

## COSTS (continued)

**DISBURSEMENTS:** In addition to the Land Transfer Tax due, and the fees charged by your lawyer, we incur many other costs in order to complete your purchase. These costs include the costs of registering any mortgage, caveats, right-of-way agreements, etc. For example, the cost charged to register a mortgage in the Land Titles Office is \$70. The Land Titles Office also charges for title searches conducted and copies of plans, caveats, easements, and rights-of-way, as they apply to any given property. These costs range on average from \$20 to \$80. Finally, all law offices charge for other expenses such as courier charges, postage, faxing, file materials, photocopies, and long-distance charges

**“Buying a home is one of the most significant financial decisions you may make in your lifetime. As such, our team of real estate lawyers and staff are committed to assisting you every step of the way!”**



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# BUYING A HOME

WHAT YOU NEED TO KNOW



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# BUYING A HOME

WHAT YOU NEED TO KNOW

Buying a home is one of the most significant financial decisions people make during their lifetimes. Homebuyers in Manitoba should be aware that the doctrine of “buyer beware” is still alive and well with regard to this significant purchase.

Typically, an Offer to Purchase used in Manitoba states that all promises made by a seller must be in writing, otherwise they will have no binding effect, and that most of the promises of a seller, even if in writing, will not continue to bind the seller after the closing of a transaction. For these and other reasons, a typical Offer to Purchase in Manitoba states, in bold print just above the buyer's signature, that “purchasers are cautioned to make their own inquiries with respect to matters of importance to them prior to entering into the Offer to Purchase”. Since the purchase of a home is such a significant financial investment, we recommend that you seek the involvement of a lawyer as soon as possible with respect to any purchase which you may be contemplating.

## OFFER TO PURCHASE

An Offer to Purchase is the form used to create the agreement between the buyer and the seller. Once the Offer to Purchase is signed, the agreement between the parties is established, and your lawyer will be limited by the agreement with regard to their ability to assist you. Therefore, prior to entering into an Offer to Purchase you should investigate all matters of importance to you with respect to the home, or add conditions to the Offer to Purchase with regard to such issues as:

1. That you are permitted to have a structural engineer or other qualified home inspector of your choosing conduct a home inspection which is to be satisfactory to you in your discretion;
2. That the seller provide you with a Building Location (Survey) Certificate and Zoning Memorandum, indicating that there are no encroachments onto or by adjoining properties and that the property complies with local government zoning by-laws;

3. That the Offer to Purchase be subject to your lawyer's approval as to both form and content, with such approval to be given with a reasonable time (we suggest 3 business days as being appropriate in many circumstances although you should consult your lawyer in this regard before binding them to a condition they may not be able to meet due to illness, vacation or other reasons);
4. That, if you need to sell your current residence prior to being able to complete the purchase of your new home, you insert an appropriate condition and time frame in that regard; and
5. That, if you are buying property subject to subdivision, or a vacant lot, that you are able to obtain a building permit.

**There are many other considerations in an Offer to Purchase and you should seek the assistance of a realtor who will work with your lawyer, or if you have chosen to proceed without a realtor, you should consult your lawyer.**

Other questions you may ask prior to entering into an Offer to Purchase could include:

- what the property taxes are or are expected to be for the home;
- what amount of Land Transfer Tax you should expect to pay (discussed below);
- what your monthly utility charges could be; and
- whether the property is serviced by city, town, or municipal sewer and water, or whether it has private well and septic field.

You should also contact the city, town or municipality responsible for the property tax to inquire regarding any existing or foreseen local improvements, development fees, or levies that may affect the property.

If you require financing to complete the purchase of your home, you should make sure that it is a condition of your Offer to Purchase that you have an opportunity to obtain appropriate financing and consult with your lender as to your financing needs as soon as possible. In particular, if you are selling a

## OFFER TO PURCHASE *(continued)*

home and purchasing a new one, you should also speak to your lender to inquire whether you require “interim” or “bridge” financing. Since you will not typically get the proceeds of the sale of an existing home for about 2-4 weeks after the possession date of that home, you should not rely on funds coming from that sale to complete your new purchase. Your lender will be aware of this situation and can explain to you the interim/bridge financing options which most lenders provide.

## MORTGAGES

The majority of homebuyers are not afforded the luxury of paying for a home without obtaining a loan from one of the many available lenders. As a result, it is usually a requirement that the buyer arrange a mortgage with their lender.

A buyer of real property should be aware that the requirements of a mortgage lender will add to the documents that need to be prepared and to the costs needed to complete your purchase. For example, lenders may require that you obtain, at your expense, a water quality test or a survey, even though you had not intended to obtain either document.

The lender will often deduct a significant amount of funds from the proceeds of the mortgage in order to pay for certain loan requirements. It is not unusual for the lender to deduct funds for the costs of appraisals, inspections, CMHC application fees and CMHC insurance premiums. In addition, if you will have your lender attend to the payment of property taxes on your behalf, then the lender may also deduct a sum of money from the mortgage proceeds in order to start a tax account. You must take all of these deductions into account in order to determine the amount of funds that you will need in order to complete your purchase.

Your lawyer will review the lender's terms and conditions of the loan with you to ensure that they meet with your expectations, and are in accordance with your discussions with your lender. The lawyer will also ensure that the mortgage and other loan

documents are prepared correctly, the mortgage is properly registered and will report to the lender in order to obtain the necessary mortgage funds in order to complete your purchase.

## LAND TRANSFER TAX

In Manitoba, a buyer is required to pay Land Transfer Tax. There are only very limited exceptions to the payment of Land Transfer Tax. For example, an “interspousal” transfer of land between spouses or common-law partners is typically exempt from Land Transfer Tax, however, a minimum registration charge will be applicable. The sale of farmland to another farmer (as defined by the applicable legislation), who will use the land for farming is also usually exempt from Land Transfer Tax. Land Transfer Tax is calculated based on the fair market value of the property (usually the purchase price) and the percentage used by the provincial government to calculate Land Transfer Tax differs based on the value of the home. The Land Transfer Tax calculations charged by the provincial government are subject to change. For the current calculation of Land Transfer Tax that may be applicable on your purchase, please consult our website for further information, or contact our office to obtain the current Land Transfer Tax fees.

## INTEREST

If you are arranging for part of the purchase price to be paid by way of the proceeds of a new mortgage, the process of registering the transfer of land and the mortgage documents in Manitoba will require that the transaction be closed without the mortgage funds being available to the buyer. This results in the proceeds not being available to the seller until 2 – 4 weeks after possession. However, most Offers to Purchase will include a term that the seller will accept a delay in receiving the balance of the purchase price if the mortgage proceeds are paid to the seller with interest, at the same rate as charged by a buyer's lender. During the time of registration, the lender has not provided you with the mortgage funds and as such, you are not paying any interest to the lender. It is the practice of law firms in Manitoba that you provide your lawyer with a sufficient sum of money to cover the additional interest charges to be paid

to the seller from the possession date to the date of payment to the seller. The receipt of these interest funds will ensure that the seller will receive the interest, which a seller is entitled to receive, as per the Offer to Purchase.

This interest can sometimes be avoided by using the Protocol method of closing (see: Protocol Closings below) or by purchasing Title Insurance. Your lawyer will discuss these matters more fully with you.

## PROTOCOL CLOSING

When purchasing a home in Manitoba, the buyer will usually pay interest to the seller from the possession date until registration of the buyer's new transfer of land and mortgage at the Land Titles Office, which usually takes approximately 2 – 4 weeks after the possession date. There is a method of avoiding this interest to the seller by closing the transaction under The Western Canadian Law Societies Protocol method of closing (“Protocol”), but Protocol is not possible in all circumstances. Please consult your lawyer to learn more about Protocol. For example, some law firms (particularly those in Winnipeg) do not have the staff resources to close Protocol. We have those resources and we do not charge extra for Protocol closings.



## PROPERTY TAXES

In a typical real estate purchase, usually there is an adjustment to the purchase price with respect to property taxes. This is because property taxes are due at different times of the year in the various areas of the province. Regardless of which area of the province the property is in, property taxes are always paid for the current calendar year. Therefore, depending on whether taxes have been paid for the current calendar year or whether they remain unpaid, the seller of the home may need to be reimbursed for any prepaid taxes, or the buyer may need to be compensated if taxes have not yet been paid for the current calendar year.

The “rule of thumb” is that as a buyer, you will only be responsible for paying property taxes from the date of possession to the end of the calendar year, and your lawyer will explain to you the adjustments made to the purchase price to reflect that fact.

The exception to the general rule is if the parties have agreed to adjust property taxes on some other date, other than the possession date, or not to adjust property taxes at all (as is sometimes done with farmland for example).

## COSTS

**FEES:** The fees your lawyer charges for all typical work with respect to your purchase include such things as:

- title searches at the land titles office; investigating taxes relating to the property;
- exchanging information with the seller's lawyer;
- preparing all documentation necessary to complete the purchase;
- answering your questions and meeting with you to review and sign all necessary documents;
- negotiating satisfactory closing trust conditions;
- ensuring all appropriate documentation has been completed and registered;
- reporting to your lender and to you regarding the purchase and any mortgage; and other related matters.

To ensure fair and competitive fees, the lawyers within our firm generally abide by a price guideline established by our firm, which is dependent upon the amount and complexity of the transaction. Please feel free to contact a lawyer in our office for a fee quote. We would be happy to provide one and believe our fees are fair and competitive. Please note that legal fees are subject to GST and PST.

