

## **WHAT TO EXPECT WHEN YOU BUY OR SELL A HOME**

Congratulations on the purchase or sale of your home. For most people, these transactions represent the biggest and most important financial events of their lives. The whole process can seem overwhelming. At Kane, Shannon & Weiler we have years of experience in real estate conveyancing and mortgage financing, which serves to make our clients' real estate transactions as seamless and stress-free as possible. Here is a step-by-step guide of what can be expected in a typical real estate transaction.

### **Buying a home**

1. Your Contract of Purchase and Sale will be sent to us from your realtor when you have a firm and binding contract to purchase your new home. Your contract will spell out the 3 P's – the people, the property and the price.
2. Your contract will also tell us when you will become the owners of the property (the Completion Date), when you will take possession of the property (the Possession Date) and when you will become responsible to pay the taxes and utilities upon the property (“the Adjustment Date”).
3. Once we have opened your file, we will conduct various investigations on your behalf, because the rule in purchasing real estate is still *caveat emptor* or “buyer beware.”
4. We will search the title to the property to determine what charges, if any, are registered against the title that may adversely affect your ownership and use of the property. Those charges may include (but are not limited to) mortgages, liens, judgments, court orders, crown debts, restrictive covenants, easements, rights-of-way, leases, statutory building schemes and options to purchase.
5. We will also conduct property tax searches to determine how much you pay for property taxes, water and sewer and whether the existing owners owe any money to the municipal government on account of tax or utilities arrears. Tax searches may also reveal bylaw or building code violations which require rectification. Sometimes the presence of a former marijuana grow operation is revealed through a routine tax and bylaw search.
6. If any of those issues exist, we will contact the seller's lawyer and put them on strict conditions known as undertakings, in writing, to remove those charges, pay those arrears or rectify those bylaw problems on , or prior to, the Completion Date of your purchase.
7. If you are arranging mortgage financing to purchase your home, we will receive mortgage instructions from your lender, which will tell us how much money you will be receiving for the purchase. We will be acting for your lender in this transaction too, and you will sign a consent allowing us to do so, because we will have to share all relevant information with you and your lender that pertains to the purchase. In this case, and in these limited circumstances, we cannot maintain solicitor-client confidentiality. This is how the majority of

residential mortgage transactions are conducted in British Columbia. If an actual conflict did arise between you and your lender, then we would have to stop acting for you both.

8. If you are purchasing a strata unit, usually a condominium or a townhouse, we will contact your strata manager to obtain certain forms that are required before we can register your property purchase with the Land Title Office. Your strata manager may also have some conditions that must be fulfilled through our offices, such as the payment of a move-in fee or the prepayment of your first month's strata payment. Sometimes the strata manager will advise of a special levy that has been assessed to or owing by the seller for repairs to the strata property. Occasionally the strata manager will reveal the presence of existing work orders or strata bylaw infractions that have to be rectified by the sellers before they will issue their strata forms to us.

9. You will be required to obtain insurance for your new property covering major risks of loss, including fire, flood and earthquake. If you are obtaining a mortgage, your lender will require that we obtain a document from your insurance agent confirming that your lender will be the first to be paid from the insurance proceeds (the first loss payee) if there is such perilous event after purchase.

10. Some lenders will require that we obtain title insurance for the benefit of the lender, to protect the lender against any decrease in the value of the property due to problems arising from surveys, building permits, zoning, illegal use, hazardous materials or other perils that can reduce the value of the property and jeopardize the lender's security. Some lenders will require title insurance to protect them against mortgage fraud due to identity theft. Buyers can also obtain title insurance for homeowners, but those policies are separate from the lender policies we may be required to obtain.

11. Sometimes the sellers are non-residents of Canada. If that is the case, we will have to place the seller's lawyer on an undertaking to hold back a substantial portion of the purchase monies from the seller until Canada Revenue Agency issues a Clearance or Compliance Certificate. If this is not done, the buyer can become responsible for any tax payable by the seller for income taxes (capital gains) on account of the sale.

12. One of our jobs will be to calculate exactly how much money will be needed to complete your purchase. We will calculate, to the penny, this amount. Some of the usual costs involved in completing your purchase are as follows:

- the purchase price under the contract;
- Property Transfer Tax (1% of the first \$200,000 and 2% on the balance of the purchase price) payable to the Province of British Columbia, unless you qualify for an exemption such as the First Time Homebuyer's exemption;
- HST/GST/PST, if new construction or bare land;
- municipal tax and utilities adjustments;
- insurance binder, if charged by your agent;

- title insurance, if required by your lender;
- strata forms/strata fees required by the strata manager;
- other agreed costs specific to the contract; and
- the lawyer's statement of account;

13. We will also calculate the resources you are employing in order to pay for the property, which typically will include the following:

- your deposit already paid;
- the advanced mortgage loan or line of credit, if any;
- any HST/GST/PST rebates available to buyers of new housing;
- any credit adjustments owing to you by the seller;
- any proceeds transferred from the sale of another property; and
- the balance required to complete the down-payment.

14. Prior to the Completion Date the conveyancer who is handling your file will set up an appointment for you to sign your documents with one of our lawyers. At this meeting you will usually bring in the money required to complete the down payment, by way of bank draft or certified cheque. This amount will have been communicated to you by the conveyancer in advance of the appointment. After you sign your documents, we will deposit your money to our trust account. This amount, together with your mortgage proceeds, if any, will be used to pay the seller on the Completion Date.

15. On the Completion Date we will attend to registering your purchase documents with the Land Title Office. Once registered, your mortgage lender, if any, will forward the mortgage money to us. Once we have this money, we will pay the seller, and you will become the registered owner of your new home.

16. You will be entitled to move into your new home on the Possession Date. This date is usually 1 – 3 days after the Completion Date, or at some other time mutually agreed between the buyer and the seller.

17. Within approximately two weeks to two months, we will forward the State of Title Certificate issued by the Land Title Office, confirming your ownership of the home. If you have a mortgage lender, they will also receive a copy of the State of Title Certificate, confirming that their mortgage is registered against the title of the property as their security for your loan.

18. As the registered owner of your home, you will enjoy the rights of ownership and accept its obligations, the latter of which involves the timely payment of property taxes, the obligation

to keep the home properly insured, the duty to prevent the property from falling into disrepair, waste or illegal use, and the covenant to pay the mortgage loan on time and when due.

19. At some point along the path of home ownership, and for a multitude of reasons, you may decide to sell your home. The section entitled “*Selling a Home*” tells you what you can expect when you make that decision.

### *Selling a Home*

1. Once you have a firm and binding contract to sell your home, your realtor will forward your Contract of Purchase and Sale to our offices, and we will open a file for your sale.

2. Since it is the seller’s obligation to deliver clear title of the property to the buyer, we will be placed on undertakings by the buyer’s lawyer regarding those obligations.

3. We will review the charges on title that we are on an undertaking to clear, such as mortgages, liens, judgments, court orders, crown debts, and certificates of pending litigation (“CPLs”). There may be other charges on title that affect the use of the property, but we will normally not be on any undertakings to clear those non-financial charges on the Completion Date. Those non-financial charges usually include covenants, easements, rights-of-way and statutory building schemes.

4. We will order payout statements from mortgage holders, lien holders and judgment holders. We will contact those who have filed CPLs (usually another lawyer) to determine the conditions upon which they will release their certificates.

5. We will review tax searches to see if your taxes, water and sewer charges are paid up to date with your local municipality, and if not, we will determine how much is owing and will make arrangements to pay any tax and utilities arrears upon the Completion Date. We will also determine whether there are any bylaw or building code violations that we you are required to rectify.

6. We will review real estate commission information provided by the realtors to ensure that real estate commission is deducted from the sale proceeds and forwarded to the appropriate realtors on the Completion Date. Usually the realtors involved will divide the commission between the realtor who acted for the seller and listed the property and the realtor who acted for the buyer and brought the buyer to the seller.

7. We may be asked by the buyer to review previous surveys with the seller to determine if their have been any material changes to the dwelling or other buildings situated on the property.

8. If the seller is a non-resident, as defined under the federal Income Tax Act, we may be legally required to hold back a substantial sum from the sale proceeds until such time as Canada Revenue Agency issues a Clearance Certificate or a Compliance Certificate, in which the government says that it has either calculated all taxes owing to the government (if not yet due), or it has received all taxes owing to the government, from the seller. While the holdback can be 25% of the value of the land and 50% of the value of the improvements, the practice is to holdback 25% of the gross purchase price. This holdback can create real problems for sellers

who are unable to deliver clear title to the buyers because, deducting the holdback, there is not enough money to clear title. If that is the case, the seller will be unable to complete the sale and will be in breach of their contract to the buyers. It is extremely important for non-resident vendors to contact their accountants early in order to obtain a Clearance Certificate from Canada Revenue Agency prior to the Completion Date. This process can take several months, and so it is imperative to plan ahead if you are a non-resident vendor.

9. If the sellers are separating spouses, it is very important to have a separation agreement in place. If one spouse is buying out the other and arranging a new mortgage to do so, the lender will usually require a separation agreement to be signed before advancing money. Since separation agreements can take time to negotiate, sellers who are separating spouses will also need to plan ahead and will need to have been properly advised of their rights and obligations upon marriage or relationship breakdown. In British Columbia the law may allow for one spouse to retain more than 50% of the family assets for reasons to do with fairness, and as such, separating spouses cannot wait until they sell their home before obtaining proper advice.

10. If the seller is an owner/builder, they must be registered with the government for tax purposes. An HST certificate will need to be produced prior to the Completion Date if the owner/builder wishes to self-assess the HST that is payable to the government (after calculating tax credits that may also be available to reduce the HST payable by the owner/builder). Otherwise, the full HST will have to be forwarded to the federal government on the Completion Date.

11. Prior to the Completion Date the seller will sign the conveyance documents with one of our lawyers. At that meeting, the seller will know exactly how much money will be paid upon the Completion Date, after all costs to clear and close have been deducted.

12. On the Completion Date the title of the property will transfer to the buyers and the money from the buyers will be received by our offices. Quite often this money does not arrive at our offices until late in the day. Our accounting department must then arrange for the bank deposit to our trust account, which in some cases does not occur until the next business day. However, the buyers will have fulfilled their obligations even if the seller does not actually have the money in their hands. If it is in the lawyer's hands, the deal has completed.

13. The net sale proceeds are paid to the seller as soon as practicable on the Completion Date or on the next business day following the Completion Date. This will depend on the time of day that the buyer has received money from their mortgage lender, if any, and upon the timing of all other events in the chain, such as courier travel time and banking hours. For these reasons, the next business day is typically the day the sellers' mortgages are paid out, with interest already calculated to that next business day.

14. Typically the date of possession is 1-3 days after the Completion Date, in order to give the seller time to move out of their home after they have received the sale proceeds. Moving can be costly and often sellers will need the sale money in order to finalize moving arrangements.

15. On the Adjustment Date, the buyer becomes responsible for payment of all taxes and utilities upon the property. All tax and utilities adjustments between buyer and seller are calculated to this date.

16. The seller is usually advised not to cancel their home insurance until the Possession Date. Even though the buyer's insurance will be effective on the Completion Date, the seller may still have contents situated in the home until the Possession Date. There are many cases where a peril occurs between the Completion Date and Possession Date, and so both buyer and seller will need to maintain insurance coverage on their home and/or contents, as their policies of insurance allow.

Not all of the steps set out in this guide will apply to every transaction, but this does represent a summary of the typical events involved in the purchase and sale of real estate in British Columbia. We at Kane, Shannon & Weiler have years of experience in real estate conveyancing and will be happy to provide our expertise and skill to our clients to make their transactions as smooth and trouble free as possible.

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