

# DE RUBEIS, CHETCUTI LLP

## REAL ESTATE LAWYERS

### YOUR LAWYER'S ROLE WHEN BUYING A HOME

The primary role of your solicitor in your real estate purchase is to conduct searches and make enquiries as are necessary to assure your home is free and clear of any liens or encumbrances and to answer any concerns you may have about the transaction. Generally, you contact your solicitor once the offer has been accepted however, you may wish to contact him prior to submitting the offer if there is anything you do not understand about your agreement of purchase and sale. This valuable service is usually available at no cost to you.

At the outset, your lawyer will recommend to you the best manner of assuring your ownership in the home. This assurance may be in the form of a written opinion of title or a policy of title insurance or a combination of the two. In either case, certain searches and enquiries will be conducted as a basis for the opinion and/or title insurance policy. The solicitor is generally charged a fee by the various government departments to conduct these searches and enquiries and passes these fees on to you. These fees are known as disbursements.

If you are purchasing the home together with another person, you will be asked the manner of "taking title". Spouses often take title as **joint tenants** which means equal ownership and, on the death of one owner, the property passes automatically to the surviving owner. The other option is to become co-owners as **tenants-in-common**. This way, there is no automatic right of survivorship as the deceased person's interest passes to his or her heirs by will or succession laws (if no will exists)

#### **Title Search**

Your lawyer will conduct a search of the title to the property prior to the date for requisitions contained in your agreement of purchase and sale (see Paragraph 8 of the OREA Agreement). The search is conducted in the appropriate division of the Land Registry Office to determine if the vendor is in fact the owner of the property and has the right to sell the lands. This search will also reveal any mortgages or easements affecting the title. If the solicitor finds any problems on title he will notify the vendor's solicitor of his concerns and the vendor's solicitor is required to answer or solve those problems.

On the closing date the title search is up-dated to ensure no other registrations have taken place since the property was originally searched.

#### **Utilities and Taxes (including Local improvement charges)**

Your solicitor directs enquiries to the local authorities for gas, electricity, water consumption or sewer charges to determine the status of the accounts and to determine if there is any rental equipment on the premises. Enquiries are also made of the City to determine the status of the realty taxes and any local improvement charges a new owner may face. These enquiries are conducted because arrears of these utility charges and taxes can form a lien on the property.

### **Building, Zoning and Survey**

Your solicitor directs an enquiry to the Municipal Building Department to determine if the building and structures on the property comply with the zoning by-law as they relate to the location of the structures and the use of the property (e.g. single family or multiple family). In addition this enquiry will determine if the building department has any outstanding inspections or orders for work to be performed on the property.

In order to obtain a complete answer to an enquiry, the solicitor must submit a plan of survey of your property. A survey shows the exact location of all structures and improvements on the property in relation to the lot lines. Without the plan of survey, your solicitor cannot determine whether the location of the buildings and structures comply with the applicable zoning by-laws.

If a plan of survey of the property is not available, a new one can be ordered or alternatively a policy of title insurance may be purchased which insures the owner and lender against the risk of any forced removal of non-conforming structures or improvements because of non-compliance with the applicable by-laws.

### **Search For Writs of Execution**

Your solicitor conducts a search for writs of execution in the appropriate Sheriff's Office or Enforcement Office to determine if there are any judgements filed that would affect your property. This search is done by name. The vendor and previous owners are searched. An execution arises when a creditor obtains a judgment against a debtor for an amount of money. This judgment when filed in the Sheriff's Office or Enforcement Office forms a lien against that debtor's property.

Writs of execution will also be searched against you as purchaser if you are placing a mortgage on the property you are purchasing. This is to ensure there are no judgements against you that would affect the mortgagee's interest in your property. Your lawyer searches writs of execution prior to the date he must make requisitions of the vendor and again on the closing date. The cost of the search is \$11.00 per name.

### **Condominium Status Certificate**

This search is only applicable if you are purchasing a condominium. The certificate provides your solicitor with :

- (a) insurance particulars for the Condominium Corporation;
- (b) the amount of money in the reserve fund which fund is used for repairs and upgrading of the common elements;
- (c) details of any lawsuit against the condominium corporation; and
- (d) the amount of the common element fee and the standing of the common element account.

### **Communication with the Vendor's Lawyer**

When your solicitor has completed all of his initial searches, he will write to the vendor's solicitor outlining any problems or concerns that have been revealed by these searches. In addition he will enclose in this letter documents he has prepared and which he requires the vendor to sign. These documents may include written promises by the vendor to pay all utilities charges and realty taxes up to the closing date, warranties and a declaration regarding the vendor's possession. This correspondence is generally referred to as the Purchaser's Requisition letter. This letter must be sent prior to the requisition date commonly found at paragraph 8 of the standard OREA Agreement of Purchase and Sale. Therefore, it is important

that the agreement of purchase and sale be given to your solicitor well before the requisition date to afford him time to complete his searches.

### **Financing**

If mortgage financing is required to complete your transaction these arrangements should be made and a written commitment issued by your lender prior to making your agreement of purchase and sale firm and binding. Prior to signing your mortgage commitment you may wish to consult with your lawyer to ensure you understand its terms and that sufficient funds to close the transaction will be available. Once you have accepted the financing being offered, provide the financial institution with your solicitor's name and address. The financial institution will then forward its instructions to your solicitor along with the mortgage proceeds for closing.

### **Home Owner's Insurance**

Prior to the closing date, you must arrange home owner's insurance to cover the property from and including the day of closing. When you contact your insurance broker you must advise him of the name and address of any mortgage lenders. In addition, your insurance broker must send a letter to your solicitor confirming insurance coverage for yourself and the mortgage lenders.

### **New Home Purchases**

If you are purchasing a new home, you must complete an inspection of the home under the Ontario New Home Warranty Program prior to closing. This inspection is arranged with your builder. At this time, you will complete a form known as a Certificate of Completion and Possession which will include any building deficiencies revealed by your inspection. Proper completion of this certificate requires the builder to rectify any deficiencies noted thereon within a limited time period depending upon the nature of the deficiency. You should arrange this inspection prior to your final meeting with your lawyer as he requires this certificate to complete the transaction.

### **Signing Day at your Lawyer's Office**

A few days prior to closing, your lawyer will contact you to arrange an appointment and advise you of the exact amount of funds required to close your purchase. At this time, you will be required to bring in the balance of the closing funds by certified cheque payable to your lawyer in trust. All items relating to your purchase will be reviewed with you. You will be signing various closing documents such as a mortgage and a land transfer tax affidavit.

### **Closing Day**

Your lawyer will make arrangements with your mortgage lender to pick up the mortgage funds. Your lawyer will also arrange to send the closing funds and any other documentation to the vendor's lawyer. The vendor's lawyer will forward the deed of ownership and keys to your lawyer. Once this exchange is completed, your deed of ownership will be registered and keys will be made available at the lawyer's office for you to pick up.

Since the actual closing time is subject to the availability of the vendor's lawyer and the mortgage funds, the closing is often not completed until the afternoon. As a result, your keys may also not be available until the afternoon. Therefore, it is recommended that movers and moving trucks be arranged with this in mind. Finally, it is important that you provide your lawyer with a telephone number where you can be reached on the day of closing if your current number is being disconnected.

**After Closing**

Following the closing date (usually within 30 days), your lawyer will provide you with a reporting letter containing his or her opinion on title as well as copies of your title documents and any title insurance policy.