



TAYLOR  
MACLELLAN  
COCHRANE  
LAWYERS

MAKING SERVICE A MATTER OF PRACTICE SINCE 1835



# INFORMATION FOR SELLERS

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

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## SERVICES PROVIDED BY LAW FIRM

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A law firm assisting you in the sale of your property should provide all, or most, of the following services:

- Review the Agreement of Sale to determine the steps required to look after your interests.
- Answer your questions and give you advice.
- Provide the purchaser with the legal description, a draft deed (document of legal transfer of property from one person to another), and a draft Bill of Sale if one is required.
- Provide information concerning any equipment on the property which is being leased by you. Provide a statement of adjustments showing all price adjustments called for in your Agreement of Sale.
- Examine and answer any questions the purchaser may have about the title (ownership) to your property.
- Assist you in clearing objections to title.
- Review the closing statements with you and meet with you to have you sign the deed and other documents.
- Handle the closing on your behalf to deliver the deed, keys, and other things which have to be passed on to the purchaser.
- Receive the purchase funds, discharge any mortgages or liens, pay any remaining real estate sales commission, and pay the balance as you direct.

## MORTGAGE PAYOUT

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- If you have a mortgage on your property, the lawyer will make arrangements to pay it out or have it assumed by the purchaser.
- If your mortgage is paid out, the lawyer will report the fact to the purchaser and return the original Release of Mortgage to you after recording it in the Registry Office.

- If the mortgage is assumed, the lawyer will obtain assurances that the Assumption Agreement, if any, has been forwarded to the mortgage company.

Please note that you may still be responsible for payment for an assumed mortgage if the purchaser defaults on the mortgage until the mortgage company releases you or the mortgage is paid out by the purchaser.

## THINGS FOR YOU TO DO

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There are a number of things you should do before closing:

- Do not cancel your fire insurance until you have the money in hand. If you cancel your insurance before the transaction has closed you lose your protection. If your fire insurance policy shows a mortgage lender on it, you may not be able to cancel the insurance until you produce a release of interest from the mortgage company. These releases are usually sent promptly after the mortgage has been paid.

- Have your electric metre read on the closing day so that power used after the closing will be charged to the purchaser.
- If you are on a Town or Municipal water system or sewer service notify the authority to bill you to the day of closing.
- Make arrangements to have your cable TV service terminated on or before closing day.
- Be sure to contact your fuel supplier to cancel automatic delivery. If you are adjusting for oil at the time of closing, be sure to arrange to have the tank topped up on the closing day and pay for the delivery before the closing. It is common for the purchasers to ask for a receipt for oil delivered to the premises. The purchaser will be paying for a full tank of fuel and does not want to have to pay the oil company for topping up the tank.
- Be sure that any work you have agreed to complete before closing is completed.
- Advise your lawyer immediately of any changes in the transaction or in the closing agreements.
- Provide your lawyer with the keys to the property before closing so that all the keys can be delivered to the purchaser at the time of closing. There are many variations in the arrangements made for the delivery of keys at the time of closing. To ensure that the purchaser will have the keys at the time of closing, you must provide your lawyer with a set beforehand. Purchasers are entitled to all the keys to the property at the time they pay for it.

## VACANT POSSESSION

Your Agreement requires you to provide the purchaser with Vacant Possession. This means that you and any tenant(s) (unless the property is being sold subject to the tenancy) are completely moved out of the house and other buildings at the time of closing. You must have your things out the day before the closing so the house is empty on the closing day unless it has been expressly agreed to between you and the purchaser. This is a frequent source of trouble at the time of closing. If you do not provide vacant possession at the time of closing, you may be responsible for any additional moving costs, accommodation costs, etc. incurred by the purchaser. The Agreement of Purchase and Sale also states that "time is of the essence". This means that you and the purchaser have agreed that the sale will occur precisely on the agreed date. Often one sale will be related to another, so observance of all time periods is absolutely critical. Although the right is not often exercised, a purchaser is able to cancel the Agreement if you did not close on time and the purchaser had done nothing to waive the purchaser's rights under the "time is of the essence" clause.

## FIXTURES

Although the law is not entirely clear about what constitutes fixtures, the general rule of thumb is that anything that is permanently attached to the land or buildings is a fixture. Things which are nailed or screwed into the walls are fixtures and go with the house. Many Agreements of Sale call for other things to go with the house; if this is the case in your Agreement, the listed items must stay.

Frequently there are misunderstandings. Some of the more common problems arise over curtains, range hoods, mirrors, light bulbs and light fixtures. Range hoods are fixtures. Light fixtures are not fixtures and are removed unless the Agreement calls for them to stay. We have been involved in disputes over what is included in the expression "curtains". If your Agreement calls for curtains to remain, be sure that both you and the purchaser have a common written understanding about exactly what is to be left. In your Agreement does "curtains" include shower curtains, drapes (the long ones) and curtains (the short ones)? Check with your agent and the agent dealing with the purchaser to ensure common understanding.

## CLOSING

In preparing closing statements your lawyer will obtain tax information, mortgage information and sometimes other information from third parties such as tax offices and mortgage companies. Lawyers rely on the accuracy of the information which is provided to them. Occasionally that information turns out to be incorrect. As a result, lawyers include in the closing documents an agreement between you and the purchaser to readjust the closing figures if it turns out an error was made. For example, if your mortgage company makes a mistake and asks for \$1,000.00 less than they should to pay off the mortgage and the error comes to light after the closing, you will be required to make up the difference to retire the mortgage.

## **HOLDBACKS FOR UNFINISHED WORK**

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Because of difficulties in situations where money has been held back by purchasers for unfinished work required of vendors, lawyers do not include this service in the estimated fees. Any work done in connection with arranging for, follow up, and disbursing monies held back for incomplete work will be billed at current legal rates.

## **MOVING EXPENSES**

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You may be able to deduct our 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 40kilometres (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 taxation year. A claim for moving expenses should be made by completing form T1-M which can be obtained from a Canada Customs and Revenue Agency office or at [www.ccr-a-drc.gc.ca/E/pbg/tf/tlmeq/tl-m-e.pdf](http://www.ccr-a-drc.gc.ca/E/pbg/tf/tlmeq/tl-m-e.pdf)

## **THE LAND REGISTRATION SYSTEM**

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The new Land Registration Act System in effect across Nova Scotia on March 1, 2005. Under the new system

each lot of land is called a "parcel". You must "migrate" it to the new system when you sell or mortgage the parcel or subdivide it into 3 or more new parcels for non-family members. You may migrate a parcel into the new system voluntarily.

### **Benefits**

1. Each migrated parcel has its own electronic parcel register to show all current registered and recorded interests in the parcel without time consuming and costly historic title searches.
2. The Nova Scotia government guarantees ownership of parcels that are migrated into the new system.
3. Registration of parcels under the new system provides certainty of ownership making land transfers quicker, safer and less costly.

### **HOW MUCH WILL IT COST?**

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Your lawyer will explain the cost of migration during your first contact. Migration will usually be tied to a sale, mortgage or subdivision transaction. Fees and disbursements will depend on the resources required for the services you need. These will vary with the complexity of each transaction. If your lawyer cannot predict the exact fee for a particular transaction because it is unusual in some way, agree upon the basis on which the fee will be determined. In most transactions the lawyer's fee and disbursements are paid as part of the closing costs on closing.

### **WHAT IS INVOLVED?**

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Migrating a parcel into the Land Registration System involves: preparing forms and consents, a title search

in the Registry Office, inquiries in other public records, approval of the parcel's legal description, registration of the parcel and maintaining documents required by the government. Migration requires great care and judgment on the lawyer's part. The lawyer's work is subject to two levels of approval by the government and random audits by the Nova Scotia Barristers Society for quality assurance. These quality assurance measures are the basis of the government's guarantee of title to parcels after migration. They also help insure that no innocent party will lose his or her interest in the parcel as a result of the migration.

### **LAWYERS' QUALIFICATION**

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Your lawyer received specialized training in the use of Land Registration software and procedures before being permitted to work in the new system. Your lawyer was also required to train staff and establish new procedures in his or her office to migrate parcels.

### **WHAT CAN YOU DO TO REDUCE COSTS?**

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If you plan to sell a parcel, migrate it to the new system as soon as practical to avoid last minute problems and delays – the process takes time and parts of the process cannot be rushed.

Before you see your lawyer gather your deed and plans for the parcel you intend to migrate.

You will have to confirm that the sketch of your parcel in the government records matches the legal description of your parcel. Be prepared to show your lawyer where your parcel is in relation to a fixed

point like the corner of two roads and to confirm its size and shape. If your parcel is described by the names of neighbouring owners sketch your parcel noting the names of the current neighbouring owners. If anyone is using or occupying any part of your parcel without your consent write down the details for your lawyer.

## **MIGRATING YOUR PARCEL INTO THE LAND REGISTRATION SYSTEM**

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**Title Search.** Before migrating the parcel your lawyer must search its title to the new Professional Standards For Real Property Transactions in Nova Scotia adopted by the Nova Scotia Barristers' Society specifically for the Land Registration System processes. Your lawyer must consider and address any outstanding title issues before certifying title to the government.

**Certifying the legal description.** Your lawyer will review the existing legal description of your parcel to ensure it is consistent with both the title search and government requirements then prepare a new legal description for it in required format for approval by the Provincial land Mappers. The new legal description will include details of both outstanding easements and parcels excepted from the parcel. In some cases your lawyer may need to assist you in consolidating existing parcels or in obtaining new Parcel Identification Numbers for parcels split by roads or railroads. Your lawyer will submit the

new description to the land Mappers for Parcel Description Certification Approval (PDCA). The Mappers will approve the parcel description when they are satisfied the parcel can be located on their electronic map.

**Creating your Parcel Register:** Next your lawyer will make an Application For Registration (AFR) to the government for pre-approval. This electronic application will identify all outstanding interests in the parcel under the Registry Act, applicable judgments against all owners of the parcel during the past twenty years and, in certain circumstances, the occupation of the parcel by others without your consent. Because people will later rely on the parcel register as showing all outstanding registered interests,

judgments and certain possessory interests in the parcel at the time of migration, your lawyer must exercise great care and judgment when completing this application.

Land Registry Office staff will pre-approve the AFR when they are satisfied that it meets their requirements. After pre-approval your lawyer will ensure there are no intervening registered interests or judgments then submit a final Application For Registration. The new system will accept this final application virtually instantaneously by issuing a Statement of Registered and Recorded Interests (SRRRI) showing the registered and recorded interests in the parcel as shown in the AFR. The parcel is then under the new system.

