

Retaining a Real Estate Lawyer

Hiring a Real Estate Lawyer early in the process can save you time & money, will help you avoid costly mistakes and will put your mind at ease.

This Bulletin will give you a basic overview of working with a real estate lawyer in the purchase or sale of your home, and will cover the following topics:

- ❖ Legal fees & disbursements in a typical real estate transaction
- ❖ An overview of the legal processes involved in buying or selling a home
- ❖ Title Insurance
- ❖ Land Transfer Tax
- ❖ Your responsibilities in the legal process



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The Agreement of Purchase and Sale

An agreement of purchase and sale is a binding contract on both the buyer and the seller. Once signed by both parties, and once all conditions have been fulfilled or waived, then the seller has a legal obligation to sell, and the buyer has a legal obligation to buy the home.

Some people choose to obtain legal advice prior to signing the Agreement of Purchase and Sale (prior to entering into the binding contract).

Many people contact a lawyer after the Agreement is signed and the contract is binding. If you have not spoken to a lawyer before signing the Agreement, then it is a good idea to call your lawyer as soon as your Agreement of Purchase and Sale is signed. At that point, your lawyer starts working on your deal. Your lawyer will ask you a number of questions about the specific property you plan to purchase (or sell), and then the legal process is underway.

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Purchasing a Home – Closing Costs

Legal Fees: \$800

Disbursements: (“out-of-pocket” expenses which the lawyer spends on your behalf, which can vary in each case):

Title Search: \$50 - \$200

To ensure that you are getting good and clear title to the property you are buying. Required by your lender and strongly advised even if you aren't getting financing.

Execution Searches: \$11 - \$60

To determine if there are outstanding court judgments against the buyer or the seller – required by lenders and by the Ontario government. Depends on the number of people buying and selling and the jurisdiction.

Tax Certificates: \$0 - \$65

To determine if there are outstanding property taxes on the property that you are purchasing. Required by lenders, and strongly advised even if you aren't getting financing.

Title Insurance: \$150 - \$300

Protects against title problems for as long as you own the home. Required by many lenders in the absence of a recently completed building location survey. Cost determined by insurer and depends on type of property, zoning and location.

Register Deed / Register Mortgage: \$60 each

Charged by the Ontario government.

Teranet Charges: \$10 per registration

Charged by the Company that manages the on-line registration of real property in the Province of Ontario.

Sub-search Charges: \$10

To ensure that no lien or mortgage is put on the property you are buying a few days before closing.

Bank Charges: \$6 - \$15

To purchase bank drafts or certified cheques which are required to buy your property.

Postage, Faxes, Copies & Long-Distance: \$35

HST on fees and disbursements is extra. Land Transfer Tax is extra and is based on your purchase price (see page 5).

***Total:** \$1500 - \$1,600 on average.

*These are the fees currently charged by McGahey Law and may be subject to change. Fees charged by other law firms may be different.

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Purchasing a Home – The Legal Process

Step # 1: We obtain and review the Agreement of Purchase and Sale, and make sure you understand the terms. We will also discuss the key dates in the process, the obligations that the Agreement has created, and the expenses and fees involved. We will discuss the benefits of title insurance with you and the different ways in which you can own the property if you are buying it with someone else. Remember that this is a legally binding contract - the seller has a legal obligation to sell, and the buyer has a legal obligation to buy the home.

Step # 2: We will review title to the property you have chosen, and prepare a list of issues that we need to see resolved by the seller (called “requisitions”: paragraph 8 of the Agreement of Purchase and Sale sets out the “Requisition Date”). These are concerns about what is on title to the property you are buying, such as any mortgages, executions or liens to remove. These need to be resolved by the seller before closing, so that you are purchasing a “clean” title. We need to tell the seller what problems we want them to resolve.

Step # 3: We do the math with respect to property taxes, utilities such as oil and / or propane, and other charges to balance out the purchase price to the date of closing (called “adjustments”) and ensure that you are paying only your share of the taxes, utility and fuel bills, and other costs that have been pre-paid by the seller.

Step # 4: We work with your mortgage company to prepare and finalize the mortgage that will be registered on title to your new property, arrange for them to provide the necessary funds for the closing date, and make sure you are aware of the balance of funds that are required to provide prior to closing. We will let you know 3 – 5 days before closing the exact amount of funds you will need to bring in to close the deal – we can only determine this final number when we have the mortgage documents from your lender. We will also arrange to obtain a policy of title insurance to cover the possibility of hidden, or latent defects in title.

Step # 5: We need to prepare all the necessary documents to transfer the ownership of the home to you. Then we meet with you to sign a number of documents, ensuring that you understand the implications of what you are signing, and obtain your instructions about contacting you when the Deed is registered so that we can deliver the keys to you.

Step # 6: On closing day we need to obtain funds from your lender, provide the purchase funds to the seller in exchange for the keys. We perform a variety of banking tasks (getting your money deposited, the mortgage company’s money deposited, issue bank drafts to the seller and/or his prior lending company, and to the Minister of Finance for land transfer tax and registration fees). Finally, we register the transfer of ownership and mortgage on title to the property. When this is complete, we give you the keys to the property and then you are legally entitled to move in.

Step # 7: We provide you with a report that summarizes the whole transaction. Also, because the seller’s existing mortgage is rarely discharged on the closing date, we need to make sure that the seller’s discharge document arrives before too many months have passed.

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Your Responsibilities in the Purchase Process:

- **Contact a lawyer** as early in the process as possible, and provide them with a fully signed copy of the Agreement of Purchase and Sale.
- Arrange for **mortgage financing** if you have not already done so, and ensure that all details regarding your mortgage have been finalized with your lender.
- Arrange a **building inspection** (if your Agreement of Purchase and Sale is conditional upon a satisfactory building inspection).
- Arrange a **septic** pump inspection (if any and if applicable).
- Arrange for well **water** testing (if any and if applicable).
- Your real estate agent will normally assist you with the above three tasks or refer you to the appropriate professionals for assistance.
- **Advise your lender who your lawyer is** so that they can send your lawyer the appropriate mortgage instructions in a timely fashion.
- **Meet and/or waive all required conditions** in the Agreement of Purchase and Sale, where appropriate, by the deadline. Your real estate agent will work closely with you on these tasks.
- When all conditions are waived, and if you are currently renting, give your landlord the required written notice. Ensure that any deposit that your landlord is holding as “last month’s rent” is properly credited to you.

- **Do not plan to move into your home prior to 5:00 p.m. on the closing day.**

- While you *may* be able to get your keys prior to this time, you shouldn’t count on it. Sometimes we are not always able to register your Transfer / Deed until late in the afternoon due to factors beyond our control. For instance, sometimes your lender will not provide the mortgage funds to us until 2:30 p.m. in the afternoon. It is at that point that the banking tasks commence, and it is not until the banking is completed that we can register your Transfer / Deed on title. **Until the deed is registered, showing you as the legal owner of the home, you cannot move in.** This is important to know to avoid un-necessary costs for moving companies, and to plan for help from friends / family when moving in.
- **Contact your utilities:** gas, hydro, telephone, cable, water, security etc. to advise them of the address of your new home and the date you are moving in, and set up your new utility accounts. You will also want to advise them of the last day at your current residence so that they know the effective final date for billing purposes.
- Arrange for **home insurance** and provide your lawyer with the contact information for your broker as soon as possible. We need to obtain certain information and written assurances from your insurer to satisfy your lender otherwise they will not advance funds.

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Land Transfer Tax

What Is Land Transfer Tax: Land Transfer Tax is an Ontario tax levied on all transfers of land in Ontario, (new and re-sale).

How is it Calculated: It is not a flat-rate tax, but is calculated as follows:

1. **0.5% on the first \$55,000:**

On the first \$55,000 of purchase price, the tax is one-half of one percent (0.5 % on the first \$55,000, which equals \$275).

2. **1.0 % on the excess between \$55,000 and \$250,000:**

On the purchase price above the first \$55,000 up to \$250,000, the tax is 1 % of that excess.

So, for a house costing \$250,000, the tax is \$275 [from the calculation in # 1 above],
plus 1% of \$195,000 [\$250,000 - \$55,000],
which equals \$1,950, for a total of \$2,225.

3. **1.5% on the excess between \$250,000 and \$400,000:**

On the purchase price above the first \$250,000 up to \$400,000, the tax is 1.5% of that excess.

So for a house costing \$400,000, the tax is \$2,225 [from the above calculation in # 2 above],
plus 1.5% of \$150,000 [\$400,000 - \$250,000],
which is \$2,250, for a total of \$4,475.

4. **2% on the excess above \$400,000.**

On the purchase price above the first \$400,000, the tax is 2% of that excess.

So for a house costing \$500,000, the tax is \$4,475 [from the calculation in # 3 above],
plus 2% of \$100,000 [\$500,000 - \$400,000],
which equals \$2,000 for a total of \$6,475.

First Time Home Buyers: First-time home buyers may be eligible for a refund of all or part of the tax. The *maximum* amount of the refund is \$2,000. If the cost of the home is \$200,000 or less, then there is no land transfer tax payable. If the cost of the home is more than \$200,000, then some land transfer tax will be payable. For example, for a \$300,000 home there will only be \$975 payable for land transfer tax (as opposed to \$2,975 without the refund). If the refund is claimed at the time of registration of the transfer, the refund is offset against the land transfer tax ordinarily payable.

Who Qualifies for the Refund: To qualify, you must be at least 18, must occupy the home as your principal residence within 9 months after the date of transfer, and you cannot have owned a home, or an interest in a home, anywhere in the world. If it is a newly constructed home, you must also be entitled to a Tarion New Home Warranty. A qualifying purchaser may also claim a *partial* refund in proportion to his or her spouse's interest if that purchaser's spouse has owned a home before becoming the purchaser's spouse.

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Title Insurance

What Is Title Insurance: Title insurance is an insurance policy that provides protection to the home buyer and the lender for both the title-related aspects of buying a home and the legal services provided by your lawyer*. Because it is insurance, a title insurance policy moves the risk associated with title from the home buyer, the lending institution or the lawyer, to the title insurance company.

What Does Title Insurance Cover:

- Title related problems, or defects in title, such as conflicting ownership interest in the property
- Forgery or fraud committed by third parties affecting your title
- Old or improper mortgages, liens from judgments, special assessments for local improvements, realty tax arrears or public utility arrears
- Improper documents affecting title
- Certain rights arising from tenancies, contracts, options, or rights of possession by a spouse
- Regulatory compliance problems, such as certain breaches of restrictive covenants, notices of violation, work orders, encroachments, building permit problems, and set-back deficiencies
- Inability to live in the home as a single residential dwelling under zoning by-laws
- Access-related problems, such as the absence of a legal right of access to the home or the inability to use certain easements or rights-of-way over a neighbour's property

What is Not Covered by Title Insurance:

- Some rights governments may have in the land
- Certain environmental hazards
- Buyer's ability to change the use of the land
- Buyer's right to undertake renovations or construction
- Certain native land claims
- Generally, anything that was *known* to the buyer prior to the closing of the transaction

What Happens if There is a Problem Covered by Title Insurance: If there is a problem with title that only becomes known *after* closing, the title insurer may rectify the problem or compensate the title insurance policyholder, provided the type of problem that surfaces is covered by the title insurance policy.

A Note About Surveys: Generally speaking, a title insurance policy will eliminate the need for an up-to-date building location survey of the property. However, be careful about deciding not to hire a land surveyor to perform an up-to-date survey. If you are planning to alter the property (for example, by building an addition on the house or changing the use of the property), it would be very important to you to purchase the survey and ask your lawyer to perform a zoning search. A review by your lawyer of the survey and zoning search / by-laws is the only way that you will know if you can build (or do) precisely what you want on the land.

*Not all title insurance companies insure the legal services provided by your lawyer, so ask your lawyer if the policy protects against this.

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Selling Your Home – Closing Costs

Legal Fees: \$650

Disbursements: (“out-of-pocket” expenses which the lawyer spends on your behalf, which vary in each case):

Register Mortgage Discharge: \$60

Charged by the Ontario government when we discharge your mortgage from title after you sell.

Teranet Charges: \$10 per registration

Charged by the Company that manages the on-line registration of real property in the Province of Ontario.

Law Society of Upper Canada

Transaction Levy Surcharge: \$65

Charged by the Law Society of Upper Canada for all real estate transactions in Ontario which are not title insured (and when you are selling, you are not at the same time purchasing title insurance – you only do that when you buy).

Postages, Faxes, Copies, Long-Distance: \$35

Couriers: \$25 - \$30

Parcel Register: \$25 - \$50

HST is extra.

***Total:** \$850 - \$900 on average.

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Selling Your Home – The Legal Process

Step # 1: We need to obtain a copy of and review the Agreement of Purchase and Sale, and make sure that you understand the terms of the deal. We will also discuss the key dates in the process, the obligations that the Agreement has created, and the expenses and fees involved. The key point to remember is that this is a legally binding contract - the seller has a legal obligation to sell, and the buyer has a legal obligation to buy the home.

Step # 2: The buyer's lawyer will have a list of issues that need to be resolved (called "requisitions": paragraph 8 of the Agreement of Purchase and Sales sets out the "Requisition Date"). These are concerns about what is on title to your property, or any executions or liens to remove. We need to resolve all of these issues before closing.

Step # 3: We prepare the Transfer / Deed to the Buyer, as they direct. We do the math with respect property taxes, utilities such as oil and / or propane, and other charges to balance out the purchase price to the date of closing (called "adjustments"). We make sure that you are properly credited or compensated for any utilities or other expenses which you have pre-paid (i.e. the value of the oil left in an oil tank, or the value of any pre-paid property taxes, or the value of any pre-paid rentals, i.e. hot water tanks). We review the real estate agent's commission statement and make arrangements to ensure that the broker is paid on closing out of the sale proceeds.

Step # 4: We make inquiries to obtain the payout balance from your mortgage company(s), calculated to the day of closing, and request the documentation that we need to register a discharge of the mortgage after you sell. We make certain signed promises to the buyer's lawyer that the mortgage will be discharged within a reasonable period of time after closing (which is normally 2-3 months after closing, depending upon when the bank provides us with their written authorization to discharge).

Step # 5: We meet with you in person a few days before the closing date to sign a number of documents, ensuring that you understand the documents, and obtain your instructions about contacting you when the Transfer is registered so that we can deliver the balance of the sale proceeds to you. We get the keys from you a day or two before closing so that we can give the keys to the buyer's lawyer at the right time.

Step # 6: We attend to the duties on the day of closing, and provide the keys to the buyer's lawyer in exchange for the purchase funds. We perform a variety of banking tasks (getting the purchase funds, paying off your mortgage company, paying the real estate commissions, etc.).

Step # 7: We provide you with a report that summarizes the whole transaction within 30 days after closing.

Step # 8: It will be a month or two before we can obtain a discharge of your mortgage (as we must wait for documentation from your former lender), and then we must ensure the discharge is registered and provided to the buyer's lawyer.

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Your Responsibilities in the Sale Process:

- **Contact a lawyer** as early in the process as possible, and ensure that you provide them with a fully signed copy of the Agreement of Purchase and Sale.
- **Contact your lender** to advise them that you will be paying out the mortgage early, and speak with them to understand what penalties must be paid in order to exercise your pre-payment privileges. Sometimes, closing out a mortgage early can result in significant penalties – make sure you understand what those penalties are (if any).
- **Meet and/or waive all required conditions** in the Agreement of Purchase and Sale, if appropriate, by the deadline. Your real estate agent will work closely with you on these tasks.
- **Ensure that you are completely moved out by no later than 10:00 a.m. on moving day.**
- As soon as the purchaser's lawyer registers the Transfer / Deed on title, the home belongs to the new purchasers. This can happen as early as 10:00 a.m. on closing day. Once title is transferred to the purchaser, you are no longer legally permitted to be in the home.
- **Contact your utilities:** gas, hydro, telephone, cable, water, security etc. to advise them of your final date of occupation. They will want a forwarding address to send the final bill to. You will also want to advise them of your new address and set up your new utility accounts there.
- Ensure that your **home insurance** remains in effect until the day *after* the day of closing.
- Arrange insurance for your new home.

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