

INTRODUCTION

After completing my law degree at Queen's University in 1984, I moved to Ottawa to complete my articles and establish my law practice. Called to the bar in 1986, my practice consists mainly of residential real estate, wills and estates. My office is conveniently located at 157 Gilmour Street, Ottawa, Ontario (just east of Elgin Street). There is metered parking on Gilmour Street.

I can be reached at the following numbers if you have any questions after reading my article about the costs associated with buying or selling real estate.

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COSTS OF A RESIDENTIAL REAL ESTATE TRANSACTION

To state the obvious, when a person buys or sells a home, there are various expenses involved. The following summary will hopefully give one a better understanding of the expenses which are usually applicable in the sale or purchase of a single family residence in an effort to avoid unnecessary financial surprises.

A. PURCHASE

1. Disbursements

The lawyer's role in the purchase of a property is to certify to the Buyer that:

- (a) there is good and marketable title to the property, free from all liens and encumbrances;
- (b) the location of the structures on the lot (i.e. buildings such as house, garage, additions, deck) comply with applicable zoning by-laws; and
- (c) no arrears of property taxes and water exist.

In order for the lawyer to certify the above, numerous enquiries and searches are required. The cost of the enquiries varies depending upon the municipality in which the property is located. Examples of these disbursements are:

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| Tax Certificate | \$ 40.00 to \$56.00 |
| Water Arrears Certificate | \$ 56.00 |
| Hydro account enquiry | \$ 10.00 to \$15.00 |
| Gas account enquiry | \$ 16.05 |
| Zoning compliance | \$200.00 |
| Hydro work orders enquiry | \$ 49.00 |
| Septic search | \$ 40.00 to \$60.00 |
| Status Certificate (condominium only) | \$100.00 |
| Sheriff's Certificate (\$11.00 per name) | \$ 44.00 to \$88.00 |
| Title search | \$100.00 |
| Title insurance | \$270.00 to \$322.92 |
| Title insurance (condominium) | \$162.00 to \$193.32 |

In addition, there are also registration costs and fees such as:

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| Law Society of Upper Canada transaction levy surcharge | \$ 53.00 |
| Registration of Deed | \$ 70.60 |
| Registration of Restrictive Covenants (new home only) | \$ 70.60 |
| Registration of Mortgage | \$ 70.60 |
| Miscellaneous disbursements (such as couriers, long distance, postage, photocopies ...etc.) | \$ 75.00 |

In summary, disbursements on a purchase are approximately \$800.00. Furthermore, the purchase of an out-of-town property could increase disbursements by another \$150.00 to \$250.00.

2. Land Transfer Tax:

This tax is collected by the Government of Ontario and must be paid by anyone who purchases land in Ontario. The tax is paid on the closing date of the purchase and is based on the amount the Buyer pays for the property.

The following rates apply for a single family residence:

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|--|------|
| Amounts up to and including \$55,000.00..... | 0.5% |
| Amounts exceeding \$55,000.00, up to and including \$250,000.00..... | 1% |
| Amounts exceeding \$250,000.00..... | 1.5% |
| Amounts exceeding \$400,000.00..... | 2% |

For any purchase up to \$250,000.00, the easiest way to calculate the tax is to multiply the purchase price by 1% and deduct \$275.00. For example, if the purchase price is \$175,000, the Land Transfer Tax would be $(\$175,000.00 \times 1\%) - \$275.00 = \$1,475.00$.

For first-time homebuyers (defined as never having owned a home anywhere in the world) purchasing a **newly-built home** (i.e. purchased from a builder), the Ontario Government has seen fit to exempt payment of Land Transfer Tax up to a maximum of \$2,000.00 (this is a purchase price of \$227,500.00).

3. Adjustments

The Agreement of Purchase and Sale provides that fuel, rent, taxes and local improvements will be apportioned and allowed to the date of closing. In the case of property taxes, for example, if a Seller paid property taxes of \$2,400.00 in full for the entire calendar year and the transaction closed on September 30, 2002, the Buyer would pay an extra \$600.00 on closing to reimburse the Seller.

If the property is heated by oil, the Buyer pays for a full tank of oil on closing, the approximate cost of which is \$600.00 - \$800.00 depending upon the price of oil.

4. Miscellaneous Costs

(a) Survey:

The survey shows the location of the building on the lot. It is required by the Buyer's bank or financial institution in order to determine that the building's location complies with the appropriate zoning by-laws and that no serious encroachments exist. Usually the Seller has an existing survey and makes it available to the Buyer. Most financial institutions will accept an existing survey if it accurately depicts the location of all of the buildings on the lot. If the survey is out of date, it is the responsibility of the Buyers (unless the Agreement provides otherwise) to obtain a new survey prior to closing, the approximate cost of which is \$950.00.

A less expensive alternative to obtaining a new survey which is acceptable to most financial institutions is a product called **title insurance**. The cost of title insurance to the Buyer is a one time fee of \$270.00 to \$318.00 and is arranged for by the Buyer's lawyer. This insurance policy insures both the lender and Buyer against any actual losses suffered by the lender or Buyer as a consequence of it being determined at some future date that the house and other structures which were in existence at the time of closing are improperly located on the lot.

(b) CMHC Insurance

If the Buyer's mortgage is a high ratio mortgage (i.e. greater than 75% of the appraised value of the property) the mortgage must be CMHC insured. There are additional costs associated with a CMHC insured mortgage such as:

- CMHC application fee of \$165.00
- Provincial Sales Tax of 8% is charged on the CMHC insurance premium.

The CMHC insurance premium itself will be added to the principal amount of the mortgage, however, the PST, and CMHC application fee must be paid on closing.

(c) Conventional Mortgages

A conventional mortgage is a mortgage for 75% or less of the appraised value and does not have to be CMHC insured. Some banks, however, do charge a processing or appraisal fee of \$75.00 to \$200.00 to process a conventional mortgage.

(d) Newly-built Homes

The standard Agreement of Purchase and Sale used by most builders of new homes may contain various additional costs to be borne by the Buyer such as:

- preparation of the Transfer (Deed) - \$125.00 to \$175.00
- enrolment of the home in the TARION Program. This cost is based on the purchase price and typically ranges anywhere between \$500.00 and \$650.00.

5. Legal Fees

Legal fees vary from lawyer to lawyer. Usually it is a function of how efficient the law firm is in handling real estate matters and the kind of service the lawyer provides.

My legal fees for a residential real estate transaction (not including G.S.T.) are \$775.00. Legal fees for the purchase of a multi-residential property (duplex, triplex, etc.) will be greater.

QUESTIONS ASKED MOST FREQUENTLY BY BUYERS

(Answers to these questions are based on how I practice law)

Q1: When and where does the Buyer pick up the keys?

A1: Keys are picked up from my office on the day of closing. In some cases, the key may be available earlier on in the afternoon and, should this be the case, the Buyer is contacted. Please note that there are no guarantees keys will be provided at any time prior to 5:00 p.m. on the day of closing.

Q2: When should the Buyer book the movers?

A2: Movers are usually paid on an hourly basis. Consequently, I recommend that a Buyer book his/her movers for early afternoon, say 1:00 p.m. or 2:00 p.m. Assuming it takes movers 2 to 3 hours to load ones' belongings, this puts us at about 4:00 p.m. when keys are needed. Chances are the keys will be available but, again, no guarantees until 5:00 p.m.

Q3: When does the Buyer know how much money will be needed in order to close the transaction?

A3: It is usually 3 or 4 days prior to the closing date before the exact amount of money required has been calculated. At this point, the Buyer is contacted, is told the amount required and an appointment is made, usually for the day before closing to sign the documentation. Keep in mind, however, that I would have met with the Buyers at the very beginning and provided a very close estimation of how much money would be required in order to avoid unnecessary surprises.

Q4: How does the Buyer make their money payable and in what form must the money be?

A4: The money must be in the form of a certified cheque or bank draft made payable to the law firm, in trust.

Q5: Who needs to be there to sign all the documents and how long does it take?

A5: The meeting takes about 45 minutes to sign all the documents. Anyone who is going on title to the property or, in some cases, a person not going on title but guaranteeing the Mortgage would have to be present for that meeting.

Q6: What if a person who needs to attend the meeting referred to in Question 5 is out-of-town?

A6: The documents can be sent by courier to the out-of-town person. In some cases, that person would have to meet with a lawyer practising in the area where they are signing. Alternatively, Power of Attorney documents can be prepared and signed authorizing an individual who is not out-of-town

to sign on that person’s behalf. There are additional legal fees and disbursements associated with this option.

Q7: Can a sale and purchase be closed on the same day?

A7: This is certainly achievable assuming both transactions are in the same area (i.e. within the City of Ottawa). If, on the other hand, the sale is in Toronto and the purchase is in Ottawa, things can be problematic. The biggest problem is arranging for the timely transfer of funds from the lawyer in Toronto once the sale has been concluded. Sometimes, wire transfers or direct deposits have complications and delays. I am not saying it’s impossible but, in this case, if the purchase could be 1 day later it would make life a lot easier.

Q8: Can a Buyer ask the Seller to give them a key prior to the closing date so they can move some of their belongings in?

A8: Nothing prevents a Buyer from asking the Seller for a key in advance, however, if the Seller consults his or her lawyer, the answer will probably be “NO”.

Q9: Does a Buyer have the right to inspect the house just prior to closing if the Agreement does not provide for such an inspection?

A9: This answer has a legal and practical side to it. Legally speaking, there is a case where a Judge decided a Buyer has the right to pre-inspect. There are lawyers, however, who will argue the case has limitations and does not apply as a general rule. Practically speaking, it doesn’t matter in most cases what the legal answer is. If the Seller does not want to allow the inspection and the Seller’s lawyer is in agreement, there will not be sufficient time before closing and no Buyer will want to spend the money required to determine what the law is. Buyers can always sue the Seller after closing if something is missing or damage to the premises has occurred.

B. SALE

The lawyer’s role when acting for a Seller consists of:

- preparation of documentation;
- providing answers to any valid problems regarding title and zoning; and
- paying off the Seller’s Mortgage.

1. Disbursements

Fortunately for Sellers, disbursements on a sale are minimal. One can expect to pay for items such as:

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|---|---------|
| - registration of a Discharge of Mortgage . . . | \$70.60 |
| - miscellaneous expenses . . . | \$50.00 |
| - Law Society of Upper Canada transaction levy surcharge . . . | \$53.00 |

2. Adjustments

As in the case of a purchase, items such as oil, property taxes and condominium fees are adjusted for up to the day of closing. If the Seller, for example, has paid property taxes or condominium fees which, when calculated on a daily basis, covers a period beyond the closing date, the Seller is reimbursed by the Buyer on closing. If the Seller has underpaid, the Buyer receives a credit on closing. If the house is heated by oil, the Seller fills the tank for closing and is reimbursed by the Buyer for a full tank.

3. Legal Fees

Assuming there is one Mortgage to Discharge, my legal fees for a sale are \$525.00 to handle the sale itself and an additional \$150.00 to orchestrate the discharge of the existing mortgage plus GST of \$40.50.

QUESTIONS ASKED MOST FREQUENTLY BY SELLERS

Q1: When does the Seller get the money from the sale?

- A1: The money can be made available on the actual day of closing but, again, it is difficult to say in advance when exactly it will be ready. My preference is for the Seller to pick up the money at anytime after 12 noon on the next business day.
- Q2: When does the Seller have to move out?
- A2: The Seller's obligation is to provide vacant possession upon completion of the transaction and the standard Agreement of Purchase and Sale states that the Agreement is to be completed no later than 6:00 p.m. Arguably, the Seller should vacate no later than 6:00 p.m. on the day of closing.
- Q3: What is the Seller's obligation in terms of the condition in which they leave the property?
- A3: The Seller should leave the premises in a clean and tidy manner. All garbage should either be removed or bagged and left out front for collection.
- Q4: Should a Seller let the Buyer have a key prior to closing in order to facilitate the Buyer's move?
- A4: I do not recommend giving the Buyer a key prior to closing. A Seller is taking a risk (albeit remote) that the Buyer upon viewing the house prior to the closing finds something not to the Buyer's liking and refuses to close. However, the risk is remote and ultimately it is the decision of the Seller. The Seller may know the Buyer personally and have no reservations about doing the Buyer a favour.

C. A FINAL NOTE: LEGAL FEES AND SERVICE

When selecting a lawyer, a Seller or Buyer should not make their selection based solely on which lawyer quotes the lowest fee. Real estate is an area of law where service matters and the manner in which your lawyer completes your sale or purchase will have a direct impact on your state of mind. I firmly believe that in order to make the closing process problem free and avoid unnecessary surprises, it is essential that a Seller & Buyer be fully informed shortly after all conditions are removed and the agreement becomes firm. Consequently, once your deal is unconditional, I meet with you at my office as part of the service I provide, at no additional cost to you. This meeting is approximately 25 minutes in length during which I will calculate all of the financial costs of your particular transaction as well as provide you with a detailed list of all the things you must know and do to prepare yourself for closing.

Before selecting a lawyer, a Seller or Buyer would be well advised to satisfy himself or herself as to the following:

1. Most importantly, is the lawyer intending to meet with you at the very outset of the transaction in order to finalize all costs and explain the process?
2. Did the lawyer return your initial call promptly to discuss the transaction? Was the lawyer informative or vague? Was the lawyer personable? Would you enjoy dealing with this person?
3. Will the lawyer be meeting with you personally at the time of closing to explain the documentation and have it signed or will it fall to staff members to fulfill this function?
4. How long has the lawyer been in practice? Is real estate an area of law that the lawyer concentrates in?

CONCLUSION

You may very well have questions about the materials you have just read. If so, we encourage you to contact me directly at (613) 231-2734 Ext. 22, by fax at (613) 231-1121 or e-mail at khoyt@magma.ca.

I welcome any enquiries you may have and I am happy to answer your questions free of charge.