



THE AGREEMENT OF PURCHASE & SALE

A LEGALLY BINDING CONTRACT

Once you find the house of your dreams and decide you would like to buy it, you are engaged in a process of negotiation, which results in a complex legal contract. You will likely not be told that this is a complex legal contract. You will likely be advised that you are simply putting an 'offer' on the house. There is a lot of ancient law around 'offer' and 'acceptance'. If you make an offer and the seller accepts it without changing a word, you better meet it, because it is now a solid binding contract. Thus, it is extremely crucial that you consult with a lawyer prior to putting an offer on a property, and have that lawyer review the terms of the agreement and explain them to you.

At Agnihotri | Anwar LLP, we like it when clients come to see us early on in the transaction; preferably prior to entering into an Agreement of Purchase and Sale, so that we may be able to tailor the Agreement of Purchase and Sale to protect our clients rights, some of which you may not be informed of. We ensure that right from the get-go, our clients are well aware of the terms and conditions in the contract, and understand what is expected of them, what they are agreeing to do, what the consequences are, what their rights are, and what forms of recourse they have available to them in case of breach.

Most real estate agreements are fairly standard, either prepared by the builder for a new property, or standard forms used by real estate agents or brokers. Many people do not realize however that terms are negotiable. Our lawyers will carefully review the terms of the Agreement of Purchase and Sale with an eye to our clients particular set of circumstances and interests. We will then advise our clients of their options and seek instruction.

EXAMPLES OF WHAT WE LOOK OUT FOR

PRICE

The first thing you want to consider is whether the price is reasonable. While we cannot advise you about market value per say, we can review the offer with you before you sign it, and provide you with meaningful insight with respect to your rights, and the potential consequences of some of the terms, which may not be apparent at face value. Further, reviewing an agreement of purchase and sale with your lawyer prior to signing can give you time to reflect outside of a pressure situation, which allows for more time to carefully review every detail.

DEPOSIT

Deposits are made payable to the listing broker. They are held in trust as an advance on the purchase price until the closing of the deal. This should generally be paid by certified cheque and should be large enough to cover the real estate broker's commission. Although not generally included up front as a condition in the agreement of purchase and sale, it may be prudent for the purchaser to include a clause in the agreement that the listing broker invest the deposit in an interest bearing account or term deposit, with interest earned being paid to the purchaser immediately following closing. Further, the purchaser may want to include a clause that the deposit be returned to the purchaser if the transaction fails to close for any reason that is not the fault of the purchaser.

DESCRIPTION OF THE PROPERTY

Many mortgage institutes require an accurate and up to date survey attached to the agreement of purchase and sale. Further, if the dimensions of the property are important, it is important to delete the words "more or less" from the agreement of purchase and sale, and instead set out the specific dimensions of the property.

FIXTURES AND CHATTLES

Fixtures are attached to the property and Chattels are movable items, such as non-built-in appliances, furniture and draperies. Generally, fixtures are included and chattels are excluded. Often there is some back and forth between the buyer and seller with respect to negotiated clauses concerning fixtures and chattels. For example, the purchaser's interest is to try to obtain a warranty from the seller that the fixtures/chattels are in good working order and will be free and clear of encumbrances on the date of closing. Likewise, the interest of the Seller is to add a clause, which states that buyer agrees to purchaser them on an as is basis.

CLOSING DATE & REQUISITION DATE

On closing, money is exchanged for possession of property. The requisition date is the last date the purchaser's lawyer can require the seller to clear up any title problems. This can be especially important if the purchaser is putting a mortgage on the property and the mortgage company requires clear title before advancing funds.

ADDITIONAL AND OFTEN NEGOTIATED CLAUSES

Depending on the circumstances and instructions from our client, we commonly include additional clauses into the offer/agreement surrounding the following:

- a. If the vendor is assuming or taking back any outstanding mortgages, a condition to provide a description of that outstanding mortgage
- b. A condition that a home inspection be completed that reveals no or minimal building deficiencies.
- c. A condition that any interest accrued on a deposit be provided to the purchaser
- d. A condition to provide information/ details regarding the assumption of any tenancies
- e. A condition that the purchaser may inspect the property before closing to confirm that there is no significant damage.
- f. A condition that an up to date survey be provided within a certain number of days of the date of acceptance of the offer.

- g. A condition that the seller provide a warranty that the property has never been insulated with Urea Formaldehyde. It may also be prudent to include that the condition survive closing.
- h. A condition that the buyer be provided with any particulars of any easements, encroachments and/or other special title problems.
- i. If the property is a new home, a condition that the buyer be provided with confirmation about registration of the builder, as well as the dwelling unit itself, with the Ontario new home warranty program. Further, a condition that the buyer be provided with confirmation of the registration status of the plan of subdivision. And lastly, a condition that the buyer be provided with confirmation of the status of the building permits.
- j. If the property is a new home, a condition surrounding the liability for GST and mechanics of payment.
- k. Including a condition to the agreement about the seller obtaining a committee of adjustment consent to the severance of the property or to a minor variance, the issuance of a building permit for the renovation of the property or the completion of an addition to the building, the rezoning of the property to permit a varied use, etc.

In addition to negotiating, drafting and/or reviewing your real estate contract with you, we also assist you navigate through the entirety of the real estate transaction process, advising you on pertinent steps along the way to ensure you do not find yourself in an unfavourable position down the road. For this reason, it cannot be overstated how important it is to consult with a lawyer as early in the process as reasonably possible. Working with Agnihotri | Anwar LLP lawyers early on in the process can save you a lot of headache down the line and prevent you from making errors or falling into some of the traps that can arise in a seemingly simple real estate transaction. Our lawyers help you navigate through the process, offering expert knowledge and advice each step of the way. Let our experience be your guide.

A FEW EXAMPLES OF EASY TO MAKE ERRORS THAT COULD HAVE JUST AS EASILY BEEN AVOIDED

MORTGAGE PRE-APPROVAL IS NOT ENOUGH

There are certain things you must keep in mind that we tend to see time and time again, and is worth highlighting here for your awareness. One thing we tend to see in offers is a buyer who has been pre-approved for a mortgage, and decides to waive the financing condition. This is a very dangerous thing to do, as it means that you have now committed with the seller when you are not sure you can get the mortgage approval. Pre-approval for mortgage does not mean the mortgage will be approved for that particular house. The Pre-Approval is that your income can support mortgage payments for a certain number of dollars. There are certain conditions that are pertinent for your protection and safeguarding of your rights, and it is prudent to consult with a lawyer prior to entering into an agreement of purchase and sale, or prior to waiving any conditions.

HOME INSPECTIONS – NOT JUST A TECHNICALITY

People typically do more research when purchasing furniture, then when buying a home. The reason for this is because the process and the speed of the market can drive people very quickly. However, you should be aware that there are certain important steps when purchasing a home that you do not want to rush through. Particularly, it is important to get the home inspected before locking yourself into the contract. There is a surprising amount of non-visible damage that can be done to a home, or

damage that has been done but is beyond the scope of your knowledge or expertise, and therefore undetectable. For instance, most of us cannot know the condition of a roof by simply standing on the rooftop. Further, we wouldn't be able to tell if the property has Urea Formaldehyde or mold behind the walls. For this reason, we always encourage people to seek expert advice and a home inspection is integral to successful transactions.

CHATELS V. FIXTURES – IT ISN'T ALWAYS OBVIOUS

An important part of reviewing an offer with a buyer or seller is going through what the contract says, but also talking about the house. We often sit down with our clients and determine what it is they like about the house. What would upset them if it was not there on move-in day? When drafting an Agreement of Purchase and Sale, we always talk about fixtures and chattels. A chattel is something you are able to pick up and take away, like a table or chair. A fixture is something you cannot, such as wall to wall carpeting, or a air conditioner or a furnace. Having a complete list in the agreement of purchase and sale ensures that on the date of closing, you will walk into your home and find all the things you expected to find. For example, if appliances are not included in a specific list, the vendor has the right to take them away.

It is important to keep in mind that our job as lawyers is to safeguard the interests of our client in a real estate transaction. We have no other vested interest. We do our best to help you. We know a lot about buying and selling homes. Let our expert knowledge be your guide. It makes sense to get as much assistance and knowledge as possible before you commit to a contract that may not work for you. Down the road, you will be very glad you did.



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