



## MEMORANDUM TO BUYERS OF RESIDENTIAL PROPERTIES

Prepared by  
**DUST EVANS PROFESSIONAL CORPORATION**  
for the assistance to its clients

**PLEASE NOTE:** This memorandum has been prepared and is intended for your general information only. It is not held out as and is not to be construed as legal advice concerning your particular purchase.

### LEGAL FEES AND OTHER COST CONSIDERATIONS

Quoted fees and disbursements are based on the assumption there will be no unusual complications in the transaction as it progresses. While we will make every effort to keep our costs within the amount quoted, circumstances may arise which are beyond our control and which may require us to spend considerably more time on your file than originally anticipated. A few examples of events which may result in an increase in our fees and disbursements are: a change in the closing date, documents having to be signed and registered under a Power of Attorney, the registration of additional mortgages on title, and unusual title problems or difficulties with the Seller. In the event that the transaction does not close, our fees will usually be calculated on the basis of the amount of time we spend working on your file, at our usual hourly rates.

In most cases we cover our out-of-pocket expenses prior to closing and ask that all fees and disbursements be paid by you at closing.

If your account is reimbursable by your employer, relocation company, or any other third party, we will provide you or the third party with our account when required. If your account is reimbursable, or to be paid by someone else, please let us know as early as possible so that the appropriate arrangements for payment can be made.

In addition to our fees and disbursements, there may be other costs involved with arranging your mortgage. These may include such charges as appraisal fees, documentation fees, and a mortgage insurance fee. The mortgage insurance fee will have Provincial Sales Tax (PST) added to it. There may also be an interest adjustment on the mortgage advance. You should enquire directly with the mortgagee concerning these matters.

### ADJUSTMENTS AND OTHER COSTS

At the time of closing, there will be adjustments to the purchase price. Consequently, you may require some extra cash on closing. The most common adjustments for a resale home are realty taxes, fuel oil (where there is an oil tank), and mortgage interest (where the mortgage is being assumed). If you are purchasing a new home from a builder there may also be adjustments for preparation of the Deed, the New Home Warranty fee, and other matters specifically provided for in the Agreement of Purchase and Sale. In the normal course of events it is impossible for us to advise you of the amount of these adjustments until very close to the closing date. However, to assist you in your budgeting at this time, we can advise that these adjustments normally range from between a few hundred dollars to just over a thousand dollars.

After closing, you will be responsible for all unpaid tax instalments as they become due. You may find that you are required to make a tax payment very shortly after closing. We will provide you with as much information as we can regarding tax payments at the time of closing. However, you should contact the tax department as soon as possible after closing in order to determine when the next bill will be due. You may also want to discuss payment options with them. The City of Ottawa, and most other tax departments, offer a monthly payment option, payments by pre-authorized cheque, etc.

The City of Ottawa charges a fee to change the tax account into your name. This will be billed to you after closing.

### TAKING TITLE

Generally speaking, multiple Buyers can take title to real property either as joint tenants or as tenants in common.

**Joint Tenants** - Each person has the same interest in the property as the other, with a right of survivorship. If one of them dies while owning the property in this fashion, the survivor becomes the owner of the entire property without a further conveyance and the deceased's interest does not fall into his or her estate for purposes of administration. Couples usually choose this option.

**Tenants in Common** - Each person owns a percentage interest in the property. Unlike joint tenancy, upon the death of one of the registered owners, the survivor does not automatically receive the deceased's interest. It will be disposed of according to the deceased's will or the laws of intestate succession. This manner of taking title is more common for business partners, ownership among siblings, etc.

A single buyer will simply take title in his or her name and may deal with the property as he or she wishes, unless the property is a matrimonial home in which event the non-owning spouse will usually be required to consent to any disposition or mortgage of the property.

As soon as you have decided how title will be taken, we will need to know the full legal names and dates of birth of all title holders in order to properly prepare the Deed and other conveyancing documentation.

### **UTILITIES**

Services such as water, hydro, telephone, cable vision, gas and fuel oil are matters of personal contract and do not necessarily continue automatically upon your purchase of the property. Prior to closing, we will advise the various utilities of the change in ownership and request that a meter reading be taken on the date of closing. Immediately following closing, you should contact each of the utilities to make sure they have changed their records and know where to send all future bills. You should also take your own meter reading on the day of closing so that if there is any confusion as to the closing date or time of the reading, the matter is easily resolved. You should note that the meters are not always read on the day of closing, notwithstanding our request. They may be read a few days before or after closing. All final bills for services up to the date of closing should be forwarded to the Seller at his or her new address for payment. On closing, we obtain from the Seller a written undertaking to pay all final accounts following closing. You should be aware that local practice does not require that any funds be held back on closing to pay these accounts. As Buyer you must rely solely on the Seller's undertaking to pay the accounts following closing. If the Seller fails to pay accounts that create a lien on your property, you may have to pay the accounts and then sue the Seller to recover the amount paid.

Should you be purchasing a home which is heated by unmetered fuel oil, the tank should be filled by the Seller immediately prior to the date of closing. When taking possession, you should check that the tank has been filled.

### **SURVEY** (not applicable for condominiums)

If you are purchasing a property with buildings and other permanent structures, it will, in almost all cases, be advisable to obtain a "building location survey". This survey is recommended to ensure, among other things:

1. That the buildings on the lot fall wholly within the lot lines;
2. That the by-laws concerning set-backs have been complied with;
3. That there are no encroachments onto the property.

Unless the Agreement provides otherwise the Seller is under no obligation to provide a survey which is not within his possession or control. Without the benefit of a survey, we, as your solicitors, cannot provide you with any opinion regarding the items noted above, and our opinion as to title will be subject to any defects which an up-to-date survey may reveal. We strongly advise, if a survey is not available, or if the existing survey is inaccurate, illegible, or no longer up-to-date, that you obtain a new survey or direct us to obtain one for you from an Ontario Land Surveyor. The cost of a new survey for a typical lot in an urban area is approximately \$2,000.00.

If the Seller has an existing survey and, if after reviewing it you are of the opinion that it shows the exact location of all buildings and improvements on the property, you may decide to rely on it rather than incur the cost of a new survey. You may decide to rely on it even if it does not show all improvements made to the property since the date of the survey. If you decide to proceed in this way, we will arrange to have the existing survey up-dated by the Seller by means of a Statutory Declaration confirming that, to the Seller's knowledge, the survey is still accurate, with any qualifications as to any improvements which may not be shown on the survey. While this approach is commonly adopted by resale Buyers, you should be aware that there are certain risks in proceeding in this fashion. For instance, a new survey might reveal that the earlier survey was in error or that there have been additions or alterations to the premises which would render the survey inaccurate. As well, there may have been additions or alterations to adjoining properties which would affect your property. For example, neighbours may have mistakenly placed their fences or other additions or improvements on the property which you are purchasing. If this occurred since the date of the existing survey, only a new survey would reveal the problem. If we have not already discussed this matter with you, please call

us as soon as possible so that we can proceed according to your instructions.

### **BUILDING PERMITS - IMPROVEMENTS**

Improvements may have been made to the premises since the house was originally constructed. This may include the construction of a deck, shed, recreation room, fencing, swimming pool, sunroom or other extension, etc. Quite often, the homeowner making the improvements does not obtain a building permit for the work being done. We will usually perform searches to learn as much as we can about the status of permits for the property. However, notwithstanding these searches, we cannot certify or guarantee that all the necessary permits have been issued and inspections performed. The reasons for this are that (i) the records in some municipalities are sometimes incomplete or inaccurate; and (ii) there may have been work done on the premises without the municipality being aware of it.

Even if we were to determine that permits were not issued, experience has shown that there is little or nothing that can be done to effectively remedy the situation. For instance, after the structure has been completed it is usually impossible to check if it was constructed according to code. Also, over time, permit requirements and building code regulations may change, such that what may have been acceptable when the structure was built may no longer comply with current standards. Finally, most municipalities are very reluctant to issue permits retroactively. Some refuse to do so.

These days, most Offers to Purchase contain a condition allowing you to have the building inspected by a professional building inspector. This is your best protection against major defects in the property. If you are aware of any additions to the property that may have been done without permit, you should ask your inspector to pay special attention to them to make sure that they conform to the Ontario Building Code.

The use of Title Insurance, while not a total answer to problems arising from a lack of permits, can help to minimize your risks.

### **TITLE INSURANCE**

Title insurance is becoming increasingly popular with residential home buyers. It is an alternative to proceeding with a transaction on the strength of a lawyer's certificate of title. It offers many advantages over a non-title-insured transaction. Some of these are:

- (i) If you have title insurance, you avoid some disbursements. In many cases your savings on disbursements will be greater than the cost of the title insurance.
- (ii) Title insurance provides broader coverage than a lawyer's certificate on title which will often be qualified. For instance, a lawyer's opinion will often be stated to be "subject to the accuracy of public records and information provided to us by third parties". If there was an inaccuracy in any of this information and this later results in a problem with your title, the lawyer will not be responsible to correct it. However, the title insurance would cover in this situation.
- (iii) If you have title insurance, you usually do not have to worry about a survey. Title insurance will usually cover you for any defects that a new survey might reveal. In some instances this will save you the cost of a new survey.

Under our Law Society regulations, we are required to discuss title insurance with you. If we have not already spoken to you about it, and about the different policies that are available, please give us a call.

### **PROPERTY INSURANCE** (not applicable for most condominiums)

It will be necessary for you to arrange your own comprehensive homeowners insurance policy to take effect at 12:01 a.m. on the day of closing. You should remember that in addition to fire insurance coverage, you will require public liability and contents coverage. Generally, the amount of the coverage must be sufficient to cover full replacement value. In the event your purchase involves mortgage financing, please instruct your insurance agent to provide us with a binder letter confirming the coverage and showing loss payable to the mortgagee, whose full name and address must appear on the policy. Your insurance agent should also make sure a copy of the policy is sent to the mortgagee(s). Without this proof of insurance, the mortgage company will not advance mortgage funds on the day of closing.

### **CLOSING THE TRANSACTION**

Normally, we do not receive all the financial information and documents on your file until a day or two before closing. Once we have everything, we will be in touch with you to set an appointment to meet with us to review the file, sign all papers, and

receive the funds needed to close. At the time that the appointment is fixed, we will give you the exact amount of money to bring with you in the form of either a bank draft or a certified cheque payable to "Dust Evans in trust". If this timing poses a problem for you, please advise and we will endeavour to provide you with our best estimate of the amount required to close before all final figures are in.

#### **IF YOU CANNOT BE HERE FOR THE CLOSING**

If you cannot be present at our offices at the time of closing, arrangements should be made to have funds delivered to our offices, or wired to our trust account, on the day prior to closing. It may also be necessary for you to appoint someone else to execute the documentation by Power of Attorney. This person could be a relative or friend who lives near our offices, or, if this is not convenient, one of the lawyers at this office. If signing under Power of Attorney is required, you must advise us well ahead of the closing date so that the necessary paperwork can be prepared and signed. In most cases, this cannot be done by fax.

#### **ENQUIRIES BEFORE CLOSING**

Throughout this transaction, please feel free to call us with any questions. If you are not able to get through to the lawyer involved, please leave a message for the lawyer or ask for one of our legal assistants. Our legal assistants are very experienced and will be able to handle many matters.

#### **CLOSING AND KEYS**

At the time of closing, we exchange funds, keys and documentation with the other lawyer by courier. Once the lawyers for both parties have received all that they are entitled to, the Deed is registered on title and we can release the keys to you. Most registrations are now done electronically. This speeds up the process and usually results in keys being available earlier than under the old paper registration system. However, there are many other variables in a transaction which can affect the timing of closing and the delivery of keys. Therefore all we can guarantee is that keys will be available by 5:00 p.m. on the day of closing.

That being the case, you should not expect to be able to give access to the property to movers, tradespeople or delivery persons until the evening of the day of closing.

#### **REPORTING LETTER AND FINAL ACCOUNT**

Following closing, we will provide you with a full report on your transaction along with your deed, mortgage (if applicable) and other applicable documents. Our report will include our final statement of account and our trust statement which will show the sources and disbursement of funds. In most cases, our report and account will either be given to you with your keys or mailed within few days of closing. It is important that you keep our report and the enclosed documents for future reference and use. In most cases, we will have copies of all documents in our file. If it is on site, we will normally provide copies at no charge. However, if we must retrieve the file from off-site storage, there will normally be a fee charged to you for obtaining the file and making copies.

We invite you to call us if you have questions after reading this memorandum.

#### **NOTES:**

## MOVING CHECKLIST

### UTILITIES

- Arrange for cancellation, final meter reading and billing, hook-up and meter reading at your new home. When you arrive take the reading yourself and check fuel tank.

Electricity  
Gas  
Oil  
Water  
Telephone  
Cable vision

### PROFESSIONAL SERVICES

- Give notification of move and obtain recommendations of professionals located in your city.

Doctor  
Dentist  
Lawyer  
Broker

### INSURANCE

- Give notification of move and arrange for cancellation or change of endorsement.

Life

Fire  
Personal Liability  
Personal Property  
Auto  
Accident  
Hospital  
Health

### ESTABLISHED BUSINESS ACCOUNT

- Close or transfer accounts, especially charge accounts, and give notification of move.

Banks  
Department Stores  
Finance Companies  
Fuel Supplier  
Oil Companies

### GOVERNMENT AND PUBLIC OFFICES

- Give notification of move .

Library  
Post Office  
Driver's Licence  
Revenue Canada (Child Tax Credits, etc.)

### SCHOOL

- Speak to principal about one month ahead of time to ensure that the necessary records and useful information will be promptly forwarded.

### PUBLICATIONS

- Give notification of move one month to six weeks in advance.

Newspapers  
Magazines  
Professional  
Fraternal

ORGANIZATIONS AND CLUBS

- Give notification of move, resign or transfer membership.

Athletic  
Business  
Civic  
Church  
Fraternal  
Social

FRIENDS, RELATIVES AND BUSINESS ASSOCIATES

- Give notification of move.

ARRANGE

Movers  
Travel Arrangements  
Temporary Accommodation  
Shipment of Pets  
Servicemen to prepare appliances for shipping  
Servicemen to install appliances upon arrival  
Travel valuables

COLLECT AND RETURN

Borrowed items  
Stored items  
Repaired items

OBTAIN

A floor plan of your new house and then identify the rooms and make a plan showing arrangements of your furniture.

INVENTORY

Make an inventory of all household and personal possessions and carry this with you at time of move.

**NEW OWNERSHIP CHECKLIST**

Upon Closing of your transaction, the following items will require your attention:

1. Check that the fixtures and chattels specified in the Agreement of Purchase and Sale have been left on the premises.
2. Check that the work required to be done by the Seller has been done.
3. Write down the utility meter readings. You should do this in case the utility companies send incorrect final bills.
4. Ensure that the oil tank, if there is one, is filled to capacity. Do not rely on the external gauge, check the tank itself.
5. Advise all the utility companies of the changes of ownership including names, address and the date of closing.
6. Advise the tax department of the municipality of the change of ownership including names, address and the date of closing.
7. Advise the water department of the City of Ottawa as above. If your land is outside the City of Ottawa, contact the water department of the municipality as above.
8. Advise the condominium corporation, if applicable, as above.
9. Have your locks changed for your security. No one can guarantee that all of the keys for the house will be delivered to you on closing.