

BUYING A HOME: HIGHLIGHTS OF THE PROCESS

Whether you are a seasoned buyer with several purchases to your credit or you are buying a property for the first time, the process of buying a home is technically the same.

If you're buying a property for the first time, one of the key differences will be whether or not you are eligible for exemption under the Property Transfer Tax. See below for more details on this.

After you've signed the offer and the subjects are removed, you have a legal binding document or Contract of Purchase and Sale.

To handle the conveyance or legal transfer of the property, your realtor will then ask you for the name and contact information of your legal representative, either a Notary Public or Lawyer.

When you call a Notary or Lawyer to inquire about engaging services, we will usually want to know the completion date of your purchase. This is the date upon which we work towards to make the necessary "magic" happen.

On the completion date, our primary role is to ensure that you are in a position by providing your purchase monies to the vendor's lawyer or notary and by registering you at Land Title as the new owner of the Property.

If you're financing your purchase with a mortgage, either directly with your Lender or through a mortgage broker, you will be required to sign off on the terms and conditions of your mortgage. Here too, you should also expect to provide the contact information of your legal representative so they can receive the mortgage instructions from your Lender.

For the legal practitioner, everything flows from receipt of these two key documents: your completed Contract of Purchase and Sale, and your Lender's mortgage instructions.

ELEMENTS OF CONVEYANCE: COST FACTORS

1. TAXES!

▪ Property Transfer Tax

The Property Transfer Tax is different from property tax. You pay a Property Transfer Tax when you purchase or acquire an interest in a property. The formula of this calculation, based on the purchase price, is: 1% on the first \$200,000.00 of the purchase price, plus 2% on the difference. So for example, on a purchase price of \$350,000.00 the PTT is: \$5,000.00.

As indicated above, if you are a new First Time Home Buyer you will want to determine if

you qualify for exemption to the Property Transfer Tax under the First Time Home Buyer's Program. This can make a significant difference in the cost, as the PTT is often the single most expensive closing cost item in a conveyance.

Under the program, eligible purchasers can claim an exemption from Property Transfer Tax if the fair market value of the home is less than the threshold amount. This threshold has gradually increased since the Program came into effect in 1994, and is currently (2008 – 2009) set at \$425,000.00, with a proportional exemption provided for eligible residences with a fair market value of up to \$25,000 above the threshold to \$450,000.00.

IMPORTANT NOTE: There is additional criteria other than the value threshold that you must also qualify for both BEFORE the purchase and AFTER the purchase, so I strongly recommend that you check this with both your realtor, legal practitioner and also view the information and bulletins provided by the Government web site at: [First Time Home Buyer's Program \(Bulletin 004\)](#). This bulletin defines the Who and the What criteria of eligibility.

For example, one of the often overlooked criteria under the Who Qualifies is: "a person, who has never at any time, held a registered interest in a principal residence **anywhere in the world, not just in British Columbia!** A principal residence is defined as the usual place where an individual resides.

As indicated in the above Bulletin, ALL CONDITIONS must be satisfied to become, and to remain, eligible for the exemption.

▪ **GST – Goods and Services Tax (GST)**

The GST is a federal tax, currently charged at the rate of 5%, and is payable on all new or substantially renovated homes and is often included in the quoted sales price. New home buyers of residences costing \$350,000 or less can apply for a partial rebate of the 5% GST applicable on the purchase price as long as the home is going to be the purchaser's primary place of residence.

For new homes priced between \$350,000 and \$450,000 before GST, the GST rebate reduces proportionately. New homes priced \$450,000 before GST or higher do not receive a rebate. There is no GST on resale housing unless the home has been substantially renovated, and then the tax is applied as if it were a new home.

GST questions are best answered at source i.e.: the [Revenue Canada website](#), or by an accountant who is familiar with real estate revenue taxation.

2. ADJUSTMENTS

In a conveyance some costs are included as adjustments between the vendor and buyer.

One of these is the annual property tax and / or utilities charged by the municipality in which the purchased property is situated. Depending on the time of the year and whether the vendor prepaid the taxes and/ or utilities can be either a credit or a debit disbursement to the purchaser. Either way, as the purchaser you should plan to pay either by way of disbursement on the Statement of Adjustments or directly to the municipality the property you are buying is located in, your share of the taxes for the time that you are deemed to be living in the property. The date a conveyancer uses to calculate this date is the adjustment date. The rule is that the purchaser is responsible from the adjustment date forward when calculating those costs that are adjusted between themselves and the vendor.

Pre-paid strata maintenance fees are another type of adjustment cost between the vendor and purchaser.

Jane Capwell, Notary Public
www.janecapwell.com, copyright, all rights reserved, 2009

The above is provided as an example of the main types of cost factors but it is not an exhaustive list. For additional information, you should consult with the legal practitioner who will be handling your conveyance.

A Sample Buyers Statement of Adjustments is included in the Support Documents section below. This statement outlines some of the types of cost items that can occur in a standard conveyance, and is one of the most important documents in a conveyance. The purchaser receives the Buyers Statement and the seller receives the Sellers (or Vendors) Statement of Adjustments.

3. FEES AND DISBURSEMENT: LEGAL AND NON LEGAL

Fees and particularly disbursements are costs paid out by the legal practitioner to third parties on behalf of the conveyance.

Fees are the costs charged by the legal practitioner to conduct the conveyance, and disbursements comprise both the legal disbursements paid out to third parties such as the Land Title Office to register the Transfer and, if applicable, the Lender's interest under the Mortgage.

The non-legal disbursements are those paid to third parties such as insurance companies, land title agents, municipal tax offices, and couriers.

OVERALL CLOSING OR CONVEYANCE PROCESS:

The following provides a step-by-step outline of the basic tasks performed by a notary or lawyer in most standard conveyances.

Step 1: Engaging the Notary or Lawyer's Services

Contact a lawyer or notary, as early as possible, to discuss engaging their services. Once you have made this decision the lawyer or notary will ask you to provide your realtor with their contact information, e.g. phone number, fax number, address and email, if applicable.

If you are financing your purchase it's also important that you finalize your mortgage instructions with your Lender of choice as soon as possible, and to also give your Lender or mortgage broker your notary or lawyer's contact information.

This will enable your notary or lawyer to receive the completed contract of purchase and sale and commission instruction from the realty office and the Lender's mortgage instruction from your Lender. A notary or lawyer cannot fully open your file until they are in receipt of both of these very important documents!

Step 2: Confirmation of Personal Details

Upon receipt of the completed contract, and, if applicable, your mortgage instructions, your lawyer or notary will confirm the information they require to open your file, this will include your personal details, such as: your full legal name, and occupation. They will also discuss how you plan to hold the title to your property, either by yourself or with another person, i.e. spouse or partner, and the form of legal ownership in which you intend to own the property, either joint tenancy or tenant in common. This difference between the two is further explained below.

Joint Tenancy: most common form of ownership for those who are married, or wish to share the interest together with another person in a manner that is referred to as an 'undivided interest'. Joint Tenancy essentially means: 'right of survivorship' and key difference between this and tenant in common as a form of ownership, is that when a person on title as a joint tenant dies, their interest collapses to the surviving tenant and does not pass through their will or estate. Not until the final remaining or sole remaining tenant (owner) passes away does the full interest pass through their will or estate and consequently also becomes subject to probate.

Tenant in Common: Conversely when a person holds their interest in the property as a tenant in common they hold the interest separate from the other tenant(s) such that when

Jane Capwell, Notary Public

www.janecapwell.com, copyright, all rights reserved, 2009

they die their interest passes through their will or estate, and consequently is also subject to probate.

Step 3: Information Gathering

The lawyer or notary will then conduct a title search and tax search of the property and obtain all the other information to prepare the Statement of Adjustments (see the sample Buyers Statement of Adjustments at the end of this outline). Your notary or lawyer also prepares the Vendors Statement of Adjustments, along with other documents including the Transfer Form, to send to the notary or lawyer acting for the vendor of the property you are buying.

Ideally, time permitting, the notary or lawyer will socialize the Buyer Statement of Adjustments usually in draft form with you to disclose the total funds required by you to complete. As a matter of trust, these funds will be required by your notary or lawyer in either a bank draft or certified cheque form. The practice of my office is to request the funds in bank draft form.

It is also my practice, time permitting, to provide my clients with an engagement letter outlining and confirming various information details of the transaction. **A sample of my engagement letter is provided in the support documents section below.**

Step 4: Document Preparation and Delivery

Your lawyer or notary forwards the vendor's closing documents to the lawyer or notary acting for the vendor of your property for their signature and return prior to the completion date.

This package includes the Transfer Form, which upon execution and registration at the Land Title Office on the completion date serves to release the vendor's interest in the property to you. This of course is with the understanding or legal undertaking that the purchaser's notary or lawyer forwards the purchase proceeds to the vendor's lawyer has received all the closing funds, including the balance of funds from the purchaser.

Step 5: Signing Documents

Your lawyer or notary will schedule you to attend at their office to sign your part of the closing documents, and to tender the final balance of the closing costs required by you. This usually occurs 1 – 3 days prior to the completion date.

Step 6: Registration of Documents and Payment of Monies

Upon receipt of both the executed purchaser and vendor's closing documents, specifically the Form A Transfer, your lawyer or notary prepares the transfer and mortgage, if applicable, for registration at the Land Title Office. They also notify the seller's lawyer or notary that funds are available to be picked up and then they report the registration details to all the stakeholders: the vendor's notary or lawyer; the realtors; if it's a strata or condo, the strata property company; and YOU!

Note: Land Title registration is by way of either your notary or lawyer using a Land Title agent or by filing electronically. The practice of my office is to file electronically. This can be advantageous both in cost savings and timing benefits for the purchaser, especially if the purchaser is selling and buying a property with a completion date on the same day! While not a recommended practice and most realtors try to avoid this, as an electronic filing agent with the Land Title Office my office is in a position to work with this circumstance. We also work closely with the notary or lawyer acting for the purchaser of the property you, our purchaser, is selling to facilitate matters. However, as most notary's and lawyer's would point out, we can't guarantee that receipt of funds from the sale will be received in time to close on the purchase on the same day! For further information it's best to speak with your lawyer or notary.

Step 7: Possession!

On the contracted possession date, and by having received confirmation of registration from your notary or lawyer's office, the realtors will arrange for you to receive the keys and gain access to your new property.

Step 8: Damage Control!

The viewed by date: I generally counsel my purchasing clients that now another date from the contract comes into its own: the 'as viewed by date'

When you step into your new property it should essentially be in the same condition or relatively close as it was when you viewed it, subject to any representations or warranties made by the seller to you as indicated in the Contract.

If there is substantial difference to the property upon possession date from when it was viewed, especially if there is structural damage, try to take some photographs, have the realtor or another person be a witness to the situation and walk away from the property.

You will then contact your realtor, if they weren't present at the viewing, and also your notary or lawyer to inform them of the circumstances.

Fortunately, this type of situation doesn't occur all that often and even if it does the circumstances can often be resolved with discussions by the vendor's realtors with their respective client.

However, if it can't be resolved between the parties and the situation becomes contentious, then you will need to engage the services of a lawyer. This also becomes the key difference between using a notary or lawyer to act for you as the notary can no longer act and will refer you to a lawyer. (This is further discussed in the FAQ section of my website).

Step 9: Home Sweet Home!

Assuming that everything has gone well and there are no problems, the next step is easy:

Enjoy your new home!

Your lawyer or notary will also forward your State of Title Certificate to you, in due course, upon receipt from the Land Title Office confirming the registration of your new home in your name, it will also confirm the registration of the mortgage, if applicable, in favour of your Lender's name.

Note: In preparing the above information, we wish to acknowledge the contribution of Bell Alliance, Lawyers and Notaries Public.

Support Documents:

Sample Buyers Statement of Adjustments

The attached sample Buyers Statement of Adjustments is provided to illustrate the types of costs involved for a purchaser of a City of Vancouver resale strata property, with no GST, but as they do not qualify for the Property Transfer Tax (PTT) exemption the PTT has been charged, and the CMHC insurance premium has been deducted from the mortgage advance due to the high ratio or non conventional classification of their mortgage.

You will also see an example of the conveyance fees my office charges for a standard purchase and mortgage conveyance, for further information on my fees click on Schedule of Fees. Please note, the schedule of fees charged is provided as a guideline and is subject to change given the nature and complexity of the transaction.

Sample Buyers Engagement Letter

The attached sample Buyers Engagement Letter is provided to illustrate the preliminary details my office sends out to a purchaser prior to completion date, usually along with the draft Buyers Statement of adjustments, to confirm details of the purchase such as the purchaser's name, occupation and legal ownership. It also outlines the types of duties my office will provide and those we do not and any requirements the purchaser is advised to fulfill.

Real Estate Council of British Columbia

An excellent 36 page booklet published by the RECBC that outlines the entire process of buying a home, taking a prospective buyer through the preliminary stages of thinking about buying a home and the questions to consider and preparations that can be made, to describing the contractual process. It ends off where the above conveyance process in more detail is provided.