

SINGLE FAMILY RESIDENTIAL REAL ESTATE PURCHASE CHECKLIST

*(This Checklist is to be used as a guideline or resource.
It is not intended to create or replace a standard.)*

INTAKE

Conflict Check: Is there a conflict? Yes No

How Resolved: _____

Property
Address: _____

PID(s): _____

Assessment Account Number(s): _____

Client Name(s) (including all given names and all commonly used names):

Mailing Address: _____

Community Address (if different than the above): _____

Joint Tenants or Tenants in Common (if applicable): _____
(Confirm with clients, in writing, the name or name(s) in which title is to be taken and the manner of tenure)

Marital Status (i.e. single/married/domestic partner or former domestic partner (registered or unregistered)):

(If separated, obtain and review the Separation Agreement)

Telephone #: a) Home: _____ (Voice Mail? Call Display?)

b) Work (His): _____ or (Hers): _____

c) Cell#: _____

d) Fax #: _____ (Call first?)

e) Email: _____ (Does client check regularly?)

Present Mailing Address: _____

Has the client been made aware of the possible implications of removal of an assessment cap?

Ask the client if he/she has ever made an assignment in bankruptcy. If the answer is "yes", obtain evidence of a discharge.

Note:

Consider the fact that certain debt obligations (notably CRA and WCB) are secured debts and survive bankruptcy.

An undischarged bankrupt cannot buy property or give security respecting the same.

Is the Seller a non-resident of Canada within the meaning of Section 116 of the Income Tax Act (Canada)? Yes No

(If so, obtain an undertaking from the Seller's solicitor respecting compliance with Section 116.)

FRAUD PREVENTION / DETECTION

Occupation of Client(s): _____

Is there another party (Releasor/Guarantor, etc.) who is not a client, and if so, is verification of identification required?: _____

Are funds being received or transferred to or from a third party other than:

- a) a public company or financial institution
- b) another lawyer in trust
- c) a public official acting in that capacity
- d) pursuant to an Order or a settlement
- e) pursuant only to fees, disbursements, expenses or bail? Yes No

Will client bring identification documents to my office or do I have to make arrangements with a Guarantor for this purpose?

Is the client or third party an organization? _____

(If so, complete Identification Requirements for Organizations form)

Fraud Alerts

NOTE: Remember that the Lender is your Client as is the Buyer and thus you have an obligation to both. You cannot withhold material information from the Lender.

- Is there a gift letter or a gift component?
- Be particularly vigilant about “gifts” between parties who are not closely related.
- If the Agreement of Purchase and Sale provides that the lawyer is holding the deposit, be sure to collect the entire deposit amount. The deposit should not be released until closing.
- Be vigilant about the possibility of a bogus Agreement of Purchase and Sale setting out an inflated purchase price. This can include two Agreements of Purchase and Sale, one of which is for the “benefit” of the Lender and the other of which discloses the real purchase price.
- Have you received instructions for a Vendor take-back Mortgage or Promissory Note which is not referenced in the Agreement of Purchase and Sale?
- Are the closing funds coming from a source other than the client?
- Have you received instructions for certain allowances upon closing? If so, these must be disclosed to the Lender, if they are material.
- After the Agreement of Purchase and Sale is signed, have the parties agreed upon a reduced purchase price? If so, this must be disclosed to the Lender.
- Question the Buyer and the Lender any time the mortgage proceeds are approximately equal to or greater than the purchase price. While there may be a legitimate explanation (i.e. renovations to be carried out post-closing), appropriate questions should be asked of the Buyer and of the Lender.
- If the Buyer instructs you to make a payment to the Seller, other than adjusted purchase price disclosed in the Agreement of Purchase and Sale, **this is a red flag.**
- Has the Buyer instructed you to make payments to a third party at or after the time of closing? This is a red flag, unless the third parties are financial institutions or

businesses or other parties to whom the Lender has directed you to make payment.

- Do the financing requirements stipulate that the unit must be “owner occupied”? If so, obtain an Affidavit or Statutory Declaration from the Buyer declaring that he/she will indeed be occupying the building in question as his/her personal residence, and explain to the Buyer the importance of the accuracy of this information.
- Does this transaction involve other parties who have recently or regularly been involved in property transactions with each other? **This is a red flag.**
- Has the property been flipped, or is it about to be flipped? **These are red flags.**
- Be particularly careful if dealing with a private (non-realtor) Long Term Agreement of Purchase and Sale/Rent to Own document. Among other inquiries, check to see if the Seller owned the property as of the date appearing on the Agreement of Purchase and Sale?
- If in doubt, “Google” the client.

AGREEMENT OF PURCHASE AND SALE

Private Sale? or Realtor?
(if a Realtor, list name and contact information): _____

2. If there is no Realtor, who will prepare the Agreement if none was already was already prepared? _____

3. Purchase Price: _____

4. Deposit: _____

Who holds the deposit?: _____

Is the amount paid the same as that in the Agreement? _____

5. Closing date: _____

6. Is personal property included?: _____

7. Date of lawyer review condition: _____

8. Conditions Precedent: _____

9. Expiry date for conditions: _____

10. Conditions satisfied?: _____

11. Deadline for Title Objections: _____

12. Listing cut received and reviewed? _____
(check for features which client may be expecting (i.e. water access))

13. Property Condition Disclosure Statement received and reviewed? _____

14. Have there been amendments to the Agreement?: _____

15. Are there any fraud flags? (i.e. cash-backs, has the Seller only recently acquired title, etc.)? _____

16. Are there any deviations from the wording of the standard Agreement of Purchase and Sale?: _____

17. Is there any reason to believe that HST is applicable (new construction; substantial renovation; business use; etc.)? _____

How is the HST issue addressed in the Agreement? _____

INITIAL SEARCHES

(and use a supplementary Checklist as well)

1. Judgment search (20 years) in name of Buyer(s): _____

2. Judgment search of Seller(s) from the later of last revision or migration:

Note:

- Consider the necessity of doing judgment searches in previous names of Seller and Buyer. In the case of a Seller this becomes pertinent only if the name of the Seller has changed since the Seller's Deed was registered.
- Consider the fact that in certain cultures the surname may not be the last name.

3. Land Registration View: _____

- Check for flip-side matches respecting benefits and burdens
- If there are burdens, provide the client with all appropriate details
- If there are benefits, provide client with all available information respecting the apparent extent of the same

4. Property Online Graphic: _____

- Does the Land Registration View match the parcel description and the Plan?
- Review the description with the client and provide an appropriate disclaimer respecting our inability to certify as to the extent of title.
- Be sure to apply at least the typographical and LR parcel shading map layers.

CAUTION: If the LR parcel shading is "flesh coloured", this is an indication of a subdivision problem.

5. Neighbouring parcels for relevant easements: _____

Note: It is good practice to look at the graphic and at neighbouring parcels, and to apply the topographical function. The presence of a red line is not conclusive of the existence of an easement but it is a red flag. Alert the client to the possibilities of:

- a) a right of way of necessity on the part of a third party;
- b) an application by a third party under the provisions of the *Private Ways Act*;
- c) a prescriptive easement or a claim that a lane or path is "openly used and enjoyed"
- d) Do neighbouring parcels have restrictive covenants which do not appear in this parcel register? If so, consider alerting the client to the possibility that this parcel may be affected.

6. Survey Plans: _____

7. Personal Property Security Act (if applicable): _____

8. Workers' Compensation Board (if applicable): _____

9. Registry of Joint Stock Companies (corporate Buyer or Seller): _____

FINANCING

1. Required?: _____
2. Condition date: _____
3. Approved?: _____
4. Institution: _____

-
5. Loans Officer (Name and contact information): _____

PROPERTY INSURANCE

1. Arranged?: _____
2. Name and contact information of Agent: _____

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3. Evidence of coverage received?: _____

SURVEY PLAN/LOCATION CERTIFICATE / TITLE INSURANCE

1. Review mapping and description of property with client: _____
2. Client's expectation as to the size of the lot: _____
3. Is there an existing Plan/Certificate?: _____
If so, does it disclose any issues? _____
4. How does client expect to access the property?: _____
5. Does client expect to access other properties (i.e. accessed water frontage, shared well, etc.)?: _____

- 6. Has client been advised of the benefit of a new Survey or Certificate vis-a-vis the benefits of title insurance, or both? _____
- 7. Discuss with client issues/features such as shared driveway, easements, restrictions, possessory title and prescriptive title issues, etc.: _____
- 8. Does client wish to obtain?:
 - title insurance Yes No
 - location certificate/survey Yes No
 - title insurance and location certificate/survey Yes No

If client waives either title insurance and/or location certificate/survey options, confirm this in writing.

ZONING / USE ISSUES

1. Is the property:

Residential: (Number of units?) _____
(If this is a condo unit, use a supplementary checklist for condos)

Commercial:

Vacant land:

Mixed use (i.e. apartment in basement, office in the home, etc.):

a) What are the client's expectations respecting the number of units and permitted uses? _____

If dealing with a rental unit(s), remember to adjust rent, security deposit and interest on the security deposit. An additional Checklist should be used for multi-unit residential properties.

2. What is client's intended use of the property?

3. Check zoning, if appropriate: _____
4. If this is new construction, obtain occupancy permit: _____
5. (a) Do restrictive covenants apply? _____
(If so, provide with client with a copy of the same.)

(b) If there are restrictive covenants, has the Developer retained the right to alter them for subsequent purchasers of other parcels in the subdivision?
If so, the effect of any such alteration must be explained to the client.
6. Are there any legal restrictions upon use of the property including but not limited to registered heritage designation? _____
If so, the client must be provided with details.

CONDOMINIUMS

1. Have the following been reviewed and forwarded to the client? (Date):
 - (a) Estoppel certificate (and is it current): _____
 - (b) Reserve fund study or status certificate?: _____
 - (c) Declaration: _____
 - (d) By-laws: _____
 - (e) Common element rules: _____
 - (f) Minutes of Board meetings for preceding 24 months:? _____
 - (g) The corporation's property insurance policy covering common elements owned by the corporation: _____
 - (h) The most recent financial statement: _____
2. Is a parking space assigned or separately deeded? _____
3. Are other special features (i.e. storage space, mooring, etc., designated)?

TAXES / UTILITIES / SERVICES

1. Deed Transfer Tax calculation: _____
2. Does HST apply?: _____
3. If the Buyer claims to be a registrant, and wishes to handle HST on a flow-through basis, **do an online verification of the Buyer's current registration.**
4. Does a Change of Use tax apply? _____
5. Obtain Municipal Tax Certificate or make other appropriate inquiry:

6. Are there any outstanding capital or betterment charges?: _____

Note: Remember that the wording of the standard Agreement of Purchase and Sale provides that the Seller is responsible for payment if the improvements have been completed, whether or not they are billed.

7. Public water? _____
(If so, check water rates. If private water supply, check water test results.)
8. Public sewer? _____
(If so, check to see if there are separate sewer user charges.)
 - a) If sewage disposal is onsite, is tank to be pumped? _____
 - b) Is a receipt to be provided? _____
9. If the electricity utility is municipality owned, ensure that there will be no arrears as of the closing date (any such arrears are, pursuant to the *Municipal Government Act*, a lien on the property).

FUEL ADJUSTMENTS / RENTALS

1. Source of heat:
Oil
Electric

Propane

Natural gas

Other: _____

2. Will there be a fuel adjustment?: _____

If so, what is the size of the tank?: _____

3. Is there any leased equipment?: _____

(a) If so, identify the leasing company and the account number, if the Buyer is assuming the lease: _____

(b) Do we have evidence that the Buyer has signed and submitted the required documents?: _____

4. Is the Seller required to pay out any lease? _____

RESIDENTIAL HOME INSPECTION

1. Has the client arranged/waived an inspection? _____

2. Are the results available and satisfactory to client?:

CLOSING ARRANGEMENTS

1. (a) Was final inspection satisfactory? _____

(b) Is Deed on hand and is it in satisfactory form? _____

(c) Have Mortgage and any related documents been executed? (Date):

(d) Have I.D. requirements been met? _____

(e) Have arrangements been made with respect to keys? _____

2. Conduct final search (as noted earlier, use a supplementary checklist for this purpose)

Note: Retain a record of search results.

3. Are all of the Lender's requirements met? _____

4. Do we have funds from: i) Lender?: _____

ii) Client?: _____

5. Property Insurance - Do we have documentary evidence and does it meet the requirements of the Lender?: _____

6. Have Undertakings been received?: _____

7. Have the Undertakings been diarized?: _____

8. Obtain proof of Mortgage payout in accordance with Mortgage Protocol.

9. If this is new home instruction, have we obtained:

a) Occupancy permit?: _____

i) Is the occupancy permit conditional, and if so, are these conditions acceptable to the client and to the Lender?

ii) Should a holdback be put in place?: _____

iii) Who will hold the holdback money?: _____

iv) If the occupancy permit is not available, is a final occupancy report available? _____

Are there any issues with it?: _____

b) New Home Warranty documentation?: _____

i. Who is responsible for submitting the documentation?

10. Is any holdback required?: _____

If so: a) What is the amount?: _____

b) What is the purpose?: _____

11. Have fuel top-up slips been obtained (oil and propane if applicable)?:

12. Is there evidence that the Seller has met any commitments contained in the Agreement of Purchase and Sale or otherwise?:

13. Obtain client's new contact information: _____

UNDERTAKINGS

14. Have I received appropriate Undertakings (where applicable) with respect to each of the following?:

- Release of Mortgage(s) _____
- Section 116 Income Tax Act (Non-Resident Seller) _____
- Builders' Lien Holdback _____
- Deficiency or other Holdback _____