RECBC REAL ESTATE COUNCIL OF BRITISH COLUMBIA

Buying a Home
in British Columbia

www.recbc.ca

The Real Estate Council of British Columbia protects the public interest by assuring the competency of real estate licensees and ensuring their compliance with the *Real Estate Services Act.* The Council is accountable to and advises government on industry issues and encourages public confidence by impartially setting and enforcing standards of conduct, education, competency, and licensing for real estate licensees in the province.

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Buying a Home in British Columbia

Buying a home is one of the largest investments you'll ever make

What is the Real Estate Council of British Columbia?

The Real Estate Council of British Columbia is a regulatory agency established by the provincial government. Its mandate is to protect the public interest by enforcing the licensing and licensee conduct requirements of the *Real Estate Services Act*. The Council is responsible for licensing individuals and brokerages engaged in real estate sales, rental and strata property management. The Council also enforces entry qualifications, investigates complaints against licensees and imposes disciplinary sanctions under the Act.

Introduction

Buying a home is the largest investment most of us ever become involved in. Yet people sometimes take less time over it than they do when buying a new car. That's because it's unfamiliar territory to many of us. We don't know what questions to ask. We may take things for granted, rely on others when we shouldn't, and sometimes we later wish we had known more about the process involved.

The Real Estate Council of British Columbia feels it is important for you to understand the procedures normally involved in the purchase of a home, to recognize the significance of the documents you will encounter, and to understand the role of other people who may be involved in the transaction. Buying a home is a major event. This booklet will help you better understand the entire process.

The Decision to Purchase

Purchasing a home can be both exciting and frightening!! It is probably one of the biggest financial investments you'll ever make. You'll not only have to live with your decision, but also live in it, so you don't want to make any costly mistakes. Before you start looking for your "dream" home, organize yourself by considering a few basic questions:

- What are my housing needs?
- What are the choices?
- What can I afford to spend?

Time spent answering these questions in advance may save you from frustration and disappointment during your search.

What Choices Do You Have?

To meet the many kinds of needs that people have, a number of different housing styles and types of ownership have developed over the years. Your individual requirements and your income level will govern the housing type which is most suitable for you at the present time.

Types of Housing Structures

Single Family, Detached Home – A detached home is one which has no common walls with any other residential structure, resting on its own land with front, rear, and side yards. It may be any size from a small, one-storey bungalow to a huge mansion.

Semi-Detached Home – A semi-detached home is two single family dwellings joined together by a common middle wall. It is sometimes called a "side-by-side" duplex.

Purchasing a home can be both exciting and frightening!

Duplex – A duplex is two separate dwellings which are attached either side-by-side (a semi-detached home) or one unit above the other. It is important to note that this type of structure may be a strata titled property and therefore subject to the *Strata Property Act*.

Townhouse – In British Columbia, the term "townhouse" is usually used to describe one of a group of dwellings (most often two-storey) joined together by common walls, each with its own entrance from the outside.

Apartment – An apartment is one of several dwellings (most often single storey dwellings built one above the other) joined together by common walls, each having its entrance from a common hall. The overall building containing the apartments may be from three to 33 or more storeys.

Mobile or Manufactured Home – A manufactured home is a factory-built residential structure designed to be moved from one place to another, although wheels are not necessary. It is often placed on a rented space (called a "pad") in a manufactured home park.

Types of Housing Ownership

While there are a variety of housing ownership interests, the most common include the following:

Freehold – A freehold interest (also known as a fee simple) is the more precise term for what we ordinarily refer to as "ownership" of a home. The owner of the freehold interest has full use and control of the land and the buildings on it, subject to any rights of the Crown, local land-use bylaws, and any other restrictions in place at the time of purchase.

Strata Title – The strata title form of ownership is designed to provide exclusive use and ownership of a specific housing unit (the strata lot) which is contained in a larger property (the strata project), plus shared use and ownership of the common areas such as halls, grounds, garages, elevators, etc. This type of ownership is used for duplexes, apartment blocks, townhouse complexes, warehouses, and many other types of buildings. In additiion, some single family home developments may be part of a bare-land strata development. Because ownership

of the common space is shared, the owners also share financial responsibility for its maintenance.

Leasehold – In some cases, you might purchase the right to use a residential property for a long, but limited, period of time. The owner of this right of use has a type of ownership called a leasehold interest. This type of ownership is used most often for townhouses or apartments built on city-owned land. It is also used occasionally for single detached homes on farm land, on First Nation reserves, and for apartments where the owner of the freehold interest of an entire apartment block sells leasehold interests in individual apartment units to other "owners." Leasehold interests are frequently set for periods of 99 years, but regardless of the length of the original term, you will only be able to purchase the remaining portion. Of course, the shorter the remaining portion, the less you, or the person who eventually purchases from you, will be willing to pay for the leasehold interest.

Cooperative – In the cooperative form of ownership, each owner owns a share in a company or cooperative association which, in turn, owns a property containing a number of housing units. Each shareholder is assigned one particular unit in which to reside.

What Can You Afford?

Before you start looking for a new home, it is important that you become aware of how much you can afford to pay. This knowledge will allow you to spend your valuable time looking productively at homes which are within your predetermined price range. You can calculate a relatively accurate figure for yourself if you assemble the following information:

$_____	The cash you have saved to be used for this home purchase is called the down-payment
$_____	**Plus:** The amount of borrowed money you are able to arrange
$_____	**Less:** Closing costs and other "last minute" costs associated with a real estate purchase
$_____	**Equals: Maximum Price**

The Down-payment

Lending institutions will usually require you to make a down-payment of at least 5% to 10% of the purchase price of the home. Lending institution policies may vary from time to time. However, as a general rule you should make your cash down-payment as large as possible. Your deposit for the real estate transaction may form part of your down-payment.

The Borrowed Money

Almost everyone who purchases a home borrows some of the money needed to pay for it. The easiest way to determine how much money you will be able to borrow as a mortgage loan is to consult with one or more lending institutions. These lenders will apply standard tests, based on your family's current income and debts, in order to decide the amount of money they will lend to you. They will ask for information about your finances and make a thorough credit check, in order to be sure you are able to repay a loan.

What is a Mortgage?

Obtaining a loan to finance the purchase of your new home will probably require you to sign a document called a mortgage. This document will set out the terms and conditions for the loan and its repayment. If you fail to meet your debt obligations, the lender may have the right to claim your home to pay off what you still owe.

What Types of Mortgage Loans Are There?

All mortgage loans are of two basic types:

- A conventional mortgage loan allows borrowing up to 75% of the purchase price or the appraised value of the home, whichever is less.
- A high-ratio mortgage loan allows borrowing more than 75% of the purchase price or the appraised value of the home, whichever is less. But the borrower must pay a mortgage default insurance premium to protect the lender if payments are not made. Check with your lender to find out the amount of the insurance premium.

What is an Amortization Period?

Typically, the size of a mortgage loan payment is calculated as if the loan payments were going to be paid over 20 or 25 years. This is called the amortization period. Each payment will repay the interest due up to the payment date along with some of the principal owed. The longer the amortization period you choose, the lower the regular payment will be. Keep in mind that the faster you repay any money borrowed by choosing a shorter amortization period, the more you reduce the total cost of borrowing.

What is a Term?

Most mortgage loan contracts only permit the regular payments to continue for a specified term which is shorter than the amortization period. The term can be as short as six months or it can be five years or more.

At the end of the term, you are required to repay the full unpaid balance. If you don't have the cash required to pay the balance, it may be necessary to refinance the loan.

Deciding on the length of term you want will depend partly on whether you think interest rates will go up or down. Keep in mind that the longer the term you choose, the longer your monthly payment remains stable.

CAUTION: The lender is not obligated to renew your mortgage loan at the end of the term.

How Much Can You Afford to Pay in Mortgage Payments?

Based on Your Income:
A general guideline is to allow no more than 30% of your gross monthly income (before deductions) to make your monthly housing payments. This test of your ability to repay a mortgage loan is generally referred to as the Gross Debt Service Ratio.

Complete the following calculation to determine the approximate amount you may be able to afford for the mortgage payment, the property taxes and, where applicable, 50% of the strata maintenance fees. Some lenders will require that this total maximum monthly payment also covers heating costs.

1 Your gross monthly income	$_____
2 Co-signor's gross monthly income (if applicable)	$_____
3 Other income (monthly)	$_____
4 Total monthly income	**$**_____
5 Multiply the **Total** line above by 30% to calculate your: **Total monthly maximum housing payment**	$_____

Based on your Other Financial Obligations:
If you have other monthly financial obligations, such as car or credit card payments, the lending institution will also apply the Total Debt Service Ratio test to determine the maximum mortgage loan for which you can qualify.

Complete the Following Calculation

$_____	Your Monthly Housing Payment as calculated previously
$_____	Your Monthly Debt Payments (car, credit card, etc.)
$_____	**Total Monthly Payment**

A general guideline should be that the total of your monthly housing payment added to your other monthly debt payments should not exceed 40% of your monthly gross income.

The Gross Debt Service Ratio and the Total Debt Service Ratio tests protect both you and the lender by ensuring that you do not take on more debt that you can reasonably afford to repay.

Many lending institutions will prequalify you for a specific size and type of mortgage loan before you begin searching for your new home. Taking the time to apply for a pre-approved mortgage will give you the security of knowing how much you can afford to spend.

Before concluding the loan agreement, most lending institutions will require an appraisal of your selected home. The appraised value is a professional opinion of the value of the home and may differ from the purchase price you are willing to pay. The appraised value may affect the approved value of the loan.

The Closing Costs

It's easy to count your available cash, but remember that all of these cash savings cannot be used as your down-payment. There are last-minute costs such as taxes, legal fees, appraisal fees, moving expenses, and home insurance to pay before you are finally in your new home. The time to budget for those "end" expenses is now. You must be prepared to pay most, and perhaps all, of the following closing costs.

Property Transfer Tax – The British Columbia Provincial Government imposes a property transfer tax which must be paid before any home can be legally transferred to a new owner. Some buyers may be exempt from this tax. For further information, contact the Property Transfer Tax office in Victoria at www.gov.bc.ca/sbr.

Goods & Services Tax – If you purchase a newly constructed home, you may be subject to GST on the purchase price. There may be some rebates available depending on the value of the home. For further information contact the Canada Revenue Agency at www.cra-arc.gc.ca.

Property Tax – If the current owners have already paid the full year's property taxes to the municipality, you will have to reimburse them for your share of the year's taxes.

Appraisal Fee – When the lending institution requires an appraisal of the home before approving your loan, it may be your responsibility to pay the appraiser's fee.

Survey Fee – The lending institution may also require that a survey certificate be presented to them. The purpose of the survey is to formally establish the boundaries of the property and to ensure that all buildings are within those boundaries.

Note: Lending institutions may ask for either a building location survey, which establishes where a building is located on a property, or a monumental survey, which establishes the actual boundaries of a property. If the current owner cannot provide a recent survey certificate, it will be your responsibility to pay the surveyor's fee.

Mortgage Application Fee – Lending institutions may charge a mortgage application fee. This application fee may vary between lending institutions.

Don't forget about last minute costs

Mortgage Default Insurance – This type of insurance is required on most mortgage loans in excess of 75% of the appraised home value. Its purpose is to ensure that the lender will not lose any money if you cannot make your mortgage payments and the value of your home is not sufficient to repay your mortgage debt. The insurance premium is paid to the lender and, in most cases, is added to the loan amount and paid for over the term of the loan.

Life & Disability Mortgage Insurance – At your option, you may purchase insurance which will ensure that your outstanding mortgage balance is paid if you die or become disabled.

Fire & Liability Insurance – The mortgage lender will insist that you purchase an insurance policy which guarantees that, in the event of fire, the lender will receive the balance owing on the mortgage loan before you receive any insurance proceeds.

Legal Fees – The transfer of home ownership from the seller to the buyer must be recorded in the Land Title Office in order to protect the new owner's interests.

You will probably want to engage a lawyer or notary public to act on your behalf during the completion of your purchase. The lawyer or notary public will charge a fee for this service, plus disbursements, including the Land Title Registration fee. If you are financing your purchase with a new mortgage loan, there will be a further fee and disbursements to prepare and register the mortgage documents.

Other last-minute costs you shouldn't forget to set some money aside for:

- home inspection fees
- moving expenses
- deposits required by utility companies
- household goods:
  - > kitchen appliances,
  - > garden equipment,
  - > garbage cans, tools, window coverings, etc.
- redecorating or renovations

Where Should You Purchase?

Before you begin looking for your new home, it is important that you consider the needs of all the people it must shelter and what effect their daily activities will have on your desire for a certain size or location, both now and in the future. Thinking about some of the following factors will help you determine where and what you should purchase.

Community

- Rural? Small town? Suburban? City?
- What facilities are available: shopping centres? places of worship? recreational facilities? hospitals? schools?
- Are property taxes comparable to those in other communities?
- Are there any future developments planned which you may not like?
- Are the sewage and water systems adequate?
- What is the availability and cost of utilities: electricity? gas? water?
- What public services are provided: police? fire protection? ambulance? garbage collection? mail delivery? snow removal?

Transportation

- Is there nearby public transportation available?
- Do you mind a long commute to work or to visit friends?
- Can you afford to drive to and park at your workplace?
- Will another car be needed for your partner to drive to work, to shop, or take children to school or other activities?
- Are major roads easily accessible?

Consider everyone in your household when looking at homes to purchase

Neighbourhood

- Is public and private property maintained to your satisfaction?
- What is the composition of families living nearby: quiet, mature people? teenagers? potential playmates for children?
- Are their incomes and lifestyles compatible with yours? Have home values risen, fallen, or remained stable in the recent past?
- Are there any known projects on the horizon which could substantially change the quality of the lifestyle or the home prices in the area?
- Do you feel comfortable with the current zoning regulations? Will they protect home values yet still allow you to use a dwelling in the way you envision: outdoor basketball hoops and barbecues? storing your boat? a home-based business? keeping chickens/rabbits/horses? cutting trees? high fences? a basement suite? etc.
- When you walk up and down the streets of the neighbourhood, can you picture yourself living there for several years into the future?

Dwelling

- Are you interested in brand new only? an historic, character home? an already renovated resale? a solid, older home that just needs redecorating? or can you purchase a "fixer-upper" and do major renovations yourself?
- What combination of space do you require? Think not only about bedrooms, bathrooms and garages, but also about areas for hobby activities and children's play; and storage for clothes, skis, bicycles, wind surfers, tools, garden equipment, etc.
- Is a large, well-equipped kitchen important to you? How about a fireplace? A large entrance hall? A sun deck? A pool?
- Would you prefer a small lawn and low-maintenance garden, or do you enjoy cutting grass and making things grow?
- Do you need a dwelling with room to eventually accommodate more children? Elderly parents? Inlaws?

Schools

- What schooling is available: primary? high school? adult evening programs? college?
- How close are the schools and how do the children get there?
- Are the schools crowded? Is the sports program satisfactory? Do the students have a high achievement record?
- If your family has special educational needs, are these available?

Real Estate Licensees

Licensing Requirement

It is important to understand that in British Columbia, the person you hire to assist you to purchase your home must be licensed under the provincial *Real Estate Services Act*.

Responsibilities of Seller's and Buyer's Licensees

In every real estate transaction there is a seller and a buyer. A real estate licensee may be employed as an agent for the seller, as an agent for the buyer, or both. Early in the first meeting with a real estate licensee, the licensee should provide you with full disclosure about the nature of his or her relationship with you, as a buyer, and any relationship he or she may have with the seller. The licensee is required by law to provide this information and explain its implications to you.

Your Relationship with a Real Estate Licensee

Real estate licensees work within a legal relationship called agency.* The agency relationship exists between you, the principal, and the brokerage, the company under which your real estate licensee is licensed. The essence of the agency relationship is that the brokerage has the authority to represent the principal in dealings with others. Your real estate licensee acts as the brokerage's representative in performing the agency obligations.

**Agency descriptions have been adapted from the Working With a Realtor brochure and used with kind permission from the British Columbia Real Estate Association.*

One Brokerage Acts for the Buyer and One Brokerage Acts for the Seller

When a seller engages a real estate licensee to help sell his or her home, the related brokerage and the licensee become the agent of the seller. As a buyer, it is possible for you to select a licensee to act as your agent. As a buyer, you become the principal and the licensee becomes your agent.

Brokerages and their licensees are legally obligated to protect and promote the interests of their principals as they would their own. Specifically, the brokerage and the licensee have the following duties:

1. Undivided loyalty. The brokerage must protect the principal's negotiating position at all times, and disclose all known facts which may affect or influence the principal's decision.
2. To obey all lawful instructions of the principal.
3. An obligation to keep the confidences of the principal.
4. The exercise of reasonable care and skill in performing all assigned duties.
5. To account for all money and property placed in a brokerage's hands while acting for the principal.

You can expect competent service from your brokerage, knowing that the company is bound by ethics and the law to be honest and thorough in representing your interests. Both the buyer and the seller may be represented by their own brokerages in a single transaction.

Dual Agency

Dual agency occurs when a brokerage is representing both the buyer and the seller in the same transaction, either through the same licensee or through two different licensees engaged by the same brokerage. Since the brokerage has promised a duty of confidentiality, loyalty and full disclosure to both parties simultaneously, a duty it cannot satisfy if acting as an agent for both parties, it is necessary to limit these duties in this situation, if both parties consent.

If you find yourself involved in a transaction where the same brokerage is working with both the seller and the buyer, before making or receiving an offer, both you and the other party will be asked to consent, in writing, to this new limited agency relationship.

This relationship involves the following limitations:

1. The brokerage will deal with the buyer and the seller impartially.

2. The brokerage will have a duty of disclosure to both the buyer and the seller except that:
   a. The brokerage will not disclose that the buyer is willing to pay a price or agree to terms other than those contained in the offer, or that the seller is willing to accept a price or terms other than those contained in the listing.
   b. The brokerage will not disclose the motivation of the buyer to buy or the seller to sell unless authorized by the buyer or the seller.
   c. The brokerage will not disclose the personal information about either the buyer or the seller unless authorized in writing.

3. The brokerage will disclose to the buyer defects about the physical condition of the home known to the brokerage.

No Agency Relationship

You may also choose to use the services of a licensee without having any kind of agency relationship. This might occur, for example, when you are being shown a home by the seller's licensee.

The licensee you choose to work with in this manner has a legal and ethical duty to provide you with accurate, honest answers to your questions and can provide all these services:

- Explain real estate terms and practices
- Provide and explain forms used
- Assist you in screening and viewing properties
- Inform you of lenders and their policies
- Identify and estimate costs involved in a transaction
- Assist you in establishing your range of affordability
- Prepare offers or counter-offers at your direction
- Present all offers promptly

A licensee who is not your agent cannot:

- Recommend or suggest a price
- Negotiate on your behalf
- Inform you of his or her principal's bottom line
- Disclose any confidential information about his or her principal unless otherwise authorized.

You should not provide a licensee who is not your agent with any information that you would not provide directly to his or her principal.

Services a Buyer Can Expect From a Real Estate Licensee

You can expect licensees to provide you with such services as:

- Helping you to clarify the type of home you need and can afford
- Providing information about available properties and sources of financing
- Arranging appointments to view available properties
- Providing accurate answers to any questions you may have about a specific home you are considering
- Explaining the forms used in a real estate transaction and assisting you in making a written offer to purchase
- Presenting your written offer to the seller
- Familiarizing you with the steps you must take to complete the purchase after the seller accepts your offer.

Keep in mind that if the licensee with whom you are working is the seller's agent, any information you give to him or her must be passed on to the seller. It is in your best interest to discuss with that licensee only what you would discuss with the seller in person.

The Big Search!

Now it's time to begin your informed search for that "right" home. You have gathered all the information you need to make a rational decision rather than an emotional one, but it may not be easy! You, like everyone else, will probably want what you can't afford. Try not to become discouraged. Every homeowner started somewhere and it is most likely that there is a place for you!

What Should You Look For?

After you have found a home, don't be shy! You are about to invest a lot of money and you should investigate each home thoroughly. Pay particular attention to the following:

- What size and shape is the lot? Is it fully serviced with sewage, water, gas, and electrical lines?
- How many square feet of living space is there? How many rooms?
- Condition and age of the roof: Are there any leaks or recent repairs? If only part of the roof was repaired, will the rest cause trouble?
- Are there proper roof gutters and adequate downspouts which are properly connected to storm drains?
- Are the interior walls and ceilings solid? drywall or plaster? Is there any evidence of leaks or cracks?
- Are floors firm and level? What about the condition of the floor boards? and supports? Does the ceiling sag?
- Is there evidence of termites or dry rot?
- What types of floors are beneath the carpeting?
- Are stairs and door frames level and well joined?
- Is the natural lighting to your liking?
- Which way does the front face – north, south, east or west?

Don't be shy! You are about to invest a lot of money and should investigate each home thoroughly

- Are the room sizes adequate for your family's needs? Is the layout compatible with your habits?
- Is the kitchen suitable? Are there enough outlets and space for appliances? What about cabinets?
- Are storage areas and closet space adequate?
- Does it look like renovation work has been done? If so, are there copies of building, electrical and gas permits for this work? Plumbing work is covered by a building permit; however gas and electric work require separate permits.
  - > What is the condition of the electrical wiring? Are there cables visible in the basement or close to the electrical panel that are not fastened at regular intervals to the floor joists or walls? If so, that may be an indication that work was done on the electrical system without a permit.
  - > Is there a hot tub or swimming pool installed? If so, check for evidence that there are electrical permits for these installations—it is very important for you and your family's safety that proper grounding of the electric systems for these devices is in place.
  - > Has a gas fireplace insert been added at some stage? Is there a gas permit for this installation? Proper clearances from combustibles for these installations are critical and evidence that a permit was taken out for this work is confirmation that the work was done by a licensed contractor and/or inspected by a qualified person.
- What about satisfactory ventilating equipment? Are there exhaust fans in the kitchen and bathrooms?
- What type of heating system is it (forced air, gravity, etc.)? What kind of fuel is used? Is there a heat pump?
- Is there sufficient electrical wiring? Is there enough power for your electrical equipment? Are there adequate outlets in the home? Has the fuse box been updated?
- Can the wall space be utilized to suit your needs? Check the locations of doors and windows.
- Drainage – is the home well drained and has landscaping been done to prevent erosion?
- What is the condition of the basement and foundation? You should check the walls and floors. Is the floor dry?
- Are there hookups for a washer and dryer?
- What about the attic or crawl space? Is there evidence of leaks? Dry rot? Is there proper ventilation and insulation? Does the insulation meet current specifications?
- Are there severe cracks in or excessive or uneven settlement of the foundation?

- How large is the garage? Is the driveway adequate? Is there cracking or lifting and is drainage satisfactory?
- What is the condition of caulking on windows and doors? What kind of storm windows are there and what condition are they in? Do windows and doors open and close easily?

Each home is unique. Keep some notes to enable you to remember the details later!

Buyer Beware!

If you think you have found the right home, but you have some concerns about its structural soundness, now is the time to call in an expert. Consider having the home inspected by a building inspection service which will prepare a written report. Your purchase is a big investment, so think of the fee for this service as an insurance premium.

Be aware that home inspections are primarily visual inspections and they may not reveal problems with electrical or gas systems. If there is evidence that there are some issues with the electrical or gas systems and/or work has been done without appropriate permits, you should consider having people with qualifications in those areas inspect those systems.

What Other Questions Should You Ask?

Is a Property Disclosure Statement available?
In British Columbia, sellers may have completed a Property Disclosure Statement. This statement provides information about the state of the home to potential buyers.

What is the Zoning on this Home?
The zoning on a home is established by the local government. Zoning sets the type of buildings which may be built on any particular piece of property and how those buildings may be used: single-family residential, duplexes, multi-family residential, commercial, or industrial. You may also wish to ask about the zoning on the surrounding properties to determine if, for instance, a factory or a park could suddenly appear nearby.

Is a Land Title Search Available?
A Land Title Search will allow you to see who is registered as the current owner of the home and if there are any registered mortgages, easements, restrictive covenants, rights of way, etc. which may affect the use or value of the home.

Are There any Restrictive Covenants?
A restrictive covenant places a specific limitation on the owner's use or occupancy of the property. Such things as a prohibited type of exterior finish, the minimum size of the structure, or the maximum height of the structure are only a few examples of the type of restrictive covenants you may encounter. The act of purchasing a property which has a restrictive covenant compels you to abide by it.

Are There any Easements?

An easement is a right or privilege one party has to use the land of another for a special purpose. Examples are: easements given to telephone and electric companies to erect poles and run lines over private property, easements given to people to drive or walk across someone else's land, and easements given to gas and water companies to run pipelines to serve their customers.

How Much are the Property Taxes?

As stated earlier, the amount of property taxes payable will figure in the calculation of how much money you can borrow to finance your purchase.

Is the Structure Covered by any Warranty?

Homes built by a licensed residential builder under a building permit applied for on or after July 1, 1999, or where construction began on or after July 1, 1999 in areas where no building permit is required, are subject to the mandatory third-party warranty insurance provisions of the *Homeowner Protection Act.* The licensee with whom you are working can assist with acquiring warranty information. The Homeowner Protection Office (HPO) can assist with questions regarding warranty issues. The HPO can be reached through their toll-free information line at **1-800-407-7757** or you can refer to their web site at **www.hpo.bc.ca.**

Fixtures vs. Chattels

Things contained in a building or on the land are classified as either fixtures or chattels. The difference between a fixture and a chattel is very important to you because fixtures stay with the home when it is sold, but chattels depart with the old owner. If you see an attractive fireplace insert, a "murphy bed" in the spare bedroom closet, a vacuum canister in the utility, or custom window blinds which you think should stay, but are not certain if the seller agrees, ask if it is a fixture.

Are there permits in place?

Are there permits in place for building and/or renovation work and for the electrical and gas systems including original and alterations/additions? For information on what type of work in a home requires gas and electric permits please contact the BC Safety Authority at 1-866-566-7233 or visit www.safetyauthority.ca.

Don't be afraid to ask lots of questions!

What About Strata Properties and Cooperatives?

If you are contemplating the purchase of a home which involves the strata or cooperative type of ownership, there are some additional points to consider:

- What are the charges for common area maintenance? What services or utilities are included?
- Does the building have a good reputation for honesty and successful operations? Are units not controlled by the developer being successfully resold?
- Who controls the recreational facilities? Will you be required to pay extra fees for using any of the facilities or amenities? If it is a new development, is there a certain date when your unit will be ready for occupancy? Will the swimming pool and recreation facilities be completed by that date?
- Who manages the property? Is it managed professionally or is it an owner's responsibility?
- What contingency reserve fund is maintained for roof replacement, decorating, repairs and maintenance?
- Are owners permitted to rent their units to tenants? How many rental units will be allowed in the project?
- Are pets allowed in the building? Are there any other restrictions on use?
- Have any special assessments been agreed upon or have any structural problems been noted which may lead to a special assessment in the future?
- Has the building envelope been renovated in the past? Since October 1, 2000 all building envelope renovators who engage in, arrange for, or manage a building envelope renovation in British Columbia must be licensed as a building envelope renovator with the Homeowner Protection Office and must provide applicable warranty insurance on the building envelope renovation.

- What about parking stalls and storage lockers? All strata property is either part of a strata lot or common property. Common property can then be designated as limited common property for the exclusive use of one or more strata lots. In strata developments, the strata plan usually contains one of the following arrangements for parking stalls and storage lockers.
  - > *The parking stall or storage locker is part of a separate strata lot.* Parking stalls can exist as separate strata lots with their own strata lot number.
  - > *The parking stall or storage locker is part of the strata lot.* A parking stall or storage locker that is designated as "part of the strata lot" will share the same strata lot number as the main strata lot which uses the stall or locker.
  - > *The parking stall or storage locker is part of the common property.* If the parking stall or storage locker is part of the common property, the strata corporation has ultimate authority over it. In these instances the parking stall or storage locker may be under a lease or licence agreement that can normally be assigned to subsequent buyers. The parking stall or storage locker may also be designated under short-term exclusive use agreement. Under a short-term exclusive use agreement, the strata corporation allows the owner to exclusively use a parking stall or storage locker. Such an arrangement is limited to a period of one year. Although the strata council can renew the arrangement, it could choose not to renew. A key element of short-term exclusive use agreements is that the right to use only attaches to the owner and not to the strata lot. Sellers, therefore, cannot contractually assign their right to use a parking stall or storage locker to new owners as with a lease. This means that if a seller has an exclusive use arrangement concerning a parking stall or storage locker, the new owner, upon taking title of his or her strata lot, will not automatically acquire the right to use the parking stall or storage locker.
  - > *The parking stall or storage locker is limited common property.* Limited common property means property designated for the exclusive use of the owners of one or more strata lots.

Read documents very carefully as they may reveal potential problems in the building

- What information should you obtain about the building? Ask to see the current bylaws, rules, annual budget, Information Certificate (Form B prescribed under the *Strata Property Act*) and at least the last two-years' minutes of all meetings (including strata council meetings, annual general meetings, extraordinary meetings, special general meetings and meetings of the executive or the members of any section to which the strata lot belongs). You should also ask to see any applicable warranty information, envelope inspection reports or remediation reports, the registered strata plan and any amendments or resolutions dealing with the common property and any correspondence to owners from the strata council over the last twelve months. These documents will govern the manner in which your unit and the common areas may be used. They will also advise you of what has been going on in the building. Read these documents very carefully as they may reveal potential problems in the building.

Making an Offer

Once you have found the home you would like, a written offer to purchase must be prepared. Considering the substantial nature of this investment, you should work with a lawyer, notary public, or a real estate licensee when preparing an offer to purchase. An offer is usually recorded on a standard form entitled Contract of Purchase and Sale.

What Should the Offer Contain?

When you prepare an offer, it should contain a number of standard details, plus any conditions which are important to you. Be fully aware that once you sign this document and the seller also signs it, a legally binding contract has been formed. Legally binding means both you and the seller will be bound by the terms of the contract and must each perform your respective obligations as stated within that contract. Either of you can go to court to compel the other to perform his or her part of the contract. Even if a contract contains subject clauses, it is legally binding as soon as both the buyer and the seller have signed the contract.

Your offer should include:

- Date of offer.
- Date and time your offer expires.
- Full legal names and addresses of both the buyer and the seller.
- Full legal description of the home.
- Amount of the deposit you are giving (which will be held in a trust account and will form part of your down-payment).
- Sale price.
- Amount of your cash down-payment and details as to how you will finance the remainder of the purchase price.

- Your desired closing and possession dates.
- A list of the conditions which must be satisfied before the sale can occur. These are called "subject clauses" or "conditions precedent."
- A list of items which are not attached to the building (chattels), but which you state are to be included in the sale price; for example, drapes, refrigerator, stove, etc. It is helpful to be specific in the description of these items.
- Your signature.

What are the Seller's Options?

When the seller receives your "offer to purchase," he or she has three options.

Accept the Offer Exactly as Written
If the seller signs your offer without making any changes, a legally binding contract has been formed. Again, legally binding means both you and the seller will be bound by the terms of the contract and must perform your respective obligations as stated. Your performance can be enforced in a court of law.

Reject the Offer
The seller is under no obligation to accept your offer or to make a counter-offer.

Make a Counter-Offer
If the seller changes anything at all on your original offer, the seller is considered to have rejected your offer and to be making a new offer back to you. This new offer is usually referred to as a "counter-offer."

When you receive a counter-offer, you then have the same three options as the seller had: accept, reject or make a further counter-offer. The process of counter-offers may continue until an agreement is reached.

If the counter-offer is unacceptable to you or if you have changed your mind about the purchase, the seller does not have the option of returning to your original offer and accepting it.

What are the Buyer's Options?

If, after making a written offer, you decide you don't want to purchase the home, it may be possible to revoke the offer. Many legal problems can result from the revocation of an offer, so you should seek professional advice about the correct procedure to follow.

More About "Subject" Clauses

The purpose of a subject clause (also know as a condition precedent) contained in an offer to purchase is to set out a specific condition which must be fulfilled before the sale can go through, although the contract is legally binding once it is signed by both parties.

Subject clauses must be carefully and precisely worded. You would be wise to get professional help in composing them; however, it is ultimately your responsibility to be sure the clauses mean what you want them to mean.

There can be as many subject clauses as you are able to negotiate with the seller; however, the fewer you put into an offer, the more serious you seem as a buyer and the better the chance is that your offer will be accepted. Remember that you are, in effect, asking the seller to take the home off the market during the period while you are attempting to fulfill the conditions you have set.

Some possible items you might wish your purchase to be "subject" to include:

- a satisfactory professional building inspection
- the arrangement of the financing you require
- the lender's approval of your application to assume the seller's existing mortgage
- the sale of your present home
- if the home is a strata lot, satisfactory review of all relevant strata documentation

When you place "subject" clauses on your offer to purchase, you are required to use every reasonable effort to see that the conditions are satisfied. It is important to know that subject clauses are not "escape" clauses that allow you to avoid your

It is up to you to make sure the subject clauses mean what you want them to mean

legal responsibilities in the contract. Once you have fulfilled the conditions, written notification should be given to the seller that you are removing the subject clauses.

If you are unable to meet the conditions after making every reasonable effort to do so, the contract ends and there is no legal obligation to complete the purchase. It is important to remember that if the brokerage is holding your deposit, both you and the seller must sign a deposit release form prior to the deposit being released to you.

A seller may wish to accept your offer containing subject clauses, yet still be free to consider other offers until you have removed the conditions. To allow his or herself this freedom, the seller may ask for a clause in the agreement which permits the seller to require you to remove all subject conditions within a short, specified time period (usually between 24 and 72 hours) if the seller receives another attractive offer. If you cannot do so, your conditional contract comes to an end. Sellers are most likely to request this time clause where you have made an offer which is subject to the sale of your current home.

More About Deposits

Usually, you will make a deposit with your offer to purchase or after your offer is accepted. That deposit is usually held in your brokerage's trust account. The brokerage holds the deposit for the benefit of the transaction, not just for your benefit. Note: If your contract contains subject clauses in your favour and you do not remove those clauses, you will not automatically get your deposit back. Both you and the seller will have to sign a separate release form. If the seller will not sign the release, you will have to obtain legal advice, as your brokerage cannot release the deposit unless you and the seller have agreed to do so.

Unless the contract specifically states that any interest earned on a deposit will be payable to either the seller or the buyer, interest is payable to the Real Estate Foundation of BC.

If a deposit is to be held by someone other than a real estate brokerage, you should obtain independent legal advice to ensure there is no concern about either how the deposit is to be held, or the terms upon which it may be released.

Completing Your Purchase

The Contract of Purchase and Sale, which you signed, will state the completion day for the transaction. On that day, legal ownership will transfer from the old owner to you in exchange for the purchase price of the home. You will be able to move in on the possession date stated on your contract. The completion and possession dates are not necessarily on the same date.

Do You Need Legal Assistance to Complete the Purchase?

It is normal practice for the buyer to engage a lawyer or notary public to prepare the documents necessary to transfer the legal ownership. Among other things, he or she will protect your interests by:

- searching the title in the Land Title Office registration system to find if anyone other than the seller has any legal rights to the home and to see if there are any registered easements or restrictive covenants
- preparing the documents to transfer ownership from the seller to you, including the property transfer tax return
- ensuring that the seller's old mortgage has been properly discharged, if this is required
- confirming that all payments for which the seller is responsible have been made
- arranging for you to sign the transfer documents
- preparing a Statement of Adjustments outlining all monies owed by you and the funds you will need to complete the transaction
- delivering the final amount due to the seller and ensuring you are registered as the owner in the Land Title Office

The day has arrived! You have signed the documents, turned over your cheque, and received the keys. The home is yours!

Complaints About a Licensee

If a concern develops for a consumer as a result of real estate services provided by a licensee, the following steps should be considered:

- Discuss the concern with the licensee.

- If the matter is still not resolved, discuss the concern with the managing broker in charge of the brokerage. Most concerns are settled by these two means.

- If the licensee is also a member of a local real estate board, it may be approached. The board may be able to assist to informally resolve the concern. Real estate boards sometimes investigate conduct that may be in violation of their Code of Ethics and Standards of Business Practice. These boards will refer all matters to the Council where it appears that the *Real Estate Services Act*, Regulation or Rules have been contravened. Please visit www.bcrea.bc.ca for names and addresses of local boards.

- If satisfaction is still not forthcoming, the concern should be referred to the Real Estate Council at 604-683-9664, toll-free in British Columbia 1-877-683-9664 or on the internet at www.recbc.ca.

The Real Estate Council can investigate any complaint about the conduct of a real estate licensee in his or her handling of your real estate transaction. The Council is authorized to discipline a licensee found guilty of professional misconduct. It should be noted, however, that the Council does not have the authority to require a licensee to perform under the terms of a contract, nor does the Council have any jurisdiction over sellers who have not performed under the contract. The Council cannot award damages to a complainant from a licensee. Those matters may require legal action.

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Rev.10/2008