

LEGAL GUIDE TO
BUYING
— AND —
SELLING
MY HOME



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Making Law Accessible

Real Estate Buying and Selling Guide

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Part I

BUYING

1. Working with a Realtor
2. Mortgage
3. Considerations for writing the offer
4. Legal transfer of title
5. Possession

1. Working with a Realtor

When you are looking to purchase a new home, I recommend working with a Realtor. Realtors have access to the Multiple Listing Service (MLS) and can gain access to most homes for sale.

A good realtor will quickly narrow down the homes to view to those most appropriate for your wants and needs. He or she will make your search more productive.

Realtors also have access to standard forms of offers to purchase. This makes the process of entering into a contract to buy a home much easier.

If you do not have a Realtor, you should consult with a lawyer to prepare the offer to purchase. This is the biggest investment of your life. Lawyer fees are insignificant compared to the risk of preparing a poor offer. Fees should be under \$500.00. TLR law standard fee is \$350.00 for offer preparation and advice.

2. Mortgage

If you need a mortgage to buy your home, your bank must approve your mortgage. Approval is provided in two steps.

First, you must be pre-approved. Prior to viewing homes, you should meet with your banker. He or she will consider your income and expenses and give you an upper limit to the mortgage that will be provided.

Once you make an offer on a home, the bank must be satisfied that the home is worth what you offered. They may send an appraiser or rely on internal software and reports.

3. Considerations for writing an offer

Your realtor will provide you with the form to make your offer to purchase the home. He or she will also assist you in preparing the offer. When making the offer, you should include a few conditions to protect yourself.

a. FINANCING

If you need a mortgage, then you should include a condition stating that the offer is subject to financing. This condition will allow you to cancel the offer if the mortgage is not approved (if the bank has concerns about the property). The form of offer used by realtors includes a pre-printed condition at para. 8 (b). It reads as follows:

That any mortgage shown as to be arranged can be so arranged by the Buyer by _____ a.m./p.m. on the _____ day of _____, _____.

b. HOME INSPECTION

I also recommend that you obtain a home inspection. You should have the home inspected because, in Manitoba, the principle of "buyer beware" or "*Caveat Emptor*" applies. This means that you must satisfy yourself that the home meets your standards.

The vendor is under no obligation to disclose problems. Therefore you accept the home "as is". If the foundation is failing, it becomes your problem. There are exceptions to this, but legally it becomes complicated. A home inspection should flag any potential problems early and should avoid expensive litigation.

Para. 8 (c) of the offer reads as follows:

*That by _____ a.m./p.m. on the _____ day of _____,
_____ the Buyer obtain, at the Buyer's expense, an inspection of the
property, satisfactory to the Buyer, by an inspector chosen by the Buyer.*

c. PROPERTY DISCLOSURE STATEMENT

If you are purchasing, you should also ask the vendor to provide you with a "Property Disclosure Form". In the form, the vendor must state if he/she/they have experienced or are aware of any problems with the property. While this is not a guarantee that everything is in order, it provides some background on the property. This information may become important if litigation ensues.

d. LAWYER APPROVAL

Realtors will be able to assist with most routine transactions, without your lawyer reviewing the offer. However, be forewarned that lawyers cannot change the terms of an offer once you accept them. If you have concerns or would prefer to have your lawyer approve the offer, then you should include the following condition in the offer at para. 8 (d):

*This offer is conditional upon solicitor approval of the terms of this
Agreement of Purchase and Sale in his/her sole and absolute discretion
by _____ a.m./p.m. on the _____ day of _____, _____.*

4. Transfer of title

Once the offer has been accepted and all the conditions satisfied, you must engage the services of a lawyer to assist you in obtaining title and registering your mortgage.

You will meet a week or two prior to possession to execute all the documents. Your lawyer will ask you to bring in the cash to close. This is the money needed on possession. It is the amount not covered by the mortgage and the deposit you placed at the time of making the offer.

In addition to the cash to close, you will need to provide the funds for the following:

- a. Land transfer Tax - this is based on a percentage that increases as the purchase price increases.
- b. Title insurance - If you do not hire a surveyor to prepare a survey, you will need title insurance. This insurance protects you from any defects that exist on title that would have been uncovered by a surveyor.
- c. Lawyer fees
- d. Disbursements for items like tax and title searches and deliveries.

You must also make arrangements to have fire insurance coverage as of the date of possession. Your lawyer will ask that you provide proof of insurance. Your insurance broker will be familiar with the process and will provide you or your lawyer with a "binder letter" evidencing your insurance.

5. Possession

Once you have signed all the documents, your lawyer will ensure the documents, keys, and funds get exchanged with the other party's lawyer. While you may get the keys to your new home a day or two prior to possession, you cannot enter the property until the possession date and time agreed upon in the offer.

On possession date, you should take pictures of the water, hydro, and gas meters and report the readings to Manitoba Hydro for Hydro and gas and the city or municipal authority for water.

Unless the offer specifies otherwise, all the appliances, mechanical, electrical, heating, cooling and plumbing should be in the same condition as they were at the time the offer was made.

If an appliance breaks between the time the offer was accepted and possession, the vendor must repair or replace the appliance. If anything fails the day after possession, it is the responsibility of the new owner(s).

Part II

SELLING

1. Working with a Realtor
2. Considerations for writing the offer
3. Legal transfer of title
4. Giving possession

1. Working with a Realtor

Listing your home for sale with a Realtor will help you cast your net as widely as possible to "catch" the highest number of possible buyers. In exchange for exposing your home to the most possible buyers, Realtors will ask you to sign a listing contract and will charge you commission on the selling price of your home.

Contracts can range in time from 3 to 6 months, usually. Commissions will range from a flat fee to 5 or 6 % of the selling price. If you don't have a Realtor, I recommend interviewing at least three. You should feel comfortable with your choice because you will be bound to them by contract.

2. Considerations for accepting an offer

Purchasers are responsible for making an offer. Normally, purchasers will include one or more conditions for their benefit. If those conditions are not satisfied, the offer will become null and void and they will have their deposit returned.

The conditions included most often include:

- a. financing: If they are obtaining a mortgage, the bank will want to ensure the property is worth the purchase price.
- b. Home inspection: As a vendor, you are under no obligation to disclose defects in the property. The principle of "buyer beware" applies. To protect themselves, purchasers will hire a home inspector who will provide them with a report on the condition of the house.

- c. If your property is serviced by a well, the bank will want a water potability test done.
- d. Lawyer approval: Realtors will be able to assist with most routine transactions, without your lawyer reviewing the offer. However, be forewarned that lawyers cannot change the terms of an offer once you accept them. If you have concerns or would prefer to have your lawyer approve the offer, then you should include the following condition in the offer at para. 8 (d):

This offer is conditional upon solicitor approval of the terms of this Agreement of Purchase and Sale in his/her sole and absolute discretion by _____ a.m./p.m. on the _____ day of _____, _____.

PROPERTY DISCLOSURE STATEMENT

Vendors should be wary of completing the "Property Disclosure Form". The form is attached as a schedule to the offer and consist of a series of questions with a yes, no, and not applicable box where you would respond to the question.

These forms only benefit the purchaser and can create liability for the vendor. If, for example, you live in the home for over 20 years, you may not remember that 15 years ago, you had problems with water in your basement. If you indicate that you have no problems with water in the basement, you just misrepresented the truth. A purchaser would have a claim against you if he or she were able to show that you were aware of the problem 15 years ago.

3. Transfer of title

Once you accept the offer, you must engage the services of a lawyer to assist with the transfer of title. Your lawyer is responsible for:

- a. transfer of keys;
- b. preparation and execution of transfer documents;
- c. receipt of sale funds;
- d. Mortgage payment and discharge;
- e. Payment of commission to Realtor;
- f. Payment of final municipal water account;

- g. Final payment of leased, rented or installment plan payments for items such as furnace, air conditioning unit, hot water tank, or windows if applicable.

Your legal fees and disbursements will be paid out of sale proceeds. Disbursements include the costs for items like tax and title searches and deliveries.

At your appointment with your lawyer, you will provide one key, old building location certificate (if any), and zoning memorandum (if any).

4. Giving possession

The day before possession or as late as possible prior to possession, you should take a picture of your water, hydro and gas meter and report your hydro and gas readings to Manitoba Hydro. You will provide your lawyer with your water meter reading. Your lawyer will ensure water is paid from sales proceeds.

Unless the offer specifies otherwise, all the appliances, mechanical, electrical, heating, cooling and plumbing should be in the same condition as they were at the time the offer was made.

If an appliance breaks between the time the offer was accepted and possession, the vendor must repair or replace the appliance. If anything fails the day after possession, it is the responsibility of the new owner(s).

Before leaving the home for the last time, make sure everything is working. Make a video if possible. Leave all extra keys and garage door remotes on the kitchen counter. If you didn't provide your lawyer with copies of old surveyor location certificates and zoning memorandums, you should also leave them on the kitchen counter for the purchasers.

If you have any questions, call the lawyers at TLR law for a free 30 minute consult at (204) 925-1900 or visit our website at www.tlrlaw.ca.