

Mosquito Creek Law Office

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So You Want to Sell Your House! Important Information about the Sale Process - From Real Estate Lawyers

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You have made the decision to sell your property - Congratulations! So, what's next? To answer that question, we have put together an overview of the sale process, so that you know what to expect from start to finish.

1. Pre-Sale

Realtors and Real Estate Lawyers

After you have made the decision to sell your home, the next major question becomes, should you use a realtor? Of course, this is a personal decision, and the answer will depend on your own unique circumstances. However, it is important to know that realtors and real estate lawyers both play valuable but different roles in the sale process.

Realtors are responsible for helping you navigate the entire real estate process, and their responsibility does not end after your deal has "gone firm" (which simply means, all conditions in your Purchase Contract have been fulfilled and your sale will proceed). Realtors can provide guidance on marketing your property, will confirm that you have the documentation necessary to list and sell your home (discussed in more detail below), and of course, they will help you negotiate a sale on terms that are acceptable to you.

On the other hand, real estate lawyers perform a different role than that of your realtor. Your lawyer will typically only receive your contract once the deal has been signed and all conditions are waived. This means that your real estate lawyer does not negotiate the terms of the deal, but rather, prepares the legal transfer documents which enables you to transfer the property to the Purchasers in exchange for the purchase price.

A real estate lawyer may be available to help negotiate the terms of your sale and prepare a Purchase Contract, however, this is usually only available in certain circumstances. For example, a real estate lawyer may assist if both the Sellers and Purchasers are not using a realtor, or, there is a transfer of property or land between family members.

Regardless, your real estate lawyer is there to make sure that you understand the process and the documents that you sign. As such, it is generally recommended that you have your real estate lawyer review any Purchase Contract *prior* to signing, to ensure that you understand your rights and obligations.

Identification

In Alberta, both realtors and lawyers have strict “know your client rules” that they are required to follow in order to meet their professional regulations. Therefore, you can expect both your realtor and real estate lawyer to review and take copies of current, valid, photo ID for all registered owners (Sellers) of the property.

Although this may seem straightforward, issues can arise if there has been a name change since you originally purchased the property. This is commonly seen when a person gets married or divorced, such that their current photo ID does not match the name on the certificate of title. In these circumstances, both realtors and lawyers will require supporting documentation such as marriage certificates, divorce judgements, or birth certificates.

It is important, as the Seller, that you have your ID and supporting documentation ready prior to listing your property for sale. If you do not, there is a risk that your closing date may be delayed. It can take considerable time to order new documents (i.e. from a registry office) and lawyers are not permitted to proceed with closing your sale until they have met their professional ID requirements.

Real Property Reports with Municipal Compliance

A Real Property Report (RPR) is a survey of the property, prepared by a land surveyor, that shows all improvements located within the property boundaries. This may include fences, decks, sheds, retaining walls, patios, and sidewalks. A letter of municipal compliance is obtained when the RPR is submitted to the municipality for review. If there are any issues or concerns with the RPR, this will be noted on the letter of compliance. Examples of such issues include: structures located too close to the property line, structures encroaching onto neighboring properties, or structures that were built without the required development permits.

Unless you are selling a condominium unit (referred to as a conventional condominium), you will be required to provide a Real Property Report with Municipal Compliance. This is because, according to the terms of the standard AREA Residential Purchase Contract, a Seller is contractually obligated to provide a current RPR with municipal compliance.

If you have an RPR, your realtor should review the RPR in detail with you and confirm that it is accurate and current. If you do not have an RPR, or if you have made improvements to the property since your RPR was prepared, your realtor should help you order one as soon as possible as land surveyors are heavily booked and it can take some time before you receive the final RPR.

If you do not have an RPR by the time your real estate lawyer receives your file, and the issue has not otherwise been addressed, there may be significant delays to your closing date. In the best-case scenario, your lawyer may be able to negotiate a “holdback”. This means that your sale will close on the closing date, however, a portion of your net sale proceeds will be held by your lawyer until you can provide an RPR. The holdback amount will vary depending on the circumstances, but it is often in the range of \$5,000.00 to \$30,000.00. If the Purchasers do not agree to a holdback (and they are not obliged to agree under the standard realtor purchase contract), then they may be entitled to take possession of the property on the closing date without paying the purchase price. In this scenario, the Purchasers would only pay the purchase price once the RPR is provided and all related issues are addressed. Again, to avoid any of these issues, it is important to ensure that you have discussed your RPR with your realtor and lawyer as soon as possible

2. Sold!

Conveyancing

After you have sold your property, and all conditions have been waived, your realtor will send your sale documents to your lawyer. This package is referred to as the "conveyancing" and will include your final Purchase Contract as well as any waivers or amendments to the Purchase Contract. Ideally, this conveyancing package will also include a copy of the RPR.

Before the COVID-19 pandemic, lawyers would typically receive conveyancing from realtors at least 30 days before the closing date. However, conveyancing is now commonly sent to law offices with less than two weeks before the closing date. In these circumstances, your real estate lawyer may charge an additional rush fee, as they will be required to perform their due diligence searches and prepare your sale documents in a short timeframe.

Signing Appointment with your Lawyer

Once your lawyer receives conveyancing from your realtor, they will begin the due diligence searches and preparing your sale documents. This process may include reviewing the certificate of title, requesting mortgage payout statements and corporate registry searches, as well as requesting property tax information. If you are selling a condominium, your lawyer will also be required to confirm that all condominium fees are up-to-date, condominium insurance is current, and an Estoppel Certificate is ordered.

Once your sale documents are ready, your lawyer will contact you to schedule an appointment for signing. In Alberta, the Land Titles Office requires that all transfer documents contain original signatures. As such, you cannot docu-sign or otherwise electronically sign your sale documents (even if you electronically signed your Purchase Contract with your realtor). It is strongly recommended that you are available to make an in-person appointment with your lawyer during the two-week period before your closing date. Some law offices will offer signing by video conference for an additional fee, however, many do not.

2. Post-Closing

Registration

Your sale has now closed - Congratulations! - but your lawyer's job doesn't end on the closing day. In the days that follow, your lawyer will ensure you receive your net sale proceeds and provide an interim report.

Additionally, in Alberta, the Land Titles Office is currently taking four months to register documents. This means that the certificate of title will not be officially transferred into the Purchaser's name for at least four months. This also means that your mortgage discharge (sent to your lawyer by your bank after closing) and any other required discharges will not be registered for at least four months. During this period of time, your lawyer will continue to monitor your file, follow-up on any outstanding matters, and prepare final reports to you!

Please contact our office should you have any questions, and we would be happy to speak with you and assist you through the sale process! This article is meant only as general information. Legal and financial advice should be sought about your specific circumstances.

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- Mortgages and Refinances
- Corporate Law
- Employment Law and Human Resource Advising
- General and Independent Legal Advice
- Notary Public and Commissioner-for-Oaths
- Other General Practice Matters



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