



The Agreement of Purchase and Sale; Unveiled

Writing

An agreement to purchase land must be in writing otherwise it is unenforceable (S. 4 of the *Statute of Frauds*).

Chattels / Fixtures

Chattels: It is important to list the chattels (movable property) that are included in the sale such as a refrigerator, oven, microwave, washer and dryer. Unless specifically listed in the Agreement of Purchase and Sale, chattels are deemed not be included in the transaction.

Fixtures: These are chattels that are affixed to the house such as a chandelier and curtain rods and are automatically sold with the house unless they are excluded in the Agreement of Purchase and Sale.

Spousal Consent

If the owner is married his/her spouse must enter into the Agreement of Purchase and Sale even if the spouse is not a registered owner of the property and must confirm that he/she will execute the transfer or deed to release their *Family Law Act* interest, which provides that no spouse can sell a home without their spouses consent (some exceptions apply).

Offer Conditional on the Sale of the Purchaser's Home

If a purchaser makes an offer conditional on the sale of their home and then waives the condition, they must complete the purchase transaction regardless of whether their own sale is completed. Upon receiving a binding offer, the purchaser must waive the sale condition and proceed with the purchase.

Conditions

Typically a purchaser is given five to ten days to waive a condition. It is important to note that, unless otherwise stated in the Agreement of Purchase and Sale, silence is deemed to be an acceptance. Therefore if the condition is to be satisfied on a Friday and the Purchaser doesn't waive the condition and doesn't try to extend the condition, then he/she is deemed to have waived the condition.

Delivery of Documents

If a vendor has any documents related to the property such as a survey, they must deliver them to the purchaser, if requested. However, a vendor does not have to provide a document if they do not have a copy of that document in their possession (e.g. an updated survey). The onus is actually on the purchaser to obtain the document at their own cost.

Weekends/Holidays

A purchase and sale transaction cannot close on a Saturday, Sunday, or on a statutory holiday, because the land registry offices are not opened and no documents can be registered on those days whether electronically or by hand.

Insurance

In Ontario, unless otherwise stated, any risk of loss or damage to the building is on the purchaser as beneficial owner (from the date the Agreement of Purchase and Sale is signed). Normally the Agreement of Purchase and Sale contains a clause that provides that if damage occurs to the property between the date of the agreement and the date of closing, the purchaser has the right to cancel the agreement and demand the return of the deposit or can claim the proceeds of insurance and complete the transaction.

Pre-Closing Inspection

The common belief is that a purchaser does not have a right to carry out a re-inspection prior to closing unless that right is set out in the Agreement of Purchase and Sale. There is however an Ontario case involving an application under the *Vendors and Purchasers Act*, *Harkness v. Conney*, where the judge ruled that the purchaser had a right of inspection prior to closing. Despite this court decision, it is prudent to include a right of re-inspection in the Agreement of Purchase and Sale if the purchaser wishes to re-visit the property prior to closing.

Language

Written words as a general rule prevail over numbers. If the purchase price is written out as Three Hundred Thousand Five Hundred Dollars and the dollar amount indicated is \$375,000.00, the offer will be for \$350,000.00.

Initialling Pages

Normally purchasers and vendors must initial each page of the Agreement of Purchase and Sale except for the page where they sign. The reason for initialling pages is to prevent pages of the agreement being replaced after the agreement is signed. It is not a requirement to have all of the pages initialed, but good practice.