

# The Real Estate Transaction: FAQ's for Buyers and Sellers



---

## **1. When should I contact 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 to the agreement.

### **2a. What is the lawyer's role in a SALE transaction?**

Our role consists of reviewing the Agreement of Purchase and Sale, responding to title requisitions, preparing closing documentation, including Statement of Adjustments and Transfer, reviewing documentation provided by the purchaser's lawyer to ensure your rights are protected and that the documentation reflects the terms in the Agreement of Purchase and Sale. We will also obtain mortgage discharge statements, as required. We will exchange closing documentation with the purchaser's lawyer, obtain funds and payout outstanding encumbrances, real estate commission, etc., from sale proceeds and provide net proceeds to clients. We are also responsible for providing the clients with a final reporting letter including a Statement of Account and Trust Ledger Statement.

### **2b. What is the lawyer's role in a PURCHASE transaction?**

Our role consists of reviewing the Agreement of Purchase and Sale, arranging and reviewing a Title Search, requesting and obtaining Title Insurance and preparing and sending requisition letters to the seller's lawyer. We will also obtain mortgage instructions, as required. We will exchange closing documentation with the seller's lawyer, and prepare and provide certified cheques with the money held in trust on behalf of the client to provide to the seller's lawyer, in keeping with the requirements in the Agreement of Purchase and Sale. We will register the Transfer and the Charge once released by the seller's lawyer and will receive the keys and provide them to the client once the transaction has been completed. Finally, we will provide the client with a final reporting letter including a Statement of Account and Trust Ledger Statement.

### **3a. What fees will I incur for my sale?**

Our fee for the completion of a real estate transaction with one mortgage payout is \$875.00 plus HST. Standard disbursements will vary depending on your sale transaction and typically range between \$40.00 - \$60.00 and include items such as faxes, photocopies, postage, courier and long distance. These disbursements are subject to HST. There is also a \$20.00 bank fee. You are further responsible for the Law Society real estate levy fee of \$65.00. The registration fee for a discharge of mortgage is \$75.77. Any additional discharge for a mortgage/loan will incur a fee of \$50.00.

Items typically paid out of your sale proceeds include any existing outstanding mortgages, outstanding property taxes, real estate commission, legal fees and disbursements. There may be additional fees charged by the mortgagee on the mortgage discharge statement and these fees will be specific to each transaction. Please be advised that if your real estate transaction is closing in less than two weeks, an additional \$150 rush fee will be included.

**3b. What fees will I incur for my purchase?**

Our fee for the completion of a real estate transaction with one mortgage is \$975.00 plus HST. Standard disbursements will vary depending on your purchase transaction and typically range between \$40.00 - \$60.00 and include items such as faxes, photocopies, postage, courier, and long distance. These disbursements are also subject to HST. There is a \$140.00 fee for obtaining both the Water and Tax Certificates through the City of Barrie (\$70.00 each). The registration costs of the mortgage and transfer is \$75.77 each as well a title insurance premium that can range depending on the purchase price of the property. This one-time fee for title insurance is approximately \$432.00 from Stewart Title. Finally there are execution searches which must be conducted and the price ranges from approximately \$50.00 – \$90.00 on average. Please be advised that if your real estate transaction is closing in less than two weeks, an additional \$150 rush fee will be included.

**4a. What will the lawyer require from me to complete my sale?**

Typically, a lawyer will ask for the following items:

- Signed copy of the Agreement of Purchase and Sale, and all amendments/ waivers
- Mortgage or secured line of credit name and reference number (for all mortgages registered on title)
- Copy of your reporting letter when you purchased the property, if available
- Survey of the property, if available
- Final or interim tax bill (depending on time of year)
- Confirmation of how the property is heated (i.e. gas vs. oil)
- Any rental items and who they are rented with (i.e. water heater)
- Your new address
- VOID cheque
- Identification Check – Copy of two pieces of valid ID – one being a photo ID; note that the Ontario Health Card does not qualify
- If the property that you are selling is a condominium, we will require the name and address of the Condominium Corporation

**4b. What will the lawyer require from me to complete my purchase?**

Typically, a lawyer will ask for the following items:

- A signed copy of the Agreement of Purchase and Sale, and all amendments/ waivers
- Your full names and dates of birth
- Whether or not you are a first time home buyer
- Your marital status
- Name and contact information of mortgage company or institution
- Name and contact information of insurance company or broker

- Identification Check – Copy of two pieces of valid ID – one being a photo ID; note that the Ontario Health Card does not qualify

## **5. Do I need to get spousal consent to sell our home?**

Yes, if the home is the “matrimonial” home we require a written consent of both married spouses even if the title is only in the name of one spouse.

## **6. What is required if the subject property is heated by oil?**

If the home being sold or purchased is heated by oil, it is the seller’s responsibility to have the tank filled on closing. An adjustment will be made so that the Purchasers will reimburse the seller for a full tank of oil, including HST. If the Purchasers advise that they are converting to gas or have some other reason that they do not require the tank to be filled, this should be included in the Agreement of Purchase and Sale or confirmed through the lawyers.

## **7. What type of conditional clauses can I expect in the Agreement of Purchase and Sale?**

When listing your property for sale you will often receive an offer that is conditional upon the buyer satisfying certain conditions before the deal becomes firm and binding. As a seller, this means that while you have accepted an offer, you do not yet have a firm and binding offer. Only once the conditions have been met or waived does the deal become firm and your house is considered sold.

Conditional clauses will vary in each Agreement of Purchase and Sale and can be affected by real estate market conditions and the particular circumstances surrounding your sale.

While there are a number of clauses which can be inserted by the buyer into an offer, there are two common conditional clauses which are included in an Agreement of Purchase and Sale. The first is the home inspection condition which appears in almost every residential real estate transaction. This condition allows the buyer to hire a registered home inspector to conduct a home inspection at their expense in order to obtain a satisfactory report pertaining to the condition of the property. If major deficiencies are revealed which the buyer is unwilling to accept or waive and/or the seller is unable or unwilling to remedy, the offer may be terminated. This clause is included for the benefit of the buyer and may be waived at their option.

The second most common clause relates to financing. This clause means that the Offer is conditional upon the Buyer arranging, at their own expense, a mortgage in order to finance the purchase of the property. This condition provides the Buyer with the requisite time to confirm with their mortgage broker or lender that they are approved for the necessary funds. If the buyer is unable to obtain the financing approval, they must notify the seller and the agreement will be terminated.

Overall, a review of any Agreement of Purchase and Sale by your real estate lawyer, prior to executing the Agreement, will help to ensure that the language of your agreement protects your legal rights and financial interests.

## **8. What adjustments can I expect to the sale price?**

Each transaction will vary as to adjustments depending on the subject property. Typical adjustments to the sale price include any deposit paid by the purchaser, property taxes, heating cost adjustments, tenancy adjustments and credits specifically provided for in the Agreement of Purchase and Sale.

## **9. What happens in the event that a seller is a non-resident of Canada?**

If you are selling a property and you are a non-resident of Canada or will be a non-resident as of the closing date, you should contact our office immediately as we may be required to hold back 25% of the sale price until we are in receipt of a clearance certificate from the Canada Customs and Revenue Agency.

## **10. What other actions am I required to 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.

## **11. As the seller, when will I receive the sale funds?**

Once the transaction has closed, the registered owners will receive the sale proceeds. The funds may be available at our offices late in the afternoon on the closing day or the following business day. If the transaction is being completed by way of Power of Attorney, the funds will be made payable to the registered owner of the property and not the person named in the Power of Attorney. In the event that two or more people are selling a property, the proceeds of sale will be made payable to all of the registered owners.

## **12. As the purchaser, 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.

*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: 705-8127834  
Email: [shari@elliottlawyers.com](mailto:shari@elliottlawyers.com)