

MULLIN DEMEO

BARRISTERS & SOLICITORS

Overview of a Real Estate Transaction - Buying or Selling your Home

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General

The following overview is intended to be general in nature, not comprehensive. Each property transaction is unique. It is extremely important that each Buyer or Seller have a good working relationship with the professionals involved in his or her real estate transaction - realtor, lawyer and banker - in order to move the transaction smoothly toward completion.

Our goal at Mullin DeMeo is to provide our clients with excellent quality legal service, and ensure complete client satisfaction with the progress of each transaction, so that our clients remain long-term clients of the firm. If you have any questions with regard to the process of buying and selling property, or if you would like information regarding costs, please contact our office.

Working with a Real Estate Agent

Looking for a new home? Selling your current property? Your Realtor is an essential part of either of these transactions. Licensed realtors possess specialized knowledge of the local housing market and the expertise required to negotiate the best terms possible for either a purchase or sale.

In British Columbia, Realtors may work as agent for the Seller, for the Buyer, or for both parties. When you enter into an agreement to work with a Realtor, you can expect the Realtor to make clear the capacity in which he or she is working with you. As your agent, your Realtor must exercise care, skill and loyalty, and protect your negotiating position.

The Contract of Purchase and Sale

The Contract of Purchase and Sale is the central document in any real estate deal. It defines the expectations and obligations of each party. It is critical that this Contract address all matters important to the parties, and that the parties have professional assistance when preparing it. The Contract should also clearly identify any warranties or representations that a party considers important or will rely on for the purposes of completing the transaction.

Usually, the Buyer, with the assistance of the Realtor, will prepare the proposed Contract and then present it to the Seller and Seller's Realtor for acceptance. If the Seller accepts the proposed Contract by applying his or her signature to the document, within the time allowed and without alteration, then a binding Contract is formed.

In order for the Contract to be enforceable, it must express with certainty all material points. Some material points include: price; legal description of the property; names and signatures of all registered owners of the property; and the completion date (the date upon which the purchase funds are to be paid to the Seller and the ownership transferred to the Buyer). Whether or not something is a material point will depend upon the unique circumstances of each transaction.



Even after a binding Contract is formed, there still may be a number of issues to be resolved, such as financing, a search of title, or a home inspection (see below). Usually, these are built in to the Contract as “conditions” or “subject-to’s”, and provision is made for their removal by a certain date mutually agreeable to both parties.

If the Buyer requires a mortgage to complete the purchase, then it is imperative that a “subject to” clause be included in the Contract that will allow the Buyer sufficient time to apply for and receive mortgage approval from a mortgage lender. The lender will require a copy of the Contract, and will normally perform an appraisal of the property.

Buyers should take the time to thoroughly investigate the title to the property prior to removing Contract conditions. Buyers should be made aware of any charges registered against or legal notations that exist on the title (such as rights of way, easements, etc.). If this information is not available at the time the Contract is signed, then it is recommended that a “subject to” clause be inserted which allows the Buyer time to obtain this information and receive the appropriate advice. You may wish to review certain terms with your lawyer, and ensure that you are satisfied with the state of title before removing a condition related to this issue.

Finally, it is strongly recommended that the Buyer include in the Contract a “subject to” clause that provides the Buyer with an opportunity to have the home inspected by a professional house inspection service. A home inspector will advise as to any hidden defects or damage to the property, as well as on the overall structural soundness and condition.

The “subject to” clauses included in the Contract must be dealt with during the time specified in the Contract, and removed in writing. It is normal practice that the Realtors involved in the transaction prepare the amendments to the Contract removing these conditions.

At this point, the Buyer usually provides the Realtor with a deposit on the Purchase Price. The Realtor holds this money in trust until the completion date. The balance of the purchase price (including any costs and adjustments) is usually paid by the Buyer to the Buyer’s lawyer in trust just prior to the completion date.

Getting your Lawyer Involved

After a Contract of Purchase and Sale to either sell or buy your home, has been signed, but often before all conditions are removed, your real estate agent or mortgage lender, where applicable, may ask you for the name of a lawyer to act on your behalf in completing the transaction. Your real estate agent will contact your lawyer, and provide a copy of the Contract. Once all conditions or “subject to’s” have been removed, the lawyers for the Buyer and Seller begin to prepare the documents required to complete the transaction.

This is also a good time for you to discuss with your lawyer the steps that the lawyer will be taking and to clarify which matters are left for your attention. Your lawyer should also be able to provide you with an estimate of legal fees and other costs, to allow you to accurately budget for the entire transaction. It is important to keep your lawyer fully informed of all developments concerning the transaction, including financing arrangements and the status of any conditions on the Contract, in an effort to avoid possible problems should they arise.

Our Land Title System

We are fortunate in British Columbia to have a great land title system. It is based upon the “Torrens System”, originally developed by Robert Torrens in Australia, whereby registration of land ownership provides an “indefeasible title”, that is, conclusive evidence of ownership.

Under this type of system, no historical investigations of title are required. This is a significant advantage over some other jurisdictions, where the chain of title must be searched back historically as far as possible to ensure that there are no past defects prior to the current ownership, and that good title has been and can be passed to a new owner. Instead, to determine the state of title, we can rely upon the current Land Title Office record for the property being purchased.



British Columbia is divided into several land title districts. The Land Title Office located in Victoria deals with properties located on Vancouver Island and the Gulf Islands. Our firm can access Land Title Office records electronically, which allows us to conduct a search of title at any time, on demand. We also have an agent located at the Victoria Land Title Office to assist us with obtaining copies of documents to be reviewed (such as rights of way, easements, buildings schemes, and subdivision plans) and processing registration of transfer documentation. Finally, it is our firm's standard practice to file land title documents electronically, whenever possible, to ensure the quickest and most efficient completion of a transaction.

The Lawyer's Role in the Completion of the Purchase and Sale

Both the Buyer and the Seller in a real estate transaction should have legal representation and advice. The main function of the lawyer involved is to ensure that each party receives what he or she bargained for under the Contract. As noted above, it is recommended that each party discuss in advance with the realtor and the lawyer what matters they should be dealing with prior to the completion date, and what matters will be left for the lawyer to address.

The main function of the Seller's lawyer is to clear title of any charges against the property not agreed to by the Buyer, and to make certain that the Seller receives all funds due to the Seller under the Contract. If there are charges on title to the property which must be cleared, then the Buyer's lawyer provides the purchase funds to the Seller's lawyer upon the condition that he or she ensure that these charges are discharged before title passes to the new owner.

The primary duties of the Buyer's lawyer are to prepare all legal documentation related to the transaction, and ensure that the Buyer obtains "clear" title to the property – that is, title free of all charges or encumbrances except those to which the Buyer has agreed. In addition, if the Buyer is obtaining mortgage financing for the purchase, the lawyer will assist in preparing and registering financial documents and advising the client in this regard.