



Memorandum to Buyers of Residential Properties

Prepared by Dust Evans Grandmaitre Professional Corporation

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.

Legal Fees and Other Cost Considerations

Quoted fees and disbursements are based on the assumption that there will be no unusual complications in the transaction as it progresses. While we make every effort to keep our costs within the amount quoted, circumstances beyond our control may arise that would require considerably more time on your file than originally anticipated. Examples of events which may result in an increase in our fees and disbursements are: a change in 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 are usually calculated at our usual hourly rates and based on the amount of time we spent working on your file.

In most cases we cover our out-of-pocket expenses prior to closing and ask that you pay all fees and disbursements 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 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, and 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

There will be adjustments to the purchase price at closing. Consequently, you may require some extra funds at this time. 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, we can advise that these adjustments normally range from a few hundred dollars to just over a thousand.

After closing, you will be responsible for all unpaid tax installments as they are 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, offers 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 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.

Once you have decided how title will be taken, we require 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, 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 closing date 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 sue the seller to recover the funds.

Should you be purchasing a home that is heated by unmetered fuel oil, the seller should fill the tank immediately before the closing date. 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 is advisable to obtain a building location survey. This survey is recommended to ensure, among other things:

1. That the buildings fall wholly within the lot lines.
2. That setbacks comply with city by-laws.
3. That there are no encroachments onto the property.

Unless the Agreement provides otherwise, the seller is under no obligation to provide a survey that is not within his or her 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 that an up-to-date survey may reveal. We strongly advise that 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.

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 updated by the seller by means of a Statutory Declaration confirming that, to the seller's knowledge, the survey is still accurate, with qualifications as to any improvements that may not be shown. While resale buyers commonly adopt this approach, be aware that there are risks in proceeding this way. 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 that would render the survey inaccurate. As well, there may have been additions or alterations to adjoining lots that would affect your property; for

example, neighbours may have mistakenly placed fences or other additions or improvements on the property you are purchasing. If this occurred after the existing survey was conducted, 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 since the house was originally constructed. This could include the construction of a deck, shed, recreation room, fencing, swimming pool, sunroom or other extension. Quite often, homeowners do not obtain a building permit for the work being done. We will occasionally perform searches to learn about the status of permits for the property. Most often, we do not, as the title insurance companies are prepared to cover this risk. It is important to note that even if these searches are undertaken, we cannot certify or guarantee that all the necessary permits have been issued and inspections performed. The reasons for this are (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's knowledge.

Even if we were to determine that permits were not issued, 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, permit requirements and building code regulations may change over time, and what may have been acceptable when the structure was built might not 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, together with title insurance, is your best protection against major construction defects in the property arising from the lack of a permit or final inspection. 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 ensure they conform to the Ontario Building Code.

The use of title insurance, while not a complete 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 homebuyers. Today, almost every transaction is title insured. 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 example, a lawyer's opinion will often be stated as "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 later results in a problem with your

title, the lawyer will not be responsible for correcting it. However, the title insurance would cover this situation.

- (iii) If you have title insurance, you generally do not have to worry about a survey. Title insurance will usually cover any defects that a new survey might reveal. In some cases 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 the different policies that are available, please call us.

Property Insurance (not applicable for most condominiums)

You must arrange your own comprehensive homeowners insurance policy to take effect at 12:01 a.m. on the day of closing. In addition to fire insurance coverage, you will require public liability and contents coverage. Generally, the amount of coverage must be sufficient to cover full replacement value. If your purchase involves mortgage financing, please have your insurance agent provide us with a binder letter confirming coverage and showing loss payable to the mortgagee, whose full name and address must appear on the policy. Your insurance agent should also send a copy of the policy 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 review the file, sign all papers and receive the funds needed to close. When the appointment is set, we will inform you of 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 Grandmaitre in trust". If this timing is a problem, 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 to execute the documentation by Power of Attorney. This could be a relative or friend who lives near our offices, or one of the lawyers at this office if this is not convenient. If signing under Power of Attorney is required, you must advise us well in advance 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 reach the lawyer involved, please leave a message or ask to speak with one of our legal assistants; they 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 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 paper registration system. However, there are many variables that can affect the timing of closing and the delivery of keys. 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 movers, tradespeople or delivery persons to have access to the property 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 relevant 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 be given to you with your keys or mailed within a few days of closing. It is important that you keep our report and the enclosed documents for future reference. In most cases, we will have copies of all documents in our file, and if it is on site, we will normally provide copies at no charge. However, if the file must be retrieved from off-site storage, there will normally be a fee charged to you for obtaining the file and making copies.

We invite you to contact 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

PROFESSIONAL SERVICES

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

- Doctor
 - Dentist
 - Lawyer
 - Broker
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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 ACCOUNTS

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
- Temporary accommodation
- Shipment of pets
- Servicemen to prepare appliances for shipping
- Servicemen to install appliances upon arrival
- Travel for 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 all household and personal possessions and carry this list with you at time of move.

NEW OWNERSHIP CHECKLIST

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

This article is provided for information purposes only. It is not intended as, nor should it be taken as, legal advice. Contact us if you require legal advice on this or any other topic.