

## **ALL THOSE IMPORTANT DOCUMENTS AND DEADLINES ALONG THE WAY**

There are four basic property types which will require different documents and deadlines:

1. Existing Home - This is a home that has been previously lived in or owned.
2. New Home - This home is a home that is either already built or is being built for or by the purchaser.
3. Condominium - This property usually has a unit number, level number and in some cases a separately deeded parking spot. These units are managed by Halifax County Condominium Corporations. Each corporation has a number.
4. Mobile Home - Other names are trailer and mini home. These homes are either on a rented "pad" or on its own property but they are not on a foundation and there will be no location certificate.

### **DEADLINES**

Most deadlines can be found in the Agreement of Purchase and Sale (whether completed by an agent or the solicitor).

When you receive an agreement, the most important thing you should do is to read the whole agreement, along with any counter offers, Schedule "A"s, and the Property Condition Disclosure Statement. Make sure all parties have signed the agreement, and the counter offer. Write down the financing date, inspection date and home insurance date. Confirm whether or not these dates have passed or not. In most cases once you have received an agreement from a real estate agent all conditions have been met and these date have passed, but you should confirm that in any event. If the dates have not yet passed, then confirm with your client that they are in the process of completing these conditions. If these conditions are not met then notice is to be forwarded to the vendor or the vendor's agent or solicitor in order to have the conditions extended or, if the results are not satisfactory, to have the agreement rendered null and void.

If these dates have passed without notice to the contrary, they are deemed to be satisfactory and the agreement is considered to be firm.

### **Title Search**

The deadline to search the title to the property is usually 10-14 days, but you must read the agreement to know exactly how long that time is. The deadline does not usually start as of the date that the offer is accepted. However, I have had some transactions where this deadline started "from the date of acceptance".

In most cases, the deadline timing starts once you receive the title information from the vendor's solicitor. When ordering your title search, it is a good practice to request that the search be returned to you or your lawyer 1-2 days prior to the deadline so there is no last minute rush.



Another tip is to order your search when you open the file or when all conditions have been met, even if you have not received any title information. That way your searcher can probably get the search done early and the search deadline will not be missed.

### **Closing Date**

This is obviously a very important date to confirm. Remember to check the counter offer for any changes. This will allow you to schedule your work so that when it is the day of closing there is nothing to be done but to tender the documents and/or type the cheques.

## **DOCUMENTS**

There are various documents required to complete each transaction. There are some documents that will be required for every transaction, while other are specialized and will only be required for specific transactions. I am going to cover the most basic documents that are seen on a day-to-day basis.

### **Checklists**

This document is for the file only. Whether you are just learning property or have a lot of experience in the field, these checklists will save you time as long as you use them. The information in the checklist can be found in the file, and saves time by having all the information in the front of the file. I use three different types of checklists. One for a purchase, one for a sale and one for a mortgage. As you will see, they are basically the same but with specific differences.



Purchase Checklist

Closing date	Date File Opened	File Number
Lawyer responsible	Secretary	Legal Fee Quoted
Company or Military	Purchase Price	Deposit
Financing Date	Objection date	Oil Adjustment
Rent Adjustment	Condo Fees	Estoppel Certificate
Adjustments calculated	Adjustments confirmed	Keys
Vacant possession	Initial interview	Final Interview
Client Name, address and Phone #	Purchaser's Agent and Phone #	Vendor Agent and #
Vendor Lawyer and Phone #	Vendor's Names	
Special Instructions	Undertakings	How Purchasers are taking title

Survey Information - re-certified, new, property staked, rely on existing.

Title - Search requested, reviewed, objection letter sent

Municipal - tax roll number, district, amount, arrears, betterments, bulk assessment, zoning, tax certificate requested and received.

Insurance - Agent, address, phone, Company, policy number, amount , effective date, expiry date, loss payable.

Mortgages - Branch, instructions received and reviewed, funds requested, mortgage report, mortgage payouts.

Documents - power of attorney required, corporate resolutions, deed received, deed recorded, mortgage reviewed, mortgage recorded.

New Home Warranty information.



PURCHASER:

CLOSING DATE: \_\_\_\_\_

Name: \_\_\_\_\_ Date: \_\_\_\_\_ File No.: \_\_\_\_\_  
 Client: \_\_\_\_\_ Lawyer: \_\_\_\_\_ Secretary: \_\_\_\_\_  
 Property: \_\_\_\_\_ Fee: \_\_\_\_\_ Comp or Milt: \_\_\_\_\_  
 Present Address: \_\_\_\_\_ Pur. Price: \_\_\_\_\_ Dep: \_\_\_\_\_  
 Billing Address: \_\_\_\_\_ Fin. Date: \_\_\_\_\_ Obj. Date: \_\_\_\_\_  
 Home: \_\_\_\_\_ Work: \_\_\_\_\_ Oil Adj.: \_\_\_\_\_ Rent Adj.: \_\_\_\_\_  
 P Agent: \_\_\_\_\_ Phone: \_\_\_\_\_ Condo.: \_\_\_\_\_ Est. Cert.: \_\_\_\_\_  
 V Agent: \_\_\_\_\_ Phone: \_\_\_\_\_ Adj. Cal.: \_\_\_\_\_ Adj. Con.: \_\_\_\_\_  
 V Lawyer: \_\_\_\_\_ Phone: \_\_\_\_\_ Keys: \_\_\_\_\_ Vac. Pos.: \_\_\_\_\_  
 Vendor: \_\_\_\_\_ Init. Int.: \_\_\_\_\_ Fin. Int.: \_\_\_\_\_

SPECIAL INSTRUCTIONS: \_\_\_\_\_

UNDERTAKINGS: \_\_\_\_\_

PURCHASERS TAKING TITLE: \_\_\_\_\_

SURVEY: Recert. \_\_\_\_\_ New Cert. \_\_\_\_\_ Staking \_\_\_\_\_ Rely on Existing \_\_\_\_\_ Survey Plan \_\_\_\_\_ Surveyor \_\_\_\_\_  
 No Survey Required \_\_\_\_\_ Advised Client Subject to Survey \_\_\_\_\_

TITLE: Req. Search \_\_\_\_\_ Search Rec'd \_\_\_\_\_ Search Reviewed \_\_\_\_\_  
 Obj. Sent \_\_\_\_\_ Cards Filed \_\_\_\_\_ Search Filed \_\_\_\_\_  
 Title Notes \_\_\_\_\_  
 Status Corp. Vendor \_\_\_\_\_ Residential Status Vendor \_\_\_\_\_

MUNICIPAL: Tax Roll No. \_\_\_\_\_ District \_\_\_\_\_ Amount \_\_\_\_\_  
 Arrears \_\_\_\_\_ Betterments \_\_\_\_\_ Bulk Assess. \_\_\_\_\_  
 Zoning \_\_\_\_\_ Work Order \_\_\_\_\_ Conf. Use \_\_\_\_\_  
 Tax Cert Req'd \_\_\_\_\_ Tax Cert. Rec'd \_\_\_\_\_

INSURANCE: Agent \_\_\_\_\_ Address \_\_\_\_\_  
 Phone \_\_\_\_\_ Company \_\_\_\_\_  
 Policy No. \_\_\_\_\_ Amount \_\_\_\_\_  
 Effective Date \_\_\_\_\_ Expiry Date \_\_\_\_\_  
 Loss Payable (1) \_\_\_\_\_  
 (2) \_\_\_\_\_

MORTGAGES: Branch \_\_\_\_\_ Inst. Rec'd \_\_\_\_\_ Inst. Rev'd \_\_\_\_\_  
 Funds Req'd \_\_\_\_\_ Mortgage Report \_\_\_\_\_  
 Mortgage Payouts \_\_\_\_\_

DOCUMENTS: Power of Attorney Required \_\_\_\_\_ Corp. Resolutions \_\_\_\_\_  
 Deed Received \_\_\_\_\_ Deed Recorded \_\_\_\_\_  
 Mortgage Reviewed \_\_\_\_\_ Mortgage Recorded \_\_\_\_\_

NEW HOME NHWP No. \_\_\_\_\_ Occ. Permit \_\_\_\_\_  
 CONST.: Mechanic's Lien \_\_\_\_\_ Vendor \_\_\_\_\_ Purchaser \_\_\_\_\_ Amount \_\_\_\_\_  
 Holdback \_\_\_\_\_ Vendor \_\_\_\_\_ Purchaser \_\_\_\_\_ Amount \_\_\_\_\_





## Vendor Checklist

The vendor checklist is opposite to the purchase checklist.

Closing date	Date File Opened	File Number
Lawyer responsible	Secretary	Legal Fee Quoted
Company or Military	Purchase Price	Deposit
Financing Date	Objection date	Oil Adjustment
Rent Adjustment	Condo Fees	Estoppel Certificate
Adjustments calculated	Adjustments confirmed	Keys
Vacant possession	Initial interview	Final Interview
Client Name, address and Phone #	Purchaser's Agent and Phone #	Vendor Agent and #
Vendor Lawyer and Phone #	Vendor's Names	Special Instructions
Undertakings		

Municipal - tax roll number, district, amount, arrears, betterments, bulk assessment, zoning, tax certificate requested and received.

Mortgages - Branch, Fax number, phone number, contact, mortgage payouts.

Documents - power of attorney required, corporate resolutions, HST applicable

Enquiries - All vendors present, Grant ROW, Resident of Canada, Marital Status, Fixtures, Insurance.

Instructions for proceeds

How Purchasers are taking title

New Home Warranty Information



VENDOR:

CLOSING DATE:

Name: \_\_\_\_\_ Date: \_\_\_\_\_ File No.: \_\_\_\_\_  
 Client: \_\_\_\_\_ Lawyer: \_\_\_\_\_ Secretary: \_\_\_\_\_  
 Property: \_\_\_\_\_ Fee: \_\_\_\_\_ Comp or Milt: \_\_\_\_\_  
 Present Address: \_\_\_\_\_ Pur. Price: \_\_\_\_\_ Dep: \_\_\_\_\_  
 Billing Address: \_\_\_\_\_ Fin. Date: \_\_\_\_\_ Obj. Date: \_\_\_\_\_  
 Home: \_\_\_\_\_ Work: \_\_\_\_\_ Oil Adj.: \_\_\_\_\_ Rent Adj.: \_\_\_\_\_  
 V Agent: \_\_\_\_\_ Phone: \_\_\_\_\_ Condo.: \_\_\_\_\_ Est. Cert.: \_\_\_\_\_  
 P Agent: \_\_\_\_\_ Phone: \_\_\_\_\_ Adj. Cal.: \_\_\_\_\_ Adj. Con.: \_\_\_\_\_  
 P Lawyer: \_\_\_\_\_ Phone: \_\_\_\_\_ Keys: \_\_\_\_\_ Vac. Pos.: \_\_\_\_\_  
 Vendor: \_\_\_\_\_ Init. Int.: \_\_\_\_\_ Fin. Int.: \_\_\_\_\_

SPECIAL INSTRUCTIONS:

UNDERTAKINGS:

MUNICIPAL: Tax Roll No. \_\_\_\_\_ District \_\_\_\_\_ Amount \_\_\_\_\_  
 Arrears \_\_\_\_\_ Betterments \_\_\_\_\_ Bulk Assess. \_\_\_\_\_  
 Zoning \_\_\_\_\_ Work Order \_\_\_\_\_ Conf. Use \_\_\_\_\_

MORTGAGES: Branch \_\_\_\_\_ Payout \_\_\_\_\_ Inst. Rev'd \_\_\_\_\_  
 Assumption \_\_\_\_\_ Covenants \_\_\_\_\_  
 Other \_\_\_\_\_

DOCUMENTS: Power of Attorney Required \_\_\_\_\_  
 Deed \_\_\_\_\_ Bill of Sale \_\_\_\_\_ Survey \_\_\_\_\_ Corp. Resolutions \_\_\_\_\_ Survey \_\_\_\_\_  
 Other \_\_\_\_\_

ENQUIRIES: All Vendors Present at Closing \_\_\_\_\_  
 Grant RoW or Portions of Property, Expropriations, etc. \_\_\_\_\_  
 Res. of Can. \_\_\_\_\_ Marital Status \_\_\_\_\_  
 Fixtures \_\_\_\_\_  
 Insurance \_\_\_\_\_

INSTRUCTIONS FOR PROCEEDS:

PURCHASERS TAKING TITLE:

NEW HOME NHWP No. \_\_\_\_\_ Occ. Permit \_\_\_\_\_  
 CONST.: Mechanic's Lien \_\_\_\_\_ Vendor \_\_\_\_\_ Purchaser \_\_\_\_\_ Amount \_\_\_\_\_  
 Holdback \_\_\_\_\_ Vendor \_\_\_\_\_ Purchaser \_\_\_\_\_ Amount \_\_\_\_\_



## Mortgage Checklist

The mortgage check list is similar to a purchase but without the vendor information.

Closing date	Date File Opened	File Number
Lawyer responsible	Secretary	Legal Fee Quoted
Company or Military	Adjustments calculated	Adjustments confirmed
Initial interview	Final Interview	Client Name, address and Phone #
Special Instructions	Undertakings	

Survey Information - re-certified, new, property staked, rely on existing.

Title - Search requested, reviewed, objection letter sent

Municipal - tax roll number, district, amount, arrears, betterments, bulk assessment, zoning, tax certificate requested and received.

Insurance - Agent, address, phone, Company, policy number, amount , effective date, expiry date, loss payable.

Mortgages - Branch, instructions received and reviewed, funds requested, mortgage report, mortgage payouts.

Documents - power of attorney required, corporate resolutions, mortgage reviewed, mortgage recorded.

New Home Warranty information.

As you can see there is a lot of information that can be kept on these lists that will save quite a bit of time.



MORTGAGE:

CLOSING DATE: \_\_\_\_\_

Name: \_\_\_\_\_ Date: \_\_\_\_\_ File No.: \_\_\_\_\_  
 Client: \_\_\_\_\_ Lawyer: \_\_\_\_\_ Secretary: \_\_\_\_\_  
 Property: \_\_\_\_\_ Fee: \_\_\_\_\_ Comp or Milt: \_\_\_\_\_  
 Present Address: \_\_\_\_\_  
 Billing Address: \_\_\_\_\_  
 Home: \_\_\_\_\_ Work: \_\_\_\_\_  
 \_\_\_\_\_ Phone: \_\_\_\_\_  
 \_\_\_\_\_ Phone: \_\_\_\_\_ Adj. Cal.: \_\_\_\_\_  
 \_\_\_\_\_ Phone: \_\_\_\_\_  
 \_\_\_\_\_ Init. Int.: \_\_\_\_\_ Fin. Int.: \_\_\_\_\_

SPECIAL INSTRUCTIONS: \_\_\_\_\_

UNDERTAKINGS: \_\_\_\_\_

SURVEY: Recert. \_\_\_\_\_ New Cert. \_\_\_\_\_ Staking \_\_\_\_\_ Rely on Existing \_\_\_\_\_ Survey Plan \_\_\_\_\_ Surveyor \_\_\_\_\_  
 No Survey Required \_\_\_\_\_ Affidavit \_\_\_\_\_ Survey Plan \_\_\_\_\_  
 Advised Client of Mortgagee's Requirements \_\_\_\_\_

TITLE: Req. Search \_\_\_\_\_ Search Rec'd \_\_\_\_\_ Search Reviewed \_\_\_\_\_  
 Obj. Sent \_\_\_\_\_ Cards Filed \_\_\_\_\_ Search Filed \_\_\_\_\_  
 Title Notes \_\_\_\_\_

MUNICIPAL: Tax Roll No. \_\_\_\_\_ District \_\_\_\_\_ Amount \_\_\_\_\_  
 Arrears \_\_\_\_\_ Betterments \_\_\_\_\_ Bulk Assess. \_\_\_\_\_  
 Zoning \_\_\_\_\_ Work Order \_\_\_\_\_ Conf. Use \_\_\_\_\_  
 Tax Cert Req'd \_\_\_\_\_ Tax Cert. Rec'd \_\_\_\_\_

INSURANCE: Agent \_\_\_\_\_ Address \_\_\_\_\_  
 Phone \_\_\_\_\_ Company \_\_\_\_\_  
 Policy No. \_\_\_\_\_ Amount \_\_\_\_\_  
 Effective Date \_\_\_\_\_ Expiry Date \_\_\_\_\_  
 Loss Payable (1) \_\_\_\_\_  
 (2) \_\_\_\_\_

MORTGAGES: Branch \_\_\_\_\_ Inst. Rec'd \_\_\_\_\_ Inst. Rev'd \_\_\_\_\_  
 Funds Req'd \_\_\_\_\_ Mortgage Report \_\_\_\_\_  
 Mortgage Payouts \_\_\_\_\_  
 Outstanding Releases (1) \_\_\_\_\_  
 (2) \_\_\_\_\_  
 (3) \_\_\_\_\_

DOCUMENTS: Power of Attorney Required \_\_\_\_\_ Corp. Resolutions \_\_\_\_\_  
 Mortgage Reviewed \_\_\_\_\_ Mortgage Recorded \_\_\_\_\_

NEW HOME NHWP No. \_\_\_\_\_ Occ. Permit \_\_\_\_\_  
 CONST.: Mechanic's Lien \_\_\_\_\_ Vendor \_\_\_\_\_ Purchaser \_\_\_\_\_ Amount \_\_\_\_\_  
 Holdback \_\_\_\_\_ Vendor \_\_\_\_\_ Purchaser \_\_\_\_\_ Amount \_\_\_\_\_





## **Search Request**

Usually every office has their own form for requesting a search. You should order your search as soon as possible to avoid any last minute problems. If the search is ordered early enough, and a problem arises there will still often be sufficient time to resolve the problem before the closing date. In order to help your title searcher, you should give them as much information as you possibly can. You may not think it is relevant but it may be something that will help the searcher search the property more easily.

Make sure you let your searcher know when you need the search back and also the objection and closing dates. That way, they will know in what priority to place your search.

The following is information that they will need in order to start the search:

Lot number and subdivision name  
Civic address of the property  
Vendors and purchasers full names (not initials)  
The Book and Page number of the vendor's deed  
Assessment account number

## **Chattel Search**

This search is conducted at the Personal Property Security Registry and each search will cost \$7.00.

## **Tax Certificate Request**

You will need the assessment account number to order the tax certificate. To get this number you will need to call Provincial Assessment (424-5225). The tax certificate should be ordered as soon as the file is opened so that you will receive the certificate in time to complete the adjustments and also to confirm what, if any, outstanding charges are on the account. Halifax Regional Municipality will not give tax information over the phone or via fax so you have to either mail or drop off your request. In your letter, you should include the owners' names, assessment account number, civic number, street name and lot number along with a cheque to cover the cost of the tax certificate. If you are ordering a certificate from another municipality, call them first to confirm the cost of the tax certificate because each municipality is different.

## **Location Certificate**

If your client requires a new location certificate, order it as soon as possible. Sometimes a new certificate will be required to confirm that all buildings are fully located on the property and that the set back requirements, if any, have been complied with.



### **Municipal Clearance Letter**

This letter will confirm that the property complies with zoning requirements and other municipal regulations. They usually cost \$60.00 and available from the planning and development office of each municipality. In HRM, zoning clearance letters are only issued for properties which have 4 or more units.

### **Request for Estoppel Certificate**

This letter is sent to the Condominium Corporation requesting an estoppel certificate. You will have to call the Condo Corp to see if there is a charge and if so how much. The estoppel certificate will show if there are any outstanding charges that the vendor is responsible for. Make sure that your lawyer sees this certificate. If you order the certificate make sure that you send a copy to the other lawyer, and, if necessary, call the other lawyer and request a copy. To find out who to contact to order the estoppel certificate, call the Registry of Condominiums at 424-5758.

### **Mortgage payout request**

This letter is sent to the bank early in the transaction. If the closing date moves up you can always call or fax the bank for a new payout. If the closing is delayed, add the per diem amount for every day that the closing is delayed.

### **Power of Attorney**

This document is used if someone will not be in the area to execute the documents on closing. For example if your client is military and they will be at sea or moving to the area after the closing but their spouse will be in the area for the closing, then a power of attorney will be given to the spouse that will attend at your firm to execute the documents. It allows a person to sign as a lawful attorney for the absent person with respect to the matters as set out in the power of attorney. If a power of attorney is required, it will have to be recorded at the Registry of Deeds and it will require an affidavit of execution.

### **Authorization**

This allows the firm to receive and pay any funds with respect to the sale, purchase, or mortgage on behalf of the client. It also directs that all funds are to be made payable to the firm with respect to the transaction. It authorizes the firm to accept undertakings of a Barrister and Solicitor to provide a release in lieu of receiving, prior to or at the closing, the release. The clients acknowledge that the firm is acting on behalf of themselves and on behalf of the mortgagee and could result in a conflict of interest. The client acknowledges this and waives the option of independent legal advice with respect to the firm acting for both the client and the mortgagee.



## **Deeds**

You will have to read the agreement of purchase and sale to find out the type of deed that is required for the transaction.

**Warranty Deed** - This deed warrants title to the property and is used in most sales.

**Quit Claim Deed** - This deed is usually used by bank and financial institutions and also in divorces. The vendor releases their interest in the lands.

**Trustee's Deed** - This deed is used in the case of bankruptcy or if the owner is deceased. The executors/trustees of the will or bankrupt will execute this deed.

## **Deed transfer tax form**

This form is filled out and sent to the Registry of Deeds along with the Deed, mortgage and the cheque to cover the cost of the deed transfer tax. The deed transfer tax for HRM is 1.5% of the purchase price (less HST). Each municipality differs so you will have to call each different municipality to confirm the percentage for the deed transfer tax. Some municipalities do not have this tax but a deed transfer tax form is still required. This form is done in triplicate. HRM no longer requires the first page of the deed and the legal description to be attached to the deed transfer tax form. I usually have the purchaser sign this form but it can be signed by the lawyer, as solicitor for the purchaser.

## **Mortgages**

There are several different types of mortgages. Almost every bank has a different mortgage form.

A vendor-take back mortgage is a mortgage wherein the vendor gives the purchaser a credit on the purchase price in exchange for a mortgage of the same amount. You will receive all of the pertinent information from the client, lawyer or vendor regarding the amount, interest, payments and dates which will enable you to complete the mortgage document.

In the case of a mortgage from a financial institution, you will receive a package of mortgage documents and instructions. Read these instructions very carefully as these instructions will tell you everything that is required by the bank and what information is to be put into the mortgage. With respect to the location certificate some banks want a recent location certificate so you will have to read the instructions to confirm what is the oldest the location certificate can be.

In some mortgage instructions, there will be two different principle and interest payments. The payment that is to be put into the mortgage will be the monthly principle and interest payment. The other information that will be required is the interest adjustment date, interest rate, first and last payment dates.



You also have to include a legal description either as Schedule "A" or "B". Read the mortgage to find out which one it is. Also, the document will require an affidavit of execution and affidavit of spousal status.

Some mortgages will require a preliminary report to be faxed to the bank prior to the closing date; others will have a "request for mortgage funds" that will have to be faxed to the bank prior to the closing date. Check your instructions carefully because some of these have a deadline wherein they have to be faxed to the bank no later than 48 hours prior to the closing or you may not receive your mortgage funds in time.

### **General Security Agreement**

These agreements are usually filed by the bank or financial institution in lieu of the chattel mortgage. These documents will cost \$20 + \$7.00 a year to register.

### **Affidavit of Spousal Status**

This document confirms that the persons executing it are of the age of 19 years, their marital status and their residency status.

### **Affidavit of Execution**

This certifies that the witness was present when the document was executed.

### **HST Certificates**

There are different types of certificates. There is one that is used for an existing home and one for a vacant lot. The certificates are executed by the vendor, and they certify that there is no HST payable on the property. These are not used for new home construction because HST is applicable on those types of properties. Vendors who are not in the business of buying and selling vacant lots also will execute the HST certificate for vacant land. Vendors who are in the business of buying and selling lots will not execute this document because HST is applicable. Your lawyer will advise whether or not the certificate should be executed.

### **Statutory Declaration**

These are signed statements which are often used for judgments but can also be used in other situations as directed by the lawyer.

### **Opening Letter to the other solicitor**

This letter advises the other solicitor that your firm has been retained to act on behalf of the Purchaser/Vendor. For a purchase, this letter will ask for the title information, a copy of the location certificate if one is available, confirmation that the vendor is a resident of Canada,





confirmation that the property is exempt from HST, confirmation that there will be an oil adjustment, if required, and cost of the oil adjustment. It will confirm that you will be ordering the tax certificate and also advise how your client wishes to take title. For a sale, the letter will include the title information, location certificate, confirmation that the vendor is a resident of Canada, and confirmation of the oil adjustment. The letter will also ask how the purchasers are taking title. You may not have all the information at the time that this letter is sent out so you may have to amend the letter to suit the occasion. If you do not know how your client are taking title then you can advise the other solicitor that you will let them know and then you can send a separate letter once you have the information.

### **Objection letter**

Once the title search is received back from the title searcher and the lawyer has reviewed it, there may be some items that the lawyer will want to object to. The most common are mortgages and judgments. But there may be other items which the lawyer will bring to your attention and will want in the letter. If there are no objections to the tile of the property, this letter will not be sent.

### **Closing letters**

These letters are sent to the other lawyer on the closing of the transaction. On a purchase you will include - your cheque to purchase the property, confirmation of all undertakings, and requests all the documents you require (i.e. Deed, authorization, keys, statutory declaration, power of attorney, oil top up slip, and any other document such as leases, and security deposits.) In the case of a sale the letter will include all of the items that are asked for in the purchase closing letter (i.e. Keys, deed, authorization, oil top off, power of attorney, statutory declaration, leases, security deposits and undertakings).

### **Mortgage Pay out letter**

This is the letter that will be forwarded to the bank on closing along with the cheque to pay out the mortgage. This letter also asks that the release be forwarded to the firm.

### **Letter to Assessment - Mobile**

As there is no deed to send to the Registry of Deed and no deed transfer tax form filled out, you will have to send a copy of the bill of sale with this letter to the Provincial Assessment in order to have the ownership changed. Include the make, model and serial number of the mobile, the date of purchase and the assessment account number.

### **Report to client on closing**

We always provide a closing report for the client. I include items such as: keys, certificate of title, statement of adjustments, statement of proceeds, statement of account, copy of mortgage, copy of mortgage pay out statement, copy of letter to payout the mortgage, copy of the real estate



commission statement, copy of letter(s) to pay out the real estate commission and any other receipts or information that the client may want or require.

### **Certificate of Title**

This certifies to the purchaser that the property is free from encumbrances and that the taxes are paid up to the date specified on the certificate. It also sets out specific items that are not certified by the law firm.

### **Letter to Real Estate Agents**

This letter is sent to the real estate companies along with their cheque to pay the real estate commission.

### **Letter to Tax Office**

If there are any outstanding taxes that need to be paid on closing you will use a letter similar to this to send to the tax payment to the tax office. Always include the address of the property and the tax account number. Also you can include the previous and new owners names but this is optional.

### **Report to the Bank**

Once the mortgage has been received from the registry you will have to fill out the mortgage report form and forward the report, original mortgage, tax certificate, location certificate, insurance particulars and any other information that the bank requires. This information will be found in the mortgage instructions.

### **Sending the release to the other lawyer**

Once the release of the mortgage is received from the bank, if a credit was given to the purchaser to record the release, then you can use this letter to enclose the release to the purchasers' lawyer which will fulfill the undertaking.

### **Condominiums**

When dealing with condominiums there are additional items to remember. There will be no location certificate for the unit. You will need a copy of the Declaration and By-laws, whether you are acting for the purchaser or vendor. (The vendor is required to forward a copy to the purchaser) You will also need to know whether the parking spot is conveyed with the unit. You should verify the status of the common fees so that an adjustment can be made on closing. The most important thing is to make sure that the unit is described properly. This information can be found in the Declaration and By-laws, confirm the proper description with your title searcher.

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## **New Home Construction**

This type of transaction can be a little more challenging. You will normally require a new home warranty certificate and occupancy permit. Also you will have to know whether the HST rebate is being assigned to the builder or not. This can be found in the agreement of purchase and sale. On closing there may be extras and deficiencies, so sometimes it is very difficult to complete the adjustments prior to the closing date. Check in the agreement of purchase and sale with respect to the mechanics' lien hold back. Confirm whether the vendor's solicitor or purchaser's solicitor will hold these funds. Also if there are deficiencies, who is to hold the deficiency hold back. The mechanics' lien hold back is 10% of the purchase price of the property and is to be held in trust for 45 days. On day 46 the purchaser's lawyer will conduct a subsearch of the property to confirm that there are no judgments registered against the property. Once that has been confirmed, the purchaser's lawyer will authorize the release of these funds. The deficiency hold back is usually held until the deficiencies are completed or if the vendor fails to complete the deficiencies within a reasonable amount of time, the lawyer may be entitled to release the funds to the purchaser so that the purchaser can complete the deficiencies.



## ADJUSTMENTS AND CLOSING THE TRANSACTION

### Statement of Adjustments

In each file I usually prepare a handwritten statement of adjustments and proceeds along with the typed adjustments and proceeds. I find that I can double check my numbers so that there are no mistakes in the calculations.

You will find the purchase price and deposit in the agreement of purchase and sale. In the case of a condominiums you usually will find the amount of the condo fees. You should confirm these fees with the condo corporation as sometimes the amount in the agreement is not correct.

On a new home construction the amount of the HST payable will be added to the purchase price

The tax information will be found on the tax certificate. The taxes that are paid will be added to the purchase price. If there are any arrears of taxes from previous tax years and interest that will be credit on the purchase price. To figure out the tax adjustment you take the total amount of taxes that are payable for the year divide it by the number of days in the year (365 or 366) and multiply that by the number of days that the vendor has owned the property. The tax year for HRM starts on April 1 of each year and runs to March 31 of the next year. There for you have to count from April 1 to the day of closing to find out how many days the vendor has owned the property. This tax adjustment will be a credit on the purchase price.

If the property is heated using oil then the cost of a full tank of oil is added to the purchase price if the oil tank is topped off. If the oil tank is not topped off then this amount is not added to the purchase price and the oil that is in the tank is considered to be included in the purchase price. A normal oil tank is 250 gallons (909 litres). You will have to call the oil company to confirm the size of the tank and also what the current price per litre is for oil. Oil prices fluctuate a lot so do not rely on information that may be two weeks or more old. I have seen oil jump 3 to 8 cents a liter in just one month. The oil company will also confirm how much a full tank of oil costs including HST.

Rental properties will require adjustments for lease payments and security deposits. Any rents that have been paid from a tenant of the property will be added to the purchase price and a credit for the amount of days that the purchaser will own the property in the month will be given to the purchaser.

The amount of the deposit will be found in the agreement of purchase and sale and is given to the purchaser as a credit on the purchase price. Make sure that the deposit is correct. You can do this by checking the counter offer to see if it has been increased.





Any sewer or betterment charges that are outstanding on the property can be given to the purchaser as a credit on the purchase price. If this is done then it is the purchaser's responsibility to pay those charges on closing.

A credit can be given to the purchaser to record the vendor's release of mortgage. The cost of a release is usually \$42.00, \$40 plus \$1.00 per page, . In the case of a partial release, the cost depends on the length of the description, but is usually \$43.00.

A statutory declaration, if required, can be recorded by the purchaser. The vendor will give the purchaser a credit to record this document. If a power of attorney is to be recorded, then a credit can also be given for this charge.

To complete the adjustments you will have to add all of the items such as oil, taxes, rent etc. to the purchase price then subtract the credits that are given to the purchaser and you will end up with the balance due to vendor.

Security deposits can be a little tricky, but if you do one step at a time then you should have a fairly easy time of it. The vendor should supply a list of tenants, the amounts of security deposits received from each tenant and also when the deposit was received. Interest is calculated on a cumulative basis. Interest is added for each year before calculating the interest for the next year. The following is a chart of interest rates that apply to certain years:

7% - up to January 1992

3% - From January 1992 to January 1995

1% - From January 1995 to present

Find out how long the tenant has been in the unit. Multiply the deposit by the interest rate and add that to the security deposit to get a new amount. Then multiply this new amount by the interest rate and add that amount to the new amount. Continue this for each full year. To figure out the days you have to find the per diem and multiply that by the number of days in the year that the tenant has been in the unit.

Example: Security Deposit is \$250.00. The Tenant has been living in the unit since January 1995.

$\$250.00 \times 1\% = \$2.50$  Interest from January 1995 to December 1995

$\$252.50 \times 1\% = \$2.53$  Interest from January 1996 to December 1996

$\$255.03 \times 1\% = \$2.55$  Interest from January 1997 to December 1997

$\$257.58 \times 1\% = \$2.58$  Interest from January 1998 to December 1998

$\$260.16 \times 1\% = \$2.60$  Interest from January 1999 to December 1999

Total security deposit plus interest is \$262.76



If the tenant has only been in the unit up to the end of October then divide the whole year's interest by 366 or 365 and multiply it by the number of days from January to October (304 days)

$\$2.60 / 365 \times 304 = \$2.17$  interest from January to October.

This may become tricky if you have to change the interest rate from the previous year. Just take the previous year amount and multiply that by the new interest rate.

### **Statement of Proceeds**

This can also be called the trust statement as it shows the client how much money came in and where it was disbursed. To complete this statement you will need the following:

Amount due to vendor

Amount of the municipal deed transfer tax (Purchase only)

Cost of surveyors fees (if location certificate was ordered)

Amount of property taxes and outstanding charges to be paid (if any)

Cost of recording documents- Statutory declaration, deed, mortgage, power or attorney, release etc.

Cost of title search

\*Legal fees

\*Cost of tax certificate

\*Courier fees

\*Photocopies

\*Long distance

\*Fax Charges

HST on the items with an asterisk above

Once you have all these numbers you can then finalize the statement. Add all these items up and subtract the amount of funds that the bank will be forwarding. The result will be the amount that the client will have to bring in.

In the case of a sale you will need the following:

Amount of mortgage payout

Cost of recording any documents (if required)

Amount of the real estate commission (if applicable)

\*Legal fees

\*Cost of tax certificate

\*Courier fees

\*Photocopies

\*Long distance

\*Fax Charges

HST on the items with an asterisk above



Add these items up and subtract them from the balance due to vendor. The result is the amount that will be paid to the vendor on closing. If the amount of these items is more than the amount due to the vendor then the vendor will have to bring in the difference. Also, if there is a mechanics' lien hold back or deficiency hold back, this money will be kept in the trust account until it is authorized to be released. The difference can be released to the vendor on closing but confirm that the amount for the lien and deficiency hold backs are in the trust account and the amount of each hold back.

I usually write all undertakings and hold backs on the outside front cover of the file so that I do not have to go through the whole file to find out what hold backs or undertakings there are.

### **Closing the Transaction**

I try to have all documentation, letters etc. ready for the closing day. This way I only have to tender the documents and write cheques on the closing day. This practice is especially useful in the busy spring and summer months.

On a purchase file, you have to pick up the mortgage funds from the bank and also receive the funds from the client. Once the client has executed the documents, and conducted a satisfactory pre-closing inspection of the property, you can then release the funds to the vendor's solicitor.

Once you receive the deed, read it over to make sure that your clients are described properly. If the deed is correct, check the legal description against the legal description that was forwarded by the vendors' solicitor to confirm it is the same. A sub-search should be completed at the Registry of Deeds.

You should prepare the deed, mortgage, statutory declaration, power of attorney and any other documents to be sent to the Registry of Deeds. The deed will require an executed deed transfer tax form (in triplicate), the cheque for the deed transfer tax (if applicable), and a cheque for the cost of recording the documents. The documents will cost \$40 plus \$1 per page to record. You do not count the backer as this will not be recorded at the registry, unless part of the document is on the same page, i.e. the affidavit of execution. Also remember that one page that is double sided will cost \$2 to record.

This is also the time to send out the letter to the tax office to pay any taxes that may be outstanding, the letter to the surveyor to pay for the location certificate and any other disbursements that are required to be made on behalf of the purchaser.

On a sale file, you will forward the closing letter with all the documentation to the purchaser's solicitor.

Once you have received the funds from the purchaser's solicitor, you have to send funds to the bank to pay out the mortgage, send funds to the real estate companies to pay for the real estate commission and the balance will go to your client with the exception of any hold backs that are required. In some cases, you will send the clients funds to their bank on their behalf.



For a mortgage file, you will receive the funds from the bank, pay out the mortgage and any other disbursements as required, and record the mortgage.

Do not forget to confirm that funds are in trust for hold backs and for recording the release.

Attached are numerous precedents for your consideration.

**Laurinda Desrochers**  
**December 1, 1999**

