



SELLING YOUR HOME

WHAT YOU NEED TO KNOW

Selling your home can be a lengthy, complicated process. We pride ourselves in our ability to help you understand what is expected, what is optional and what is necessary when selling your home. We look forward to helping you.



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SELLING YOUR HOME

WHAT YOU NEED TO KNOW

Like buying a home, selling a home is one of the most significant financial decisions people make during their lifetimes. Therefore, the importance of proper advice is critical.

OFFER TO PURCHASE

When selling a home, a seller normally receives an Offer to Purchase from a buyer, which sets out the terms of the agreement between the buyer and seller. The Offer to Purchase creates a binding agreement between the parties and therefore, if you have any questions about it, you should consult your lawyer prior to signing the Offer to Purchase. As an alternative, you may make it a condition that the Offer to Purchase is subject to your lawyer's review and approval as to form and content, within a reasonable time period (we suggest 3 business days as being appropriate in many circumstances). In this regard, you should consult with your lawyer to ensure that you do not bind your lawyer to a time frame which they are unable to meet due to illness, vacation or other reasons.

REAL ESTATE COMMISSION

If you have hired a real estate agent to help you with the sale of your home, you will be required, as a term of your agreement with the agent, to pay real estate commission for their services. The real estate commission is usually payable as a percentage of the price obtained for the property being sold.

It is the usual practice of the real estate agents to retain the deposit and forward their statement of account for the balance of the real estate commission payable and GST applicable thereon, to your lawyer for payment. After receiving authorization from you, the law office will use the sale proceeds received from the buyer to pay the real estate commission outstanding.

PROPERTY TAX ADJUSTMENT

Property taxes must be paid on all residential real property as charged by the city, town or municipality in which the property is located. The tax period for all properties is the calendar year, despite the fact that the due dates for the payment of taxes will differ depending on the city, town or municipality rendering the tax bill. It is the usual practice that the owner of the property will attend to the payment in full of the tax bill by the due date set by the local government. However, the non-paying party will reimburse the other party for their portion of the tax bill by way of adjustment to the purchase price. It is the usual practice of law offices in Manitoba that the seller's lawyer prepare a Statement of Adjustments for review by the buyer's lawyer to ensure that this adjustment is made correctly.

If you have a tax account with your lender who is attending to the payment of the taxes on your behalf, the sale of your property will require you to close out your tax account with that lender. If there are excess funds in the tax account, then the lender will typically apply it against the mortgage payout amount, but if the tax account is overdrawn, then the amount owing will be added to the amount of money required to payout your mortgage with your lender.

TRANSFERRING CLEAR TITLE

It will be a requirement of most Offers to Purchase that the seller transfers to the buyer title to the land, free and clear of all registered encumbrances, mortgages, liens, etc., with a few exceptions. As a result, your lawyer will conduct a search of the title upon opening their file to determine which registrations will remain on title and which must be discharged as a requirement of the Offer to Purchase.

The most common registration to be discharged is the mortgage(s) granted by the seller to their lender. Your lawyer will obtain from your lender a payout figure to determine how much of the sale proceeds will be required to obtain a discharge of the registered mortgage(s). The mortgage payout(s) will include the principal and interest accruing to the date of the payout.

TRANSFERRING CLEAR TITLE (continued)

The lender will also add other amounts owing pursuant to the terms of the loan, which additional costs could include interest penalties, refund of cash-backs paid, discharge fees and tax account deficits. All of these additional costs will increase the amount payable to obtain the discharge and decrease the net proceeds payable to the seller.

In addition to paying out your mortgage(s), you will also be required to attend to the payment of home improvement loans obtained through utility companies or government agencies. If you have obtained personal loans in which your lender has filed a caveat against the property as security for the loan, then these loans will need to be paid out in order to obtain a discharge of the caveat. If you have been involved in legal proceedings in which a judgment was issued against you for monies unpaid, then you may find that your property has liens or judgments registered against it which also must be paid out in order to clear the title for the buyer. Finally, certain registered claims may need to be paid out including hot water tank rental agreements, (if you rented your tank and the buyer did not agree to assume the rental agreement), and your final water bills. As with your mortgage(s), all of these payouts will necessarily add to the amount of monies taken from the sale proceeds and decrease the amount of monies payable to you for your purposes.

INTEREST

When you sell a home, a typical Offer to Purchase provides that the buyer is entitled to pay for part of the purchase price through proceeds of a new mortgage. If so, payment of the sale proceeds to you may be delayed by the time required to register the buyer's transfer of land and a new mortgage at the Land Titles Office. In that regard, a seller is normally entitled to interest to be paid by the buyer from the date of possession until the date of payment to the seller's lawyer. However, there are methods in Manitoba of providing a seller with payment of the sale proceeds immediately, or shortly after possession (such as Protocol Closings, as discussed next).

PROTOCOL CLOSINGS

When selling a home in Manitoba, with some exceptions, there are generally two methods of closing a real estate transaction. The regular conveyancing method requires that on or before the possession date, the buyer pay the difference between the purchase price and the net amount of the buyer's new mortgage. In this case, the buyer will usually pay interest to a seller from the possession date until registration of the buyer's transfer of land and mortgage at the Land Titles Office, which usually takes approximately 2-4 weeks after the possession date. However, there is a method whereby essentially all monies payable in the transaction, including borrowed funds from a financial institution, will be released to a seller either on the closing day, or shortly thereafter. This is known as The Western Canadian Law Societies Real Estate Conveyancing Protocol ("Protocol").

In order to close a transaction by way of Protocol, an agreement must be reached between you, the buyer, your lawyers, the buyer's lender, and the lawyers for the buyer, prior to the closing of the transaction. If such an agreement cannot be reached, your sale proceeds may not be available to you until some time after that date, when registrations are completed in the Land Titles Office and the transaction is complete. Further, in order to close a transaction by way of Protocol, it will be necessary for both the buyer and the seller to provide their respective lawyers with a specified Declaration as to Possession, which will allow their lawyer to correct, re-sign, and amend documents as may be required in order to complete the transaction. In order to qualify as a Protocol closing, it is necessary for your lawyer to obtain a discharge of each Non-Permitted Registration prior to closing. You should advise your lawyer immediately if there are any claims against the property that are not referred to in the Offer to Purchase.

The Protocol method may not be possible in all circumstances. Please consult your lawyer to learn more about Protocol closing. Please note that not all lawyers in Manitoba close transactions under Protocol as they may be unfamiliar with the Protocol method of closing or find that it is slightly more work than closing a transaction under other methods which they are unwilling to undertake. Smith Neufeld Jodoin LLP encourages closing transactions using the Protocol method, and does not charge extra fees for that service.

GST

The issue of GST as it applies to the sale of property is a complex issue that should be discussed with your lawyer at an early stage to determine whether it must be charged and collected from the buyer of your property. It is the responsibility of a seller to determine whether a particular transaction should have GST applied to it.

The GST applies to all transactions of sale of real property unless the particular transaction meets all of the requirements of one of the exemptions as set out under the applicable legislation. The most common exception is the sale of a used residential property. If the house being sold was being used primarily as a place of residence before the sale, it will generally be exempt from the requirements of the collection of GST from the buyer. There are other exceptions to the obligations of the seller to collect and remit GST as it relates to the purchase of commercial property or mixed use properties. We recommend, given the complexity of this area of the law, that you discuss your uses of the property being sold with your lawyer, so that GST can be dealt with appropriately.



LEGAL COSTS

FEES:

Lawyers fees with respect to the sale of a typical home are usually less than half a percent of the sale price, and sometimes less than a quarter of a percent of the sale price. At Smith Neufeld Jodoin LLP, our lawyers typically adhere to guidelines regarding fees which are based upon the sale price of the property and upon the complexity of the transaction. Please do not hesitate to call any of the real estate lawyers in our firm for a fee quote with respect to selling your home.

DISBURSEMENTS:

In addition to the fees, all law offices will also require reimbursement of their out-of-pocket expenses incurred in the completion of the sale of your home. These out-of-pocket expenses include such items as courier charges, land titles office searches, necessary discharges, photocopying, fax charges, long-distance charges, etc. These costs incurred by a seller are usually much less than the costs incurred by a buyer. For simple transactions, the disbursement costs are often in the range of approximately \$100.00 - \$200.00.

It should be noted that GST and PST are payable on all legal fees. GST is payable on real estate commission and some of the disbursements incurred as a result of the sale of a home.



“Like buying a home, selling a home is one of the most significant financial decisions people make during their lifetimes. The importance of proper advice is therefore critical. Our team of real estate lawyers and staff will assist you every step of the way!”