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BUYING A HOME

The purpose of this presentation is to provide you with a very brief outline of what is involved in buying a home from a lawyer's point of view. It is not meant to be a complete or exhaustive text on all legal rights and obligations which may arise between a vendor and purchaser. **Please consult with a lawyer before signing any contract in connection with any real estate transaction.**

1. THE CONTRACT

After you have found the house (single family dwelling, townhouse or condominium apartment) you want to buy, you will be presented with an "offer". This is an important legal document. When the purchaser signs it and if the vendor accepts it, also by signing, it becomes a binding contract which **cannot** be amended, except by mutual consent. There is no "cooling off period" or right to reconsider and terminate a contract at a later time, except for certain new home purchases.

Most contracts for resale homes are on a standard form prepared by the Toronto Real Estate Board or by the Ontario Real Estate Association. See below for new homes. As a purchaser you should be aware of some of the "standard terms", make inquiries, and, where necessary, make amendments to the agreement before signing. In particular please note the following:

(a) **Survey** - A survey is a document which accurately shows the dimensions of the lot and the location of buildings, fences and other structures. It is required to determine a number of things including the following: if the building is situated on the lot, whether or not there are encroachments onto neighbouring lands or the road allowance, whether fences, hedges etc. are on the lot line or onto a neighbouring property and whether or not the buildings are set back far enough from the lot lines to comply with zoning bylaws and, for rural properties, whether or not anyone else has a right to go onto the property and whether or not there is access to a public road.

Lenders often will not permit mortgage advances without a "current" survey, which is generally considered to be one that is not more than 20 years old. Also for large value purchases, title insurers may require a survey. The cost of a new survey for a residential property can range between \$1,200.00 and \$1,500.00. In some cases, title insurance will be accepted in the absence of a survey.

A survey may show that a neighbour has put a fence over a part of the property that you intend to purchase. If the property is registered under the Registry system, the neighbour may have acquired “adverse possession” of the lands on his or her side of the fence and the vendor is effectively no longer the owner of the same.

Standard real estate contracts provide that the purchaser will accept whatever survey the vendor has, if any. Obviously, there is a potential cost involved if a survey is not available and your mortgage lender or title insurer requires one.

(b) **Easements and Restrictions** - There may be restrictions registered on title which may prohibit certain uses of the property, or certain types of construction or additions. As well, a part of the lands may be reserved for public utilities or municipal authorities to maintain underground or above ground wires, pipes, etc. and the landowner is not permitted to build on these lands. Standard contracts specify that the purchaser will accept the property subject to any restrictions and easements registered, provided that they have been complied with and provided that they do not materially affect the use of the property. For example, if you want to build a backyard swimming pool but a utility easement prohibits building on a 10-foot strip along the back or side of the lot, you may not be able to construct your pool or it may have to be much smaller than planned. New subdivisions often have restrictions running for 10 or 20 years prohibiting building of fences, erection of aerials or satellite dishes, parking of trailers or campers etc.

(c) **Zoning/occupancy** - Purchasers of homes with basement apartments should pay particular attention to the clause describing the type of legally permitted use of the property. If a particular use was legal at one time but zoning later changed to prohibit the use, it is considered to be a “legal non-conforming use” and can still be used as is; however, it may not be permitted to be reconstructed in the event of major renovation, destruction by fire, etc. If a commercial use is anticipated for home office or other purpose, check zoning before signing the contract or make a particular zoning a condition.

(d) **Basement Apartments** - Particular attention must be paid to basement apartments or “in-law suites”. No matter when they were built, they must all comply with **current** Building and Fire Codes. A warranty regarding compliance should be put in the offer. There is a risk of substantial renovation costs, potential civil liability for losses due to fire or other causes for units which do not comply, potential denial of insurance coverage and finally, potential prosecution and fines of up to \$25,000.00 or a year in jail or both. Areas of fire safety standards include the installation of proper smoke and carbon monoxide alarms, fire separations (drywall) between units, secondary means of escape and electrical wiring. Inspections by the local fire department and by Ontario Hydro are mandatory and it should be a condition of the agreement of purchase and sale that the hydro and fire department clearance certificates are delivered on closing. Also, while these types of apartments were legalized 1994, subject to compliance with fire and safety standards as noted, that legalization was reversed as of November 16, 1995. It is therefore necessary to have a representation inserted in the offer as to compliance with the codes and use or occupancy on or before the November 1995 cutoff, **unless** local zoning currently permits such units.

(e) **Adjustments** - Most offers provide that items such as, property taxes, utilities, etc. will be adjusted so that no matter what the vendor has actually paid, the proper amounts will be calculated to the day of closing and the parties will credit each other where required for amounts underpaid or overpaid by the vendor. You should ensure that the offer includes a provision for adjustment for rent and a tenant's last month security deposit, for which the purchaser has to credit the tenant. Also, if you intend to convert from oil to natural gas, the offer should provide that the fuel tank not be filled and that there will be no payment to the vendor for oil in the tank.

(f) **Environmental** - It is important that there are no environmental problems with the property. The cost of cleanup can be prohibitive. **Even if you are willing to accept the property subject to same, your mortgage lender will not and may not advance funds.** The most frequently arising problem with residential properties is with fuel oil tanks. In some areas, tanks were buried underground and must be removed by specialized and licensed firms. The *Technical Standards and Safety* requires that all underground tanks (whether currently used or not) be registered and prohibits any supplier of fuel from filling an unregistered underground tank. Also the Act requires registration of tanks inside the house and a similar prohibition against filling unregistered tanks. **If the subject property was ever heated with oil, your agreement should contain a warranty that there are no underground tanks and, if there are, a requirement that the Vendor will remove the tank before closing and further that any tank inside the house complies with all applicable laws and regulations.**

Another problem which may arise is the existence of "toxic mould" which can arise as a result of faulty construction or repairs or the failure to repair leaks in or into the house, from the roof or windows or showers or other interior plumbing and which results in dampness in which the mould grows. Toxic mould is also a frequent result of use of houses as marijuana "grow-ops". It is important that you carefully inspect and ask questions particularly where there is any new drywall or paint and where the house is not occupied by the owners. The possibility of the existence of toxic mould is yet another reason why an inspection by a qualified person is essential. Also, particularly if the house is empty at the time you look at it, or if it has been occupied by tenants, it is important to obtain a specific warranty in the agreement that during the time the Vendor has owned the property and, to the best of the Vendor's knowledge and belief at any time prior thereto, no part of lands and premises has ever been used for the growth or manufacture of any illegal substances.

(g) **Closing** - This is the day you actually get possession of the premises and pay the balance due under the contract. Try to avoid closing your purchase on the 15th and last days of the month or on the last Friday of the month, particularly in the busy April to June period. These days are peak periods for movers and accordingly it is more expensive for all parties. Also, elevators in high rise buildings must be booked in advance. Only a limited number of moves in or out will be permitted on any day.

(h) **Entire Agreement** - Each offer has a clause which states that all of the promises the parties are making to each other are contained in writing in the agreement. As movie studio boss Samuel Goldwyn is reputed to have said: *"A verbal contract isn't worth the paper it is*

written on.” You have no legal ability to enforce promises which are not put into the agreement in writing. Your agent will prepare a schedule which should contain all additional promises or agreed upon amendments to the standard wording, and this must form part of the offer.

(i) **Property Disclosure and Information Statements** - Some real estate boards and agents are asking vendors to complete statements containing information about the property and its history. Vendors should be extremely careful when completing these documents as, if they fail to honestly and completely provide all information they have knowledge of, purchasers may sue the vendors for failure to do so. Even if a vendor completes the document to the best of his or her ability, these documents are invitations to litigation. Purchasers will always claim that vendors knew of problems and failed to disclose and vendors will always claim that they were unaware of the problem being complained of. It is a question of fact in each case for a court to determine. **We do not recommend that our vendor clients complete or sign these forms.**

2. CONTRACT CONDITIONS

Once an “offer” is signed and accepted it becomes a binding contract. It is however possible to end the contract without penalty or liability if it is conditional on a number of searches being completed or other matters. Conditions are typed into the offer or are attached as a schedule and in all cases must be agreed to at the time the offer is signed and accepted. Conditions usually have time limits within which the purchaser must satisfy himself or herself and failing which the offer becomes void and the deposit returned. Typical conditions inserted in offers include the following:

(a) **Financing** - Inserted to give the purchaser time to obtain a mortgage commitment. Even if you have pre-qualified, your lender will not commit until it has considered the particular property you want to purchase and conducted such appraisals and inspections as it sees fit.

(b) **Inspection** - Inserted to give the purchaser time to bring a qualified home inspector onto the premises to conduct a thorough inspection. **This is important and should be done for every home regardless of age and apparent condition.** A qualified inspector can detect problems which the average person would miss when viewing the property prior to buying it. Unless the vendor has taken steps to conceal a problem, the purchaser must take the house “as is” and subject to any problems which could have been reasonably detected prior to signing the offer. Also, some lenders, including CMHC for high ratio mortgages, might require their own inspection. In certain areas of Toronto, particularly the eastern part of the downtown, a termite inspection is strongly advised.

(c) **Sale of existing home** - Inserted to give the purchaser the opportunity up to an agreed date, to sell his or her existing home to prevent the unfortunate situation of carrying two homes. Vendors seek to avoid this clause, particularly in a strong market where there are numerous potential purchasers. The standard form of this condition includes an “escape clause” which gives the vendor the right to continue showing the premises and if another purchaser appears, the original purchaser is put to the election of waiving the condition and making the

offer “firm” or ending his or her offer and permitting the vendor to sell to the new potential purchaser.

(d) **Vacant Possession** - Inserted to give the vendor the opportunity to have the current tenant leave the premises. Tenants have rights to security of tenure and can only be removed on certain conditions. Sometimes, even though the vendor has the right to terminate the tenancy, the tenant refuses to leave and it is necessary to apply to the Landlord & Tenant Board for an Order for possession. A clause to the effect that the Purchaser requires the home for his or her own personal use or that of a parent, child or caregiver and that the Vendor is required to serve the Tenant with notice to vacate pursuant to s. 49 of the *Residential Tenancies Act, 2006* may also be added to an Offer to start the time running on when a possession order can be obtained.

(e) **Condominium status certificate** - Inserted to give the purchaser the opportunity to review the condominium’s financial statement to ensure that there are adequate reserves for major repairs and that there are no known major expenses, legal actions or other matters contemplated. These are more particularly discussed later in this document.

(f) **Rural Properties** - Conditions are usually inserted to give the purchaser the opportunity to test to see if the well water is potable, the water supply and pressure are adequate, the septic system was properly installed and inspected, that there is public road access etc. These are more particularly discussed later in this document.

3. TITLE INSURANCE

Purchasers and mortgage lenders rely on the lawyers who act for them to provide an opinion on title on which they can depend. Title insurance provides coverage for negligent title opinions but is somewhat more wide ranging in its coverage including items for which a lawyer could not be found to be negligent. Coverage includes defects in title, such as conflicting interests or ownership of the land; mortgages or other encumbrances affecting title; and the unmarketability of title; compliance risks, such as non-compliance with restrictive covenants, the existence of work orders and major encroachments; access-related problems, such as the absence of legal right of access to the home because of rights-of-way or easements, and other rights and defects such as rights in the land because of tenancies. With title insurance, because it is an insurance product, it is not necessary to prove negligence. It is anticipated that litigation will be avoided and that claims will be paid faster.

There are various companies which offer title insurance. The cost of a policy, which is a one-time fee and is valid for as long as you own the home usually fluctuates with the purchase price and is usually less for condominiums. Costs may range between approximately \$400 for a house costing up to \$500,000 to \$900 for a house costing \$1,000,000. For condominiums costing up to \$500 the fee may be \$250. In all cases HST is in addition. Pricing is less for new home purchases directly from a builder. In all cases there are corresponding savings, including waiver of the \$65.00 Law Society transaction levy charged in each real estate file, waiver of the requirements to search for judgments against prior owners on title, searches of corporate owners, searches for compliance with subdivision or development agreements registered on title and, in

most cases, waiver of the requirement to obtain a building department search. The related charges, could, in some cases amount to \$350.00. There may be further savings in certain situations including where a survey is unavailable or is not up to date, but the property falls within the title insurer's criteria of not requiring a survey.

4. **FEES, DISBURSEMENTS, LAND TRANSFER TAX**

All purchasers must pay Land Transfer Tax to the provincial government, which is calculated on the purchase price. For single family dwellings the tax is:

Amount	Formula
Up to \$55,000	Purchase price x .005
\$55,001 to \$250,000	Purchase price x .01 less \$275
\$250,001 to \$400,000	Purchase price x .015 less \$1,525
over \$400,000	Purchase price x .02 less \$3,525

The City of Toronto also charges a Municipal Land Transfer Tax ("MLTT") for all properties purchased in the city at the rate of 0.5% of the first \$55,000 of the purchase price, 1% of the amount between \$55,000 and \$400,000 and 2% of any amount in excess of \$400,000 for single or dual family residential properties, 1.5% for other properties. As is the case for provincial Land Transfer Tax, MLTT is collected at the time of registration of a transfer.

Your lawyer must conduct searches to see if the Vendor owns the property or if there are any encumbrances (mortgages), liens or other matters affecting title, to see if the Vendor has any judgments against him or her, to see if all taxes and other charges which, if unpaid, may constitute liens on title, to check the zoning and to see if the municipality has any work orders for building deficiencies. The provincial and municipal governments charge for each and every one of these searches. By way of example, the City of Toronto charges \$116.00 for a building department certificate, \$65.00 for a tax certificate and \$25.00 for a water certificate. Hydro and natural gas suppliers no longer issue certificates and do not have a lien on the property. For a typical residential purchase these out-of-pocket expenses ("disbursements"), including title search fees, sheriff's execution certificate, transaction levy surcharge, municipal charges and registration fees, are in the range of \$450.00.

In addition to disbursements, lawyers charge fees for the work they do, including reviewing the agreement, searching title and other matters, drawing documents including mortgage documents, preparing and reviewing adjustments, arranging for closing (the formal exchange of money and documents for a key and deed and registrations), meeting with the client before closing and reporting after closing. Fees vary and depend on the complexity of the transaction, the lawyer's experience and expertise and any work involved in resolving title or other problems which may arise, and satisfying the requirements of mortgage lenders.

5. FIRST-TIME HOME BUYERS

First-time home buyers are entitled to some financial relief under various programs.

(a) **Land Transfer Tax Rebate** - First-time home buyers (individuals who are over 18 and have never owned a home anywhere) may obtain a deduction of provincial land transfer tax payable to a maximum of \$2,000.00 on the purchase of a home they will occupy as their principal residence. A person whose spouse owns a home or owned one at any time when the parties were spouses or partners cannot claim the refund. If the spouse owned a home before, but not during the marriage or cohabitation, he or she cannot claim the deduction, but the first time home buyer can claim half, or \$1,000. First time home buyers also get a rebate of the City of Toronto MLTT on the first \$400,000 of the purchase price.

(b) **RRSP Home Buyer's Plan** - First-time home buyers (persons who did not own a principal residence in the five calendar years before making the withdrawal) are entitled to withdraw up to \$25,000.00 from their RRSP, tax free, but must repay it over 15 years without interest. Please check with your tax advisors for specific details.

(c) **First-Time Home Buyers' Tax Credit** - First-time home buyers can also claim a non-refundable tax credit of up to \$750.00 on their income tax return for the year in which they buy their home.

6. NEW HOME PURCHASES

New home (single family, townhouse and apartment residence) purchases are usually more complicated than resales. The contracts are far more complex, closing dates uncertain and dependent on construction. It is necessary to coordinate final municipal and home warranty inspections.

All new home purchasers are protected under the Ontario New Home Warranty Program, a provincial government mandated program administered by Tarion Warranty Corporation. **Please note that this applies only to new construction and not to renovations or conversions of older buildings to residential use.** Tarion provides for protection of: the initial deposit of up to \$40,000.00 (\$20,000.00 for condominiums, which have an additional \$20,000.00 protected under the *Condominium Act, 1998*); a one year warranty on all of the builder's work; a two year warranty on major items such as electric, heating and plumbing systems, basement water penetration, the "building envelope" including wall and roof assemblies and other items which separate interior and exterior spaces, exterior cladding and fire, safety and insulation protection as required under the Ontario Building Code; and a seven year warranty on major structural items, such as foundations. Even if the builder goes out of business, the Plan covers the warranty. Further particulars are available at: <http://www.tarion.com/home/>

New home contracts are **not** standardized and each builder prepares its own contract, subject to certain mandatory clauses required by ONHWP. Note the following:

(a) **Additional charges** - In addition to the stated price of the new home, builders often require the purchaser to pay for a number of extra charges. These are often hard to find in the contract. You should make sure that the sales agent discloses these to you and that some limit should be included in the contract. Typical additional charges may include the cost of a water meter (up to \$300.00), hydro meter (up to \$500.00), hot water tank (\$750.00 to \$1,200.00) (or a requirement that the Purchaser rent the tank), the municipal and education levies charged on newly developed lots (\$1,500.00 to \$5,000.00 depending on the municipality), any new levy or charge imposed after the contract is signed, municipally required beautification charges (\$200.00 to \$400.00) and the Tarion enrolment fee (\$535.00 for a purchase price of \$100,000 or less increasing to a maximum of \$1,650.00 at a purchase price of more than \$1,000,000, plus HST), the Law Society Transaction Fee (\$63.00), the builder's cost of registering partial discharges of its mortgages on title (\$100.00 to \$300.00) and in some cases even an extra day's interest on the balance due on closing to compensate the builder for not delivering your money to its bank on the same day as the transaction closes. **As of October 1, 2012, all adjustments to a new home's purchase price must be located in one single schedule attached to the purchase agreement so that purchasers can identify all possible changes to the purchase price or balance due on closing. Items not shown on the Schedule cannot be charged to a purchaser.**

(b) **HST**- HST is not payable on a resale home but is payable on the purchase of a new home or a substantially renovated home. HST adds a significant amount to the cost of a home. **The contract must stipulate whether or not the purchase price includes HST.** Most new home purchase contracts include the HST. A rebate is available but if the price includes HST, the contract will require the purchaser to assign the rebate to the builder. A purchaser must warrant that he or she is qualified to receive the rebate which includes a promise that he or she, or a spouse, parent, child, other descendent or sibling, will use the home for a principal residence and will occupy the home after closing. **Most new home purchase contracts provide that the Purchaser will reimburse the builder for the amount of the HST rebate lost (approximately \$24,000) if the Purchaser does not qualify for the rebate.**

Investors, who are not occupying the new home as their principal residence, will not qualify for the HST rebate and will be required to pay the equivalent amount to the builder. However, investors will be able to apply to Canada Revenue Agency for the "Investor Rebate" if they own the property for a year and the first tenant of the property is "reasonably expected" to occupy it for a year.

(c) **Delayed closing - Delays of closing dates are usual.** Delays are regulated by the Tarion New Home Warranty Program. Every agreement of purchase and sale, for either freehold or condominium properties, must have a Statement of Critical Dates and Addendum in the form provided by Tarion, which cannot be altered by a builder. The terms of the addendum override anything to the contrary in the builder's form of contract. There are two kinds of addendum for condominium and freehold sales are used, one where the builder chooses to specify a firm closing date and one where the builder can only offer a tentative closing date. In either event, the addendum will specify the relevant critical dates and will provide for purchasers' rights to terminate or obtain compensation for delayed closings and builders' rights to extend closings if

certain conditions are not met. Compensation is now \$150.00 per day for living expenses, without provision of receipts, plus other direct costs such as additional moving or storage costs, but only if proof of payment is provided, an additional amount where a builder fails to give 10 days notice of closing delays to a maximum claim of \$7,500.00. **A Purchaser must make a claim for compensation to the builder within 180 days of occupancy and, if the matter cannot be resolved, must make a claim to Tarion within 1 year of occupancy.**

Generally 90 days prior written notice is required to change a closing or occupancy date however short term delays are permitted if 10 days notice is given but compensation is payable. If the builder delays beyond the permitted date, compensation is payable. The buyer has 30 days to terminate if closing has not taken place by the "Outside Closing Date" as specified in the addendum and may also terminate if the Critical Dates listed in the addendum are not met or if the early termination conditions are not satisfied. In any such case the Purchaser is entitled to the return of all deposits **with** interest. Extensions of all closing dates are permitted if there is unavoidable delay due to such things as strike, fire, flood, other Acts of God or matters not caused by or contributed to by the builder but the builder must provide written notice.

(d) **Conditions and Early Termination** - A builder may provided for termination of a transaction in various events such as where it is unable to obtain certain municipal approvals for zoning or where it cannot negotiate a subdivision or development agreement with the local municipalities or where it is unable to obtain municipal services for the subdivision such as water or sewage disposal. It may also make the agreement terminable if it cannot obtain construction financing or if it cannot obtain approval for such things as basement walkouts. The conditions must be clearly listed and described in the addendum. **If a builder wishes to provide for early termination, a purchaser has three days to review the agreement after signing it and may cancel the agreement and obtain a return of his or her deposit if not satisfied with the proposed conditions.**

(e) **Restrictions** - Purchasers are usually restricted from altering the drainage or grading on the lot, at least until the municipality has given final approval to the site, and has released the builder and developer from the site plan agreement registered on title. Furthermore, many agreements provide that the purchaser cannot finish the basement until the warranty period has expired, so that the builder does not become responsible for deconstructing and refinishing the basement if a warranty repair is required. Most agreements also give the builder, subdivider and municipal authorities the right to come back onto the land for a specified period, usually up to two years, to alter the grading when necessary.

Other restrictions, designed to enhance the beauty and livability of the subdivision, may prohibit or restrict fencing or the type of fencing that can be used and may prohibit installation of satellite dishes, radio or television antennae, parking of motor homes or other large vehicles etc.

In some cases, particularly condominium buildings, a builder may restrict supply of cable or telephone service to companies selected by it and include such restriction in agreements registered on title. These restrictions may not be specifically disclosed in the agreement of purchase and sale, but may be included as part of the unspecified restrictions which purchasers

agree to accept. You should inquire at the time of signing the offer have a representation inserted to the effect that there are no restrictions on title pertaining to the supply of television, internet or telephone service.

(f) **Substitution of materials and alteration of plans** - Most agreements provide that the plans are approximate only and that the builder has the right to make “minor” changes. If it is absolutely imperative to you that certain room dimensions be at least as large as shown on the plans, the contract should be amended to state this. The total square footage may be decreased by up to 5% without any liability. Likewise builders give themselves the right to substitute materials and colours with equivalent materials and colours. The agreement will specify that model homes contain upgraded finishes and top end fixtures and appliances and that the purchaser’s unit may not have similar finishes and fixtures unless paid for as extras. **If certain finishes, brand names and specifications are important to you, the agreement should be amended to remove the right to make changes for those important items. Remember, the agreement will have a clause to the effect that all promises are contained in the agreement in writing. Therefore, anything negotiated with the agent must be written into the agreement and signed by the builder or representative.**

(g) **Condominiums** - When buying a new condominium some special rules apply. First, there may be a “Tentative Occupancy Date” given in the contract which is a guesstimate of the date the building will be substantially complete and the purchaser will move in. Within 30 days of the roof assembly being completed, the builder will provide a “Confirmed Occupancy Date” which will be the actual move in date. If no notice is given 90 days before the Tentative Occupancy Date then that date automatically becomes the Confirmed Occupancy Date.

There will be two closings, the first being an “Occupancy Closing” which will take place on the Confirmed Occupancy Date, when construction is substantially finished and the buyer moves in and the “Final Closing”, approximately three to nine months later, which will take place when the condominium plan has been registered. The condominium plan cannot be registered until construction is complete and therefore title cannot be given to the buyer nor can the buyer give a valid mortgage to a lender. On the Occupancy Closing, the buyer will pay the cash balance due on closing (usually 25% of the purchase price) and will pay the monthly “occupancy cost” which is the equivalent of property taxes and common expenses the purchaser would have paid anyway, plus interest on the unpaid purchase price until the Final Closing. A Purchaser may elect to pay the full balance on the Occupancy Closing **if he or she notifies the builder during the 10 day “cooling off” period.** The purchaser is entitled to interest on the deposits at a rate set by statute.

In addition to the extra charges noted above, condominium developers also attempt to have purchasers pay the initial contribution to the reserve fund, usually equal one or two month’s common expenses.

The builder must provide to the purchaser of a new condominium a disclosure statement with a prescribed Table of Contents, which statement must accurately describe the type of complex being built, the significant features of the proposed condominium declaration, by-laws

and rules, a schedule of construction and completion dates for amenities and a budget for the first year of operation. A summary must be provided which must indicate whether or not the building is a conversion or new construction and whether or not the *Ontario New Home Warranties Plan Act* applies, whether or not commercial uses are permitted on the property, whether or not there are any restrictions concerning pets, if a number of units are being leased, what the parking provisions are for owners and visitors, etc. **A purchaser has ten days from receipt of the signed agreement of purchase and sale and the disclosure statement, or any material amendment, to terminate the agreement and obtain the return of his or her deposit.**

Some developers have been required to make concessions to local municipalities in order to obtain zoning changes. These may include provision of daycare or other facilities in the building. In addition you should check to see if the developer is retaining ownership of the superintendent's suite or guest suites, which will then be sold back or rented to the condominium corporation at consequent expense to all owners.

Some developers retain ownership of certain areas of the building, such as communications rooms, so that they can make arrangements for supply of cable or satellite television or telephone or internet services. They may also enter into contracts with providers of cable or telephone services which will be binding on subsequent owners. The *Condominium Act, 1998* permits condominium corporations to terminate these agreements in certain circumstances and also permits corporations to make agreements with competitors of the service providers.

(h) **Other Provisions** - While new home purchase contracts are not standardized most contain the items noted above and usually contain the following in addition:

(i) You may have to provide the Vendor with a mortgage commitment or other proof that you have the financing available to complete the transaction, within 10 days of a request being made for one, failing which the Vendor can deem you to be in default and, among other remedies, terminate the agreement and retain your deposits. While you can no doubt obtain a commitment it is not likely that you will obtain a firm rate, so far in advance of closing. In any event you should apply for a commitment now so that you can satisfy this requirement.

(ii) Title to the lands will be subject to the number of easements in favour of local authorities and utilities entitling them to enter onto the lands for purposes of servicing their various works and prohibiting alteration of certain features of the local landscape and will be further subject to development agreements between the builder and subdivider and local governments and their agencies which contain requirements as to what can be built on the lands and how building may take place and how the lands will be serviced and may also contain various restrictive covenant preventing the lands from being used for various, specified purposes or from being altered, particularly as to surface drainage works and patterns.

(iii) There will be warnings set out in the subdivision agreements to be registered on title. These usually relate to availability of school buildings, transit routes, lack of door to

door postal delivery, noise and otherwise as required by the local municipality. Some of these items may be specifically mentioned in the agreement or a schedule. For example the proximity to major roads, railroad tracks etc. may be mentioned as these may generate higher levels of noise, vibrations and exhaust odours.

(iv) The builder will reserve the right to make changes to the work including exterior elevations etc. and provide for extra charges if it is necessary to build the house with listed features, such as full or partial walkout basement, or deck and credits if the house called for these features but it cannot be built that way depending on final engineering studies and municipal requirements. Those credits are the sole remedy you have and you do not have the right to terminate the transaction or recover any greater amounts from the builder, nor does there appear to be any right to terminate the agreement if you are required to pay extra amounts as noted. Also, if the grading requires it, it may be necessary to install more or fewer steps to front, rear and side doors or from the garage entrance to the house. You must accept the house subject to such variations.

(v) A sketch of the floor plan may be attached to the offer. Please note that you must accept the house with deviations from the floor plans and elevations and reverse image if that is the way the Vendor builds it or if the municipality requires same. The Vendor reserves the right to build the house with different dimensions than shown on the plans or in a reverse, or mirror, image to the plan. Also you must accept the house even if there are colour or shading variations in the finishes of building or decorative materials. **If certain rooms must be a minimum length width or size, or if colours must be a certain shade, you must obtain the Vendor's written agreement in that regard.**

(vi) If the municipality does not permit the model of the house you have chosen to be built on the lot, the Vendor may end the agreement and give your deposit back but you have no other claim against the Vendor.

(vii) Until you close the transaction and move in, you may not offer the house for sale or rent, list the property for sale or rent, otherwise advertise the property for sale or rent or assign the agreement of purchase and sale.

(viii) All promises made to you on behalf of the Vendor are contained in the agreement which you are signing. The Vendor is not bound by any representations made by any real estate agents or otherwise. **Please ensure that everything that has been promised to you is inserted in the agreement in writing, particularly the listing of items to be supplied in the Schedules.**

7. CONDOMINIUMS

Condominium is a form of cooperative ownership of property wherein individual owners own a specific unit (apartment, townhouse or even detached home) and all unit owners own the common elements (lobby, hallways, elevators, recreation facilities, garage, grounds and landscaping) through a condominium corporation of which each unit owner is a member. Parking and locker spaces may be owned outright, leased from the condominium corporation or be part of common elements allocated for “exclusive use” of a unit owner. Usually, these cannot be sold or transferred separately from the residential unit. You must check to see if there is any separate rent or fee for the use of the parking or locker space. Balconies or front or rear yards may also be “exclusive use” common elements and subject to restrictions as to decoration and landscaping and subject to the condominium corporation’s right to enter for maintenance or otherwise.

The Condominium corporation is run by its directors, who are elected from the unit owners. The directors are responsible for overall maintenance of the common elements, including the basic building structure, establishing and enforcing rules and regulations, hiring maintenance and other staff, billing owners for the cost of operating the building as “common expenses”, and approving and paying all building costs including staff, utilities, repairs and maintenance. The directors must provide annual financial statements to the unit owners and must also ensure that the condominium corporation conducts required reserve fund studies and that the reserve fund be maintained as required by law.

For all new condominiums, the directors must obtain a “Performance Audit”, conducted by a licensed architect or engineer. This designed to see if there are any construction or other deficiencies which might give rise to a claim against the builder under the *Ontario New Home Warranties Plan* or otherwise. This assists all owners by providing expert assistance at an early stage of the existence of the condominium and ensures that builders comply with their obligations.

It is important when considering a condominium purchase that you inspect not only the individual unit you are thinking of buying but also the entire complex. You are also buying a share of that complex including its problems and strengths.

Before signing the offer, or at the very least before finalizing the purchase, you should review the following:

(a) **Financial Statements & Reserve Fund Study** - In addition to showing the condominium’s sources of income and its expenses, the latest financial statements should disclose whether or not the “Reserve Fund” has enough money in it to meet major expenses, and what has been spent on repair and maintenance items in the past. A Condominium must ensure that money is collected from unit owners and placed in a Reserve Fund which should be “the amount that is reasonably expected to provide sufficient funds for the major repair and replacement of the common elements and assets of the corporation calculated on the basis of the expected repair and replacement costs and the life expectancy of the common elements and

assets...”. Usually, such funds are collected as part of monthly common expenses. The *Condominium Act, 1998* requires that a condominium conduct a reserve fund study and update it from time to time. It is important to review the financial statements and the reserve fund study before committing to the purchase in order to avoid having to pay for major expenses by way of special assessment (a lump sum charged to owners as required).

(b) **Status Certificate** - The corporation is required to prepare and provide when requested (at a fee of up to \$100.00) a certificate which will confirm that the unit owner has paid common expenses to date. It will also contain important information including as to whether or not the corporation anticipates a current year budget surplus or deficit, whether or not common expenses have been increased and the reason for any increase, whether or not any special assessments have been charged and the reason for any such assessments, the status of reserve fund studies and information as to how funding of the reserve fund is being carried out. It will also advise whether or not the corporation anticipates any significant expenses for major repairs, whether or not it is a party to any legal actions which may involve significant liability or recovery, and whether or not any steps are being taken to terminate the condominium.

In addition, the condominium corporation will provide with the certificate a copy of the declaration, by-laws and rules, a copy of the last audited financial statements and current budget, a list of agreements for management, leases of common facilities for business purposes, agreements for shared facilities and agreements for ongoing supplies of goods or services (such as telephone or cable services), a copy of the insurance certificate and a copy of any notice to owners regarding any reserve fund study and notice regarding funding of the reserve fund. There are rights to inspect copies of contracts and other books and records listed in the certificate but not reproduced.

(c) **Declaration, By-laws, Rules** - Each condominium has rules and regulations pertaining to various matters including: restrictions on the types of pets permitted on site, use of recreation facilities, permitted use of premises, restrictions on renting and otherwise. You should review these to ensure that keeping your pet or your intended use of part of your suite as a home office does not conflict with the rules, etc.

Your review of, and satisfaction with, these items should be a condition of any contract which you sign.

8. INSURANCE

You must insure your home and its contents effective at the time of completion of your purchase. Discuss with your broker the coverage which best suits your needs. “Basic” coverage includes risks named in the policy but does not cover any other type of risk. Typical risks covered include damages caused by fire and related smoke damage, electric current, lightning, impact from vehicles or aircraft, theft, vandalism, wind damage, hail, window breakage, water damage from floods or water seepage, but not usually sewer backup. “Broad form” coverage is more expensive but includes comprehensive damage to your building. “Comprehensive” coverage covers buildings and contents for all risks except those specifically excluded in the

policy. Typical exclusions are Acts of God, wartime damage, damage caused by animals (including squirrels and racoons) and by insects. There are usually limits on claims for coins, stamps or other collectibles, furs, jewellery, laptop computers etc. unless these items are specifically described in the policy and the appropriate premium paid.

It is possible to purchase extra coverage for such things as damage caused by sewer backup, furnace oil spillage, melting or moving snow or ice, heaving frost, earthquake, loss of contents of freezers and the inability to use the premises during times of mass evacuation including for nearby fires, toxic spills or otherwise. You should also consider coverage for the cost of living elsewhere while your house is being repaired and loss of rental income from basement apartments. If you operate a business from your home, ensure that the business contents and potential loss of income because of loss of the premises are covered.

You might also wish to review with your agent the purchase of coverage for “replacement cost” which means replacement of a damaged item with a new item, as opposed a payment based on the depreciated value only. If an old item or part of a building is replaced, the policy may only require the insurance company to pay for a part of the actual repair cost because of the fact that the part was worn and you would have had to have replaced it soon anyway. Also, in older urban areas, you might wish to review the availability of coverage for the cost of complying with current building codes and zoning by-laws in cases where it is necessary to rebuild or substantially replace the entire house.

Finally, your insurance coverage must include “third party liability”, which is protection from people who are injured on your property and sue for their injuries and loss of income. We recommend at least \$2,000,000.00 coverage in this regard. Laws place heavy responsibility on home owners to keep their property safe and a corresponding liability to pay damages to people who are injured on your property.

Condominium owners have coverage on the building but not the improvements (including cabinets, toilets, sinks and other fixtures and carpets, tiles and other floor coverings), painting, wallpaper or other decoration, furniture or contents. Also, you are responsible for damage to adjoining apartments for smoke, water or other substances which flow from your unit into neighbouring units. Special “condominium packages” are available to condominium owners to cover those items and their third party liability coverage.

9. **RURAL PROPERTY**

Rural property (farms, cottages etc.) has its own unique features. The amenities we enjoy in the city are not always present in the country. In particular, note the following and insert conditions and warranties in the agreement of purchase and sale where appropriate:

(a) **Access** - Check to see if the road leading to the cottage is a public road or a privately owned right of way and whether it is maintained by the local municipality or unassumed. You should ensure that, if a private right of way, there is unrestricted year round access, if snow is cleared, that the owner does not have the right to change the route, and that the

right is registered on title. You should also find out whether or not there is a fee to be paid every year (to an individual owner, a “cottagers’ association” or “road association”) to use or maintain the road and whether or not any uses are restricted either as to the type of vehicle (eg. no snowmobiles, ATV’s etc) or as to the individuals who may use the road and if parking is permitted. You do not have a right to alter or make any improvement or do other work on a publicly owned road or private right of way without the owner’s permission, nor can you interfere with any access over the road or right of way construct anything on or under a road and only under a right of way if there is no interference with access.

It is also important to check shared driveways or walkways. Although it may look as if you have a right to drive or walk over a part of your neighbour’s property, you may not have a legal right to do so and the neighbour may fence off or build something on the access route. The right of way must be properly registered on title. Conversely, even though nothing may be registered on title, rights of adverse possession may have arisen and you may not have the right to deny someone access over a part of your land. This depends in large part on the type of system under which the land is registered and a number of legal factors. **A survey is an invaluable tool in determining the existence of such rights. Also, title insurance “survey coverage” may provide assistance with some of these problems.**

If the property is located on an island or other remote area, there may be no road or land access. Access may be over water only. If so, you must ascertain if there is a right to park anywhere near the boat dock on the mainland or if this is a matter of paid access and parking at a local public or private marina. Such parking is usually not deeded and terms and conditions can change at any time.

(b) **Amenities** - Check to see if there is garbage pickup or if you are required to take garbage to a local dump. Ascertain if there any restrictions on what can be disposed of or how much per visit, per week etc.

(c) **Water** - If there is no public water supply, the well water should be tested for potability. Sample containers can be obtained from and tests conducted at the local office of the Ministry of Health. You should find out if the water works in winter, and if there is adequate pressure and supply for your proposed use. An active family of five intending to spend the whole summer at the cottage uses a lot more water than a retired couple who only spend weekends there. If there is a well, get the Well Driller’s Certificate or find out who drilled the well and when so that a search may be made. Lack of a Well Driller's Certificate for the well may mean that the local Health Unit, Ministry of the Environment, or other governmental authority may require that the well be repaired or replaced, at your expense. If this is not done, the land may not be capable of being legally used as a residential dwelling. Please note as well that a common well or system serving more than 6 residences is subject to compliance with the regulations under the *Safe Drinking Water Act, 2002*. **The contract should contain warranties as to potability of the drinking water and that the Well Driller’s Certificate will be produced before and as a condition of closing.**

(d) **Sewage** - Find out when the septic system was installed and get a certificate from the local health department as to installation and inspection which should be available for any system installed in the last 25 years. Also, check when the system was last pumped out. Please note that many municipalities have re-inspection programs to get unsafe systems replaced and that an inspection could result in a requirement to make repairs or even install a new system at significant expense. **The contract should contain warranties that septic system installation was in accordance with all applicable laws and that a copy of the permit or inspection report will be produced before and as a condition of closing.**

(e) **Beaches and Water's Edge** - In Ontario, private property ownership extends only to the water's edge which is where the water meets the land at its normal level at the time of the original grant from the Crown (i.e. government). Land which was added by "fill" or otherwise, will not be included and must be separately deeded from the Crown. Also, certain lakes have receded in recent years and the newly exposed "land" is owned by the Crown, not the adjoining rural property owner. Although sometimes used, the term "high water mark" does not really apply because lakes generally do not have tidal movement. In certain areas, even though it looks as if the lakefront is part of the private property, the plan of subdivision may reveal that the lot line does not extend to the lakeshore but that the Crown or local municipality owns lands along the shore or that there is a public right of way over, in some cases, 66 feet from the water's edge. In some cases the right of way may have been closed and the lands conveyed to the owner. It may also be possible to have the municipality close the roadway and convey it but the modern trend is that the municipality will want to be paid for the value of the land being transferred. Also, the municipality may refuse because of a policy of public access to lakefront areas. Anyone has the right to walk along a public right of way and use the beach area. The survey should be checked to see if the land on which the cottage is built is in fact owned by the vendor and not on the Crown lands or the right of way. **Make it a condition of the contract that the title includes exclusive ownership of everything to the lake without any right of way.**

(f) **Navigable Waters** - Most lakes and rivers, except for very small shallow lakes, creeks and rivers come under government jurisdiction as navigable waters. Any structures, such as piers and boathouses built on navigable waters must have been built with a permit (for construction and, depending on the size of what is being built, the right to occupy Crown lands) from the Ontario Ministry of Natural Resources and must also comply with municipal by-laws. The Ministry or municipally may order the removal of structures illegally built. In addition, the federal government may regulate or prohibit any structure which interferes with navigation in areas such as the Great Lakes, Georgian Bay and St. Lawrence River areas etc. **The contract must specify that all structures in any water are built according to law and with all required permits for construction and occupation.**

(g) **Zoning** - Some cottages can be used year round but **some are zoned for seasonal use only**. Furthermore, some cottages may be in environmentally protected areas, such as the Niagara Escarpment or protected shoreline lands. There may be restrictions on further building and some uses. Also, some cottages may be situate in flood plain areas and therefore subject to controls by the local conservation authority.

(h) **Harmonized Sales Tax (“HST”)** - HST may be payable on the purchase of properties used by the Vendor for commercial purposes and in particular on the purchase of a **farm**. “Farmland” generally means land that is regularly used by a person for the purpose of gaining or producing income from a farming business carried on by the person. Farmland also includes any portion of vacant land (e.g., a bush area) that may not be used directly in a farming business. In addition, any fixtures on the farmland (e.g., a barn or a corral) form part of the farmland. Whether or not HST is payable depends on whether or not the Vendor used the property for commercial purposes, meaning with the expectation of making any profit. HST would not be payable in circumstances where the Vendor used the land as a “hobby farm” meaning that it was not used in a business in which the Vendor intended to make a profit. **You must obtain a warranty in the agreement of purchase and sale to the effect that HST is not payable for the foregoing reasons.** Further information may be obtained at the Canada Revenue Agency website at: <http://www.cra-arc.gc.ca/E/pub/gi/gi-002/gi-002-e.html>.

(i) **Other** - It is also necessary to obtain warranties in the Agreement as to various other requirements and statutes which may impose liens or charges on the lands including but not limited to under the *Drainage Act* for works constructed on the lands, the *Tile Drainage Act* for loans made by the local municipality to construct private drainage works, for unregistered easements under the *Electricity Act, 1998*, for special levies under the *Local Improvement Act*, for the existence and removal of underground oil storage tanks and for ensuring that actively used tanks are registered under the *Technical Standards and Safety Act, 2002*.

10. STEPS TO CLOSING

After you have signed the offer, the following are required in order to close:

(a) **Deliver the offer** - This seems obvious, but you would be surprised at how many people wait until just before closing to notify their lawyer. The agreement has a deadline for searching title and notifying the other side of defects and problems which the vendor must correct. It often takes time to get municipal reports and certificates.

(b) **Decide on title** - If there is more than one owner, decide how you want to be shown on title. “Joint tenancy” means that if one dies, the survivor automatically becomes the owner of the property. In the event of death of a joint tenant no will is required, nor is the property subject to any claims of the deceased’s creditors. “Tenancy in common” means that each person has a share of the property and is free to dispose of his or her share as he or she sees fit. In such case, on death a Certificate of Appointment of Estate Trustee will be required and the deceased person’s share of the property is subject to the claims of creditors.

(c) **Arrange mortgage financing** - Remember that it takes time to appraise the property and process the application. Do not wait. Preapproval, before you even make an offer to buy a property, is a useful tool and you should speak to your financial institution to obtain same. Preapproval is based on your income and expenses as well as your other debts and tells you how much your bank thinks you can borrow and be able to repay on a monthly basis. A full approval will still be required after you sign your purchase agreement, which will be based on the

foregoing matters and the value of the property. Lending institutions are very competitive so it pays to shop around. **Be cautious when dealing with smaller institutions and especially “virtual banks” or internet bankers.** Some do not have the administrative staff to process transactions in a timely manner and may delay your closing by not being able to advance mortgage funds in a timely manner on the day of closing. In some cases clients have been put at risk of default because of the failure to advance funds on the closing date. Furthermore, legal fees may be increased where lawyers have to sort out problems which result from a mortgage lender’s administrative delays.

(d) **Arrange insurance** - The policy will likely not be available before closing but your agent can obtain a “binder”. It is absolutely necessary that insurance be available on closing and that your mortgage lender be shown on the policy. For condominiums as noted, the basic structure is insured by the condominium corporation but you must insure for replacement of carpets, decorative materials, fixtures, equipment and furniture and must obtain liability insurance.

(e) **Arrange your move** - Try to avoid closing your purchase on the 15th and last days of the month or on the last Friday of the month, particularly in the busy April to June period, as these are peak periods for movers (and for lawyers). Also arrange for the elevator in the condominium building and pay whatever security deposit is required. Avoid disappointment and extra cost in having the movers waiting while an elevator is being used by someone who did book in advance or even worse, in being turned away for not booking in accordance with the condominium rules.

(f) **Attend with your lawyer** - You will attend with your lawyer a day or two before closing to sign documents and deliver the keys for the house you are selling, if any, and a certified cheque for the funds required for the purchase. If your lawyer does not already have it, you will also deliver your insurance binder.

(g) **Closing** - The transaction is closed by your lawyer and the other party’s lawyer by money being exchanged for a deed and keys and all necessary documents are registered. Ontario now has electronic registration so that the lawyers will arrange for courier exchange of funds, keys and documents and they will then register from their offices, on-line. After registration, your lawyer will arrange to give you the keys. For newly constructed homes, keys are usually released at site. Electronic registration hours are from 8:30 a.m. to 5:00 p.m., so the transaction can close at any time during the day. Your lawyer cannot guarantee when your transaction will close as it may be necessary to wait for the other side’s lawyer. If you are selling a home, it may be necessary to wait until your purchaser has completed the sale of his or her own home before having funds available to complete the purchase from you.

(h) **After Closing** - Get the keys from your lawyer (or at the construction site) and inspect the premises at the earliest opportunity. If there is any damage caused after you last inspected the premises, the Vendor must make repairs. You are entitled to the premises in the same condition as existed when you signed the agreement of purchase and sale, subject only to reasonable wear and tear. If there is damage, notify your lawyer immediately. If you wait, the

vendor may take the position that you caused the damage. Take pictures of any damage. If your camera is packed away, buy a disposable camera at a convenience store. Likewise, as a vendor, you may want to photograph your house after you move your furniture out in order to have a record as to the state of repair at the time you left the premises. You will then be able to rebut any claim by your purchaser that you left the premises in an unacceptable condition.