

REAL ESTATE FOR LEGAL SECRETARIES & PARALEGALS

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MUNICIPAL DEED TRANSFER TAX

INTRODUCTION

Nova Scotia has approximately 67 municipal units, and about half of them exact a tax upon transfer of real property. The cities of Halifax, Dartmouth, and Sydney have special provisions authorizing collection of the tax in their respective City Charters. The County of Halifax has a special Act authorizing deed transfer tax, as has the Town of Bedford. All other municipal units operate pursuant to **An Act to Authorize a Municipal Land Transfer Tax.**

The rate of tax payable varies in each municipal unit, and I have attached a list of the Tax Collectors and the Deed Transfer Tax payable in each unit as Appendix "A".

The **Town of Bedford** also has an exception in that deed transfer tax payable on raw land is charged at the rate of $1\frac{1}{2}$ percent on the total purchase price of the raw land be it under or over \$100,000.00.

DEFINITIONS

(a) **"Assessor"** means the Regional Director of Assessment of the Province of Nova Scotia having responsibility for the municipal unit.

(b) **"Deed"** means any instrument or writing, other than a mortgage or lease, not testamentary in character, whereby any right or power in respect of any kind of real property is absolutely conveyed,

transferred, assigned or vested in any person;

(c) **"Grantee"** means the person to whom real property is transferred by deed for value or otherwise;

(d) **"Grantor"** means the transferor or the person who transfers real property by deed for value;

(e) **"Person"** includes a corporation and the heirs, executors, administrators or other legal representatives of a person;

(f) **"Registrar"** means the Registrar of Deeds for the municipal unit;

(g) **"Registry"** means the Registry of Deeds for the municipal unit;

(h) **"Sale Price"** means the gross sale price of the real property transferred which shall be the sum of the actual cash paid, property exchanged, given or bartered, past obligations cancelled or satisfied, purchase money obligations given, if any, and the real amount of all liens, mortgages, and other encumbrances under and subject to which the sale is made;

(i) **"Tax"** means the tax levied, assessed or imposed.

(j) **"Transfer"** means a transaction whereby real property situate wholly or in part within the municipal unit is transferred or conveyed by deed, for value;

(k) **Value"** means the sale price.

TAX

Deed Transfer Tax is payable on transfers of real property. For a transfer to be taxable, it must be pursuant to a sale; that is, for valuable consideration.

WHEN PAYABLE

(a) The tax shall be paid by the grantee named in the deed and shall be due and payable by him at the time of making of the transfer.

(b) Immediately after the transfer is made the grantee shall file with the Collector an affidavit of the transfer, in triplicate, setting for the true, complete and actual value thereof, the names of the parties, the location of the real property and such other information as therein required, and at the same time shall pay the tax to the Collector. The said affidavit shall be made by the grantee, his solicitor or other agent duly authorized in that behalf and shall be in the form set out in Appendix "B" hereto or to the like effect.

Please note that the County of Halifax requires the
Assessment Account Number not the Municipal Account
Number to be typed on the Deed Transfer Tax Affidavit.

(c) Every person to whom is conveyed by deed, real property, whether such conveyance or transfer be for value or not or whether or not a tax thereon is due, the person shall file with the

Collector an affidavit made by the grantee, his solicitor or other agent duly authorized in that behalf, in triplicate, setting out the information required above.

(d) If the grantee claims an exception from the tax, then the facts on which the grantee claims the except must be set out on the affidavit. If the grantee is a registered Canadian Charitable organization, it shall give the number of its registration under the Income Tax Act (Canada).

(e) A transfer of real property by a company to one of its shareholders as a preliminary step to surrendering its certificate of incorporation under s. 123 of the Companies Act is taxable if the grantee gave valuable consideration for the transfer; such as (i) the giving up of the shareholders' right to a share of all the assets on a winding-up; and (ii) by the shareholders effectively assuming the mortgage outstanding on the real property transferred.

CERTAIN EXCEPTIONS

(a) No tax shall be payable in respect of any deed that merely confirms, corrects, modifies or supplements a deed previously given, if there is no actual consideration paid or to be paid for the execution of such supplemental deed.

(b) No tax shall be payable in those cases where the transfers are to grantees who are corporations, associations, trusts, community chest funds or foundation, organized exclusively for charitable, religious or educational purposes and no part of the net earnings of

such organizations inure to the benefit of any private shareholder or person or Her Majesty the Queen in right of Canada or in right of her Province of Nova Scotia or any Crown corporation and agency thereof or any City, town or municipality.

(c) No tax shall be payable if a transfer is by way of gift between spouses despite the fact that the property is transferred subject to a mortgage.

Interest

If the grantee does not pay the tax when it is due, he shall pay interest thereon until paid at the rate set by the municipal unit along with a penalty on any tax or portion thereof which remains unpaid after the time period set by the municipal unit from the date of transfer.

An example of a late payment charge by the City of Dartmouth is as follows:

| | |
|---|------------|
| Purchase price \$80,000.00 x 1.25 | \$1,000.00 |
| Date of Transfer December 31, 1987 | |
| Interest: | |
| 1/2 of .01% per month after 10 days of transfer - 15 months 7.50% | |
| Interest | 75.00 |
| Penalty: | |
| Rate 10.00% | |
| Time - 20 days after date of transfer | |

| | |
|-------------|------------|
| Penalty | 100.00 |
| TOTAL OWING | \$1,175.00 |

In this particular case, the City ignored the 10 days interest.

Lien

The tax, with interest and penalty, shall constitute a lien upon the portion of the real property situate within the City/Municipality/Town which is conveyed by the deed. The lien shall begin at the time when the tax is due and payable and shall continue until discharged by payment or in accordance with law, and shall be added to the next yearly rates thereon and may be collected therewith and with the same rights and remedies.

Certificate that tax is paid

Notwithstanding the provisions of the Registry Act, and amendments thereto, no deed conveying or transferring land, tenements or hereditaments, or any interest therein, shall be received for registration by the Registrar of Deeds unless it bears a certificate signed by the Collector stating that, as computed from the affidavit filed with him, such tax has been paid in full or that no tax is payable. A copy of the certificate is attached as Exhibit "C".

Summary

This presentation basically deals with the Municipalities/Towns/Cities that have Deed Transfer Tax. If there is no tax payable, some of the municipal units do not require a Deed

Transfer Tax Affidavit to be filed. If you are uncertain, it is always best to give the Tax Collector a call.

PROVINCIAL DEED TRANSFER TAX

Legislation which came into force on July 1, 1990, blessed our beautiful province with yet another tax, "PROVINCIAL DEED TRANSFER TAX". It is important that we make our purchasers, especially those purchasers who are coming from out of province, aware of not only Deed Transfer Tax but Provincial Deed Transfer Tax as this is a substantial cost to the purchaser on closing, and as we all know is in addition to Deed Transfer Tax.

WHO COLLECTS THE TAX?

The Department of the Attorney General is responsible for the collection of the Tax, and it is payable at the Registry of Deeds before a deed can be registered. Your cheque for the Provincial Deed Transfer Tax is payable to the Registry of Deeds.

INTEREST

If the tax is not paid within thirty days of the deed transfer an interest charge of 1.5% per month is charged on the tax outstanding.

To calculate the interest payable, the following formula is used:

$$\underline{\text{Days}} \times 0.15 \times \text{Total Deed Transfer Tax} = \text{Interest Payable}$$

WHAT PROPERTIES ARE TAXED?

Provincial Deed Transfer Tax is paid on the transfer of two classifications of real property - residential and commercial. The definition of residential and commercial properties are those in the Assessment Act, and the properties in question are taxed according to the classifications listed on the Assessment Roll.

Residential Properties - include any property that is used for residential purposes, ie: houses, apartments and cottages.

Commercial Properties - include all properties other than those classified as residential or resource.

Resource Properties - include farm property and forest land which is less than 50,000 acres. The residential portion of a farm property is not considered resource property. Thus, if the residential portion is valued in excess of \$100,000.00 it would be subject to the Provincial Deed Transfer Tax.

WHAT PROPERTIES ARE EXEMPT?

1. Property purchased by municipal governments and other local agencies (hospitals, school boards);
2. Resource property;
3. Registered Canadian Charitable Organization;

4. Property transactions between spouses;
5. Gifts;
6. Property transactions between wholly-owned subsidiaries and parent companies.

CALCULATION OF TAX

Residential Properties - On residential properties the tax is calculated at two percent of only the portion of the sale price which exceeds \$100,000.00.

Example

| | |
|-------------------|-------------|
| Sale Price | \$80,000.00 |
| Exemption | \$80,000.00 |
| Taxable Portion | Nil |
| Total Tax Payable | Nil |

Example

| | |
|------------|--------------|
| Sale Price | \$150,000.00 |
|------------|--------------|

| | |
|-------------------------------|--------------|
| Exemption | \$100,000.00 |
| Taxable Portion | \$50,000.00 |
| Total Tax Payable | \$1,000.00 |
| (2% of total taxable portion) | |

Commercial Properties - The two percent tax is applied to the **total sale price** of the property.

Mixed-Use Properties - Properties which for example, are part residential and part commercial are divided into two portions, and the classifications for each portion are determined by the current Assessment Roll and taxed accordingly.

Example

| | |
|-----------------------|--------------|
| Total Sale Price | \$300,000.00 |
| Residential class. | \$150,000.00 |
| Taxable Portion | \$50,000.00 |
| Commercial class. | \$150,000.00 |
| Taxable Portion | \$150,000.00 |
| Total Taxable Portion | \$200,000.00 |

Total Tax Payable \$4,000.00

CHANGE IN CATEGORY

Property can change from exempt to non-exempt and the reverse, depending on the status of the owner.

A forest lot owned by Scott Worldwide Inc. was assessed as "commercial" because Scott owned in excess of 50,000 acres of forest property. When a 152 acre lot was transferred to Peter Keddy the deed transfer tax form described the lot as a "resource" property and therefore exempt from tax. The Director of Assessment objected to this categorization and the case was heard by the Nova Scotia Municipal Board. The Board decided that while in Scott's ownership the property fell within the definition of "Commercial", while in the hands of Keddy, who owned less than 50,000 acres, it no longer came within that definition. Since the tax is not imposed until the property is conveyed, it changed category prior to the transaction being taxable. The Board found that if Scott should re-purchase the property it would once again fall within the definition of "commercial property" and the purchase would be a taxable transaction.¹

This ruling should be kept in mind when a solicitor is acting for parties with large land holdings, as a property purchased by them could change category from exempt to taxable, and the designation given a property by the assessor is not conclusive as to its status.²

1. Keddy v. Director of Assessment, unreported, April 8, 1991, N.S.M.B.-1-91-TT. (Nova Scotia Municipal Board).
2. Ibid.

DEFINITIONS

Your definitions are basically the same as those used in the Deed Transfer Tax portion of this presentation, and thus I will not reiterate them at this time.

Note

It is important to remember that if a purchaser is paying for example \$100,000.00 for two pieces of property, you **must** file two separate Provincial Tax Affidavits. The Registry will not accept two pieces of property on one affidavit.

Affidavit

I have attached as Appendix "D" a copy of the Provincial Tax Affidavit which is to be completed and forwarded to the Registry of Deeds along with your deed. Page 2 of Appendix "D" sets out the Exemptions from Deed Transfer Tax and must be completed if such is the case. As well, there is a list of the Assessment Regions where forms can be obtained.

STATEMENT OF ADJUSTMENTS

INTRODUCTION

I think I would be safe in saying that this is the one part of a real estate transaction that is most dreaded by legal support staff when you are first introduced to real estate. Obviously, you must have a liking for mathematics, but it can also be the most challenging part of the transaction. The Agreement of Purchase and Sale tells the story and thus provides for the manner in which the Statement of Adjustments is prepared. Therefore, it is important that you read the Agreement from beginning to end before you start.

Clause 6 of the Agreement of Purchase and Sale is very important:

(a) Interest, rentals, taxes, rates, fuel on the premises and assessments are to be adjusted to the date of closing. The cost of municipal improvements, (including but without limiting the generality of the phrase "municipal improvements" betterment charges and capital charges for utility or municipal services) completed as of the date of this Agreement, are to be paid by the Vendor on or before the closing date, unless otherwise stated.

(b) Except as otherwise provided in this agreement if this transaction is subject to goods and services tax imposed by Part IX of the Excise Tax Act R.S.C. 1985 c E-15 as amended, hereinafter referred to as "GST" then such GST shall be in

addition to and not included in the purchase price, and GST shall be collected and remitted in accordance with the applicable legislation. If this transaction is not subject to GST, the Vendor agrees to provide on or before closing to the Purchaser a certificate in a form reasonably satisfactory to the Purchaser certifying that the transaction is not subject to GST.

I will deal with the above sections of the Agreement of Purchase and Sale as we go through the Statement of Adjustments.

I have attached various types of Statement of Adjustments which may be used in real estate transactions, and I will go through them with you. The main objective of your Statement of Adjustments is to determine how much money the Vendor is entitled to on the day of closing (if you are representing the Vendor) and how much money the Purchaser has to pay the Vendor on the day of closing (if you are representing the Purchaser).

Under the Cost of Property to Purchaser Section, these are items that are in addition to the purchase price.

Under the Credits to Purchaser Section, these are items that form credits to the Purchaser and are deducted from the Purchase Price for the benefit of the Purchaser. Thus, they are deductions from the Cost of Property to Purchaser Section.

COST OF PROPERTY TO PURCHASER

1. Purchase Price

The Purchaser has agreed upon the price with the Vendor as found on the Agreement of Purchase and Sale or any Counter Offers or Amendments.

2. Taxes Paid in Advance

Our tax year has changed, and now runs from April 1st to March 31st. This section can be done in one step or two. It is most common in this area to do it in two steps. This is a credit to the Vendor for the taxes, if any, that have been paid in a particular calendar year. If the Vendor has not paid any taxes, obviously it would be left blank. If he has paid taxes, no matter if they are paid in whole or in part he is given a credit for the exact amount paid. By doing the adjustment in this manner, the Vendor sees exactly the amount of taxes he has paid for that year. As you will see a little later on under the Credits to Purchaser Section, we will give the Purchaser a credit for what the Vendor is responsible for. Therefore, the difference being either a credit to the Vendor or the Purchaser.

If you choose to do the adjustment in one step, remember the credit is for the remainder of the year and not for the number of days up to the closing date.

3. Tax Account Credit

This section is used when a mortgage is being assumed by a Purchaser. If the mortgage company has a credit in the tax account, which will be revealed on your assumption statement, then you add the amount in the tax account to the purchase price. In other words, the Purchaser buys the tax account credit from the Vendor and it is thus applied to his taxes either in the current year or in the following year.

If there is a debit in the tax account with the mortgage company, then the Purchaser would take a credit for the debit in the **Credits to Purchaser** Section of the Statement of Adjustments.

4. Fuel Oil Adjustment

With the price of oil these days, most Vendors will want to be credited for their oil. If such is the case, it is common to have the Vendor top off the oil tank and the Vendor is then reimbursed for a full tank of oil. The standard cost of oil for a 200 gallon tank is approximately \$330.69 inclusive of GST. The Vendor will then fill the oil tank either on the day of closing or a day or two before. Always ask the Vendor if he has a standard 200 gallon tank as some Vendors, not many, have two oil tanks. As well, there are some Vendors, not many, who will simply leave whatever oil is in the tank and not seek an adjustment. There is also a slim possibility that a Vendor and Purchaser will agree that the oil tank is not to be filled and that they will make an adjustment on the amount left in the tank at a price agreeable to both parties.

If the home is heated by propane, the propane company will usually reimburse the Vendor directly for the propane in the tank and will bill the Purchaser separately for a full tank. Again, always check with the Vendor and in this case perhaps the propane company to determine their policy.

5. EXTRAS

When you deal in new construction, quite often the Purchaser has requested the Vendor to provide certain items which form extras to the purchase price.

As well, if a Purchaser goes over any of the allowances for carpet, lights, etc. they are added to the purchase price.

6. GST

With new construction, you will also deal with the issue of GST. Again, it seems to be common practice to break down the portion of GST which is in the purchase price of the property. If the Agreement of Purchase and Sale indicates the GST is in addition to the purchase price, then you simply take the purchase price of the property and multiply it by 7% to determine the amount of GST payable. If the Agreement states that the GST is included in the purchase price, then to determine what portion of the purchase price is GST you take the total purchase price divide it by 107 and multiply it by 7 to obtain the GST payable.

If the GST rebate is to be credited to the Purchaser and adjusted at

closing, you take the total amount of the GST less the 36% which represents the rebate and add the difference to the purchase price.

| | |
|------------------------------------|------------|
| Example - Total GST Payable | \$7,523.36 |
| Rebate \$7,523.36x 36% | 2,708.40 |
| GST Payable on Closing | \$4,814.96 |

Should the GST rebate not be credited to the Purchaser, the Purchaser then pays the total GST payable on closing.

7. Condominium Common Fee Adjustment

If the property is a condominium and the Vendor has paid the common fees for the month, the Vendor will be reimbursed for the number of days left in the month that he will not own the property.

If the condominium fees are not paid for the month, then the Purchaser will receive a credit under the Credits to Purchaser section of the Statement of Adjustments for the number of days up to the date he takes over ownership of the property.

8. Contingency Fee/Reserve Account

If the Agreement of Purchase and Sale provides that the Vendor is to be repaid the funds held by the Condominium Corporation, then the Purchaser will reimburse the Vendor for the amount held in the Contingency/Reserve Fund. However, if there is no reference to this credit, then the Purchaser simply receives this benefit with no adjustment being made.

9. Mortgage Preparation

This is a case where the Vendor is holding a mortgage on the property, and the cost of the mortgage preparation by the Vendor's Solicitor is to be added to the purchase price. Please keep in mind that this is a fee payable to the Vendor's solicitor and thus GST and PST must be added to the preparation cost. Again, this may or may not be disclosed in the Agreement of Purchase and Sale but is a common adjustment.

CREDITS TO PURCHASER

1. Deposit

The Purchaser gives the Vendor or Vendor's Agent a deposit at the time the Agreement of Purchase and Sale is executed. This deposit is then credited to the Purchaser and thus forms a deduction off of the Purchase Price.

2. Taxes

If you are doing your taxes in two steps, you would take the total years taxes and divide it by 365 (366 if it is a leap year) and multiply it by the number of days up to the closing date. This amount is again credited to the Purchaser and thus forms a deduction off of the Purchase Price.

3. Arrears of Taxes

If there are taxes owing for a previous year or years, then the Purchaser would be given a credit for the arrears plus interest.

If there is a balance owing on the taxes for the current year and the due date for taxes has passed, then there would be interest owing on the arrears, and thus the interest would be credited to the Purchaser.

4. Sewer and Betterment Charges

If under the Agreement of Purchase and Sale, the Vendor is to be responsible for any sewer or betterment charges owing, then the Vendor would provide the Purchaser with a credit for these charges inclusive of any interest owing. Always ensure that when you call on taxes that you ask if there are any betterment charges against the property. As well, in the City of Halifax there are capital contribution charges and you should call to see if there are any capital contribution charges outstanding. You would call the Public Service Commission for this information at 421-6920 and this covers water meters etc.

5. Mortgage Assumption

If the Purchaser is assuming a mortgage, then the amount to be assumed by the Purchaser is credited to the Purchaser and is deducted from the Purchase Price. You must always check your assumption statement for the proposed closing date as you may also

have to add interest to the actual date of closing on the amount to be assumed. In other words, if the statement is calculated up to the middle of a month and you are closing on the first of the following month, you will have to add interest from say the 15th to the 1st. Remember mortgage payments are made in arrears, that is to say, a mortgage payment made in February covers the month of January. With mortgages, you work in arrears, with rent you pay for the month you are in.

6. VENDOR TAKE BACK MORTGAGE

If the Agreement of Purchase and Sale provides for the Vendor to hold a mortgage on the property, this amount is credited towards the Purchase Price of the property and is thus deducted from the amount the Purchaser owes the Vendor.

7. MORTGAGE

If the Vendor has a mortgage on the property, it has to be paid out at closing. If the Purchaser's Solicitor wishes to take credit for the mortgage and pay it out, then the Purchaser is given a credit off the Purchase Price, however, it is then the Purchaser's Solicitor's responsibility to pay off the mortgage and thus even though a credit is given to the Purchaser it is again added to the amount he requires to close.

7. RELEASE OF MORTGAGE

If the Vendor presently has a mortgage on the property it must be paid out at closing by either the Vendor's Solicitor or the Purchaser's Solicitor. If the Vendor's Solicitor undertakes to pay out the mortgage at closing and provide a Release or if the Purchaser's Solicitor takes credit to pay out the mortgage, the Purchaser is given a credit for the recording of the Release of Mortgage. The Registry charges \$41.00 for the first page and \$1.00 for each additional page. The usual credit is \$42.00 unless you are dealing with a Partial Release of Mortgage.

8. Statutory Declaration and/or Judgments

If a Statutory Declaration is required because of title objections or if there are Judgments against a Vendor, then the Purchaser is given a credit for the recording of the Statutory Declaration or the filing of a Certificate of Discharge. The recording of the Statutory Declaration is calculated in the same manner as for a Release of Mortgage. The Certificate of Discharge is filed at a cost of \$40.00.

9. Tax Certificate

The tax certificate is normally ordered by the Purchaser's Solicitor, however, it is the responsibility of the Vendor to provide a certificate and thus the Purchaser is given a credit at closing for the tax certificate. The Purchaser then in turn reimburses his solicitor for the cost of ordering the certificate.

10. ALLOWANCES

In new construction, the Vendor usually provides the Purchaser with allowances for carpet, lights, etc. and if the Purchaser is to pay these account himself, then the Purchaser is given a credit for the allowances at closing and he must in turn pay the carpet suppliers etc.

11. HOLDBACKS

In new construction, if there are deficiencies, then the Purchaser is usually given a credit for the deficiencies. The money is held back by the Purchaser's Solicitor until the work is completed and then released to the Vendor's Solicitor to be given to the builder. In some cases the Vendor's Solicitor will undertake to hold back the agreed upon amount in his trust account until the work is completed.

There are also holdbacks for Mechanic Liens and this holdback again can be done by either the Purchaser's Solicitor or the Vendor's Solicitor. The Mechanic Lien holdback is held in accordance with the Mechanic Lien Act, and was explained in more detail by W. Richey Clarke, Q.C. If the lien holdback is held by the Purchaser's Solicitor, then at the expiration of the lien period, the monies are disbursed to the Vendor's Solicitor for presentation to the builder.

12. RENTAL ADJUSTMENTS, SECURITY DEPOSITS, AND INTEREST ON SECURITY DEPOSITS

If the property is a rental property and sold with tenants occupying the property, the Purchaser will be credited with his portion of the rent and security deposits with interest.

A rental adjustment is done based on the monthly rental divided by the number of days in the month and multiplied by the number of days remaining in the month that the Purchaser owned the property. This adjustment, of course, is based on the fact that the rent was paid at the beginning of the month.

Security deposits are also adjusted by the Purchaser being given a credit for the deposits taken and interest calculated from the date the security deposit was taken. Interest on security deposits is calculated as follows:

| | |
|----------------------------------|-----|
| January 1, 1982 to December 1984 | 12% |
| January 1, 1985 to December 1991 | 7% |
| January 1, 1992 to present | 3% |

13. BALANCE TO COMPLETE

Once you have obtained all the credits that are owed to the Purchaser, this amount is added and thus subtracted from the Total Cost of the Property to the Purchaser. Thus you are left with the Balance to Complete to the Vendor.

CASH FLOW STATEMENT

The Cash Flow Statement serves two purposes:

- (a) To determine the net proceeds to the Vendor;
- (b) To determine the total monies the Purchaser is required to have on the date of closing to purchase the property from the Vendor;

The manner in which you prepare the Cash Flow Statement depends, of course, on whether you are representing the Vendor or the Purchaser. I will provide in the following paragraph an explanation for both uses of the Cash Flow Statement.

VENDOR - NET PROCEEDS PAYABLE

1. **MORTGAGES**

If the Vendor's Solicitor undertook at closing to pay out any existing mortgages, then the amount of the outstanding mortgage is deducted from the Sale Proceeds Received (this amount is determined on the front part of the Statement of Adjustments and is called the Balance to Complete). Always double check the pay out statement and review the pay out with your client to ensure that he is aware of any pay out penalties etc.

2. REAL ESTATE COMMISSION

The deposit which is shown on the front part of the Statement of Adjustments is held by the real estate company and is credited against the total commission owing. The solicitor is provided with a commission statement from the real estate broker which shows the total amount owing less the deposit, and it is always a good idea to double check the sale price shown on the commission statement and the calculation of the commission due. If you are dealing with a private sale, then there will be no commission owing; however, if the solicitor holds the deposit in his trust account you must make sure that you return the deposit to the vendor as this amount was deducted from the price of the home.

3. HOLDBACKS

If it was agreed at closing that the Vendor's Solicitor would hold the Mechanic Lien holdback (in the case of new construction), then this amount is deducted from the net proceeds to the Vendor. Due to the length of time that a Mechanic Lien holdback is held, in most cases the funds are invested on behalf of the Vendor until the expiration of the lien period. At the end of the expiration of the lien period, and assuming there are no liens on the property, the funds are given to the Vendor.

If there is also a deficiency holdback, and it was agreed at closing that the Vendor's Solicitor would hold the funds, then these funds are withheld from the Vendor until the deficiencies have been corrected. Once the deficiencies are corrected, the funds are

released to the Vendor.

4. JUDGMENTS

If a judgment was recorded against the Vendor, and the Vendor's Solicitor undertook to pay the same out from the proceeds, then these funds would be deducted from the net proceeds as well.

5. LEGAL FEES AND DISBURSEMENTS

Legal fees are the amount charged by the solicitor for representing the Vendor with respect to the property transaction, and are usually deducted from the net proceeds at closing.

Disbursements are out-of-pocket expenses which the solicitor pays on behalf of the Vendor, i.e. deliveries, long distance calls and fax, any recording costs if the Vendor's Solicitor undertook to record a particular document, postage, estopple certificate, etc.

6. MORTGAGE PREPARATION

If in the case of a take back mortgage, the Vendor's Solicitor charges a fee for the mortgage preparation and this sum is added to the purchase price and not dealt with as a separate account, you must ensure that you deduct this sum from the net proceeds. If you forget to do this, then the Vendor is being paid for the services performed by the Vendor's Solicitor.

7. GST and PST

As you are aware both legal fees and certain disbursements carry GST and this must also be deducted from the net proceeds.

We have very recently been given the task of deducting PST on the legal fees and this would also be deducted at closing.

Once you have determined the deductions which are taken from the sale proceeds, they are subtracted and thus you have determined the "Net Proceeds to Vendor"

PURCHASER -TOTAL FUNDS REQUIRED TO CLOSE

You now must determine the total amount that the Purchaser must provide to his solicitor to purchase the property in question. It is the practice of most law firms to require either a bank draft or certified cheque, so therefore it is always a good idea to try to have your adjustments done a day or so prior to closing so as to give your Purchaser sufficient time to make these arrangements.

1. MORTGAGES

If on the front of your Statement of Adjustments, the Purchaser's Solicitor was given a credit to pay out any outstanding mortgages, then you would add the amount of the mortgage which is owing. Once again, the Purchaser's Solicitor would request that the Vendor's Solicitor provide him with a copy of the pay out statement.

2. TAXES

If on the front of the Statement of Adjustments you were given a credit for tax arrears, you must remit the taxes to the property tax office. If on the other hand the taxes were not paid in full and the mortgage company requires all taxes be paid to date, then you would have to remit the balance owing on the taxes for the current year and this amount would then be added to the Cash Flow Statement.

3. BETTERMENT CHARGES

If the Purchaser was given a credit for any betterment charges, you would also remit them to the proper tax office and add this amount to the Cash Flow Statement.

4. SURVEYOR'S FEES

If the Purchaser is required to have a survey prepared, and the same was ordered by the Purchaser's Solicitor on behalf of the Purchaser, then the amount of the survey would also be added to the Cash Flow Statement.

5. DEED TRANSFER TAX

As discussed earlier in the Deed Transfer Tax Section, if Deed Transfer Tax is payable in the region in which the property is purchased, you would calculate the Deed Transfer Tax owing and add this amount to the Cash Flow Statement.

6. PROVINCIAL DEED TRANSFER TAX

If the price of the property falls under Provincial Deed Transfer Tax, then you would calculate the amount owing and add it to the Cash Flow Statement.

7. JUDGMENTS

If there was an outstanding judgment registered against the Vendor and the Purchaser's Solicitor took a credit for the same at closing, you would also have to add this amount to the Cash Flow Statement and pay out the judgment in question.

8. BALANCE TO COMPLETE

On the front part of the Statement of Adjustments, the amount owed to the Purchaser was called the Balance to Complete. This amount is added to the Cash Flow Statement and is remitted to the Vendor's Solicitor.

9. HOLDBACKS

If on the front of the Statement of Adjustments the Purchaser's Solicitor took credit for any holdbacks for deficiencies or a Mechanic Lien holdback, then this amount would be added to the Cash Flow Statement and held in trust or invested depending upon what arrangements were made with the Vendor's Solicitor. After the completion of the deficiencies or the expiration of the Mechanic

Lien holdback period, these funds would then be released to the Vendor's Solicitor for payment to the Vendor.

10. MORTGAGE ASSUMPTION

If on the front of the Statement of Adjustments a mortgage was assumed by the Purchaser and there were any charges credited to the Purchaser for an assumption fee or a back mortgage payment, then these amounts would be forwarded to the mortgage company and the amount added to the Cash Flow Statement.

11. VENDOR TAKE BACK MORTGAGE

If in the case of a Vendor take back mortgage and the amount of the mortgage preparation charged by the Vendor's Solicitor is not added to the purchase price, you would then have to add the amount of the account due to the Vendor's Solicitor to the Cash Flow Statement and remit the same to the Vendor's Solicitor.

12. LEGAL FEES AND DISBURSEMENTS

As with the sale of a property, the legal fees charged on a purchaser are normally collected at closing and added to the Cash Flow Statement.

Disbursements again are out-of-pocket expenses by the Purchaser's Solicitor on behalf of the Purchaser and are collected at closing and added to the Cash Flow Statement. Some examples of

disbursements are search fees, deliveries, recording of the deed and mortgage, recording of a release (the purchaser was given a credit for this disbursement on the front of the Statement of Adjustments), Statutory Declaration (if a purchaser was given a credit on the front it would be added to the Cash Flow Statement), long distance calls, long distance fax, tax certificate (the purchaser was given a credit for this disbursement on the front of the Statement of Adjustments).

13. GST and PST

Again fees and certain disbursements carry GST and PST and the required amounts would be added to the Cash Flow Statement.

14. TOTAL FUNDS REQUIRED

You would then add the total of the Cash Flow Statement to determine the total cost of the property to the Purchaser.

Then, if the Purchaser is mortgaging the property you would contact the mortgage company to confirm the net amount of the cheque which you will be receiving on the closing date.

This amount would be deducted from the Total Funds Required and you would therefore be left with the "Cheque required from the Purchaser".

I have attached various types of Statement of Adjustments and Cash

Flow Statements which encompass the various adjustments explained above, and I will go through each one in detail with you. The various adjustments explained above appear to be the most common which you will have to deal with in your day-to-day workings, however, you may be faced with others which are not noted above. The easiest way to handle any type of adjustment is to first rationalize who is to be given the credit or the debit and then you will know where the proper figure is to be placed.

Always, Always do your own adjustments, **never** take the adjustments which are given to you by either a Solicitor or a Legal Secretary/Paralegal and consider them correct. We are all human and thus are subject to error. You can always answer for the adjustments which you have calculated yourself but you cannot answer for calculations done by another person.

Appendix "C"

FORM 2

CERTIFICATE OF COLLECTOR

I hereby certify that the deed transfer tax on the within described property transfer has been paid in full on this day of

City Collector

OR

I hereby certify that no deed transfer tax is due and payable on the within described property transfer.

Dated at Dartmouth, Nova Scotia, this day of

City Collector

APPENDIX "E"

NEW CONSTRUCTION

STATEMENT OF ADJUSTMENTS

Date: October 7, 1993

PROPERTY - Lot 189 Smart Street

VENDOR A-1 Construction Limited

PURCHASER George Henry

COST OF PROPERTY TO PURCHASER:

| | |
|--|---------------------|
| Purchase Price | \$137,289.72 |
| Taxes paid in advance | 500.00 |
| Tax Account Credit | |
| Oil Adjustment | |
| Extras - Overage on carpet | 655.00 |
| Condominium fees | |
| Contingency/Reserve Fund | |
| Mortgage Preparation Fee | |
| GST | <u>9,610.28</u> |
| TOTAL COST OF PROPERTY TO PURCHASER | \$148,055.00 |

CREDITS TO PURCHASER

| | |
|-------------------------------|----------------------------|
| Deposit | 1,000.00 |
| Taxes 1993 \$1,000.00/365x190 | 520.54 |
| Arrears of Taxes | |
| Sewer | |
| Betterment Charges | |
| Mortgage | |
| Mortgage | |
| Recording Release | |
| Judgments | |
| Tax Certificate | 50.00 |
| Allowances - Lights | 625.00 |
| Holdbacks - Deficiencies | 1,200.00 |
| Balance to Complete | <u>144,659.46</u> |
| TOTAL | <u>\$148,055.00</u> |

APPENDIX "F"

NEW CONSTRUCTION - VENDOR

CASH FLOW

| | |
|------------------------|--------------|
| Sale Proceeds Received | \$144,659.46 |
| Deposit Held In Trust | |

| | |
|-------------------------------------|---------------------|
| TOTAL SALE PROCEEDS RECEIVED | <u>\$144,659.46</u> |
|-------------------------------------|---------------------|

PAID:

| | |
|--|-----------|
| Mortgage | |
| Mortgage | |
| Taxes - Current | |
| Taxes - Arrears | |
| Betterment Charges | |
| Surveyor's Fees | |
| Provincial Deed Transfer | |
| Deed Transfer Tax | |
| Balance to Vendor | |
| Real Estate Commission | 7,813.99 |
| Holdbacks - Mechanic Lien | 10,945.00 |
| (Total cost of property \$146,900.00 less lot price \$37,450.00) | |

| | |
|---------------------|--------|
| Search fees | |
| Deliveries | 9.50 |
| Record Deed | |
| Record Mortgage | |
| Record Release | |
| Judgment | |
| Recording | |
| Tax Certificate | |
| Long distance fax | |
| Long distance calls | |
| Legal Fees | 300.00 |
| P.S.T. | 35.31 |
| G.S.T. | 21.66 |

| | |
|-----------------------------|--------------------|
| TOTAL FUNDS REQUIRED | \$19,125.46 |
|-----------------------------|--------------------|

LESS:

Cheque from Mortgage Company

CHEQUE FROM PURCHASER

| | |
|-------------------------------|----------------------------|
| NET PROCEEDS TO VENDOR | <u>\$125,534.00</u> |
|-------------------------------|----------------------------|

(Please note the Vendor will receive the Mechanic Lien holdback at the expiration of the lien period)

(Also, the Vendor will receive the deficiency holdback from the Purchaser's Solicitor when the deficiencies has been corrected.)

APPENDIX "G"

NEW CONSTRUCTION - Purchaser

CASH FLOW

Sale Proceeds Received
Deposit Held In Trust

TOTAL SALE PROCEEDS RECEIVED

PAID:

| | |
|--------------------------|------------|
| Mortgage | |
| Mortgage | |
| Taxes - Current | 500.00 |
| Taxes - Arrears | |
| Betterment Charges | |
| Surveyor's Fees | 267.50 |
| Provincial Deed Transfer | 745.79 |
| Deed Transfer Tax | 1,716.12 |
| Balance to Vendor | 144,659.46 |
| Real Estate Commission | |
| Holdbacks | 1,200.00 |
| Search fees | 65.00 |
| Deliveries | 12.25 |
| Record Deed | 50.00 |
| Record Mortgage | 48.00 |
| Record Release | |
| Judgment | |
| Recording | |
| Tax Certificate | 50.00 |
| Long distance fax | |
| Long distance calls | |
| Legal Fees | 525.00 |
| P.S.T. | 61.79 |
| G.S.T. | 36.75 |

TOTAL FUNDS REQUIRED **\$149,937.66**

LESS:

Cheque from Mortgage Company 50,000.00

CHEQUE FROM PURCHASER **\$99,937.66**

NET PROCEEDS TO VENDOR

APPENDIX "H"

Residential - Mortgage Assumption

STATEMENT OF ADJUSTMENTS

Date: November 15, 1993 1993

PROPERTY - 22 Cherry Street, Halifax

VENDOR Susie Smith PURCHASER Gloria Day

COST OF PROPERTY TO PURCHASER:

| | |
|--|--------------------|
| Purchase Price | \$89,000.00 |
| Taxes paid in advance | |
| Tax Account Credit - Mortgage Company | 89.50 |
| Oil Adjustment | 330.69 |
| Extras | |
| Condominium fees | |
| Contingency/Reserve Fund | |
| Mortgage Preparation Fee | 118.77 |
| GST | |
| TOTAL COST OF PROPERTY TO PURCHASER | \$89,538.96 |

CREDITS TO PURCHASER

| | |
|---------------------------------------|--------------------|
| Deposit | 500.00 |
| Taxes 1993 1,300.00/365x229 | 815.61 |
| Arrears of Taxes - 1992 plus interest | 1,410.00 |
| Sewer | |
| Betterment Charges | |
| Mortgage Assumption Nov. 1, 1993 | 29,000.00 |
| Interest to November 15, 1993 | 221.95 |
| Mortgage - to Vendor | 10,000.00 |
| Recording Release | |
| Judgments | |
| Tax Certificate | 50.00 |
| Allowances | |
| Holdbacks | |
| Balance to Complete | 47,541.40 |
| TOTAL | \$89,538.96 |

APPENDIX "I"

Residential - Vendor

CASH FLOW

| | |
|-------------------------------------|---------------------------|
| Sale Proceeds Received | \$89,538.96 |
| Deposit Held In Trust | 500.00 |
| TOTAL SALE PROCEEDS RECEIVED | <u>\$90,038.96</u> |

PAID:

| | |
|-----------------------------|------------------|
| Mortgage | |
| Mortgage | |
| Taxes - Current | |
| Taxes - Arrears | |
| Betterment Charges | |
| Surveyor's Fees | |
| Mortgage Preparation Fee | 118.77 |
| Provincial Deed Transfer | |
| Deed Transfer Tax | |
| Balance to Vendor | |
| Real Estate Commission | |
| Holdbacks | |
| Search fees | |
| Deliveries | 9.50 |
| Record Deed | |
| Record Mortgage | |
| Record Release | |
| Judgment | |
| Recording | |
| Tax Certificate | |
| Long distance fax | |
| Long distance calls | |
| Legal Fees | 300.00 |
| P.S.T. | 35.31 |
| G.S.T. | 21.66 |
| TOTAL FUNDS REQUIRED | \$ 485.24 |

LESS:

Cheque from Mortgage Company

CHEQUE FROM PURCHASER

NET PROCEEDS TO VENDOR **\$89,553.72**

APPENDIX "J"

RESIDENTIAL - Purchaser

CASH FLOW

Sale Proceeds Received
Deposit Held In Trust

TOTAL SALE PROCEEDS RECEIVED

PAID:

Mortgage
Mortgage
Taxes - Current 1,300.00
Taxes - Arrears 1,410.00
Betterment Charges
Surveyor's Fees
Provincial Deed Transfer
Deed Transfer Tax 1,112.50
Balance to Vendor 47,541.40
Real Estate Commission
Holdbacks
Search fees 75.00
Deliveries 9.95
Record Deed 48.00
Record Mortgage 50.00
Record Release
Judgment
Recording
Tax Certificate 50.00
Long distance fax
Long distance calls
Legal Fees 475.00
P.S.T. 55.90
G.S.T. 39.19

TOTAL FUNDS REQUIRED

\$52,166.94

LESS:

Cheque from Mortgage Company

CHEQUE FROM PURCHASER

\$52,166.94

NET PROCEEDS TO VENDOR

APPENDIX "K"

Residential - Mortgage

STATEMENT OF ADJUSTMENTS

Date: November 2, 1993 1993

PROPERTY - 22 Smith Avenue, Dartmouth

VENDOR Joe Gibb

PURCHASER Mel Gibson

COST OF PROPERTY TO PURCHASER:

| | |
|--------------------------|-----------|
| Purchase Price | 90,000.00 |
| Taxes paid in advance | 1,200.00 |
| Tax Account Credit | |
| Oil Adjustment | 330.69 |
| Extras | |
| Condominium fees | |
| Contingency/Reserve Fund | |
| Mortgage Preparation Fee | |
| GST | |

TOTAL COST OF PROPERTY TO PURCHASER \$91,530.69

CREDITS TO PURCHASER

| | |
|------------------------------|-------------|
| Deposit | 2,000.00 |
| Taxes 1993 1,200.00 /365x216 | 710.13 |
| Arrears of Taxes | |
| Sewer | 245.00 |
| Betterment Charges - paving | 500.00 |
| Mortgage | |
| Mortgage | |
| Recording Release | 42.00 |
| Judgments | |
| Tax Certificate | 50.00 |
| Allowances | |
| Holdbacks | |
| Balance to Complete | \$87,983.56 |

TOTAL \$91,530.69

APPENDIX "L"

Residential - Vendor

CASH FLOW

| | |
|------------------------|-------------|
| Sale Proceeds Received | \$87,983.56 |
| Deposit Held In Trust | |

TOTAL SALE PROCEEDS RECEIVED

PAID:

| | |
|--------------------------|-----------|
| Mortgage - Payout CIBC | 66,289.00 |
| Mortgage | |
| Taxes - Current | |
| Taxes - Arrears | |
| Betterment Charges | |
| Surveyor's Fees | |
| Provincial Deed Transfer | |
| Deed Transfer Tax | |
| Balance to Vendor | |
| Real Estate Commission | 1,852.00 |
| Holdbacks | |
| Search fees | |
| Deliveries | 4.75 |
| Record Deed | |
| Record Mortgage | |
| Record Release | |
| Judgment | |
| Recording | |
| Tax Certificate | |
| Long distance fax | |
| Long distance calls | |
| Legal Fees | 275.00 |
| P.S.T. | 32.36 |
| G.S.T. | 19.58 |

| | |
|-----------------------------|--------------------|
| TOTAL FUNDS REQUIRED | \$68,472.69 |
|-----------------------------|--------------------|

LESS:

Cheque from Mortgage Company

CHEQUE FROM PURCHASER

| | |
|-------------------------------|--------------------|
| NET PROCEEDS TO VENDOR | \$19,510.87 |
|-------------------------------|--------------------|

APPENDIX "M"

Residential - Purchaser

CASH FLOW

Sale Proceeds Received
Deposit Held In Trust

TOTAL SALE PROCEEDS RECEIVED

PAID:

Mortgage
Mortgage
Taxes - Current
Taxes - Arrears
Betterment Charges 745.00
(sewer and paving)
Surveyor's Fees 267.50
Provincial Deed Transfer
Deed Transfer Tax 1,125.00
Balance to Vendor 87,983.56
Real Estate Commission
Holdbacks
Search fees 125.00
Deliveries 14.50
Record Deed 48.00
Record Mortgage 52.00
Record Release 42.00
Judgment
Recording-Statutory Dec. 43.00
Tax Certificate 50.00
Long distance fax 5.10
Long distance calls 2.89
Legal Fees 650.00
P.S.T. 76.50
G.S.T. 55.82

TOTAL FUNDS REQUIRED **\$91,285.87**

LESS:

Cheque from Mortgage Company 45,000.00

CHEQUE FROM PURCHASER **\$46,285.87**

NET PROCEEDS TO VENDOR

APPENDIX "N"

Condominium with Rental Adjustment

STATEMENT OF ADJUSTMENTS

Date: November 15, 1993 1993

PROPERTY - Unit 306, 147 Colby Drive, Cole Harbour

VENDOR - Alex Bold

PURCHASER Arthur Spare

COST OF PROPERTY TO PURCHASER:

| | |
|---------------------------------|-------------|
| Purchase Price | \$90,000.00 |
| Taxes paid in advance | 1,200.00 |
| Tax Account Credit | |
| Oil Adjustment | |
| Extras | |
| Condominium fees -\$95.00/30x15 | 47.49 |
| Contingency/Reserve Fund | 345.00 |
| Mortgage Preparation Fee | |
| GST | |

TOTAL COST OF PROPERTY TO PURCHASER **\$91,592.49**

CREDITS TO PURCHASER

| | |
|--------------------------------------|-----------------------------|
| Deposit | 200.00 |
| Taxes 1993 1,200.00 /366x230 | 754.09 |
| Arrears of Taxes | |
| Sewer | |
| Betterment Charges | |
| Mortgage | 87,500.00 |
| Mortgage | |
| Recording Release | 42.00 |
| Judgments - Esso | 289.00 |
| File Certificate of Satisfaction | 40.00 |
| Tax Certificate | 50.00 |
| Rental Adjustment \$525.00 /30x15 | 262.50 |
| Allowances | |
| Security Deposit \$262.50x3%/366x320 | 6.88 (moved in January '93) |
| Holdbacks | |
| Balance to Complete | 2,448.02 |
| TOTAL | \$91,592.49 |

APPENDIX "O"

Condominium/Rental - Vendor

CASH FLOW

Sale Proceeds Received \$2,448.02
Deposit Held In Trust

TOTAL SALE PROCEEDS RECEIVED \$2,448.02

PAID:

Mortgage
Mortgage
Taxes - Current
Taxes - Arrears
Betterment Charges
Surveyor's Fees
Provincial Deed Transfer
Deed Transfer Tax
Balance to Vendor
Real Estate Commission 2,889.00
Holdbacks
Search fees
Deliveries
Record Deed
Record Mortgage
Record Release
Judgment
Recording
Tax Certificate
Long distance fax
Long distance calls
Legal Fees 100.00
P.S.T. 11.77
G.S.T. 7.00

TOTAL FUNDS REQUIRED \$3,007.77

LESS:

Cheque from Mortgage Company

CHEQUE FROM PURCHASER

NET PROCEEDS TO VENDOR

FUNDS REQUIRED FROM VENDOR TO CLOSE \$ 559.75

APPENDIX "P"

Condominium/Rental - Purchaser

CASH FLOW

Sale Proceeds Received
Deposit Held In Trust

TOTAL SALE PROCEEDS RECEIVED

PAID:

| | |
|---------------------------|-----------|
| Mortgage | 87,500.00 |
| Mortgage | |
| Taxes - Current | |
| Taxes - Arrears | |
| Betterment Charges | |
| Surveyor's Fees | |
| Provincial Deed Transfer | |
| Deed Transfer Tax | 1,125.00 |
| Balance to Vendor | 2,448.02 |
| Real Estate Commission | |
| Holdbacks | |
| Search fees | 95.00 |
| Deliveries | 15.50 |
| Record Deed | 48.00 |
| Record Mortgage | |
| Record Release | 42.00 |
| Judgment - Esso | 289.00 |
| Recording - Cert. of Dis. | 40.00 |
| Tax Certificate | 50.00 |
| Long distance fax | |
| Long distance calls | |
| Legal Fees | 725.00 |
| P.S.T. | 85.33 |
| G.S.T. | 58.48 |

TOTAL FUNDS REQUIRED

\$92,521.33

LESS:

Cheque from Mortgage Company

CHEQUE FROM PURCHASER

\$92,521.33

NET PROCEEDS TO VENDOR