

# WORKING WITH A LAWYER WHEN YOU BUY A HOME

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Buying a home is one of the most important investments you will make.





# Protecting your investment is important

You want to know that the legal issues involved in buying your home are being properly handled. You want to feel secure about the fact that you own your home. You may also need advice about who should officially own the property, what kind of mortgage you should get, and many other decisions that have to be made when buying a home.

Your lawyer is there to help guide you through the process, and protect your interests at every step.

This brochure explains how your lawyer will work with you when you buy a home.



# Before you sign an offer to purchase

An offer to purchase is a contract that is binding on both the buyer and the seller. Seeing a lawyer before you sign the offer to purchase can help avoid difficulties later on, and will ensure that your interests are protected.

Your lawyer can advise you to:

- include escape clauses which will allow you to cancel your offer if you cannot proceed with the purchase. For instance, you may want to cancel your offer if you discover that your home inspection is unsatisfactory, you are not able to arrange the financing you need, or you are unable to sell your present home;
- request a warranty that the property conforms to all municipal by-laws, zoning regulations and housing standards;
- request a warranty that the home has not been used for an illegal purpose, such as a marijuana grow-op which may have caused possible health and safety issues;
- include an exact list of the items (such as appliances and other goods) that you expect to buy with the home;
- require that the seller produce an up-to-date survey;
- request that your deposit be held in a bank account that will pay you interest.

Your lawyer can also help you determine the full cost to buy the property. Extra costs such as land transfer taxes, your lawyer's fees and disbursements (title search, registration costs, etc.), lender's fees and deductions, and monies that you will have to pay the seller for items such as prepaid realty taxes and utilities, prepaid condo maintenance fees, heating oil already in the tank or prepaid tenant rents — are not included in the purchase price.

### **New Construction**

If you are buying a newly constructed home, the offer to purchase will be quite lengthy. Your lawyer should review the offer to purchase and explain the complexities associated with buying a home that is not yet constructed.

### **Condominiums**

If you are buying a condominium unit your lawyer will review the condominium status certificate to ascertain whether there are concerns related to the unit or the development as a whole. You should review the rules and regulations of the development to identify any pertinent lifestyle concerns.

Some properties have special considerations such as rural or cottage properties, farm lands, water access properties, vacant lands, mixed use properties, tenanted properties, homes under renovation or recently renovated, homes with a pool or homes other than a single family residence, etc. Discuss any such matters with your lawyer.





## After the Seller accepts your offer to purchase

Your real estate lawyer acts as your trusted advisor. It is your lawyer's job to check various details and advise you on a wide range of matters.

For example, your lawyer will usually:

- prepare and check mortgage documents and explain the terms of your mortgage;
- explain the different ways you can own the property if you are buying it with someone else, and the difference between being joint tenants and tenants-in-common;
- check the statement of adjustments to ensure that you are paying only your share of the taxes, utility and fuel bills, condominium maintenance fees, and other costs that have been pre-paid by the seller;
- review the seller's lawyer's closing documents to ensure that they are fair and are standard in nature;
- review the builder's adjustments for a new home to confirm that they are in accordance with the offer to purchase;
- review the insurance binder letter for your home insurance to ensure that it satisfies your mortgage lender's instructions;
- explain the purposes of the documents which you will sign.

## Facilitating the Buying Process

To help make the transfer of ownership from seller to you as smooth as possible your lawyer may also:

- ensure that you have home insurance in place as of the closing date;
- hold your closing funds in trust and those provided by your mortgage lender(s), then transfer the funds to the seller when the home purchase closes; and,
- arrange for you to receive the keys to your home as soon as possible after closing.

## Your Responsibilities as Buyer

As a buyer you are part of the process of ensuring that the transaction closes smoothly. Your responsibilities include:

- informing your lawyer of any special features of the home such as a swimming pool, well, septic system, ravine lot, water access, proposed building plans, mixed use, tenants, basement apartment, etc.
- informing your lawyer of your intended use of the property;
- reviewing the survey to ensure that it appears to reflect the property which you are purchasing;
- contacting your mortgage lender(s) and signing all required mortgage commitment documentation at the earliest possible point in time after acceptance of the agreement of purchase and sale;
- arranging your home insurance with the interests of your mortgage lenders noted on the policy;

- arranging with utility companies to have hydro, water and fuel meters read on the date of closing, and to have all future bills addressed to you;
- arranging for movers after discussion with your lawyer as to when keys will be made available;
- arranging for forwarding of your mail; and,
- ensuring that you are available in person prior to and on closing to sign the closing documents and provide any further instructions.



## Assuring You of Good Title

One of the most important components of your lawyer's job is to make sure that you have good title to the property that you are buying. Good title ensures that you own the property, that it is correctly described in official documents, that it is properly registered in the applicable land registry office and that no one else has a claim or a lien on the property of which you are not aware.

Good title is essential for you to be able to mortgage or sell your home in the future.

As part of title-related responsibilities, your lawyer will usually:

- ensure that the seller has the right to sell the property;
- ensure that there are no mortgages or liens against the home other than those which you have agreed to accept;
- consider survey related issues such as whether anything on your property encroaches (intrudes) on neighbouring properties, or if neighbours are in fact using a part of your property. Keep in mind that although survey requirements may be waived with title insurance, a survey can be useful, even if you will be obtaining a title insurance policy;
- contact the building department to ensure that there are no work orders against the property which you could be forced to comply with after your home purchase has closed. This search may be waived with title insurance but you should consider if you have any concerns about the property which might be better addressed by also obtaining a work order clearance letter;

- determine if somebody else has an interest in your property that could restrict your use of it. For example, there may be easements that give utilities the right to install and access hydro or gas lines. Although the need for such searches is minimized with title insurance, you should consider if you require any specific information, especially if you are contemplating improvements to the property;
- review the available tenancy documents if some or all of the home is being rented, and confirm that the terms of the rental conform to the offer to purchase. If you wish to confirm compliance with municipal tenancy requirements or tenancy legislation make sure you raise these matters with your lawyer well in advance of closing;
- contact local utilities and the municipality to find out if there are liens against the property due to unpaid utilities or tax bills. These searches are often waived with title insurance; inquire of your lawyer's practice;
- review any non-residency concerns if a seller is not a resident of Canada; and,
- review the closing documents for compliance if the registered owner is deceased, the property is being sold using a power of attorney or is being sold under power of sale.

If there are problems that could affect title to your property, your lawyer can take steps to fix the matter. If the problem cannot be corrected, your lawyer will explain to you the risks of taking title without resolving the problem.



# Assuring you of good title: Three options to choose from

There are three different approaches that your lawyer can take to assure you of good title. Making your choice among the three options described below is a very important decision for the home buyer. It's up to you and your lawyer to decide which one of the three options is most appropriate in your situation.

With any of the options described below, your lawyer will conduct searches and inquiries to find out if there are any title-related problems with the home you plan to buy. Your lawyer will try to resolve most of these problems, and will advise you of how best to deal with any situations that cannot be resolved.

Keep in mind that if you choose to obtain a title insurance policy:

- your lawyer will not receive any commission, fee or any portion of the premium from the insurer or any agent or intermediary. Your lawyer is, however, entitled to charge legal fees and the out-of-pocket expenses that arise from the legal services provided;

- you should review with your lawyer any items not covered by the policy (exclusions or exceptions) before you make a final decision;
- your lawyer will have to disclose some information about you and your purchase to the title insurer, a standard procedure when buying insurance.

## 1. Lawyer's Opinion on Title

If you select this option, your lawyer will provide you with a Letter of Opinion which states your lawyer's view of whether or not you have good and marketable title to your property. As well, your lawyer will provide you with a description of the results of the searches and inquiries conducted on your behalf, and will inform you in writing of any outstanding issues that may affect your ownership of the property in the future.

If a problem is identified after you have closed, you can only seek compensation from your lawyer if you can prove that he or she failed to do something that was legally required or provided legal services that did not meet the standards set by the legal profession. You may have to hire another lawyer to help you sue your first lawyer and get compensation from the lawyer's malpractice insurance plan.

## 2. Title Insurance

Title insurance is an optional insurance policy to protect your investment in your property if there is a problem with title. For example,



you may find out after you have bought your home that someone else has a legitimate claim to it that has to be satisfied, or you may have to pay to move a building that is too close to a neighbour's property line.

A title insurance policy protects you against the loss that you suffer due to many title-related problems, access issues, title fraud, or regulatory compliance issues, etc. Most title insurance policies also cover your legal costs if your title is challenged.

### 3. TitlePLUS® Title Insurance

A TitlePLUS title insurance policy provides protection for both the title-related aspects of buying a home and, in most policy types, the legal services provided by your lawyer. It also automatically provides your lender with coverage where named in the policy.

You should know that there is a relationship between Ontario lawyers and TitlePLUS title insurance. The TitlePLUS title insurance policy was developed by Lawyers' Professional Indemnity Company (LAWPRO®), a corporation incorporated by the Law Society of Ontario, the regulator of Ontario lawyers. LAWPRO is the errors and omissions insurer of Ontario lawyers and operates independently of the Law Society of Ontario, with its own management and Board of Directors.

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