

INTRODUCTION

My name is Ken Hoyt. After completing my law degree at Queen's University in 1984, I moved to Ottawa to complete my articles and establish my law practice. I was called to the Bar in 1986 and have been practicing law for over thirty (30) years. My practice mainly consists of residential real estate, wills and estates. My office is conveniently located at 157 Gilmour Street, Ottawa (just east of Elgin Street).

If you have any questions after reading this article, I welcome you to contact me directly:

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PURCHASE

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

- 1) there is good and marketable title to the property, free from all liens and encumbrances;
- 2) the location of the structures on the lot (i.e. buildings such as a house, garage, addition, deck) comply with applicable zoning by-laws; and
- 3) there are no property tax or water arrears.

When a person purchases a home, there are various expenses involved to complete the transaction. In order to avoid any financial surprises, here is a breakdown of typical costs associated with the sale or purchase of a single-family residence.

1. Land Transfer Tax

This tax is collected by the Government of Ontario and must be paid by everyone who purchases property in Ontario. The tax amount is dependent on the purchase price and is paid on the closing date. The following rates apply for a single-family residence:

\$0 to \$55,000	0.5%
\$55,001 to \$250,000	1% less \$275
\$250,001 to \$400,000	1.5% less \$1,525
\$400,001 and up	2.0% less \$3,525

Here is a sample calculation with a purchase price of \$350,000: $(\$350,000 \times 1.5\%) - \$1,525 = \$3,725$, is the Land Transfer Tax payable.

First-time Homebuyer

A first-time homebuyer may qualify for a refund of Land Transfer Tax, up to \$4,000.00. In order to qualify, the Buyer cannot have owned a property or have held an interest in property anywhere in the world, must occupy the property within 9 months of closing and be a Canadian citizen or permanent resident. If a spouse is a first-time homeowner and the other is not, the first-time homebuyer spouse will only qualify for the refund if the other spouse sold their property prior to the parties becoming spouses of one another (either through marriage or at common-law). If that is the case, and the property was sold before the couple became spouses of one another, then the first-time homebuyer would qualify for the full \$4,000.00 refund. If a first-time homebuyer does qualify, the refund is immediately applied at closing. As a result, for purchases under \$368,000, there is no Land Transfer Tax payable for a qualifying first-time homebuyer.

2. Disbursements

Disbursements are out of pocket expenses that are charged to complete the transaction. In order for the lawyer to certify good and marketable title to the property, numerous enquiries and searches are required. The cost of such enquiries varies depending upon the municipality in which the property is located. Examples of these disbursements are:

Tax Certificate	\$85
Water arrears certificate	\$85
Hydro account enquiry	\$11 to \$17
Gas account enquiry	\$17
Zoning compliance	\$255
Hydro work orders enquiry	\$60
Septic search	\$115
Status certificate (condominium only)	\$113
Sheriff's certificate (\$11.00 per name)	\$52 to \$104
Title search	\$200-\$350
Title insurance (purchase price up to \$500,000.00)	\$435
Title insurance (condominium)	\$250

In addition, there are also registration costs such as:

LSUC transaction levy surcharge	\$74
Registration of the Deed/Transfer	\$75
Registration of the Mortgage/Charge	\$75
Registration of Restrictive Covenants (new home only)	\$75

Disbursements of a property located in the City (connected to City sewer and water) are approximately \$950. If a property is out-of-town/rural, then the disbursements are usually a further \$150-\$250.

3. Title insurance

All of my residential real estate transactions are title insured. In addition to disbursements, there is also the cost of a title insurance policy. Title insurance protects and provides coverage to the Buyer against issues relating to title and for losses due to title defects. The policy is a one-time fee and is in force for the entire time you own the property. The policy is arranged by the Buyer's lawyer and is paid at the time of closing. For the purchase of a home, with a purchase price of under \$500,000, the price of the policy is usually \$435, for a condo it is \$250. For homes and condominiums over \$500,000, the price of the policy increases by \$1 for every \$1,000 over \$500,000 (for example, with a purchase price of \$550,000, the policy would be an additional \$50 for a total of \$485).

As a result of obtaining title insurance, there are numerous off title searches that are no longer required for a total savings of more than \$600. For example, a property tax certificate would not be ordered saving the Buyer \$85. The Buyer relies on the Sellers representation that the property taxes are up to date. If arrears did exist, the title insurance company pays the bill.

Title insurance also provides coverage in cases where no up-to-date building location survey exists. This saves a buyer as much as \$3,500 (see paragraph 7).

4. Adjustments

The Agreement of Purchase and Sale provides that property taxes, fuel, rent and other costs will be apportioned, and the purchase price will be adjusted, to the date the buyer takes possession. A common example of an adjustment is for property taxes. For example, if property taxes for the year were \$3,600, and the transaction closed on October 1st, here would be the adjustment for property taxes:

Property taxes for the full year = \$3,600
Seller has paid = \$3,600
Seller is responsible for = \$2,692 (273 days @ 9.86/ per day)
Credit to the Seller = \$907.40 (\$3,600 - \$2,692)

In this example, the Seller overpaid their share of the property taxes. There would be an adjustment, being a credit, to the Seller for the overpayment. As a result, the Buyer would owe the property tax adjustment (\$907.40, in the example above), in addition to the purchase price.

5. Legal Fee

Legal fees will vary from lawyer to lawyer. My legal fee for a residential real estate transaction is \$1,175 + HST. My legal fee for the purchase of a multi-residential property (duplex, triplex, etc.) will be greater.

6. PST (8%) on CMHC Insurance Premium (if applicable)

If the down payment is less than 20% (a “high-ratio mortgage”), the mortgage must be CMHC insured. Provincial sales tax of 8% is charged on the CMHC insurance premium. The actual cost of the insurance premium will be added to the principal amount of the mortgage; however, the PST is payable on closing. CMHC insurance premiums are as follows:

80% to 85%	2.80%
85% to 90%	3.10%
90% to 95%	4.00%

7. Survey

A Building Location Survey depicts the location of the building on the lot. It is necessary in order to determine that the building’s location complies with the set back requirements of the Zoning By-Law. Both the Buyer and the Buyers lender require confirmation of compliance with the Zoning By-Laws. If the Seller has an existing survey, they will make it available to the Buyer. If there is no survey or the survey is out of date, it is the responsibility of the Buyer (unless the Agreement provides otherwise) to obtain a new survey prior to closing. The approximate cost of a survey is \$3,500.

Fortunately, Title Insurance replaces the necessity of obtaining a new survey saving a Buyer \$3,500. (see paragraph 3 above).

8. Newly built homes

The standard Agreement of Purchase and Sale used by most builders may contain additional costs to be borne by the Buyer. Examples are:

1. the preparation of the Transfer (Deed), which usually ranges from \$225 to \$275.
2. Tarion Enrollment Fee - By law, new homes must be enrolled in the Tarion Warranty Program. The cost of the enrollment fee will depend on the purchase price. For the purchase of new home costing between \$350,000 and \$600,000, the enrollment fee would be between \$1,050 and \$1,350.

9. Brookfield/Government/Employer Transfers

In some situations, a Buyer's closing costs are paid for by the Government or the Buyer's employer. In order to avoid additional fees before retaining a lawyer, a Buyer should ensure that the lawyer is willing to be paid in accordance with the fee structure allowed by the employer. In the case of Brookfield, the relocation agency which handles all Department of National Defence transfers, the lawyer must be listed on Brookfield's list of service providers. I am on the Brookfield list of providers.

SALE

When acting for a Seller, the lawyer’s role is to:

- 1) prepare the documentation;
- 2) respond to any valid problems regarding title and zoning; and
- 3) pay and discharge the Seller’s mortgage.

1. Disbursements

Fortunately for a Seller, the disbursements on a sale are less than on a purchase. One can expect some of the following disbursements:

Registration of the Discharge of the Mortgage	\$75
Tax certificate	\$85
Sub-search of title	\$50 - \$100
LSUC transaction levy surcharge	\$74
Miscellaneous expenses	\$113

2. Adjustments

Similar to a purchase, there will be items that will require adjusting for. Example of such items include property taxes, oil, condominium fees and rent. If the house is heated by oil, the Seller will fill the tank and is reimbursed by the Buyer for a full tank.

3. Legal Fees

My legal fee for representing a Seller is \$925 + HST. My legal fee to orchestrate the discharge of one mortgage registered on title is \$175 + HST.

COMMONLY ASKED QUESTIONS (Responses are according to my practice)

FOR A PURCHASE:

Q. When and where will the Buyer pick-up the keys?

A: The Buyer picks up keys either from a lock box at the property or at my office on the day of closing. The Buyer should expect keys between 4:30 p.m. and 5:00 p.m. If keys are ready earlier, my office will call the Buyer. Please note that there are no guarantees that keys will be provided prior to 5:00 p.m. on the day of closing.

Q. When should the Buyer reserve their movers?

A: Movers are usually paid on an hourly basis. Consequently, I recommend that a Buyer reserves the movers in the early afternoon (around 1:00 or 2:00 p.m.). Assuming that 2 or 3 movers will take 2 to 3 hours to load, keys would be required between 4:00 and 5:00 p.m. Again, no guarantees that keys will be ready prior to 5:00 p.m.

Q. When will the Buyer know how much money will be required to close the transaction?

A. Our office will usually know the amount required to close, 3 or 4 days prior to closing. I will have met with a Buyer at the very beginning of the process and provided him/her with a close estimate of the sum that will be required.

Q. How does the Buyer pay for all closing costs?

- A. The closing costs are made payable to the law firm, in trust, and is in form of a certified cheque or bank draft that can be deposited directly to our trust account; or, alternatively can be wired to our office by your bank.

Q. Who needs to be present to sign the documentation?

- A. Every person who is going on title to the property must be present to sign all documentation. This meeting is usually held a few days prior to closing and lasts around 45 minutes. During the Covid era these meetings are being conducted via Zoom video conference.

Q. What if someone who is required to sign is out-of-town?

- A. The documents can be sent to the out-of-town Buyer. This person would have to meet with a lawyer/notary to sign the documents. Alternatively, depending on the circumstances, a Power of Attorney can be prepared to authorize another person to sign on the out-of-town Buyer's behalf. Please note, there would be additional legal fees and disbursements associated with these alternatives. Again during the Covid pandemic, we have been able to conduct meetings with out of town buyers and sellers via video conference.

Q. Can a sale and purchase close on the sale day?

- A. This is certainly achievable, assuming that both transactions are in the same area. If, on the other hand, the sale is in Toronto and the purchase is in Ottawa, it can be more problematic. The hurdle is arranging for the timely transfer of funds from the lawyer in Toronto once the sale has concluded. Sometimes, wire transfers and direct deposits are delayed. I am not saying it is impossible but, in this case, it would be more achievable if the purchase closed one day later. Another possible solution would be for me to act on both the purchase and the sale, depending on the circumstances.

Q. Can a Buyer request a key from the Seller prior to closing (i.e. to move some of their items to the property)?

- A. Nothing legally prevents a Buyer from making such a request; however, If the Seller consults his/her lawyer, the answer will most likely be "NO".

Q. Does a Buyer have the right to inspect the property prior to closing?

- A. There is no right to inspect the property prior to closing, unless it is provided for in the Agreement of Purchase and Sale.

FOR A SALE:

Q. When will the Seller receive the money from the sale?

- A. Money can be made available on the actual day of closing; however, given the difficulty in predicting when the transaction will close, my preference is for a Seller to pick up funds the next business day. Alternatively, my office can arrange for a direct deposit of funds directly into your account (provided that your financial institution has a branch located in Ottawa).

Q. When does the Seller have to vacate the property?

A. The Seller's obligation is to provide vacant possession upon completion of the transaction. The Seller should vacate no later than 5:00 p.m. on the day of closing

Q. What is the Seller's obligation regarding the condition they leave the property?

A. The Seller should leave the premises in a clean and tidy state. All garbage should either be removed or bagged and left in front of the property for collection.

Q. Should a Seller let the Buyer have a key prior to closing, in order to help facilitate the Buyer's move?

A. I would not recommend that a Seller provide a key to the Buyer prior to closing. A Seller is taking a risk that the Buyer, upon viewing the property prior to closing, will find an issue and refuse to close. This risk is remote and ultimately it is the decision of the Seller. The Seller may know the Buyer personally have no reservations in assisting the Buyer.

FINAL NOTE

When selecting a lawyer, a Buyer or Seller ought not to base their selection simply on the lowest legal fee. Real estate is an area of law where the service is important. The manner in which your lawyer completes your sale or purchase will have a direct impact on your state of mind. Purchasing or selling a property can be stressful. It is important to choose a lawyer who will ensure you are fully informed and will help you avoid unnecessary surprises.

Once a transaction is firm (unconditional), I will meet with you via Zoom as part of the service I provide, at no additional cost to you. This meeting is approximately 25 minutes during which I will calculate of the financial costs of your particular transaction as well as provide you with a detailed list of all you must know and do to prepare for closing.

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

- 1) 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?
- 2) Does the lawyer intend to meet with you at the outset of the transaction to finalize the cost and explain the process?
- 3) Will the lawyer be meeting with you themselves, personally/virtually, at the time of closing to explain the documentation?
- 4) How long has the lawyer been in practice? Is real estate the lawyer's area of expertise?

CONCLUSION

You may have additional questions regarding the materials you have just read. If so, I encourage you to contact me directly.

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