC was introduced to help first-time home buyers pay the costs that are associated with buying a home. These costs include things such as legal fees, disbursements, and land transfer taxes. The HBTC is a non-refundable income tax credit that is calculated based on a \$5,000 amount for a home that qualifies and was purchased after January 27th 2009. Individuals that are eligible to receive this credit can collect up to \$750 in federal tax relief, and both you and your spouse/common-law partner can share the credit that is received (only the maximum of \$750). The credit rate is calculated by multiplying \$5,000 by the lowest personal income tax rate of the year, which is currently 15%; therefore, the credit would be \$750.

How do I determine whether or not a home qualifies?

A qualifying home includes both existing homes and homes that are being built, and applies to any housing units within Canada that were purchased after January 27th 2009. If you only have a right to tenancy at your home and do not personally own it, then the housing unit does not qualify for the credit. Also, after purchasing the home you must have the intention to occupy it as your principle residence no longer than one year after the purchase date.

How do I know if I am eligible to receive the HBTC?

To determine eligibility you must meet the following requirements:

- you or your spouse/ common-law partner acquired a qualifying home;
- you did not live in another home that was owned by your spouse/ common-law partner or yourself in the year the house was acquired or in four years preceding the transaction; and
- you do not have to be a first-time home buyer if you are purchasing the home for a related individual who has a disability, or if you are an individual that has a disability provided the home is more accessible.

How do I claim the First Time Home Buyers' Tax Credit?

In order to claim your tax credit you must complete Schedule 1 when you file your Canadian federal income tax return. On line 369 of Schedule 1 you enter \$5,000, which is the maximum amount that can be claimed. This amount can be split between you and your spouse/ common-law partner, or if there are two individuals that are both entitled to the amount because the home is jointly owned, than both individuals can split the amount, but the total must not exceed \$5,000.

Is the HBTC connected in any way to the Home Buyers' Plan (HBP)?

Although the two are similar, and have some coinciding eligibility requirements, they are not connected to one another. This means that if you participate in the HBP this will not affect your eligibility for the HBTC.

c) Land Transfer Tax Refund for First Time Home Buyers

What is Land Transfer Tax?

Ontario Land Transfer Tax (LTT) is payable at the time of registration of your transfer and is based on the consideration paid for your property. In order to calculate the LTT applicable to your purchase please visit our website at www.elliottlawyers.com. I have included a LTT calculator for your use which can be found under "**Practice Areas: Real Estate Law**", located at the bottom of the page. This calculator can be used to determine the LTT for yourself or your clients.

If the subject property being purchased is in the City of Toronto, there is an additional LTT payable to the City of Toronto.

When an individual is purchasing their first home, they are eligible for a LTT Credit (LTTC) which is a refund of the cost of LTT in the province in which the property is being purchased. Currently, the rebate is available regardless of the purchase price but only to a maximum of \$2000. This rebate applies to both new and resale homes and there is no interest paid on the refund. For example, on a home with a purchase price of \$200,000 the tax payable is \$1725 and would be totally refunded.

Importantly, the Ontario government recently introduced changes which take effect on January 1, 2017. Under these changes, first time home buyers will be eligible for a refund of up to \$4,000 for the LTT, thus doubling the current amount. This will effectively remove the LTT from the first \$368,000 of a home price.

How do I determine whether or not I am eligible to claim the refund?

In order to determine whether or not an individual is eligible to claim a refund of all or part of the tax they must meet certain requirements:

- 1) they must be at least 18 years of age;
- 2) they must occupy the home as their principal residence within 9 months of closing;

- 3) they must not have ever owned a home, or an interest in a home, **anywhere in the world**; they can apply if they are not a Canadian resident, but they must be making the new home in Canada their permanent place of residence; **Note** that under the new changes the refund is restricted to Canadian citizens and permanent residents;
- 4) the spouse cannot have owned a home, or an interest in a home, anywhere in the world while being their spouse; and
- 5) the purchaser cannot have previously received an Ontario Home Ownership Savings Plan (OHOSP)-based refund of land transfer tax.

How do I apply for the LTTC?

Any taxpayers that meet the eligibility requirements may claim an immediate refund at the time of registration.

Some lawyers leave the rebate application up to the clients. Normally, lawyers prepare the application as part of the closing procedure and obtain the rebate immediately. If the refund is claimed at the time of registration it may offset the LTT that would ordinarily be payable. If the refund is not claimed at registration, then the refund may be claimed directly from the Ministry of Finance and the application must be made within 18 months after the date of closing. No interest is paid on this refund.

It is also important to note that any applications made for a refund payment are subject to audit by the Ministry of Finance and charges/ fines can be laid if a person attempts to obtain a refund by deceit, falsehood or any other fraudulent means. The Ministry would investigate the matter further and determine whether or not there was “willful default”, and if so, there would be a 25% penalty (up to a maximum of \$500) coupled with interest payments dating back to the date of registration. The homebuyer would also be required to give back the refund that was received under fraudulent means. Further information on this topic can be found in Section 7 of the [Land Transfer Tax Act, R.S.O. 1990, c. L.6](#).

The content of this guide is intended to provide a general guide to the subject matter. The information does not constitute legal advice and a solicitor and client relationship is not created.

Shari D. Elliott
Elliott & Elliott
57 Collier Street
Barrie, Ontario, L4M 1G7
Tel.: 705-797-2672
Fax: 705-812-7834
Email: shari@elliottlawyers.com