

# IMPORTANT INFORMATION FOR HOME BUYERS/SELLERS



Compliments of  
**Sherry Anderson**

**NOTARY PUBLIC**

*Real Estate Conveyancing • Mortgage Documentation  
Mobile Home Transfers • Wills • Statutory Declarations  
Subdivisions • Notarizations*



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Member

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# INTRODUCTION

The office of Sherry Anderson Notary Public is pleased to provide the following general information to assist you in your home purchase or sale. I have grown up in Terrace and have over 20 years experience in residential real estate conveyancing including subdivision work, Wills and Powers of Attorney. My office will always strive to make our clients' dealings with our office as pleasant, convenient and informative as possible. Our office goal is to be the preferred choice for residential real estate legal services by providing clients with maximum service, competitive rates, and peace of mind, from start to finish.

If this is your first purchase, you will appreciate the attention to detail and the extra information and communication that are standard at my office. Please call anytime for a cost estimate, or to ask a legal question regarding your purchase, at no obligation. (250) 635-5988 or email to [sherryanderson@telus.net](mailto:sherryanderson@telus.net)



# MORTGAGE PRE-APPROVAL

Before you begin your search for your first home, it would be beneficial to secure pre-approval for a mortgage. Your lender will run a credit report, determine your debt-to-income ratio, and verify your income to establish the amount of the mortgage you can manage. Being pre-approved for a mortgage provides many advantages.

You can lock-in at today's interest rates, yet still get a lower rate if rates change. The pre-approval will assist you in determining the approximate price range for which you qualify, and you'll have more clout when negotiating for a home.

Pre-approval is not final approval; most lenders will require specific information on the home you wish to purchase, either through the automated CMHC emili system or an appraisal of the home. Therefore, any Contract of Purchase and Sale into which you enter should contain the standard subject-to-financing clause.



# REALTOR

When buying a home, you need not use the services of a Realtor®, but because the seller pays the real estate commission, not the buyer, you can generally obtain assistance from the Realtor® at no cost to you. A good Realtor® will make the home-buying process easier, and help you avoid the common pitfalls. Your Realtor® will provide information on recent trends in housing market conditions, including a history of past and present housing prices and mortgage rate fluctuation.

The Realtor® can also narrow your search by reviewing your needs and preferences. Once the type of home and price range is determined, the Realtor® can use the computer to call up specific homes that fit your needs. Your Realtor® will also assist you in preparing the Contract of Purchase and Sale, and will obtain the Property Disclosure Statement from the seller.

Choose a Realtor® who communicates effectively, listens well, and is committed to finding the right home for you. Ask people you trust for referrals.



# CONTRACT OF PURCHASE AND SALE

## Offers

Generally speaking, in most jurisdictions, a contract respecting land is not enforceable if it is not in writing. Therefore, if you wish to rely on your right to enforce a Contract of Purchase and Sale, you should ensure that any offer you make is in writing.

As a buyer, never make an offer casually. If you are not 100% prepared to complete the purchase of the property, you should not make the offer. A buyer who defaults in a transaction can be held responsible for consequential damages, including the shortfall cost of a resale by the seller at a lower price than your offer. It is best to consult your Notary or Realtor® before signing the contract, because once the contract has been signed by both you and the seller, you typically cannot change it without the seller's consent.



## Who Prepares the Contract of Purchase and Sale?

The contract is the single most important document in the transaction of purchase and selling of a home and having it prepared right can save you a LOT of headaches. In British Columbia, it is generally the buyer who will have the Contract of Purchase and Sale prepared. If a seller is selling a home using a real estate agent, it is normally the buyer's real estate agent who will prepare the Contract of Purchase and Sale and present it to the seller's real estate agent for acceptance by the seller. If a seller is selling a home privately without the use of a real estate agent, then the buyer should consult with their Notary or Lawyer who will then prepare the Contract of Purchase and Sale and ensure that the terms are clear, the contract has the appropriate conditions and will be a legally binding and enforceable document in a court of law. Some buyers believe they will save money by preparing the Contract of Purchase and Sale themselves. The reverse is true, especially if there are errors made that may put them into court action. It is always best to have a real estate agent or a Lawyer or Notary experienced in real estate transactions prepare the Contract.



## Counter-Offers

Once you have made an offer, the seller may reject it, or he or she may make a counter-offer, essentially saying "I won't sell for the price or terms you offered, but I will sell the property if you agree to pay this price, or agree to these terms." You have the right to accept or reject the counter-offer or make a further counter-offer. Make sure you agree with all the seller's terms before signing the counter-offer.

# SOME ELEMENTS OF A CONTRACT TO BE CONSIDERED

## Property Disclosure Statements

If the property has been listed with a Realtor®, it will usually include a Property Disclosure Statement. This document contains a series of questions about the property that have been answered by the seller. Your Contract of Purchase and Sale should state that the Property Disclosure Statement forms part of the Contract. Review it carefully because generally in this document, the seller will disclose any problems with the property. If you are preparing your own Contract of Purchase and Sale, ensure that you request a Property Disclosure Statement.

## Deposit

A deposit is a sum paid by the buyer usually, but not always, on the signing of a Contract of Purchase and Sale; the deposit is normally held by the Realtor® or buyer's Notary or Lawyer until completion. The Contract of Purchase and Sale should state who is responsible for holding the deposit, for example, the Realtor® if a Realtor® is involved in the transaction or the buyer's Notary or Lawyer in a private transaction. If the Contract does not state who is to hold the deposit, the buyer may be required to pay the deposit directly to the seller. It is generally not recommended that a deposit be paid directly to the seller, if the seller goes bankrupt or disappears with the deposit the buyer is not protected. The deposit is essentially part-payment of the purchase price, and acts as a guarantee of the buyer's sincerity to complete the transaction. Your contract should state that the deposit is to be returned to you if you are unable to remove the subject-to clauses inserted in your contract.

## seller's Representations

If the seller has made any representations that are important to you – for example, the condition of the roof, the size of the lot, or any other matter – you will want to make sure the representations are included in the Contract of Purchase and Sale. As a rule, representations cannot be enforced unless they are put in writing.



## Chattels

If you wish any items in the house included in the purchase price – such as appliances, curtains, mirrors, or chandeliers – add a sentence to the Contract of Purchase and Sale that “the purchase price will include the following items” – then list each item. Be specific, do not use generalizations such as all appliances instead of listing the various appliances such as fridge, stove, washer, dryer etc.



## Subject-To Clauses

A subject-to clause is often written into one of the large blank spaces in the Contract of Purchase and Sale form. The buyer intends that the purchase will be “subject-to” certain events happening, such as obtaining a building inspection, mortgage financing, or some other matter. If used properly, a subject-to clause will allow you to escape the contract, should the conditions not be met before the specified deadline. You, the buyer, must diligently pursue the fulfillment of each subject-to clause you have inserted into the Contract of Purchase and Sale. Why? If you fail to take reasonable steps to fulfill each subject-to clause and then try to use the non-fulfillment to avoid the purchase, you can be held liable.

A “subject-to-financing” clause may not work in certain circumstances – for example, if the financing clause does not state all the particulars of the financing you are seeking. Therefore, make sure any financing clause states the principal amount of the financing required, the interest rate you expect, the term of the mortgage, and any other relevant particulars. Actively pursue the financing and do not reject an offer of financing unreasonably. Ask your Realtor® or Notary or Lawyer to assist you in drafting of subject-to clauses.



## Removal of Subject-To Clauses

Once your offer has been accepted, you will visit your lender to confirm your mortgage loan details. The lender will require a copy of the Contract. He or she will then arrange an appraisal of the property and/or the submission of a mortgage loan application, using the automated emili approval system. When you get your financing commitment from the lender, you will need to remove – or have your Realtor® remove – the subject-to clause regarding the financing. The subject-to is removed by notifying the sellers in writing. All other subject-to clauses will be removed in the same manner as they are satisfied.

When the last subject-to clause is removed, you will have a firm and binding contract. It is important to remember that all subject-to clauses must be removed by the date specified in the Contract; otherwise the seller can legally sell the property to another person.



## Existing Tenancies

Problems naturally occur when there are existing tenancies, and the buyer expects vacant possession on completion.

Many buyers, unaware they have signed a Contract that makes provision for existing tenants, later discover that the existing tenants plan on remaining in the property after completion of the sale. Therefore, a buyer should consider situations such as existing tenancies when having the Contract prepared. The first step is to find out what kind of tenancy is in place.

## Types of Tenancies

There are generally two types of tenancies, a “fixed term tenancy” where the tenant signs an agreement to rent the property with a specific start and end date or a “periodic tenancy” (the tenant rents from month to month). In a “fixed term tenancy”, the landlord or the tenant cannot end the tenancy without a written agreement of both parties. A notice to end the tenancy is not required for fixed-term tenancies where a tenant must move out at the end of the term. However, if a “fixed term tenancy” agreement does not require the tenant to move out at the end of the term (*for example, when the fixed term tenancy ends, the tenancy sometimes automatically rolls over into a month to month tenancy at the end of the fixed term*) then the tenancy must be ended with proper notice or by mutual agreement”

If a periodic tenancy exists (month to month) and the buyer or a close family member of the buyer, in good faith, plans on moving into the property, the buyer can request that the seller give the tenant 60 days legal written notice to vacate; provided that all conditions on which the sale depends have been satisfied and removed from the Contract in writing before such notice is able to be given to the tenants (example, all subject to’s in the Contract of Purchase and Sale have been removed).



Alternatively, the buyer can take possession of the property with the tenants in place. But know that the buyer will be taking on the responsibilities of handling the vacating of the tenant.

## **Tenant Compensation for landlord's Use of Property**

If a Two Month Notice to End a Tenancy is given the Residential Tenancy Act requires that on or before the effective date of the Notice to end a tenancy, the landlord must pay the tenant an amount equal to one month's rent. The tenant may withhold the last month's Rent instead of being paid compensation.

If a tenant has already paid the last month's rent, the landlord must refund the rent as the compensation. No compensation is required in a fixed term tenancy where the tenant must move out of the property at the end of the fixed term tenancy.

If a buyer takes possession of the property with the tenants vacating the property after the closing date, the one month compensation should be considered and dealt with in the Contract as to who will be responsible for payment of the compensation to the tenant.

## **Completion Date (Closing Date)**

The completion date is the date on which the sale is registered in the Land Title Office, and the purchase price is paid. It must be a date that the Land Title Office is open, and therefore not on a weekend or a statutory holiday.

When selecting a completion date, it is important to understand that it is impractical for the buyer's Notary to commence conveyancing procedures until all subject-to clauses have been removed from the Contract. Therefore, the completion date must not be the same date as the date for removal of the subject-to clauses in your Contract. Set a completion date that gives your Notary enough time – between the date for removal of the subject-to clauses and the completion date – to prepare the conveyancing and mortgage documentation.



## **Adjustment Date**

The adjustment date is the date the parties will adjust those items of a financial nature that need to be settled between them. The usual items for adjustment are annual property taxes, water rates, and local utilities such as sewer and garbage removal. These items are generally pro-rated. For example, if you purchase the property at the end of July, you will be required to reimburse the seller for approximately one-half of the amount of the annual property taxes he or

she paid on July 2. The adjustment date is often a day or two after the completion date and is usually, but not always, the same date as the possession date.

## **Possession Date**

The possession date is the date the buyer obtains possession of the property.



# SOME COMMON TERMS

## **Amortization**

That is the length of time over which a mortgage loan will be retired in full, generally by way of monthly or weekly payments of principal and interest.

## **Assignment of Rents**

This is a charge that is registered in the Land Title Office against the property. This charge allows a lender to collect rent directly from the tenant and apply the rent to the balance of monies due and owing if there is a default under the mortgage.

## **Assumption of Mortgage**

This is an agreement allowing the buyer to assume responsibility for the seller's existing mortgage loan, instead of getting a new mortgage loan in the buyer's name.

## **Canada Mortgage and Housing Corporation**

This crown corporation insures lenders of High Ratio mortgages against default. Mortgage loan insurance is typically required by lenders when homebuyers make a down payment of less than 20% of the purchase price. Mortgage loan insurance helps protect lenders against mortgage default, and enables consumers to purchase homes with a minimum down payment starting at 5%\* — with interest rates comparable to those with a 20% down payment. Typically CMHC insurance rates are 1.25% to 3.85% of the mortgage loan amount.

## **Certificate of Pending Litigation**

Is a document which is registered in the Land Title Office which indicates that a law suit has been commenced by someone who has an interest in the property.

## **Civic Address**

The civic address is simply the street address of the property.

## **Claim of Builders Lien**

This is a claim by a contractor, worker or material supplier who has provided materials and/or work on the property. It is registered as a charge in the Land Title Office against the property. A buyer should advise their Notary or Lawyer if they are aware that work has recently been performed on the property.

## **Clear Title**

A property that is free from liens or conflicting claims of ownership.

## **Conventional Mortgage**

A mortgage loan that does not exceed 80 per cent of the lending value of the property.

## **Conveyance**

The process of transferring ownership of the property from the seller to the buyer. This includes preparation, execution and registration of documents to effect the transfer.

## **Covenantor**

A person who agrees to be responsible for repayment of a loan.



## **Down Payment**

The part of the purchase price of a property that the buyer pays in cash and does not finance with a mortgage. The down payment along with closing costs will be paid to the buyer's Lawyer or Notary prior to the closing of the transaction.

## **Duplicate Certificate of Title (Duplicate Indefeasible Title)**

The Duplicate Certificate of Title also known as Duplicate Indefeasible Title is a highly valuable document which is issued by the Land Title Office and if lost it is costly and time consuming to replace. The duplicate certificate of title must be in the Land Title Office before a property can be transferred or mortgaged. It used to be common practice to take out the duplicate certificate of title to protect against fraud. This is no longer common practice or necessary and the duplicate certificate of title is normally left in the Land Title Office. The duplicate certificate of title is sometimes taken out of the Land Title Office and held by a lender as security for a loan instead of registering a mortgage, although this is rarely done anymore. However, if the duplicate certificate of title is lost, an application to the registrar of land titles must be made to issue a provisional certificate. This can be costly, and may take a couple of months. The Duplicate Certificate of Title must not be confused with the State of Title Certificate which simply give the status of the title of the property at a certain date and time.

## **Easement**

An easement is the legal right to use or cross (right-of-way) another person's land for limited purposes. A common example is a utility company's right to run wires or lay pipe across a property.

## **Emili**

This is an automated CMHC loan processing system which allows lenders to electronically submit an application and obtain approval for an insured mortgage loan without an appraisal. Emili assesses an application's overall risk of default by looking at the borrower, the municipal property tax assessment, historical and current sales activity, and prior sales activity of the property being purchased, if available, along with the other characteristics of the loan. Approval will normally follow, immediately after transmittal of the accepted mortgage loan application. The system requires specific information on the home you are buying and cannot be done in advance of finding a home you wish to purchase.

## **Encroachment**

This means an intrusion onto an adjoining property. Common examples are a neighbour's fence, storage shed, or overhanging roof line that partially (or fully) intrudes onto your property.

## **Fair Market Value**

Fair market value is the price that would be paid by a willing buyer to a willing seller for a property in the open market on the date of registration.

## **Foreclosure Action**

The legal proceedings initiated by a lender in the case of mortgage default. When a borrower fails to make mortgage payments or otherwise fails to fulfill any of the obligations set forth in the mortgage agreement, the lender can enforce its rights through court proceedings.

**Guarantor**

A person guaranteeing performance of certain obligations by another person.

**High Ratio Mortgage**

A mortgage that exceeds 80 per cent of the loan-to-value ratio; must be insured by either the Canada Mortgage and Housing Corporation or a private insurer to protect the lender against default by the borrower who has less equity invested in the property.

**Infant**

In British Columbia, a person under 19 years of age.

**Legal Description**

Real property registered in the Land Title Office is described with a unique legal description, which usually consists of a lot number, various other descriptive numbers and a plan number (not the civic address). The property can also be identified using a nine-digit parcel identifier number. The address listed on title is the mailing address of the registered owners and may or may not be the civic address of the property. Therefore, you cannot use a civic address to perform a title search.

**Joint Tenants**

This is a form of ownership of property. In this form, the owners of the property have an equal, undivided interest in the property with right of survivorship. When a joint owner dies, the deceased owner's entire interest in the property belongs to the remaining surviving joint tenants. Only whoever is the last joint tenant to die can use his or her Will to give the property to someone else.

**Mortgage**

A contract between a borrower and a lender. The borrower pledges property as security to guarantee repayment of the mortgage debt. Lenders consider both the property (security) and the financial worth of the borrower (covenant) in deciding on a mortgage loan.

**Mortgage Broker**

A person or company having contacts with financial institutions or individuals wishing to invest in Mortgages.

**Mortgage Insurer**

In Canada, high-ratio mortgages (those representing greater than 80 per cent of the property value) must be insured against default by either CMHC or private insurers. The borrower must pay for the insurance, which protects the lender against default.

**Mortgage Prepayment Penalty**

Is a fee paid by the borrower to the lender in exchange for being permitted to break a contract (a mortgage agreement); the fee paid is usually three months interest, but it can be higher or it can be the equivalent of the loss of interest to the lender commonly referred to as an "Interest Differential Penalty".

**Open Market Transfers**

A property transfer is considered to be in the open market when anyone likely to be interested in purchasing the property can make an offer. For example, the seller lists the property with a Realtor® or advertises it for sale to the public.

## **Option to Purchase**

An option to purchase real estate is an agreement between two parties giving the buyer exclusive right (without the obligation) to buy the property within a certain period of time. During the term of the option no-one else can buy or sell the property including the owner. In a nut shell, the seller is basically taking their property off the market during the option period until the buyer decides if he wants to purchase the property or not. The buyer is not obligated to exercise the option to purchase.

## **Principal Residence**

Where you live and conduct your daily activities.

## **Purchaser**

The person buying the property, who will be registered as the new owner of the property after the Transfer document is registered in the Land Title Office.

## **Restrictive Covenant**

A restrictive covenant may be defined as a contract imposing a restriction in the nature of a negative obligation on the use of one person's land for the benefit of another's land. The restriction is always negative, bidding someone not to do something.

## **Right of First Refusal**

A right given to a person to be the first person allowed to purchase property if it is ever offered for sale.

## **Section 219 Covenant**

Under Section 219 of the *Land Title Act*, a registered owner of land can grant in favour of the Crown, a Crown Corporation or Agency, or Municipality or Regional district a covenant imposing a negative or positive obligation on the use of the registered owner's land. Section 219 Covenants are often used by Municipalities, etc., as conditions of subdivision approval.

## **Setbacks**

Setbacks are part of zoning regulations that require any improvements (buildings) on the property to be a certain distance from the parcel lines of the property.

## **Standard Mortgage Clause**

A clause in a home insurance policy providing additional coverage for the mortgage lender and also providing that the lender's rights to recover proceeds will not be compromised if the borrower is guilty of wrong doing relative to the Insured loss.

## **Statutory Building Schemes**

A building scheme is simply a group of restrictive covenants attaching two or more lots within a particular development plan. The building scheme is often used by a developer who is selling the lots in a residential subdivision and wants to maintain uniformity in the use of the lots to protect their value.

## **Statutory Right of Way**

A charge registered against title to the property giving a party access rights to the property. This type of interest in land is available only to a restricted class of user, generally government and its agencies and public utilities. It is common to see right of ways granted for power poles, telephone poles, cable and sewer etc.

## **Substantial Renovation**

A substantial renovation is one where all or substantially all of the building has been redone except for the foundations, external walls (outside), interior supporting walls, floors, roofs, and staircases. All or substantially means 90% or more.

## **Tenants in Common**

This is another form of ownership of property. Unlike Joint Tenants, in this arrangement each person owns a half, or third or some other portion that belongs only to them. They can leave their share to someone in their Will.



## **Term**

The term is the length of time during which a borrower pays a specific interest rate on the mortgage loan. The entire principal of the mortgage loan is not usually paid off at the end of the term because the amortization period is normally longer than the term.

The reason for having a longer amortization period is that the mortgage payments on a three-year term mortgage for example, amortized over three years, would be very large.

## **State of Title Certificate**

This is a certified copy of title issued by the Registrar of Land Title Office showing the ownership and state of title as of a given date and time. A State of Title Certificate should not be confused with the Duplicate Certificate of Title.

## **Survey Certificate**

See Land Surveys” under Additional Information page 18

## **Title Insurance**

See Title Insurance under Additional Information page 18

## **Variable-Rate Mortgage**

A mortgage for which payments are fixed, but whose interest rate changes in relationship to fluctuating market interest rates. If market rates go up, a larger portion of the payment goes to interest. If rates go down, a large portion of the payment is applied to the principal.

## **Vendor**

The person who is selling the property.

## **Zoning Regulations**

These are strict guidelines set and enforced by municipal governments’ regulating how a property may or may not be used.



## COSTS

### Who Pays What?

The seller normally bears all costs associated with clearing the title. For example, the seller's Notary will make arrangements to have all financial charges paid out and discharged from the title. The buyer of the property will typically bear all costs associated with arranging and registering the new mortgage loan, the Notary's legal fees and disbursements with respect to having the property registered in the buyer's name, and some or all of the following taxes: Goods and Services Tax, General Property Transfer Tax, and Provincial Sales Tax.

### Goods and Services Tax (GST)



GST is payable on the sale of real property unless an exemption applies. The main exemption occurs if the property has been occupied by the seller as a residence.

This exemption is usually referred to as the exemption for the sale of "Used Residential Property". GST may be payable by a buyer of "Used Residential Property", if the seller, for example, has substantially renovated the home (made new) and claimed input tax credits. It is therefore important for

the buyer to make inquiries of the seller to determine if GST is payable.

In certain circumstances, a buyer can obtain a partial GST Rebate. For example, if the purchase price of the property is \$350,000 or less (lands and buildings) the GST rebate is 36% of the GST paid up to a maximum amount of \$6,300. If the purchase of the property (including land and buildings) is more than \$350,000 but less than \$450,000, the GST rebate is reduced on a sliding scale and only a partial rebate is available. The buyer is not eligible for a rebate if the purchase price is \$450,000 or higher.

### General Property Transfer Tax

General Property Transfer Tax is a Provincial tax. With some exceptions, General Property Transfer Tax is payable where there is a transfer of real property. The tax payable is 1% of the first \$200,000 of the fair market property value; plus 2% of the fair market property value above \$200,000 up to \$2,000,000 and then increases to 3% on the fair market property value greater than \$2,000,000. The tax is due at the time title is transferred to the new buyer, and is collected by the Land Title Office when the documents are submitted for registration. There may be an exemption or reduction from the tax if you qualify as a First-Time Home Buyer or are a buyer purchasing a qualifying newly built home.



### Newly Built Home Exemption:

The newly Built Home Exemption reduces or eliminates the amount of property transfer tax you pay when you purchase a newly built home with a fair market value of \$750,000 or less. To qualify the buyer must be an individual (i.e. not a corporation); must be a Canadian citizen or permanent resident; the property must not exceed 1.24 acres (0.5 hectares);



the buyer must occupy and use the property as their principal residence for one year following the date of registration of the purchase at the Land Title Office. If you don't qualify because you are not a Canadian citizen or permanent resident, but you become one within 12 months of when the property is registered at the Land Title Office, you may apply for a refund of the tax. You may still qualify for a partial exemption, if the property has a fair market value greater than \$750,000 but less than \$800,000 and/or the property is larger than 1.24 acres (0.5 hectares). The above is not intended to replace the Newly Built Home Instruction Guide issued by the provincial government. Please refer to the guide for detailed instructions at the following link:

<http://www2.gov.bc.ca/gov/content/taxes/property-taxes/property-transfer-tax/understand/exemptions/newly-built-home-exemption>

### **First-Time Home Buyer's Exemption:**

To qualify for the First-Time Home Buyer's tax exemption—which will save you all or part of the General Property Transfer Tax—you must not have owned or had an interest in a principal residence at anytime, anywhere in the world. (Note: owning a manufactured home in a mobile park does not prevent you from qualifying.) In addition to the above, to be eligible for the exemption you must meet all of the requirements set out in the First Time Home Buyer's Instruction Guide, published by the provincial government.



Here is a short summary.

- Each buyer applying for the exemption as a First Time Home buyer must be a Canadian citizen or permanent resident of Canada as defined in the *Immigration and Refugee Protection Act* (Canada) and must have either continuously resided in the province for at least one year immediately prior to the application to register the purchase of the principal residence or, if the buyer did not continuously reside in the province for that period, have filed income tax returns as a resident of the province for two of the six taxation years immediately prior to the registration date
- The fair market value of the land and improvements that comprise the principal residence must not exceed the qualifying value of \$475,000. If the fair market value of the land and improvements which comprise the principal residence exceeds the applicable qualifying value by an amount not greater than \$25,000, a proportionate exemption is available.
- If the property purchased is vacant land, the residence must be established prior to the first anniversary of the registration date; the buyer must occupy and use the property as his or her principal residence from the date the residence was established to a date no earlier than the first anniversary of the registration date.
- If the property purchased is vacant land, the fair market value of the land plus the total cost to construct the improvement must be no greater than the qualifying value of \$475,000.
- The buyer must occupy the property as his or her principal residence within 92 days of the date of registration of the transfer at the Land Title Office.
- The buyer must occupy and use the property as his or her principal residence for the one year period following the date of registration of the purchase at the Land

Title Office. If this condition is not met, a prorated exemption may be available. Eligibility for the exemption/refund will not be denied where a purchaser fails to occupy the property for this period due to their death, or because they transfer their interest in the property pursuant to a written separation agreement or a court order under the *Family Relations Act*.

- The full exemption is not available on properties where all of the buildings are not classified as residential and the land portion exceeds 0.5 hectares (1.24 acres). A partial exemption may still be available, however.

The above is not intended to replace the First Time Home Buyers Instruction Guide issued by the provincial government. Please refer to the guide.

## THE BUYER'S NOTARY

Your Notary's job generally is to ensure that you have purchased the correct property, free and clear of all financial encumbrances, registered to you in the Land Title Office, subject only to your new mortgage. A competent Notary will normally provide you with a copy of the subdivision plan, and copies of all non-financial encumbrances such as statutory rights-of-way or easements registered against the property.



A few of the major things a Notary must do for a buyer include the following:

- Determine whether there is a valid and enforceable contract.
- Search title and confirm the nature of all encumbrances or charges registered against the property.
- Carry out a property tax search, obtain utility information (water/sewer and garbage rates).
- Arrange withholding tax or a clearance certificate where the seller is a non-resident.
- Prepare the transfer to be registered in the Land Title Office.
- Prepare all other necessary documents including the Property Transfer Tax Return, Statement of Adjustments, GST Declaration, seller's Residency Declaration, Mortgage loan, Order to Pay, and the letter of undertaking to the seller's Notary.
- Meet with the buyer to review and sign the documents. (Your appointment to sign the documents will usually take place during the last week before the closing date. If you are going to be away during this time, please let your Notary know, well in advance.)
- Arrange to have the purchase proceeds placed in trust.
- Conduct a pre-registration search of title, register all documents, conduct a post registration search of title, and apply for a State of Title Certificate.
- Arrange for the appropriate undertakings with respect to the discharge of the seller's mortgage loan from the seller's Notary.

Additional steps are required if you are buying a strata or a new home in the course of construction. A Notary's fees, therefore, will vary depending on the complexity of the transaction.

## ADDITIONAL INFORMATION

### Appraisal

An appraisal is commonly confused with a home inspection. An appraisal is simply an estimate of a property's market value, done by a professional trained in appraisal techniques and familiar with the local market. An appraisal is used by lenders to determine the amount of the mortgage they are willing to lend you. It is not a building inspection.



### Building Inspections

A good home inspection by a qualified building inspector cannot be over emphasized. Many home buyers desiring to save the money for a good home inspection have spent enormous amounts of money repairing items that a home inspector would have discovered. Home inspections are not designed to disclose cosmetic deficiencies, such as an interior wall that needs touching up; they are designed to disclose defects in the property that could materially affect its safety, livability, or resale value.

Before choosing a Building Inspector, do your homework; anyone can set up shop as a home inspector. At present, British Columbia does not require home inspectors to be licensed; in many cases, if you have a problem with a major defect after closing that was not disclosed to you by the home inspector, the inspector's financial liability to you may be limited to the inspection fee paid. Simply being a member of a trade association does not constitute competency or a guarantee that you will be satisfied with your home inspection.



A properly trained Building Inspector has the experience to carry out the inspection. Ask the Building Inspector what training he or she has; how long the person has been in business; what the inspection will include; how long the inspection will take (a good home inspection will take anywhere from two to three hours); what type of report is provided; what references are available; how much the inspection will cost; and whether the person carries Errors and Omissions insurance.

### Home Insurance

Provides payment to the homeowner in the event of loss due to fire, theft, or damage through certain natural elements such as hail, tornado, lightning and flooding. The homeowner policy will not only cover the cost of repairs, but the cost of the contents of your home (furniture, appliances, electronics, clothing, jewelry, etc.), as well as incidentals, such as the cost of an alternate residence during the repair process.



### Mortgage Lenders and Home Insurance

Most lenders will require a borrower to purchase home insurance, and additionally make the lender a beneficiary on the policy. This is because the mortgage holder has an interest in the property and property damage will affect the fair market value of the property if the buildings on the property are damaged or destroyed and not repaired.



Proof of home insurance will be required by the lender at the time of closing and provided to your Notary or lawyer via a binder letter from your insurance agent. Most lenders will require that the total coverage of the homeowner's policy be for at least the largest amount of the cost to replace the home and the total mortgage amount including a "standard mortgage clause". It is up to the buyer to ensure that the required policy of home insurance is in place for the closing date.

### **Replacement Cost Policy**

When purchasing home insurance, one should seriously consider a replacement policy. When purchasing any property, the building materials depreciate, or lose value, as the property ages. In addition, inflation affects building costs as it does everything else in your budget. A roof that cost \$3,000 to install may cost \$7,000 to replace if it suffers hail damage. A replacement policy will cover the entire cost of replacement of the roof, not merely its fair market value at the time of the loss. Without home insurance lenders will not allow the mortgage proceeds to be advanced.

### **Annual Municipal or Rural Property Taxes**

When you own or lease a property or manufactured home in British Columbia property taxes must be paid yearly for each property. The money raised from the property taxes you pay is used to fund local programs and services, such as:

- Police and fire protection
- Emergency rescue services
- Road construction and maintenance
- Garbage services
- Recreation and community centres
- Parks
- Libraries
- Schools
- Hospitals

### **Home Owner Grant**

The home owner grant reduces the amount of annual property tax you pay on your principal residence. The grant is available to homeowners that pay annual property taxes to a municipality or to the province if they live in a rural area. (The homeowner grant does not apply to summer cottages, second homes or rental properties).

The completed home owner grant must be received by the municipality or the province before the due date for payment of the annual property taxes each year in order to pay a reduced amount of annual property taxes without incurring a penalty. All eligible home owner grant claimants must re-attest their eligibility each year. This means that the eligible owner must re-affirm that they are entitled to claim a grant for the current year, even if they successfully claimed a home owner grant in the prior year.

### **Are you eligible for a Home Owner Grant?**

There are two types of home owner grants: the basic grant and the additional grant. The amount of annual property tax you pay is dependent on which home owner grant you are able to claim.

## **Basic Home Owner Grant**

Generally to be eligible for the basic home owner grant, you must meet the Province of British Columbia's criteria:

- you must be a Canadian Citizen or landed immigrant.
- you must reside in British Columbia
- you must be a registered owner and an occupant of the home; and
- the home must be your principal residence



## **Additional Home Owner Grants**

If you are 65 years old, or older, have a disability, or receive a war veteran's allowance, you may be eligible for an additional grant.

## **Land Surveys**

A survey is a document prepared by a British Columbia Land Surveyor. There are typically three types of surveys.



### **1. Location Survey Certificate**

This is the most common survey. This document typically shows the location of the improvements (does not include fences) on the property. An up-to-date survey certificate will determine if there are any encroachments onto a neighbouring property or from another property; whether there are any encroachments onto easement or rights-of-way areas; and whether there is non-compliance with set-backs required under local zoning by-laws.

### **2. Form or Foundation Only Survey**

This type of survey shows only the forms or cement foundation of the improvements on the property. Because a foundation survey generally does not show structures such as eaves, patios, sundecks, carports, or other protruding structures, it is normally only acceptable by a lender in a construction mortgage.

### **3. Full Survey**

A full survey is a complete re-survey of the entire land. A full survey will show changes in land boundaries adjacent to water or resulting from subsidence; it is normally conducted to confirm the accuracy of land boundaries.

## **Title Insurance**

Title insurance is a unique form of insurance. It protects the lender and the homeowner against a number of undetected or unknown risks related to the property's title or ownership. Unlike life insurance or home insurance, purchasing a buyer's policy of title insurance is paid only once at the time of closing and coverage is valid for the entire time you own your home. Briefly, in British Columbia, title insurance is used most frequently, in residential conveyancing to protect against fraud and as an alternative to obtaining an up-to-date survey certificate, or to resolve defects revealed by an existing survey certificate prior to closing. For example, existing buildings may violate zoning setback requirements, or may extend onto



adjoining properties or onto an existing easement or right-of-way; the property owner may be forced to remove the intruding structure.

Survey coverage included in a title insurance policy insures the policy holder up to a set amount in the policy against the loss or damage arising, should there ever be forced removal of the structures that existed at the policy date (the policy date normally being the completion date of the transaction). Most Lenders (but not all) will generally insist on a title insurance policy with survey coverage. In addition to survey coverage, title insurance can cover.

- a. someone else claiming an interest in your property;
- b. fraud, forgery and false impersonation affecting the validity of your title;
- c. existing liens against the title including realty tax arrears and municipal utility charges;
- d. violations of municipal zoning by-laws;
- e. property tax arrears;
- f. existing work orders
- g. lack of legal access to the property;
- h. Unmarketability of land due to adverse matters that an up-to-date survey would have revealed.

There are situations however where a survey certificate will be required notwithstanding coverage provided by title insurance. For example, when you need to know the location of existing structures in relation to the property lines, should you want to add an addition or other improvement such as a fence or garage.

## **Water Testing**

Many homes that are connected to private water supplies, such as wells and streams may not be safe or healthy as private water supplies are not normally tested and treated for contaminants that are typically found by a municipal or community water system. Bacteria found in water are an increasing concern for public health; they have been known to cause diseases resulting in illness or death. As a result, if the water is not obtained from a municipal or community water supply, it is considered advisable to have the water source tested.



As part of the approval process for a mortgage loan, many lenders are now requiring that the water be tested if the home is not connected to a municipal or community water system. Lenders normally require that water be tested for coliform bacteria only. Additional water tests – a metal scan, for example – are optional, and should not be requested without first contacting the laboratory for their individual pricing and recommendations.

Bottles for water testing can be picked up at Aqua Clear Bottlers, Acadia Northwest Mechanical, or Suretech Systems & Solutions in Terrace, and forwarded to Northern Labs Ltd. in Prince Rupert for testing. For all other locations, please contact the lab directly to arrange for bottles.

Specific instructions are provided with the bottles.

Northern Labs Ltd. is located at 251 Kaien Road, Prince Rupert, BC.  
Contact 1-800-990-9522 for their pricing and recommendations.

## Home Warranty

As of July 1, 1999, residential builders applying for building permits to construct new homes for sale are required to provide third-party warranty insurance, unless specifically exempted from this requirement. Owner-built homes, factory-built homes such as modular homes, and purpose-built rental housing (built for rental purposes) are among a few of the exemptions.



Home Warranty insurance can now only be provided by insurance companies authorized by the Financial Institutions Commission and that meet the requirements set out in the *Homeowner Protection Act*.

Mandatory Warranty Coverage must be for a period of at least two years for defects in materials and labour, for at least five years for defects in the building envelope resulting in water penetration, and at least 10 years for structural defects.

It may be wise to have a qualified home inspector or engineer examine the property before the various parts of the warranty expire, e.g., 2, 5, and 10 years for the mandatory warranty, because problems that arise after the warranty period are generally the buyer's responsibility. One exception is that items the builder

repaired or replaced during the warranty period are warranted for an additional period of time from the date the repairs were completed.

## Owner Builders

An owner builder is a person authorized by the Homeowner Protection Office (HPO) to build a new home for their personal use. An owner builder isn't required to be licensed by the HPO to build the new home and is not required to arrange for third-party home warranty insurance on that particular home. Individuals wanting to be an owner builder of a new home are required to obtain an Owner Builder Authorization from the HPO and to pay a fee prior to commencing construction of that new home. These requirements are in effect for all areas of British Columbia, regardless of whether building permits are required or not. Starting July 4, 2016, anyone in BC applying for an Owner Builder Authorization will need to pass a home building basics exam before they will be granted Owner Builder Authorization.



## Buying or Selling an Owner-Built Home

An owner builder must occupy their new home themselves for at least one year after obtaining an occupancy permit and are not permitted to sell or rent the new home during that one-year period. An owner builder who built their home prior to November 19, 2007 must provide prospective buyers with the old-form Owner Builder Declaration and Disclosure Notice during the first 10 years after occupancy. An owner builder building under an "Owner Builder Authorization" (after November

19, 2007) is required to provide an Owner Builder Disclosure Notice, obtained from the HPO, to prospective buyers within the first 10 years after occupancy. The owner builder must advise the HPO of the occupancy date and the HPO does not release the Disclosure Notice until the one-year occupancy requirement has been verified. An owner builder who sells their home within the first 10 years after occupancy is obligated to subsequent buyers for defects in the new home during that 10-year period. The Homeowner Protection Act and regulations clarify that an owner builder's obligations under the statutory protection are similar to the obligations of a Licensed Residential Builder under a policy of home warranty insurance. That is, two years for labour and materials, five years for defects in the building envelope and 10 years for structural defects.

### **New Homes Registry**

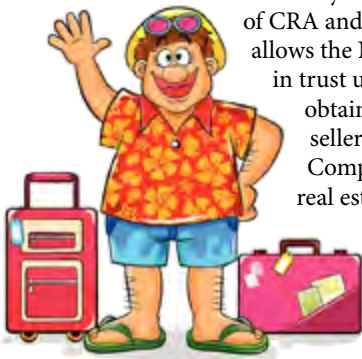
The easiest way for a prospective buyer to determine whether a home can be offered for sale is to search the HPO's online New Homes Registry at [www.hpo.bc.ca](http://www.hpo.bc.ca). Prospective buyers can check the status of a new home or a new home under construction and find out if the home has a policy of home warranty insurance and is built by a Licensed Residential Builder, or whether the home is built without home warranty insurance under an exemption, such as a Owner Builder Authorization.

Information available also includes: the name and contact number of the warranty provider, the builder's warranty number and whether there is a disclosure notice on file for an owner-built home.

### **Non-Resident Sales**

A buyer purchasing Canadian real estate from a non-resident seller has an obligation to withhold and remit to Canada Revenue Agency (CRA) 25% to 50% of the gross sale proceeds within 30 days after the end of the month in which the buyer acquired the Property. Make a note; this is the gross sale proceeds, no deductions allowed. Also, it is whether the seller is a non-resident (where they permanently reside) not whether they are a Canadian citizen. You can be a Canadian Citizen and still be a non-resident. The withholding tax requirements can be reduced or eliminated if the seller obtains a Certificate of Compliance issued by CRA. It is common practice for the buyer's Notary or Lawyer to arrange, through undertakings with the seller's Notary or Lawyer a holdback amount equal to 25% or 50% of the gross selling price of the property while the seller applies for a Certificate of Compliance from CRA.

The Notary or Lawyer withholds the amount in trust on behalf of CRA and a Comfort letter is requested from CRA which allows the Notary or Lawyer to hold the holdback funds in trust until the Certificate of Compliance has been obtained. A Comfort letter cannot be issued until the seller submits their application for a Certificate of Compliance to CRA. A buyer purchasing Canadian real estate should advise their Notary or Lawyer as soon as they have knowledge or suspect that a seller may be a non-resident of Canada so that appropriate undertakings and certificates are obtained.



# WORK SHEET

Costs are estimated; they have been provided for convenience only.  
For accuracy, verify costs through applicable sources.

1. Purchase price	\$	_____
2. GST on the purchase price <i>(New or substantially renovated homes only)</i>	\$	_____
3. General Property Transfer Tax of 1% on the first \$200,000 of the purchase price, and 2% on the balance of the purchase price up to \$2,000,000 then 3% thereafter <i>(All or part of this tax will not apply if you qualify as a First-Time Home Buyer or qualify for the New Home Exemption.)</i>	\$	_____
4. Appraisal fee <i>(an appraisal may be required by your lender: approx. \$315 including GST)</i>	\$	_____
5. Home inspection <i>(approx. \$450 or higher )</i>	\$	_____
6. Title Insurance <i>(May be required by your lender)</i> approximately \$150 to \$200	\$	_____
7. Monthly strata fees <i>(Condominium. Fees will vary.)</i>	\$	_____
8. Premium payable for loan insurance: from 1.75% to 3.75% of the loan amount <i>(CMHC/GEMICO Insured Mortgages) [Premium can be included in the amount to be borrowed].</i>	\$	_____
9. Adjustments for annual property taxes <i>(pro-rated)</i>	\$	_____
10. Adjustments for water/sewer and garbage rates <i>(pro-rated)</i>	\$	_____
11. Cost for testing water for coliform bacteria only is approximately \$44.10	\$	_____
12. Hookup fees for services such as telephone, hydro, natural gas, and cable	\$	_____
13. Home Insurance <i>(Most lenders require a comprehensive or replacement cost policy)</i>	\$	_____
14. Moving expenses	\$	_____
15. Notary's legal fees and disbursements	\$	_____
16. Other	\$	_____
TOTAL ESTIMATED EXPENSES:	\$	_____

## LINKS OF INTEREST

### **British Columbia Institute of Property Inspectors**

[http:// www.bcipi.asttbc.org](http://www.bcipi.asttbc.org)

Topics include information on why to have a building inspection, the benefit of using a certified inspector, and standards. Provides names and contact information for certified inspectors in your area.

### **Canada Customs and Revenue Agency**

<http://www.cra-arc.gc.ca/E/pub/gm/b-092/README.html>

Web page provides information on “Substantial Renovations” and the “GST”.

### **Health Canada**

<http://www.hc-sc.gc.ca/ewh-semt/water-eau/drink-potab/index-eng.php>

A good source of publications relating to safe drinking water.

### **Homeowner Protection Office**

<https://hpo.bc.ca>

Provides information and guidance to prospective buyers. Topics include information on home warranties, residential builder licensing, and home inspectors as well as the search engine for the new homes registry.

### **National Home Warranty Program**

<http://nationalhomewarranty.com>

A home warranty insurance provider.

### **Norlabs**

<http://www.norlabsltd.com/>

Information on drinking water services

### **Property Transfer Tax**

[http://www.sbr.gov.bc.ca/individuals/Property\\_Taxes/Property\\_Transfer\\_Tax/ptt.htm](http://www.sbr.gov.bc.ca/individuals/Property_Taxes/Property_Transfer_Tax/ptt.htm)

Provides information on the General Property Transfer Tax and Information; First Time Home Buyers exemption and the Newly Built Home Exemption

### **Real Estate.ca**

<https://www.realtor.ca/>

Website sponsored by the Canadian Real Estate Association. Participating local real estate boards advertise their listings. Site includes photographs and video clips of particular homes listed.

### **Stewart Title Insurance**

<http://www.stewart.ca/Purchasers.html>

A title insurance provider. Explains what is covered by a residential title insurance policy and provides Claim Bulletins describing claims actually settled with title insurance.

### **The Canadian Home Builders Association**

<http://www.chba.ca>

A good source of information if you decide to buy a “new construction” home.

### **Sherry Anderson, Notary Public**

[www.sherryanderson.ca](http://www.sherryanderson.ca)

A good source of information for individuals buying or selling a home.

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