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INFORMATION FOR PURCHASERS

TAYLOR MACLELLAN COCHRANE hopes you will find the following information helpful. This brochure outlines some things you should be aware of when buying property. If you have any questions please feel free to contact us - we want to help you!

SEARCHES

Under the *Land Registry System* all properties being purchased must be migrated. Lawyers analyse the information on Property On Line to ensure the seller has good title and then provides advice so you can decide if the title is satisfactory for your purposes.

REAL ESTATE TAXES

Unless instructed otherwise your lawyer will determine by telephone the status of municipal real estate taxes and betterment charges as disclosed by the taxing authority and ensure that they are paid or adjusted at closing. To be absolutely sure of the state of taxes you should obtain a Tax Certificate from the taxing authority. Prices vary by taxing authority but in our area the cost is about fifty dollars. The risk of closing without a Tax Certificate is that there may be outstanding taxes or betterment charges not disclosed in the telephone check.

CHANGE OF USE TAX

If the purchase of the property will result in a change of its use from agricultural, forestry or recreational use to a different purpose you may be responsible for a Change of Use Tax. If you are purchasing agricultural, forestry or recreational land for a different purpose please advise your lawyer immediately so it can be determined if you are responsible for this tax.

PHYSICAL CONDITION OF THE PROPERTY

Lawyers do not perform on-site inspection of the property. By signing the Agreement of Purchase and Sale you accepted the

physical condition of the property subject to any contrary terms in that Agreement. If you are buying an older property you bought it "as is" (the condition it was in when you made your offer) unless your Agreement states otherwise. If you are buying a new house from a contractor there may be warranties under the New Home Warranty Program either under contract with your builder or by implication of law.

ZONING

Land Use (Zoning) By-laws, the Public Highways Act, and other laws may restrict or not allow your intended use of the property. These are not "objections to title" that may give you an "out" from your Agreement but are restrictions on the use of the property. Unless the Agreement makes the use of the property a condition you may be bound to complete the purchase. If you feel this may present a problem tell your lawyer immediately.

You should advise us of your intended use of the property. It is highly advisable that you obtain a Zoning Certificate for the property to determine if the zoning permits your intended use of it, whether there are any outstanding by-law infractions and whether there is an occupancy permit for any building. In addition to obtaining a Zoning Certificate we strongly recommend that you speak directly to the Development Officer to determine what, if any, limitations there may be in the By-laws restricting your intended use of the property – particularly if you plan to make any changes to any building. Zoning Certificates do not necessarily disclose restrictions on use or further development of a property but the

Development Officer has the expertise to inform you about what you may and may not do under the Land use By-law. Please complete the annexed instruction sheet with your instructions to us about a Zoning Certificate.

If buying shore front property you may require approval from the Nova Scotia Department of the Environment under the Environment Act to alter the shoreline by "infilling", building a permanent dock, etc. In addition you may require permission from the Nova Scotia Department of Fisheries and Oceans under the federal Fisheries Act that protects fish habitat. Note: the Nova Scotia Angling Act gives any resident of the Province the right to go on foot along the bank of any river, stream or lake for the purpose of legally fishing with rod and line.

"SUBJECT TO SURVEY"

The Title Certificate will be "subject to survey". A search of title documents at the Registry Office does not:

1. Reveal the exact location or boundaries of the property;
2. Guarantee the size of the property being bought or mortgaged (property sizes stated in legal descriptions can be inaccurate particularly if the property has not been surveyed);
3. Reveal that buildings which are supposed to be on the property are located within the physical boundaries of the property;
4. Reveal if neighbouring buildings or other features encroach on the prop-

erty or if structures or other features of the property encroach on neighbouring lands; or

5. Reveal "squatters' rights" or unregistered rights-of-way that may have resulted from someone other than the owner(s) of the property using all or part of the property over a long period of time without permission.

These issues can only be detected and problems avoided by having a current boundary survey or a current Surveyor's Location Certificate prepared by a licensed Nova Scotia Land Surveyor before closing.

RECOMMENDATIONS TO PURCHASERS AND MORTGAGE LENDERS

It is recommended that you and your mortgage lender have a current Boundary Survey or Surveyor's Location Certificate prepared for the purchase. If the property is unsurveyed you should obtain a Boundary Survey that accurately determines the boundaries and shows structures, driveways, encroachments, easements, and other physical features of the property.

If there is an existing but dated Boundary Survey you and the mortgage lender may consider obtaining a current Surveyor's Location Certificate showing structures, driveways, encroachments, easements, and other physical features of the property.

For cost reasons you may decide to rely on existing survey information or no survey information at all. In some circumstances this choice involves little risk but there are also substantial risks. You and your mortgage lender will have to assess the level of risk and cost involved. By certifying title "subject to survey" the lawyer does not accept responsibility for losses arising from closing without current survey information. In a Supreme Court of Nova Scotia case, the Judge wrote: "It may well be that purchasers do not always wish to go to the expense of a survey, but as a matter of practice it is my view that solicitors should always advise them in advance on this matter and make it clear that the certificate of title which will be issued is at all times subject to survey. If this is done ahead of time and a purchaser still insists on going forward without retaining a surveyor, then the responsibilities are obvious."

CAUTIONS

Under the Nova Scotia Land Surveyors Association standards, a Surveyor's Locations Certificate does not determine the boundaries of the property, it only certifies the "location of any improvement or building relative to the boundaries of a parcel of

land." It will also show "easements, rights of way and improvements documented in the current deed which affect the property and all known and visible encroachments onto, or emanating from, the subject parcel and the magnitude of such encroachments."

A Boundary Survey or Surveyor's Location Certificate that is not current may not be adequate evidence of the present boundaries or physical features of the property. Non-current survey information does not show changes in the boundaries or physical features of the property that have occurred since it was prepared. Any Zoning Certificate based on non-current survey information is subject to the accuracy of the old survey information and may not disclose present problems or By-law infractions. Closing without current survey information may also prevent detection of violations of restrictive covenants (limitations on the use of the property).

Purchasers and mortgage lenders relying on a Certificate of Location that was prepared for someone else should consider it unlikely that they could recover any loss they might suffer if the surveyor who prepared the certificate made errors. As they have no contract with the surveyor it is doubtful they could recover any loss from negligence. For safety's sake purchasers and mortgage lenders should assume that they have no recourse against the surveyor in this circumstance.

Survey related problems (not found until after closing) that could be disclosed by current survey information are often costly for a purchaser or mortgage lender to correct. If survey related problems are found before closing the cost of correcting the problem usually falls to the seller or mortgage borrower.

WHAT LAWYER CAN CERTIFY

Relying on the accuracy of a Boundary Survey of the property being purchased or mortgaged, the lawyer may certify that the legal description of the property used in the transaction conforms to the Boundary Survey.

Relying on the accuracy of a Surveyor's Location Certificate of the property being purchased or mortgaged, the lawyer may note if the buildings and other physical features shown are located within the boundaries of the property.

Relying on the accuracy of either or both a Boundary Survey or a Surveyor's Location Certificate of the property being purchased or mortgaged, the lawyer may advise the purchaser or mortgage lender:

1. of any discrepancies between the survey information examined in a purchase or mortgage and the result of the lawyer's title search, and
2. if the Boundary Survey or Surveyor's Location Certificate discloses any encroachments or other matters that would affect the marketability of the property.

If lawyers do not receive notice of issues that cast doubt on the survey information they may accept, but cannot certify, that a Boundary Survey or Surveyor's Location Certificate of the property is accurate. If there are errors in the survey it is the surveyor who is responsible for the consequences; such errors are included in the exception "subject to survey".

Lawyers are not permitted to certify the location of property boundaries and improvements as that is the domain of licensed Nova Scotia Land Surveyors.

SURVEY ARRANGEMENTS

If you wish to arrange to survey work yourself please contact a surveyor in advance so it will be completed well before closing.

Your lawyer can recommend a surveyor who has provided good, prompt work for clients in the past if you request. They will require an advance equal to the estimated cost of the survey work as the surveyors will look to the lawyer for payment if asked to do the work.

RESTRICTIVE COVENANTS

The use of many properties is limited by Restrictive Covenants. If the property you are purchasing is subject to Restrictive Covenants you will be provided with a copy of them. These limit your use of the property. If you are already aware of Restrictive Covenants please be sure to provide a copy to your lawyer. Read any Restrictive Covenants very carefully for your own protection. Breach of many Restrictive Covenants can only be found by a physical inspection of the property, e.g., minimum floor areas of buildings, prohibitions of fences, outbuildings and standards of appearance. Your lawyer will rely on you to advise of any apparent breaches of this type as the lawyer does not physically inspect the property and would not be aware of such breaches unless advised of them.

MOVING EXPENSES

You may be able to deduct the legal fees for income tax purposes. The general rule is that you may deduct legal fees as part of moving expenses if:

1. you move in order to earn income in a new location,
2. the move results in your residence being at least forty kilometres (25 miles) closer to your new place of work, and,
3. you cease your employment or business at the former location.

Moving expenses may be deducted only from income earned at the new location. Any amount which cannot be deducted in this taxation year can be carried forward to the next. A claim for moving expenses should be made by completing form T1-M which can be obtained from the Canada Customs and Revenue Agency or at www.ccr-a-adrc.gc.ca/E/epbg/tf/t1meq/tl-m-e.pdf

UNFINISHED WORK

Unfinished work is a frequent, last-moment problem with new homes. If you are buying a home which is under construction, please do the following:

1. Visit the home frequently to be sure the work is being done to your specifications. Often work does not meet a purchaser's specification but the purchaser only realizes it on the closing day. Avoid this problem by inspecting the home frequently and carefully.
2. If there are any difficulties with the progress of construction, let your lawyer know. Provide a written list which can be passed on to the builder's lawyer. This may hurry the builder along or at least initiate discussion about holdback of money to cover the cost of completion if the house is not finished on time. If you wait until the last minute to inspect the house or to let your lawyer know there are problems there is little or nothing that can be done on short notice. This is particularly important if you must move into the home on the closing day. From hard experience it is our advice that you not move into an incomplete house except under exceptional circumstances.
3. Be sure the Building Inspector has issued an Occupancy Permit for the newly built home - it will be on the electrical entrance panel. Under Municipal By-Law it is unlawful to occupy a house which does not have an occupancy permit.

HOLDBACKS FOR INCOMPLETE WORK

Because of the frequent difficulties encountered when money has been held back on behalf of purchasers for incomplete work on

closing, this service is not usually covered. Your lawyer will bill you an additional amount to arrange, hold and disburse holdback money for incomplete work at the current legal rate.

FIRE INSURANCE

Arrange for Fire Insurance to protect your interest in any buildings or contents effective on the closing date or make it effective now if you want to be protected before closing. Be sure to have any mortgage lender added to the policy.

YOUR WILL

Review your Will to ensure that it covers the disposition of your new property. If you do not have a Will, you should make one since people who leave land (or any estate) without a Will generally leave a bitter legacy to those who are left to handle their affairs. Please see our brochure "Wills and Estate Planning" for further information.

WATER TESTS

Many buyers and most mortgage lenders test well water for bacterial content. In some areas they routinely test for mineral and chemical content.

You can arrange tests for bacteriological content, agricultural and other chemicals, and minerals such as uranium and arsenic through the Lab at the Valley Regional Hospital 150 Exhibition Street in Kentville. For current information and charges please contact the Department at 678-7381.

Make your own arrangements for water tests if you wish to have them done. We urge you to have tests done on all wells. You may want to call the Health Inspector for your area to see if there are any problems. Lawyers do not generally arrange water tests but Real Estate Agents frequently assist their clients by taking water samples to the laboratory for bacteriological tests.

ENVIRONMENTAL CONCERNS

Environmental assessments require the specialized skills of trained professionals. We strongly suggest you make any inquiries of professionals qualified to make environmental assessments to determine if there are any environmental risks present on the property (e.g. underground fuel tanks or chemicals) before closing. You may also wish to ask the Nova Scotia Department of the Environment if it is aware of any environmental problems with the property. Your lawyer will be pleased to provide the names of engineers who perform such assessments.

Lawyers do not make environmental

inquiries or conduct environmental tests of the property as part of their representation other than to secure a "UFFI" Certificate (insulation) if one is required but not included in your agreement with the Seller.

The title report to you does not deal with environmental matters. Your lawyer is not responsible to you for any loss arising from your not obtaining an environmental assessment of the property before closing.

SEPTIC SYSTEMS

Legal searches do not determine that the property you are buying qualifies for the installation of a septic system or privy, or if the existing septic system meets current standards. If these matters are a concern to you contact the Public Health Office at the Valley Regional Hospital, Kentville at 678-8931.

FUEL ADJUSTMENT

Fuel adjustments are generally set out in most Agreements of Purchase and Sale. The usual procedure is that the seller fills the oil tank on closing day. The buyer then pays for a full tank of fuel. Most oil tanks in this area hold 910 litres. The adjustment will be based on current fuel prices. Please check the fuel tank during your pre-closing inspection to ensure that it is full if you have agreed to adjust for fuel on closing. Lawyers do not check the fuel tank and rely on your inspection and the seller's assurance that the tank is full. Protect yourself with a simple check of the tank before you pay.

YOUR DEED

The most common practice of preparing the deed among couples is joint tenancy. If one joint owner dies, title to the land automatically passes to the survivor. Title may also be in the name of one person. Sole ownership is often used by business owners and professionals to protect their homes against liability claims or business related debts. The family home is registered only in the name of the spouse who is not associated with the business or practice. People may hold property as tenants-in-common which means that upon the death of one owner, his or her interest in the property passes under the Will, or if there is no Will, to his or her heirs.

MATRIMONIAL PROPERTY ACT

Since the fall of 1980 the Matrimonial Property Act has been in force. It provides that either spouse, if the marriage comes to an end by separation, divorce or death, may apply for a Court Order saying he or she has a half interest in the matrimonial

property regardless of how the Deed is made out. If title to the matrimonial home is in the name of one spouse only, the Act restricts the owner's ability to mortgage or sell the property without the consent of the non-owning spouse. A matrimonial home includes the dwelling and the land on which it rests. Recent case law in Nova Scotia (April 2000) may extend this Act to homes of couples in common-law or other conjugal relationships.

THINGS YOU SHOULD DO BEFORE CLOSING

In addition to the things to do on the attached list you should make sure the furnace, well, pump, plumbing (try the taps) and toilets (flush them) work. Remember if you are buying an older house you are buying it "as it was" on the date of the Agreement of Purchase and Sale. If problems are found before closing something may be able to be done about it, however this usually depends on the goodwill of the seller and not on any legal requirement to make good defects that existed at the time of the agreement. If you do not inspect and determine defects before money changes hands, it is practically impossible to have the seller correct deficiencies after closing.

TITLE CERTIFICATE

Before closing your lawyer will provide you with a Title Certificate for the property you are buying. This Title Certificate shows any exceptions found, is subject to survey and limited as outlined in this Information for Purchasers brochure.

It is common for your lawyer to find unreleased mortgages and, sometimes other interests that have to be clarified or released before closing. Your lawyer will make appropriate arrangements between ourselves and the sellers' lawyers to have these released. If it cannot be arranged for them to be released you will be advised about the findings and the choices available.

GENERAL

It is important that you advise your lawyer immediately if you make any change in the Agreement of Sale, the closing date or the closing time. Please make sure your lawyer is the first to know of any change.

Tell your lawyer the date and time you plan to move into the property to ensure that the seller provides you with vacant possession (an empty property) at that time. Mix-ups over the time of vacant possession are common, so if the times can be clearly established in advance it will likely save you from problems later.

We hope your purchase proceeds smoothly and would be happy to assist you in any way we can.

PURCHASER'S CHECKLIST

Things to Arrange Before Closing

- Changes:** Advise your lawyer immediately of any changes in the transaction or closing arrangements
- Financing:** Complete your arrangements for financing. **Be sure to give the mortgage company all the information that it requires to approve your application. Be sure to advise the seller in writing if your mortgage approval is delayed or if your mortgage application is turned down before the time limit stated in your Agreement of Sale. If you do not advise the seller, in writing, that your mortgage is not approved by that date the seller may hold you responsible to complete the purchase or pay damages.** Either you, your real estate agent, or your lawyer can give the notice to the seller. You must provide a copy of the letter from your mortgage lender turning down your application far enough in advance to give written notice to the seller or seller's representative.
- Water Testing:** Arrange any water quality/quantity tests and environmental tests you require from qualified

inspectors.

- Fire Insurance:** Arrange for fire insurance. If you will have a mortgage be sure to have the mortgage company shown on the policy. Please provide proof of insurance before closing as the mortgage company will not advance the mortgage money without proof.
- Other Arrangements:**
 - Care of pets during moving
 - Fuel Deliveries
 - Telephone
 - Cable TV
 - Electrical (NS Power)
 - Water Hookups
 - Sewer Hookups
- Leased Equipment:** If there is a furnace lease, water heater lease or propane contract, contact the supplier well before closing to set up a new contract with them. If you do not make these arrangements you may be without these services at closing as the seller will almost certainly arrange to cancel these services.
- Completion of Work:** Check on work to be completed before closing. Be sure you follow up on the progress of the work so there is as much time as possible before the closing to put pressure on the seller. If it is at all possible you should not close until all work is completed.
- Pre-Closing Inspection:** Arrange a pre-closing inspection and turn over of keys after the inspection with your real estate agent.
- Closing Payment:** Unless it has been arranged otherwise before closing you will need to arrange to have a certified cheque or bank draft payable to your lawyer "In Trust" for the closing payment.