

## COURSE 2

### MODULE 1

#### 1.1 Agency Relationships Terminology

##### 1.2 Terminology

-Real Estate Trading is any activity related to acquisition or disposition of real property such as sale, purchase, lease, rental, exchange, etc. Principal (Client) is an individual who authorizes an agent to act on his/her behalf. It is the party with whom the brokerage (as agent) has signed an agreement. The Real Estate and Business Brokers Act (REBBA) is a special type of the Agency Law. In real estate, the equivalent of an Agent is the real estate brokerage. Salespersons and brokers are considered employees of the brokerage for trading purposes.

Agent: Authorized by a principal to represent the principal in business transactions with another party (brokerage)

Principal: individual who authorizes an agent to act on their behalf

Fiduciary: relationship of trust with one or more parties legal obligation to act in the best interest

Authority: legal power or right given by a principal, and accepted by the agent, to act on the principals behalf in business transactions with a third person.

- **Actual Authority:** A seller gives the brokerage authority to offer their property for sale
- **Implied Authority:** the Brokerage will determine the best marketing methods to offer the property for Sale

Third Party: individual who is not directly connected to the agency relationship but may be affect by it

Agency Relationship: A legal relationship in which the agent represents the client for dealing with a third party. Under REBBA, it is known as Representation Relationship.

1. Single Agency : one agent (brokerage) representing one principal (seller or buyer) within a transaction with a third party
2. Dual Agency: When there is one agent representing two or more principles
  - a. REBBA known as multiple representation
  - b. Can also be referred to as concurrent representation

Sub Agency is authorization by one agent (brokerage) to another agent (brokerage) to assist the client in selling or purchasing real estate with the written consent of the client. The sub agent has same obligations to the client as the agent.

##### Agency Creation

- Written, Verbal (tells the salesrep to start looking for places),
- Implied → unintentionally created based on words and actions of a salesperson, seller or the buyer. If a seller or buyer and the brokerage act in a manner that suggests an express agreement exists an agency relationship is formed even though no formal understanding is reached between them

Ratification: When the agent acts either without authority or in excess of authority granted and the principal accepts the benefit of agent's unauthorized act. For example, a salesperson shows a seller's property to a buyer without authority and brings an offer. The seller accepts the offer, and this ratifies the agency relationship.

Ex : A property was previously listed for sale by a salesperson which did not sell. A few months later, this salesperson is approached by another salesperson asking if the seller would consider an offer from their buyer who viewed the property when it was listed. The salesperson obtains the offer and approaches the seller who agrees to sell.

Estoppel (Conduct): When the principal leads a third party to believe they are being represented by the agent and the agent has the authority to act on behalf of the principal. Must be clear evidence that the seller or buyer has by words or actions indicated that the brokerage has the authority to act on their behalf.

Operation of Law: creates an agency relationship where a duty created by circumstance is imposed on an agent to act on behalf of the principal, where previously no agency relationship existed. The agency relationship would be based on established legal principles rather than by a formal agreement

Express Agreement: Which may be written, oral or implied. As per REBBA, the brokerage must have a written agreement as an evidence to claim commission. For Example, a buyer signs a Buyer Representation Agreement with a brokerage.

##### Agency Termination

-By mutual agreement of the agent and the client.

-When the agency is revoked by the principal/client. If revocation is unlawful, the principal may be liable for damages.

## -Expiry

-completion or Performance: When the job is performed or completed (e.g. property is sold, and the title is transferred). -

- "Revocation" : principal has the power to revoke the authority of the agent or act on their behalf.

- Lawful → brokerage fails to fulfill their duties under the representation agreement, revocation would be lawful
- Unlawful → if the brokerage has fulfilled their duties and the principal revokes their authority without justification

## **Termination by Operation of Law**

**Impossibility of performance:** subject matter of the agency ceases to exist

Ex. Seller's house has burned down.

**Illegality:** agency purpose of the agency relationship is unlawful. If brokerage has their registration under REBBA terminated

**Death, mental incapacity, or bankruptcy**

## **Continuation of Rights and Obligations after termination**

- Termination of an agency relationship does not affect the rights of either party, or any associated obligations owed by one of the parties

## 1.2

### **Granting Authority by Principal**

Express (Actual) → Authority granted by the principal (buyer or seller) intentionally to the agent and is outlined in terms of representation agreement

Implied: Assumed given the nature of the relationship this allows the agent (brokerage) to complete the task properly

### **Implied Authorities**

Grant the agent the ability to take actions and make decisions as an extension of the express authorities granted by the principal

### **Limits on Authority of Brokerage**

The authority given to a real estate brokerage is limited.

- The brokerage cannot sign contracts (offers) on behalf of the client. Brokerages can sign the contract only as witnesses. The agency relationship cannot be delegated to other brokerages without express consent of the client.
- Delegation of duties → agency relationship is established between the principal and the agent. Delegation of duties by the listing brokerage to use other brokerages in the marketing process is neither presumed nor implied under agency law
- Purchase Price → no implied authority to receive all or part of the purchase price they can only receive deposit relating to purchase
- The brokerage cannot incur expenses on behalf of the client without express authority.

### **Duties the principal owes to the Agent**

Indemnification → agent must act according to the lawful instructions of the principal, and in doing so, may not be held responsible for any liability, claim, loss, cost, damage etc. Principal must compensate an agent for the loss or damage incurred

- Brokerage may be indemnified..
  - Seller perspective: should the seller breach any warranty or representation made by the seller
  - Buyer Perspective: should any latent defect to the land or improvements not be identified by the brokerage, as the buyer will be required to make their own enquiries to confirm the condition of the property

May extend to reimbursement for expenses incurred. Right to reimbursement does not generally apply when brokerages receive a commission

Principal has no duty to indemnify an agent who acts unlawfully

Remuneration : Principal, upon signing the agreement, is obligated to pay the brokerage for the services agreed to and provided as part of the agency relationship (typically commission). For the remuneration to apply → agent must be authorized to trade in real estate

Other: strongly recommended any obligations be formally documented

- Payment of taxes

- Agreement to maintain insurance on property
- Referral of enquiries to the brokerage
- Paying commission, if the sale does not close due to their neglect
- The client has to pay commission if the sale does not close due to client's default.

### **Negligent Misrepresentation**

This happens when a party seeks information from a registrant who is trusted for his/her skills. The registrant giving the advice knows that reliance is being placed on his/her advice. If the party subsequently suffers economic loss due to false information, the registrant can be sued for damages under negligent misrepresentation.

## **1.3 Client's Duties**

### Duty of Care

#### **General Obligations**

Duty of Care: standard of care and skill provided by a salesperson (knowledgeable)

- For client → duty to client involves everything done for that client
- For customer → limited and involves ensuring honesty, fairness and integrity, accuracy
  - o Certain disclosures (material facts known or ought to be known)
  - o Limiting services to providing information not advice
- Two obligations owed to both client & customer exercising care & Skill, Honesty

#### Obligations owed to a client

- Negotiate favourable terms
- Maintain confidentiality
- Disclose information
- Act in Person (or delegate within the brokerage)
- Obey instructions (from client ... only lawful)
- Perform mandate → as set out in the representation agreement. Set out in agreement do it.

#### Fiduciary Relationship

fiduciary relationship can be created by words or actions ... code requires a verbal representation agreement with the principal to be in writing ASAP, before an offer is made

- Based on three fundamental principles
  - o Loyalty → clients best interests are serviced
  - o Best Interests → clients informed consent must be obtained if such interest come into conflict with clients interest
  - o Trust and confidence

#### **Fiduciary Obligations**

Maintain utmost loyalty

Avoid conflicts of interests

Disclose conflicts

Do not make a secret profit

Do no misuse confidential information

#### **Regulatory Obligations Owed to Clients & customers**

Account → account for, safeguard, and keep proper records pertaining to money, documents and property insured under reco, deposit in trust account, maintain registration

- Real estate trust ledger → a record of trust money trust money transactions

Remuneration → the client has an obligation to pay commission to the brokerage

Do not induce, breach, or make certain promises

Deliever copies of agreements , offers and statements → representation agreement is immediate

Indemnification: The principal has an obligation to compensate the agent for liabilities incurred when carrying out lawful duties. The client provides indemnity if a damage or loss occurs to the client during the agreement period, except when

the damage/loss is due to gross negligence of duties by the brokerage. In real estate, the duty to reimburse the brokerage for expenses typically does not apply because the brokerage is paid remuneration (commission).

Holdover Period: The client has to pay commission if a property is shown by the agent during agreement period but is sold privately to the same buyer during the holdover period. The holdover period starts after the expiry of the agreement period.

### **1.3 Brokerage Duties to Clients and Customers**

#### **General Obligations**

The agent must use Due Care & Skill in providing information. The agent must perform agreed functions and ensure privacy. Agent must be honest and should not mislead the client.

#### **Duty of Care**

Clients: The Duty of Care includes everything done for the client.

Customers: The Duty of Care is limited to honesty, exercising reasonable care and skills when providing information and performing agreed functions. The agent must ensure that there is no misrepresentation.

Standards: The standards for Duty of Care are objective (based on facts) and not subjective (no regard to personal interpretations).

Limited Disclosures: Information related to the agency relationships and material facts about the property/trade must be disclosed to both clients and customers.

#### **Fiduciary Duties**

Fiduciary duties are based on trust and confidence, best interests and loyalty. A written agreement is not required for fiduciary obligations. These duties exist even if the brokerage is acting gratuitously (free).

Loyalty: Agent must place the interests of the principal (client) above all (except law).

Avoid Conflicts of Interest: Arising from representing two clients in a trade (multiple representation) or by having direct/indirect interest in property.

Disclose Conflicts: At the earliest practical opportunity but before an offer is made.

Disclose Referral Fees: The registrant must not make secret profits at the expense of the principal.

Protect Confidential Information: Personal or motivational information of the client must be kept confidential and must not be misused so as to harm the principal.

#### **Regulatory Obligations Under REBBA**

Accountability: The agent must account for and safeguard money, documents and property entrusted by the client. The obligation of a brokerage to maintain a Real Estate Trust Account is based on this duty.

Commission: The commission charged may be a percentage of sale price, a fixed amount (flat fee) or a combination of both. Several percentages may also be used but the percentage must be in descending order as the sale price goes up.

Promises: The brokerage must not induce anyone into signing a contract or make anyone breach their contract with another brokerage. If a promise is made to a party, it must be in writing and delivered to that party.

Delivery of Documents: Documents related to trade such as offers, representation agreements, notices, waivers, amendments, etc. must be delivered in a timely manner.

Agency Relationships: Agreements must have a date of commencement and an expiry date. The forms used by the brokerage must be current.

Disclosure of Representation: Brokerages must disclose agency relationships to all parties in a transaction before entering into any relationship. Written acknowledgement and consent must be obtained from the parties.

### **1.4 Types of Representation Terminology**

Single Representation: A relationship where the brokerage represents only one client (buyer or seller) in a transaction and the other party is a third party or a customer.

Sequential Representation: This happens when the same client first sells a property through the brokerage and then buys another from the same brokerage.

Concurrent Representation: This happens when the brokerage represents more than one client (buyer or seller) but not for the same trade. Conflict of interest may arise when the same brokerage represents more than one party with competing interests, but not for the same trade.

Multiple Representation: This happens when the same brokerage represents more than one client for the same transaction. It may also occur when more than one buyer is represented by the same brokerage for the same property.

Disclosure requirements : Discuss how services being provided would change

Written Disclosure: REBBA Code of Ethics requires that a written disclosure of representation capacity must be made, and Informed Written Consent of clients be obtained at the earliest practical opportunity but before an offer is made.

## **1.5 Representation Agreements**

### **Information Before Representation Agreement**

REBBA Code of Ethics requires that certain information must be provided to the parties at the earliest practical opportunity but before an offer (of representation) is presented.

A signed written acknowledgment must be obtained from the party. The brokerage must provide certain information about service alternatives available through brokerage.

Examples –

*Representation Agreement with a seller ;* referred to as listing agreement . Used to identify duration of agreement and commissions payable

*Customer service agreement with a seller :* non exclusive agreement establishes a contract. Used when a seller is selling property privately and the brokerage is enquiring about the property to show to a buyer. Agreement is used to confirm brokerage is not representative of the seller, provide the brokerage with authority, detail commission, obtain authorization to apply the deposit to reduce commission

*Representation agreement with a buyer*

*Customer service agreement with buyer:* used to confirm no commission is paid for any customer service provided by the brokerage, unless otherwise agreed to.

*Representation agreement with landlord or tenant*

### **Providing Info before an agreement**

- Service alternatives → representation or customer service agreement
- Services being provided → agreement would detail the specific services
- Multiple representation → must be advised that circumstances could arise in which the brokerage could represent more than one client
- Representation and obligations → nature of services that the brokerage would provide each client in the possible event that the brokerage represents more than one client in the same transaction
- Representation and customer service → brokerage could represent clients as well as provide services to others
- Service Limitations → restricted nature of the services that the brokerage would provide to a customer in respect of a trade if the brokerage also represents a client
- Obtaining written acknowledgement → earliest possible opportunity and before offer is made obtain a written acknowledgement that information regarding the required disclosures has been received.

## **1.6 Explaining Services**

Due Diligence confirming the seller has made all necessary disclosures, disclosing relevant info and material facts, making appropriate disclosures, demonstrate competence skill and judgment, refer .

### Pre-listing

Conduct visual walkthrough

Gather and verify key info about the property → review registry, tax , assemsemtn records etc

Identify and disclose any material facts

Explain marketing options, provide opinion on property value , explain selling costs, advise on property preparation

### During Listing

Accurately list the property

Explain the process for showings

Implement the marketing plan

Qualify users based on sellers directions (if there is a house for sale that is really

Pricey they want privacy

Ensure all required disclosures are made by the seller

#### **Sub-agency**

- Occurs when the seller is a client of the listing brokerage and co-operating brokerage has a buyer who is a customer
- Brokerage in the sub-agency relationship owes fiduciary duties to the seller and will represent the interest of the seller rather than the buyer
- Co-operating brokerage would treat the buyer as a customer and provide ethical and competent service but owe no fiduciary duties such as confidentiality

1.8

#### **Communication**

- Salesperson from a brokerage other than the listing brokerage must communicate with the seller through a their brokerage unless written permission has been given to communicate directly with the buyer
- Violation to induce a seller or buyer to break an existing contract they have with another brokerage

#### **Agreements in Writing**

All agreements related to trading in real estate must be in writing to be effective. The Real Estate Council of Ontario (RECO) does not provide any representation forms.

A Seller Representation relationship is created when a Listing Agreement is signed.

A Buyer Representation relationship is created when a Buyer Representation Agreement is signed

Minimum Content: The agreement must include information such as the Effective Date (date of commencement), one definite Expiry Date, services to be provided, total commission, commission to co-operating brokerage and how the commission is to be calculated.

More than 6 Months: If the agreement is for a period of more than six months, the party must give their consent using initials on the first page of agreement.

Copies of Agreements: Copies of representation agreements must be delivered immediately upon signing.

#### **Multiple Representation**

When more than one client is represented by the same brokerage and for the same transaction/trade. For example, when both the seller and the buyer have Representation Agreements with the same brokerage and for the same property.

-Both parties are clients of the same brokerage and the brokerage must act impartially. This situation may be created by Informed Written Consent (Express Authority) or it may happen unintentionally (Implied Consent).

-Multiple representation must be disclosed in writing to all parties and Informed Written Consent must be obtained at the earliest practical opportunity but before an offer is presented.

-The brokerage must disclose a potential for multiple representation before entering into a representation agreement (Listing Agreement or Buyer Representation Agreement). ---The brokerage may avoid the multiple representation situation and avoid conflicts of interest by providing Client Services to one party and Customer Services to the other party.

Imputed Knowledge refers to a legal assumption that knowledge of confidential matters about clients is transferred (imputed) to all salespersons/brokers of the brokerage.

Implied Multiple Representation mostly happens in open houses when a third party believes that an agent is working on its behalf.

#### **Acquisition/Disposition of Real Estate by Registrants**

##### **Disclosure of Interest**

Registrants must disclose any existing interest (sale) or a contemplated interest (purchase) in real estate.

The disclosure must be in writing and signed acknowledgement must be obtained at the earliest practical opportunity but before an offer is made.

The disclosure statement must include

- That the party selling or buying is a registrant under REBBA.
- That the registrant is a salesperson, Broker or a Brokerage.
- Whether the interest in property is direct or indirect.
- The material facts about the property known to the registrant that may affect the value.

The registrant must also disclose details of any agreement for subsequent sale of the property to a third party.

## **2.1 Obligations of the Registrant, Seller, and Buyer**

### **Information Before Agreement**

Section 10 of the Code of Ethics requires that registrants must provide certain information to sellers and buyers before entering into an agreement.

- They must clearly explain the nature of services provided and difference in services provided to clients, customers, and to a third party.
- The fact that the brokerage may provide client services to both the buyer and the seller in the same transaction (multiple representation).
- The fact that the brokerage may provide client services to one party and customer services to the other party in the same transaction. Specific information must also be included in the agreement documentation.
- The agreement must be reduced to writing at the earliest practical opportunity and before an offer is made. A copy of the agreement must be provided immediately upon signing.
- copy of agreement to each person

### **Documenting the Relationship**

#### Contents of Written Agreement

- There must be an Effective Date (Date of Commencement) and one definite Expiry Date.
- Both dates must be on the first page of the agreement.
- Method for calculating commission or other remuneration payable to the brokerage
- How the commission or other remuneration will be paid
- The commission for co-operating brokerage (if any) must be mentioned.
- Services to be provided

#### Copies of Written Agreement

- Must be given immediately to anyone who signs the agreement
- All forms must be current

#### Seller representation agreements, buyer representation agreement & agreements with customers

- if you enter into a verbal agreement it must be reduced to writing ASAP
- referred to as listing agreement (seller representation)

More than 6 Months: If agreement period is more than 6 months, the client's written consent is required next to the expiry date on the first page.

Claim for Commission: A registrant cannot claim commission unless there is a written agreement that is signed by the party who will pay the commission.

If the agreement is not in writing, REBBA provides that commission may be payable when: -

- A salesperson has conveyed a written offer that is accepted by the seller.
- A salesperson shows a property to the buyer, who later purchases the property, or
- The salesperson introduces the seller and the buyer for the purpose of discussing the purchase or sale of an interest in real estate.

\*\*\* failing to properly document and discuss the client's obligation to pay commission may result in an invalid agreement resulting in brokerage not getting paid, disciplinary action and reputation

#### Commission Calculations:

- Commission cannot be based on the difference in list price and the sale price.
- percentage of sale price, a fixed amount, or a combination of both. Percentages can be in descending order

Disclosure of Direct or Indirect Benefit: If the registrant is receiving any direct or indirect benefit, such as a referral fee or a gift, the fact must be disclosed to the client at the earliest practical opportunity.

Two Commissions from the Same Trade: A brokerage cannot claim commission from a seller and then claim another commission from the buyer under a different agreement for the same trade. However, the does not apply when a disclosure to this fact is made to both parties and written consent is obtained.

Fixed Commissions: The registrant cannot directly or indirectly convey to any party that commissions are fixed by their brokerage, the real estate board, or any regulatory authority.

Showing Properties: The buyer must be shown all properties that match their search criteria. This must be done without any regard to the commission to the brokerage or the salesperson.

Unexpired Agreement: No claim for commission can be made if the registrant knows that the seller has an unexpired agreement with another brokerage. The salesperson must make enquiries before entering into an agreement with the seller.

Disclosure of Representation Relationship: A brokerage cannot enter into a relationship with more than one party to a transaction unless a disclosure to this effect is made and written consent is obtained from all parties. This applies to both concurrent representation as well as multiple representation situations.

Inaccurate Representations: The registrant must not knowingly make any inaccurate representations about services provided either verbally or in any advertisement.

Insurance Requirements: All registrants must be insured under the RECO insurance program and this fact must be disclosed in writing to potential buyers and sellers.

### **Seller's and Buyer's Legal Obligations**

Indemnification: To compensate the brokerage for loss or damage incurred when carrying out lawful duties under the agreement. The duty to pay the brokerage for expenses incurred during performance of duties does not apply because the brokerage is being paid remuneration. The seller also indemnifies the brokerage for the losses incurred during performance of duties. This does not apply when the loss to the seller is due to gross negligence of the brokerage.

Remuneration: It is set out as the commission paid to the brokerage for securing a valid agreement to purchase the property.

Seller's Obligations Under Representation Agreement: The seller agrees to pay commission if the agreement does not complete due to seller's default or neglect. The seller agrees to inform the brokerage immediately if they receive any direct inquiries or offers from any source during the term of the agreement.

Buyer's Obligations Under Representation Agreement: The buyer agrees to pay commission if the agreement does not complete due to buyer's default or neglect. The buyer agrees to inform the brokerage if they come across any property of interest during the term of the agreement and agree to submit any offers through the brokerage.

## **2.2 Seller Representation Agreement (Listing Agreement)**

### **Types of Listings**

Exclusive: The seller gives the sole right of selling the property to a single brokerage as per terms of the Listing Agreement, for a specified period of time (Listing Period).

- is a measure of confidence from the seller and there is an assurance of commission to the brokerage.
- Only the brokerage with whom a seller has signed an exclusive agreement is authorized to show the property and the property would typically not be advertised on a listing service

Listing Service: member-only database that provides access to properties that are available for sale or lease. Wider exposure \*most common\*\*

- Co – listing or shared listing → representation agreement with two or more brokerages at the same time



- Share responsibilities + commission
- Usually for a divorce

Open:

- 'For Sale by Owner' listing. The seller may ask many brokerages to sell the property without any liability to compensate any of them, except that brokerage which brings in a buyer and sells the property. In this case, the seller is free to sell the property privately in order to save commission.
- Usually identified by a sign on the property "Brokers Protected" → seller will co-operate with any brokerage and compensate
- Typically commission is signed between brokerage and the seller rather than representation agreement

MLS®: This is a special form of Exclusive Listing with the added advantage of exposure on the MLS® database (listing service). Commission is typically shared between the listing brokerage and the co-operating brokerage.

**The Listing Agreement**

The Seller Representation Agreement (Listing Agreement) establishes an agency relationship between the seller and the listing brokerage and sets out obligations of each party during the term of the agreement. Under this agreement, the seller gives authority to the brokerage to market and sell the property for a specific period of time, known as the Listing Period. REBBA Code of Ethics requires that the agreement must be reduced to writing and signed by the registrant prior to any offer submitted by a buyer. Copy of the agreement must be delivered to the seller immediately after signing. Also will contain the following info

- Services the brokerage will provide
- Seller's obligations for indemnification and remuneration
- Brokerage's obligation
- Brokerages authorities
- Limitations to the brokerage authority

Terms of and Parties to a Seller Representation agreement

- Listing agreement type,
- Brokerage details
- Sellers details
- Address
- Effective and expiration dates
- Listing price
- Seller's representation (not currently listed with another brokerage) and warranty

**Key Provisions in the Listing Agreement**

1. Definitions and interpretations defines terms such as seller, buyer, real estate board
2. The Commission Clause: This clause specifies the total commission as a percentage of sale price or as a flat fee.
  - The seller agrees to pay commission if the sale does not close due to seller's default. The brokerage has the right to apply the deposit first to reduce the commission obligation of the seller. The seller pays the deficiency between the deposit and the total commission. The seller agrees to pay the applicable taxes on commission.
  - Sale not complete due to fault of the buyer → listing brokerage would have no claim for commission

Enquiries and Offers: The seller agrees to refer all enquiries during listing period to the listing brokerage. Seller agrees to forward all offers to the listing brokerage that come directly to him.

Contact After Expiry: This box provides an option to the seller when the listing period expires, and the property does not sell.

Does: The seller consents to other brokerages to contact him after expiry to discuss further listing and marketing of the property. Does Not: The seller does not consent to other brokerages to contact him after expiry to discuss listing and marketing of the property.

### 3. Holdover (Commission Clause)

- As per the wording of this provision, the commission is payable if the property is shown to a buyer during the listing period but is subsequently sold privately to the same buyer after expiry of the agreement but during the holdover period.
- If the property is subsequently listed with a different brokerage, the difference in commission applies.
- The holdover period is typically 60 to 90 days or as agreed by the parties. The obligation of the seller under Holdover to pay commission applies even if the agreement period has expired.
- The closing date of the sale is not irrelevant in this case.

**Example:** Seller Smart lists his home with Cram Realty Inc. at 5% total commission. The listing period is from April 1<sup>st</sup> to June 30<sup>th</sup>. The holdover period is 90 days after the expiry date. Buyer Bright is shown the property on June 20<sup>th</sup>, which is during the agreement period.

Commission Payable: The seller waits for expiry of the listing period and sells it privately to buyer Bright on July 5<sup>th</sup>. Cram Realty Inc. may claim full commission.

Difference in Commission Payable: After expiry of the listing period on June 30<sup>th</sup>, the seller lists the property with Power Realty Inc. at 4% commission. The same buyer Bright buys the property on July 5<sup>th</sup>. Cram Realty Inc. may claim the difference in commission, which is 1%.

No Commission Payable: After expiry of the listing period on June 30<sup>th</sup>, the seller lists the property with Power Realty Inc. at 6% commission (higher commission). The same buyer Bright buys the property on July 5<sup>th</sup>. Cram Realty Inc. cannot claim any commission because the new commission is higher than the old commission.

### **Representation Clause**

#### **Finders Fee's**

Written disclosure must be completed when finder's fee is being received

Indemnification and Insurance The salesperson signs this section to inform the sellers that they are insured under the RECO insurance program.

- Identifies the seller will not hold the brokerage liable for any damage or loss to the property and its content during the term of the agreement, unless gross negligence or a wilful act by the brokerage
- Warrant that the property is insured, including personal liability insurance against any claims or lawsuits resulting from bodily injury or property damage to others occurring on or at the property

Family Law Act and Spousal Consent: The seller must get Spousal Consent if the property is a matrimonial home and only one spouse is on the title. Otherwise, the seller provides a warranty in the Family Law Act clause that Spousal Consent is not required.

Acknowledgement: The sellers sign this section to acknowledge that they have read and understood the terms of the agreement and have received a copy of the agreement.

### **Successors and Assigns**

- Identifies that when a seller representation agreement has been signed, any heir, estate trustee, or other party must abide by the terms and conditions of the agreement
- **Conflict or discrepancy** → if something is added to the agreement that conflicts with any pre printed portion of the seller representation agreement then the added party supersedes the pre-printed
  - o Ex: when discussing the listing agreement with a seller, the seller informs the salesperson that he does not wish for a sign to be on the property. The salesperson attaches a schedule to the listing agreement

identifying these terms. Based on the wording of the Conflict or discrepancy clause, the terms added to the agreement will override the pre-printed portion

- **Electronic communication** if using electronic documents, and seller transmits agreement electronically it is deemed the seller has retained a true copy of agreement. Code requires you to provide a copy of the agreement to each party as soon as it is signed
  - o *Schedules* if any term is added to the seller representation agreement, schedule can be used, and should contain cross-references to original seller representation agreement (address of property, name of seller, name of brokerage etc. )

### Signing and Initialling Requirements

- Signature – Brokerage → comes from person authorized to bind the brokerage
- Signature – Seller → same as other legal signatures . Date signature and include #
  - o If with corporation, individual authorized to bind the corporation is required. In absence of sea phrase “ I have the authority to bind the corporation” is included
- Signature – Spousal
- Initialling – done on any page where a signature is not obtained. Signature at bottom of page
  - o Duration of the agreement exceeds six months
  - o Acknowledge the warranty statement indication they are not a party to another listing
  - o Whether they agree to another brokerage contracting them after the listing expires or is cancelled
- Declaration of insurance
  - o Must inform they are insured under RECO
- Acknowledgement
  - o Seller acknowledges that they have understood the terms and they have received a copy of agreement

## 2.3 Buyer Representation Agreement

### Differences vs. Seller Representation Agreement

General description of property type, geographic location, indemnification, consumer reports

Similarities

\*\*\* definitions, representation, finder’s fee, use and distribution, conflict, electronic communication, electronic signatures

#### Property Type

- Specific and detailed as possible in describing the type of property they are interested in (ex. Single Fam. Residential)

#### Warranty:

- They are not a party to a buyer representation agreement with any other brokerage for the purchase or lease of the same property type and within the same geographic area

#### Referral of Properties

- Provision that requires the buyer to inform the brokerage of any property they become aware of that meets the criteria as identified in the agreement

#### Indemnification

- Provision is the buyers acknowledgement that the brokerage and its representatives are not responsible for any defects found in the properties the buyer views

#### Consumer reports

- Buyer is notified that a consumer report, consisting of the buyer’s personal and credit info, may be used and referred to during the transaction
- Provision is included to ensure compliance with the requirements set out in the *Consumer Reporting Act*, which regulates consumer reporting agencies who furnish consumer reports
- Can be written, oral, or other of credit info, personal info or both

#### Schedules

- Example : list of properties that may be excluded from the buyer representation agreement ; for example, the buyer may have viewed the a property for private sale or a new come
- Pre-approval letter from a mortgage provider to assist in the brokerage assessing the buyer's qualification

#### Documenting Commission

- Buyer agrees that the brokerage is entitled to be paid commission, the agreed upon amount is agreed upon in the agreement
- Commission amount to be disclosed at earliest opportunity
- Buyer agrees to pay any deficiency between the agreed amount the brokerage is entitled to and the amount paid by the seller
- If no commission is being paid by the seller or listing brokerage, the buyer agrees to pay the full amount
- If the brokerage receives more than what is identified in the agreement, the brokerage is entitled to retain those additional funds

#### Commission Details

- The Buyer Representation Agreement includes commission arrangements and buyer responsibilities if case the commission is not paid by the seller or the listing brokerage.
- Commission is typically payable either by the seller/listing brokerage or the buyer.
- The buyer is also responsible for any difference between the commission paid by the seller and the commission specified in the agreement.

#### Holdover

- Obligates the buyer to use the brokerage for a purchase after the agreement expires if the buyer purchases a property that was shown by the brokerage when the agreement was in affect.
- Typically 60-90 days

#### Signing and Initialling

- Rebba does not require a buyer to sign a buyer representation agreement however, a brokerage must sign and present this to the buyer for signing at the earliest opportunity, before an offer is made

#### Creating Agency Relationship

-The Buyer Representation Agreement establishes an agency relationship between the brokerage and the buyer.

#### **Understanding Key Provisions**

- This agreement establishes an Exclusive Buyer Representation relationship between the brokerage and the buyer.
- The agreement states that the buyer may not be shown all available properties that may be of interest to the buyer.
- The buyer may sign representation agreement with more than one brokerage if Geographic Location or if the Property Type is different.
- The buyer agrees that Multiple Representation may occur. In this case, the brokerage will get written consent of the parties at the earliest practical opportunity but before an offer is presented.
- The agreement includes a Disclaimer that the brokerage shall not be held responsible for environmental conditions, hazards and other physical conditions of land or improvements.
- The information provided by the seller is also not warranted as accurate and the buyer must take expert advice in these matters.
- The buyer is informed that a Credit Report may be referred to in connection with this transaction to comply with the Consumer Reporting Act.

#### Other Obligations of the Buyer

-The buyer agrees to submit all offers through the brokerage during agreement period. -The buyer is obligated to pay commission if the sale does not close due to buyer's default.

- The brokerage has the right to apply the deposit first to the commission.
- The commission obligation in Holdover Period applies.
- The buyer agrees to pay the deficiency in commission if the commission received from the other brokerage is less than commission specified in the agreement.
- The buyer agrees to pay the applicable taxes on commission.

## 2.4 Customer Service Agreements

**Note:** Please refer to the Customer Service Agreements provided in the textbook or in the KMS.

### REBBA Provisions

- The Customer Service Agreement must be in writing and copies must be delivered immediately after signing.
- The buyer or seller customer is not obliged to sign the agreement.
- Duties of the brokerage under the standard customer service agreement include -Ethical Duty to deal fairly, honestly and with integrity.
- Legal Duty to exercise due care when answering questions and providing information. -Legal Duty to avoid misrepresentation.

### **Seller Customer Service Agreement**

#### **Differences**

##### None-Exclusivity Disclaimer

- Non- Exclusive, which means that the seller may sign this type of agreement with more than one brokerage.
- This form is commonly used to provided customer service to a seller when the buyer is already a client of the brokerage (has signed a Buyer Representation Agreement).
- the seller has not listed the property (private sale), the agreement is called Commission Agreement for Property Not Listed.
- The agreement confirms that the seller is not a client of the brokerage and is not represented.
- The agreement includes a warranty that the seller has not listed the property with any other brokerage.
- Commission rate or amount of commission is given in the form.
- The seller agrees that commission is still payable if the sale does not close due to seller's default.

##### No listing Price Identified

- Does not include a listing price for the property
- Pricing is one of the limitations of brokerage services to a customer that differs from those provided to a seller under a representation agreement
- Seller determines the listing price of their property with no advice or assistance
- Brokerage must observe due diligence in providing advice to the buyer about the property's fair market value

##### Deposit

- Should an offer between a seller and a buyer advance to the stage where the deposit is to be submitted by the buyer, a seller customer service agreement provides the terms under which the deposit will be hed

##### Insurance

Warranty from the seller that the property is insured

Includes maintaining personal liability insurance to ensure that any claims or lawsuits from others being injured or suffering property damage are covered provision also requires the seller to indemnify the brokerage and their representatives against any claims made against the brokerage by anyone visiting

##### Verification

##### Sold Signs

- Identification of whether or not a sold sign can be placed (initials)

##### Schedules

- Examples: alternate commission arrangement → Graduated commission percentage... 3%..2%...1%
- Seller instructions → no showings between 4-6 and after 9
- Services to seller. Prompt delivery of all required documents, info of all properties sold on the street.

##### Commissions

- This commission will be owed to the brokerage if the seller agrees to, or accepts, an offer from the buyer that the brokerage introduced even if the seller signs a seller representation agreement or customer service agreement with another brokerage

### Holdover Provision

Seller agrees to pay commission to the brokerage if they accept an offer from the buyer introduced by that brokerage within a specific timeframe after the agreement expires.

\*\* Differences vs. Seller representation : non-exclusivity disclaimer, buyers etails, terms of agreement, no listing price identified.

## **2.5 Buyer Customer Service Agreement**

### **Differences**

Commissions, representation & customer service, signature areas

- The Buyer Customer Service Agreement is Non- Exclusive, which means that the buyer may sign this type of agreement with more than one brokerage.
- This form is commonly used to provide customer service to a buyer when the seller is already a client of the brokerage (has signed a Listing Agreement with the brokerage).
- The agreement confirms that the buyer is not a client of the brokerage and is not represented. –
- The agreement includes a warranty that the buyer has not signed any Buyer Representation Agreement with any other brokerage.
- The agreement confirms that no commission is payable by the buyer.
- The buyer is informed that a Credit Report may be referred to in connection with this transaction to comply with The Consumer Reporting Act.

### Commissions

- buyer customer is often not obligated to pay any commission to the brokerage for the services provided under a buyer customer service agreement, since the buyer's brokerage generally expects payment to come from the seller

### Representation & customer Service

- unlike buyer representation agreement, the buyer customer service agreement discusses and discloses customer service and includes an acknowledgement that the brokerage has provided information on other topics, such as multiple and single representation, and may disclose the buyer's information to a client if applicable \

Indemnification: The buyer agrees that he has been advised to make his own enquiries about the condition of the property.

## **2.6 Altering the Representation Agreements**

### Amendments to the Seller Representation Agreement (Listing Agreement)

- Used to make changes to a previously agreed upon term between brokerage and seller
- With each form, the sellers' signatures, including the signatures of the non-owner spouse, are required to alter a Listing Agreement.
- The date of commencement and date of expiry are included in each of the following forms.
  - Most common change in listing price & expiry date of the agreement
  - Should the new expiry date extend the listing agreement to more than 6 months, the brokerage must seek the seller's agreement and acknowledgement by initially the relevant clause

### Suspension of a Seller representation Agreement

- Can happen when marketing activities for the property need to be stopped for a specified period of time
- This would include advertising or showing of the property
- Suspension is required to provide notice of this change to other brokerages and salespersons
  - Include Date of suspension, the date it expires and when the marketing activities for the properties will resume
  - Signatures required
  - Typically can only be executed by a broker of record or manager of the brokerage
    - Salesperson not authorized

### Cancellation of a seller representation Agreement

- Cancel listing agreement

- Holdover period remains in affect, signatures required
- Typically, consent for the cancellation on behalf of the brokerage must be obtained from the broker of record or a manager at the brokerage

#### Assignment of a Seller Representation Agreement

- With consent of seller, the listing brokerage can assign the agreement to another brokerage by preparing an Assignment of the seller representation agreement. If a seller representation agreement is assigned, it releases the original listing brokerage from all the obligations of the agreements
- Signature are required
- Only broker of record or a manger can assign a seller representation agreement

#### **Altering the Terms of a Buyer Representation Agreement**

- Additional forms may be used to change the terms, suspend, or terminate a Buyer Representation Agreement.
- With each form, the buyers' signatures, as well as the brokerage's signatures, are required to alter a Buyer Representation Agreement.
- The date of commencement and date of expiry are included in each of the following forms.

#### Amendment to Buyer Representation Agreement:

- This form is used to alter the terms of the agreement.
- These terms may relate to additional services, property type, geographic location, the terms of commission, or to extend the expiry date of the agreement.
- Buyers signature + salesperson is usually authorized

#### Cancellation of the Buyer Representation Agreement: This form is used to terminate the Buyer Representation Agreement.

- The form must be signed by the buyers and the broker of record of the brokerage or manager.
- Completion of this form releases the brokerage of its obligations under the agreement.
- Even after the cancellation, the holdover provisions of the Buyer Representation Agreement remain effective.

#### Assignment of Buyer Representation Agreement: This form is used when the Buyer Representation Agreement is transferred to another brokerage.

- This form is typically used when the salesperson transfers his/her registration to a different brokerage and the buyer permits him/her to assign the Buyer Representation Agreement to the new brokerage.
- Completion of this form releases the first brokerage from its obligations under the Buyer Representation Agreement → must be returned to the original brokerage before the effective date
- Only the broker of record or a manager at the buyer's brokerage is authorized to sign this form.

#### **Altering terms of Customer Service Agreements**

- Services that the brokerage will provide, changes to the terms of commission, changes to expiry date, corrections to information recorded
- Seller must sign, signature of the non-titled spouse is also obtained to give spousal consent

#### Amendment to a buyer customer service agreement

- Additional services , pay commission to the brokerage, changes to expiry date, corrections etc.

### **2.7 Salesperson's Obligations Regarding Services Provided**

#### Maintain Business Records

- retain all documents and records created during the course of a trade for at least 6 years
- if files relating to a contentious trade, the brokerage should store those indefinitely
- maintaining records for other activities required to conduct the brokerage business (trust money transactions, monthly reconciliations)
- retaining documents at the appropriate location → no branch office, should be retained at main office
- *salespersons obligation*
  - may be surveys, identification verification for FINTRAC, disclosures from sellers about any issues

## Inducements Made to a Seller or a Buyer

### Inducements to sell

- buy any of the sellers real estate, acquire a mortgage, and an extension of a lease for seller, buy or sell a mortgage

### inducements to buy

- sell, lease or exchange the real estate
- buy or sell any of the buyer's real estate
- buy or sell a mortgage

\*\* these types of promises must be in writing and include full details

## **Mistakes a salesperson should avoid while documenting relationships**

### Documentation Errors

- failing to obtain, read and analyze source documents
- transposing info from source materials to the representation agreement
- making errors with regard to document specifics of the land, property and defects
- failing to ensure that all parties on title appear and sign the listing agreement

### Incorrect words, statements and predictions

- making statements to a seller or buyer with regard to a transaction that advance opinions or promote comparisons "best property" "greatest return" not stating facts etc
- making predictions or giving absolute assurances to a seller or a buyer "guarantee" "great investment"
- failing to use operative words carefully "can, might, must etc") I can get you the highest price etc

### Misrepresentation

- failing to seek confirmation that the client or customer fully understands what is being shared with them with regards to services provided
- failing to defer to other professionals
- exceeding the scope of authority granted by the client
- not properly addressing issues during negotiations

### lack of due diligence

- failing to present all aspects of a property to a buyer in a diligent manner
- failing to market a property in a diligent manner for a seller client
- failing to pursue all suitable properties

### Breach of duties, obligations and disclosure requirements

- misrepresenting or failing to disclose material info
- breaching duties specified in agreement
- failing to carry out obligations in conscientious and competent manner
- failing to discuss agreements with sellers and buyers ASAP
- failure to provide a disclosure or provide an incomplete disclosures to clients and customers as required
- failing to recognize conflicts of interest that may arise when acquiring property for person use



### 3. RESIDENTIAL PROPERTIES, OWNERSHIP, AND PLANNING

#### 3.2 Ownership Rights and Limitations Types of Estates

-An estate is an interest in land that includes various rights of ownership and tenancy.

**Fee Simple Estate (Freehold):** This is the highest form of an estate and is also known as Absolute Right It provides maximum rights with minimum limitations (bundle of rights)

- Ownership for an indeterminate amount of time
- **Sell:** The right to sell their property for many reasons, such as for profit
- **Lease:** the right to rent their property to a tenant
- **Use:** the right to use their property for many uses, such as for living, renovating, and improving
- **Do nothing:** the right to buy a property and leave it dormant
- **Give away:** the right to give the property away, often encountered in the settlement
- **Enter:** right to access

**Leasehold Estate:** occupancy rights, not ownership. Right can or last for predetermined amount to time. Fewer rights than fee simple

#### **Government Limitations**

**Right to Take (Expropriation):** The right of the government to acquire private property for public's best interest and use fair compensation for the owner. It is carried out by the government using the Right of Eminent Domain. (might reduce value of property)

**Right to Regulate (Police Power):** The power of different levels of government to regulate division, development and use of land using various laws and by-laws. Promotion of public safety, health, morals and general welfare.

The buyers should be informed about any regulations that may be considered material fact from buyer's perspective.

**Right to Levy Taxes:** The ownership of property may be subject to taxes, such as Land Transfer Tax, Property Tax, etc.

-Salespersons should understand taxation issues and disclose current taxes on the property as they are considered material facts.

**Escheat:** reversion of property to the government or some kind of government agency in the event that a property owner dies, leaving no will and having no legally qualified heir

#### **Private Limitations**

- These private restrictions or Restrictive Covenants limit the use of property for a specific purpose and manner and are usually contained in the title/deed of property (Deed Restriction).
- They run with land, stay with the property even when it is sold, and are transferred to subsequent buyers.

Usually, the buyer's lawyer will get information on restrictive covenants, and if the seller has complied with them, the buyer is not able to terminate the agreement.

-Buyer's lawyer may conduct a Title Search before a binding agreement so that the buyer may terminate the agreement if the restriction is unacceptable.

#### **Easement (ex of restrictive covenant)**

-An Easement is a right enjoyed by one landowner (Dominant Tenement) over the land of another (Servient Tenement).

-It runs with land and is not terminated when the property is sold.

-Failure to disclose an easement, which is a material fact, may result in cancelled agreements or even possible legal actions.

**Concurrent ownership** refers to simultaneous ownership of land/property by two or more persons. It is of two types – (i) Joint Tenancy, and (ii) Tenancy-in- Common.

**Joint Tenancy:** It is specifically created at the time of registration and must satisfy four unities (conditions):

**Time** – Each joint tenant gets ownership at the same time.

**Title** – Each joint tenant gets ownership by same title (document such as deed or will).

**Interest** – Each joint tenant has equal interest in the property, which must be identical in nature, extent, and duration.

**Possession** – Each joint tenant has undivided possession of the whole property.

-Joint Tenancy includes the Right of Survivorship, whereupon death of one joint tenant, the entire interest transfers to the surviving joint tenant(s).

**Spousal Interest:** If the joint tenancy of a matrimonial home is with someone other than the owner spouse, and the married person passes away, the joint tenancy with the other person is immediately terminated reverts to tenancy in common.

Termination of Joint Tenancy: Termination of joint tenancy destroys the right of survivorship as the tenancy converts to tenancy in common.

There are three methods to terminate joint tenancy:

- 1) **Voluntarily:** When the joint tenants mutually agree to terminate the joint tenancy.
- 2) **Severance:** When one of the joint tenants severs the joint tenancy by selling his/her interest to a third-party without the consent of other joint tenants. In this case, other joint tenants remain joint tenants but become tenants in common with the third party. **\*\*may destroy the right of survivorship before their death without the consent of the other joint tenant\*\***
- 3) **Partition:** When a court orders splitting the land held in joint tenancy.

### **Concurrent Ownership – Tenancy in Common**

- Tenancy-in-Common has only one unity of Possession whereby everyone holds undivided possession of property.
- Tenants-in-Common may have different interests and may acquire them at different times or different ways.
- The Right of Survivorship does not exist in Tenancy-in-Common. After death of a Tenant-in-Common, the interest of that person becomes an Estate of the Deceased.

## **3.3 Ownership Alternatives**

### **Condominiums**

- Freehold or Leasehold depending on the land on which the building is built. Ownership in a condominium involves Fee Simple ownership of a unit and tenancy-in-common ownership of the common elements such as hallways, elevators, playgrounds, etc. Some owners may have exclusive use rights for a part of the common elements such as a balcony or a porch attached to the unit.

Maintenance Fee (Common Expenses): maintenance and repair of all common elements is funded through maintenance fee's. -It is based on the proportionate share of the unit as given in the Declaration. The buyer will need to review the maintenance fee in order to see if it is within his/her budget. (The mortgage lender will also consider this fee for qualification)

Board of Directors: Directors are elected by unit owners to make, amend, and repeal rules and bylaws of the condominium. Unit owners must be provided with a copy of the rules and bylaws. They can request a meeting within 30 days if they want to challenge any of the rules or bylaws.

Bylaws: Bylaws are standard procedures regarding internal operations and governance of the condominium corporation. They typically relate to election of directors, maintenance of common elements, collection of maintenance fees, and borrowing money.

- A copy of bylaws must be provided to unit owners who can request a meeting to challenge any of the bylaws.
- Bylaws are not effective until a majority of unit owners vote in favour.
- A copy of bylaws must be registered in the Land Registry Office.

Rules: Rules are made by the board of directors for safety, security, and welfare of the unit owners. The buyer must be provided with a copy of these rules so that he/she knows what is permitted or prohibited in the condominium.

Common Element Condominium (CEC): This condominium consists only of common elements such as roads, parking lots, golf course, ski hill etc. There are no units in a CEC and each owner must hold a freehold interest in the land to which the common interest attaches. A Parcel of Tied Land (POTL) refers to the parcel of land upon which a house is constructed, and a common interest is attached to it.

### **Equity Co-operatives**

- An Equity Co-operative is a form of joint ownership, managed by a board of directors, where members are shareholders having an occupancy agreement for a specific unit. Purchase of share capital\*\*
- Form of housing involves buildings with several units
- Each buyer of a co-operative buys shares in the corporation as opposed to buying a specific unit, and do not own their units...but given right to occupy

Management: The Co-operative Corporations Act does not regulate the day-to-day operations or bylaws of the co-operative. The board of directors, elected by the members, sets the annual budget and rules or bylaws of the co-operative.

Monthly Fees: Members pay a monthly housing charge that is similar to condo maintenance, which includes property taxes. If a member defaults in payment of these fees, other members become liable for the share of defaulter member.

Financing: Co-operatives were traditionally financed through a Blanket Mortgage, which may still be in place.

-In this case, the member would arrange his/her own secondary financing.

-Some lenders may be reluctant to provide such financing unless the buyer's down payment is significant.

-Salespersons must advise the buyers about financing concerns, share certificates, occupancy agreements, and rules/bylaws.

- Buyers must be advised that no freehold ownership is involved in purchase of shares in a co- operative and approval of board of directors may be required for purchase of shares.

**Co-ownership**

- fractional interest held by two or more people who are registered on title as owners.
- It is an alternative to Tenancy-in-Common ownership wherein two or more individuals purchase proportionate interest in a property as specified in the deed.
- The percentage interest may not be equally divided among co- owners.
- A co-owner in a multi-unit co-ownership building in an urban area receives ownership by way of an occupancy agreement in addition to the deed.

Condominium	Equity Co-operative	Co-ownership
<ul style="list-style-type: none"> <li>• Purchase provides a fee simple interest in a unit</li> <li>• Co-ownership interest as a tenant in common relating to the common elements</li> <li>• Board of directors to oversee the corporation</li> <li>• Rules and bylaws applicable to all owners</li> <li>• Monthly maintenance fee based on proportionate share of ownership</li> <li>• Property taxes paid separately by the unit owner</li> </ul>	<ul style="list-style-type: none"> <li>• Property is owned by a corporation</li> <li>• Purchase provides a share certificate</li> <li>• Requires an occupancy agreement to specify the unit as the share identifies only the percentage of interest owned</li> <li>• Board of directors to oversee the day-to-day business</li> <li>• Rules and bylaws</li> <li>• Monthly fee to pay for the operating expenses, which includes property taxes</li> <li>• Must also pay towards any financing on the property, plus any secondary financing to purchase the share</li> </ul>	<ul style="list-style-type: none"> <li>• Tenant in common ownership with one or more other persons</li> <li>• May require an occupancy agreement to specify the unit as the purchase identifies only the <u>fractional interest</u> owned in the property</li> <li>• Co-ownership agreement to establish the foundational rules regarding the maintenance and management of the property</li> <li>• Jointly liable for any mortgage or other expense related to the property</li> </ul>

-Salespersons must advise the buyers about joint liability of the Blanket Mortgage on the co- ownership building and that other co-owners may have the Right of First Refusal in case of sale.

**Life Lease**

-The holder of a life lease, as a tenant, owns a leasehold interest in a property for his/her lifetime.

- The appealing aspect of these communities is shared maintenance costs which results in more affordability.

Management: The buyer usually purchases the right to occupy a unit from a sponsor, which may be non-profit or charitable housing provider.

Monthly Fees: A lumpsum deposit may be required in addition to the monthly maintenance fees for heating, electricals, snow removal, garbage, landscaping, building insurance, etc.

Salespersons must make the buyers aware that no freehold ownership is involved in a life lease community.

**Land Lease**

- Involves leasing the land, which permits ownership of a home on the leased land without the added cost of purchasing land.
- The price of the leased parcel of land is based on location, lot size, and view (e.g. lake view).
- The land lease is typically for a period ranging from 20 to 99 years and the structure may be a mobile home (in a mobile home park) or a manufactured home.
- Land Leases, which are occupied only seasonally or for vacationing, are not governed under the Residential Tenancies Act (RTA).

Monthly Fees: Tenants pay a monthly fee in addition to the cost of land lease. These fees are charged by landlord for maintenance of grounds, buildings, and equipment, which are for common use.

Sellers: The owner of a dwelling unit has the right to sell or lease the structure only without approval of the landlord.

-However, they may be able to place the ‘For Sale’ sign only on their window.

Buyers: Buyers must be aware that there is no standard lease agreement and they should make their offer conditional upon review of the lease by their own lawyer. Furthermore, financing for the purchase may be difficult to obtain as there is no ownership of land.

Landlord’s Right of First Refusal: If the land lease agreement includes this provision, the seller must give the landlord 72 hours’ notice when he/she receives an acceptable agreement.

-The owner may sell to the buyer only when the landlord refuses to buy on the same terms and conditions as in the agreement.

### **3.4 Land Use Planning The Planning Act**

-The provincial Planning Act provides statutory framework for orderly division, development and use of land.

-It authorizes and gives administrative control of land use planning to the Minister of Municipal Affairs and Housing who issues the Provincial Policy Statements.

-The Minister, municipalities, local planning boards, and the Local Planning Appeal Tribunal must be consistent with the Provincial Interests when carrying out their responsibilities under the Act.

- The Provincial Policy Statements address planning matters of **public interest** such as municipal planning, housing, mineral aggregate, floodplains, and wetlands.

-The Planning Act enables municipalities to carry out planning programs for their respective needs and as per their responsibilities set out in the Municipal Act.

*Real Estate Transactions:* Salespersons must be aware how their trading activities may be affected by the Planning Act.

-They may be involved in transactions where the buyer needs land severance, subdivisions, or a land use application.

-Certain buyers may also need change of zoning or change in the Official Plan. -These buyers should be direct to land use planners for legally complex matters.

#### **Municipalities**

Single Tier (district, county, region, township, city or municipality) : They assume all responsibilities under the Municipal Act.

Upper Tier (Region, county or district) preparation, adoption, and revision of the Official Plan, and the process of dividing and developing land.

Lower Tier (municipality): They prepare, adopt, and revise the Official Plan and the Zoning Bylaws.

Some examples are City of Toronto, Ottawa, Sault Ste. Marie, Thunder Bay, Greater Sudbury, Timmins, Windsor, London, Chatham-Kent, etc.

Relationship: The lower and upper tier municipalities usually co-ordinate with each other for matters such as water supply, sewage systems, roads, etc.

Salesperson's Role: If a buyer needs certain approvals for development or change in use, the salesperson should direct the buyers to appropriate municipality.

#### **Impact on Listing and Selling :**

Placement of Signs: These regulations include size of the sign, its location, and its distance from the curb, intersections, pedestrians, and cyclists. Salespersons must be aware how long the sign can remain on the property after it is sold.

Flood Control: Many municipalities designate areas that are prone to flooding as 'flood plains'. -They prohibit or restrict placement of structures in these areas.

Noise Standards: Some municipalities may have areas that are close to a source of noise such as an airport, traffic, railways, commercial activities, etc.. clause should be inserted in the agreement to acknowledge that the buyer is aware of these disturbances.

#### **Subdivision Control and Planning Act**

Person is not allowed to convey (sell) land or lease it to someone for more than 21 years unless

- The person conveying does not retain ownership of any abutting land
- The person conveying has received consent to divide
- The land is within registered plan of subdivisions

#### **The Land Severance Process**

1. Consult & Determine Authority: contact local municipality to determine which authority grants authority -This also applies when a landowner wants to add a part of property to their existing lot. -The approval authority is the local Committee of Adjustment or the Land Division Committee.
2. Application: The consent application includes details such as description of the property, a sketch showing dimensions of land being severed and retained, use of adjoining land, etc.
3. Application Review: The application must meet the criteria such as conformity with the Official Plan, zoning bylaws, and several other factors.
4. Decision: The approval body has the authority to approve, refuse, or grant conditional
5. Appeal Process: Local Planning Appeal Tribunal
6. Issuing of Certificate:

Salesperson's Role: Salespersons should be aware that the Agreement of Purchase and Sale is automatically conditional upon compliance with the Planning Act.

-However, a seller and a buyer can have an agreement conditional upon severance, which must be completed before the closing date.

#### **Plan of Subdivision Process**

1. Consult & Determine Authority: A two-stage Subdivision Plan registration is required when a landowner wants to divide land into several lots, usually more than two.
2. Prepare a Draft Plan The developer prepares the draft plan in consultation with engineers, solicitors, surveyors, and planning
3. Complete Application
4. Approval Authority ensures notices of application are sent to surrounding property

#### Part II

5. Decision and Notice of Decisions (draft Plan Approval)
6. Appeal Decision: If the application is refused, the developer may file an appeal with the Local Planning Appeals Tribunal (LPAT).
7. Final Approval & Registration when all conditions are fulfilled, the approval authority issues the final plan approval, which is registered in the Land Registry Office.

Salesperson's Role: Salespersons have little or no involvement in the subdivision process. -However, they should be aware of the subdivision process and direct their buyers to appropriate land planning consultants.

Intensification: alternative to land severance and subdivision. Involves expanding the use of existing land, buildings and services rather than increasing housing through urban sprawl

- occurs through adding additional dwelling units in existing homes

### **3.5 Official Plans and Zoning Official Plan**

-The Official Plan for a municipality addresses issues such as location of housing, industry, offices, shopping centres, schools, roads, water/sewage systems, parks, and schools.

-It is prepared for a long range of 5 to 10 years, is approved by the Ministry of Municipal Affairs and Housing and must be reviewed every 5 years.

#### Zoning Bylaws

- enacted by municipalities to implement the Official Plan and control building structural standards such as permitted uses, lot sizes and dimensions, parking requirements, building heights, and minimum setbacks from the street (front, rear and side yards).
- Zones are divided into classifications such as residential, commercial, industrial, institutional, open space, agricultural, etc.
- Identifies many standards for land use and future development\
- Zone classifications may have subclassifications such as single family, multi-family, etc. Some examples of zoning designations are
  - Residential Detached: R1 for single-family, with variations from R2 to R5 depending on urban densities.
  - Semi-detached: RS1 for residential single-family semi-detached dwelling.
  - Multiple Units: RM, with variations such as RM2 and RM3, depending on urban densities.
  - Rural Residential: RR1 for non-farm dwellings within rural areas and RR2 for non-farm dwellings outside rural areas.

#### Zoning: Building Restrictions

- Directly refer to the structures or indirectly limit it (various setback requirements etc)

#### Zoning Amendment

Can only be considered if the new use is allowed by the official plan

if a municipality has passed a new comprehensive zoning bylaw within the past 2 years, a rezoning application may not be accepted.

#### Minor Variance

Proposed change is still in keeping with the overall intent of the official plan

Address by the Committee of Adjustment (or land division committee at the upper tier)\

#### Non-conforming Use

-In some cases, a particular use of a property may be permitted even though it does not comply with the current zoning bylaw. This usually happens when the municipalities review their zoning and change them according to changes in community needs.

-The owner may apply to the local Committee of Adjustment for approval of continuation of Non- conforming Use, and when approved the use becomes a Legal Non-conforming Use.

**Legal Non-Conforming Use:** A specific use of a property, which existed before the passage of a zoning bylaw, is not in compliance with the new bylaw, but is permitted.

**Continuous Use:** If there is an interruption in the non-conforming use, the right to continue the non-conforming use is lost as the new use must conform to the current zoning bylaws.

### Committee of Adjustment

-When certain use of property by the owner or a buyer is not permitted in the existing zoning bylaws, the owner/buyer may make an application to the local Committee of Adjustment or to the Land Division Committee for a change of use.

-The Committee of Adjustment is appointed by the lower-tier municipality whereas the Land Division Committee is appointed by the upper-tier municipality.

## **3.6 Heritage Properties Heritage Designation**

- Municipalities, under the Ontario Heritage Act, may designate certain properties (residential or commercial) as Heritage Property due to their cultural heritage value. Designation of a property as Heritage Property may deprive the owners of their natural rights on the property.

**Heritage Conservation District:** If an area within a municipality is designated as Heritage Conservation District, future changes to the area must follow certain guidelines to protect its heritage character.

- Municipality is required to adopt a district plan for every historical conservation district and consult their heritage committee
- Municipalities may also place restrictions on land adjacent to properties designated as Heritage Property.

### Heritage Designation Process

- Identifying, researching and evaluating a property: research on the history of the property and its place in the community
- Providing notice to the owner: Owner + Heritage trust is notified
- *Ontario heritage trust* : An agency of the Ministry of Culture to protect and promote Ontario's heritage.
  - o offers programs to aid in restoration and to protect property's
- Passing and registering a heritage designation bylaw: refer the objection to the conservation review board to conduct a hearing and make recommendations
  - o When decision is to proceed with designation, a bylaw is passed and registered on the title of the property

**Municipal Heritage Committee:** Potential properties are identified by the Municipal Heritage Committee by researching all relevant information.

**Conservation Review Board:** This board conducts hearings regarding objections to heritage designation and makes recommendations regarding heritage matters.

Each municipality maintains their own register of heritage properties. The municipal register lists all heritage properties declared designated by municipal bylaw on an individual basis. The municipality may also include non-designated properties in their heritage register referred to as "listed property"

The register will show you if the property is

- Non-designated but listed in the municipal registry of heritage property,
- Designated heritage property and /or
- Part of designated heritage conservation district

### Considerations for Buyers

-Salespersons may request local municipality for a list of designated heritage properties and Heritage Conservation Districts where properties may be designated in future. The Municipal Register of Heritage Properties may be consulted to verify if a property has been designated as Heritage Property.

- This designation may affect intended uses for the property and the owner may not be able to make internal or external changes to the building without permission.

**Impact on Value:** Some buyers may think that heritage designation has negative or positive impact on value, which may not be true.

*Insurance:* Due to the age of the heritage properties, some insurers may increase the insurance premiums on such properties.

-The insurer may look for risk associated with dated electrical wiring, older heating systems, and general condition of the property.

#### Salesperson's Obligations

-An appropriate Disclosure clause must be inserted in the Agreement of Purchase and Sale.

-Salespersons should make the buyers aware of the following –

Alterations: Property cannot be altered if the alteration is likely to affect the heritage designation. Written Consent:

Alterations are only permitted if the owner gets approval from the municipality. Demolition: Demolition of a heritage property should also be approved in writing by the municipality.

Heritage Easements and Tax Relief

- Many municipalities have their own financial incentive programs to assist property owners with ongoing maintenance and conservation
- Grant and loan programs are also available from the provincial and federal levels
- Some financial assistance programs will require that a heritage easement be registered on the title

#### **Demolition of a building or structure**

- Must obtain written consent from council
- An alternative to demo might be agreed to
  - o Identify how the building or structure could contribute to the future use of the property
  - o Identify alternative uses for the building or the property
  - o Potentially selling the heritage property to the municipality or a buyer who will conserve it
  - o Expropriate the property

60 days notice

## 4. NEGOTIATIONS IN RESIDENTIAL REAL ESTATE

### 4.1 Best Interests of Seller Understanding Seller Needs

**Demographics:** Study of statistical information about a particular population using measurable data (income educational background, language)

- Subscription based databases (geowarehouse) and Canada and mortgage Housing Corporation (CMHC)
- New developments in the community, changes to the local Official Plan, construction of new schools, parks, or shopping centres may influence the seller's decision.
- Some sellers might want to wait if they are provided information about new developments that might affect the value of their property.

#### Material Facts for the Seller

- material fact would be anything that may have happened or is happening in the property and the area, the intended use of the property, or anything that may affect the seller's decision to sell the property.
  - Material Fact Examples: Credit report, zoning designation, proximity to schools, dwelling measurements, easements, , new developments

*Specific and Personal:* Material facts for a particular client are subjective and personal, and what was a material fact for a previous client may not be important for this client.

*Disclosures* Salespersons have an obligation to take reasonable steps to determine and disclose material facts to both clients and customers, with higher level of obligations owed to clients.

- When the seller is a customer, the salesperson must disclose any material facts that are 'known or ought to be known'. Not obligated to conduct any research to discover material facts  
The requirement of disclosing material facts supersedes seller client instructions or directions of non-disclosure.

#### Due Diligence

- Seller's material facts should be determined based on their response to specific questions with respect to the transaction. The seller must be informed about importance of disclosures regarding material facts related to the condition of the property.
- Certain material facts such as a previous illegal activity on the property, grow operation, a crime on the property, or a previous grow operation must be disclosed by the seller.
- If any issue creates a stigma, such as a haunted house, it must be disclosed to potential buyers.
- Information provided by the seller such as property tax, lot size, square footage, etc. must be verified from original source documents such as a deed or a survey.
- Steps to verify: title of property, survey, deed, tax build, documentation of permits etc.

#### Protecting Seller's Best Interests

- All information provided by the seller should be documented.
- The seller should be provided full explanation of forms and agreements, and copies of documents and agreements must be provided as per Regulations.
- The seller must be informed about his HST obligations regarding commission and other legal services.

#### **Defects on the Property**

Patent Defect: readily visible upon reasonable inspection.

- Examples: missing railing, cracks in foundation wall, evidence of mould, etc.
- A disclosure is not required for patent defects.

Latent Defect: not readily visible to an untrained eye upon reasonable inspection.

- hidden flaws, weaknesses, or imperfections and advice from a third-party professional may be required.
- Examples hidden water damage, encroachment, vermiculite insulation, minor flooding in basement, etc.

Material Latent Defect: pose serious risks, which can render the property unsafe for habitation.

- Examples include things that make the property dangerous for living (such as high levels of radon gas), unfit for habitation due to mould, or a previous grow operation that involves municipal authorities.
- They are judged material to the enjoyment of the property and the seller must disclose all such known material latent defects.

Seller is only obligated to disclose known latent defects



## 4.2 Best Interests of Buyer Understanding Buyer Needs

- Buyer must be qualified in terms of financing, their financing needs, and whether they are pre-approved by a lender or not. After qualification, the salesperson would locate those properties that meet buyer's search criteria.

### Buyers and Technology

- Search on the internet has become popular with buyers using websites such as Realtor.ca®, Zillow.com, etc.
- Buyers may be interested in using the brokerage's website or salesperson's personal website, and they may be informing the salesperson about the properties they would like to view. Salespersons and brokerages now use advanced technologies such as QR Codes to provide information on listed properties.

### Demographics and the Buyer

Demographics impact, aging population, lifestyle choices, culture and ethnicity and social trends are impact .

### **Material Facts for the Buyer**

- Salespersons must make reasonable efforts to determine material facts that might affect the buyer's purchase decision. Information gathered from the seller or previous listings should be researched for verification before it is provided to the buyer.
- If the buyer is a customer, the information that is 'known or ought to be known' must be disclosed as soon as possible and the buyer customer should be advised to obtain third-party advice.
- Material facts known to the salesperson must be disclosed whether the buyer is a client or a customer.
  - o But customers need to do their own research to determine if any material fact affects a property

### **Due Diligence to Protect Buyer's Best Interests**

- Common Material Facts: Structural conditions and results, outdated materials, building dwellings or lot size, previous use of property → Zoning, government limitations, private limitations etc.
- accurately prepare the offer including all necessary clauses and conditions
- assist in the negotiation process
- referred to third-party professionals such as a home inspector, an accountant, or a lawyer.
- The salesperson must assist the buyer in reviewing reports or other documentation received from the seller.

### **Tax Liabilities**

The buyer should be advised to consult a tax accountant for all taxation matters.

HST: The buyer may be liable to pay HST if the subject property is commercial, a fully renovated home, or a new home.

HST would also be payable on services such as legal fees and moving costs.

Non-Residents: The buyer needs to be aware of Capital Gains Tax liability if the seller is a non-resident and leaves the country without paying tax.

Usually, the buyer's lawyer would check this aspect of the transaction.

In case the buyer is a non-resident and buys a property in Greater Golden Horseshoe area, the Foreign Buyers Tax would be payable.

## 4.3 Negotiation Strategies Sellers' Market

### **Factors Affecting Real Estate Market**

Demography: Immigration, migration, changes in family size, and unemployment rates may affect demography.

-A family is a primary consumer of housing and creation of new families by way of growing and married children generates housing demand.

Employment Conditions: When the overall economic conditions are not good, unemployment may rise, which leads to decrease in number of buyers and a drop in real estate prices.

Interest Rates: High interest rates usually result in decrease in real estate activity whereas low interest rates increase the demand for real estate and push the prices upwards.

Building Activity: Significant building activity is usually an indication of strong real estate market.

-However, if there is no corresponding increase in demand, this may also lead to decline in real estate prices.

Sellers market: Advising the seller

- Seek large deposit
- Hold out for an unconditional offer or a counter offer for terms in their favour
- Negotiate for a higher selling price

Seller's market: Advising the buyer

- Offering the highest price within the buyer's means and or accompanying their offer by a larger deposit
- Weighing the benefits and risks of submitting an offer without conditions

Buyers market: Advising the seller

- Keep their home in good condition so that the property's potential is apparent
- Make the property available for viewings
- Expect to receive conditional offers but be aware of the risks of making counter offers
- Expect that they will receive offers at a lower price

Buyers market: advising the buyer

- Make informed choices that focus on their priorities and consider making offers on the properties
- Take their time in viewing properties and putting together an offer
- Submit a conditional offer
- Make an offer that allows room for negotiations

Conditions and clauses: protecting interest of sellers and buyers

- Financing
- Having a home inspection
- Arranging insurance
- The seller making certain guarantees

#### **4.4 Advice in Different Market Conditions Seller's Market:**

Balanced Market

-In a balanced market, the buyers and sellers should be advised that conditional offers may be made as no party is at a distinct advantage or disadvantage.

-Buyers and sellers should be advised according to the existing balanced market conditions and make or accept reasonable offers.

Conditions and Clauses

Protecting Best Interests: Salespersons should insert appropriate clauses in the agreement to protect the best interests of the buyer client or the seller client.

-Most common conditions include arrangement of mortgage financing, satisfactory home inspection, and arranging insurance.

-Additionally, there should be clauses related to guarantees from seller regarding condition of the property, chattels, fixtures, or major improvements.

-Appropriate clauses should be inserted if the seller agrees to undertake repairs for damages and repainting, if necessary.

Competing Offers

-Salespersons must ensure that proper records are maintained, such as evidence of number of offers, in case any of the buyers make a complaint to RECO.

## MODULE 5 THIRD-PARTY PROFESSIONALS

### 5.1 Selling and Buying Expenses Seller's Expenses

#### Seller

Third Party: home stager, lender, surveyor, lawyer

- HST and Capital Gains Tax: HST is applicable to various services such as lawyer's fees, brokerage commission, and moving costs.
  - Capital Gains Tax is payable if the property is not a principal residence or it is an investment property.
  - The seller pays this tax with his/her next income tax return. Further, the Capital Gains Tax is payable if the seller is a non-resident of Canada.
- Commission: Commission on sale is usually paid by the seller to both brokerages.
  - The deposit received from the buyer is first applied to reduce seller's commission obligations upon closing.
- Moving Expenses: In addition to the cost of moving the household stuff by a moving company, the other costs include change of address on utility accounts, driver's license, payments for rent-to-own equipment, etc.
- Closing Adjustments: Closing adjustments performed by lawyers include seller's portion of unpaid property tax, unmetered utility costs, etc. The details are given in the Statement of Adjustments provided by the seller's lawyer.

#### Buyer's Expenses

- Property Inspection, Appraiser, moving
- Surveyor: The buyer may need a survey report to identify any encroachments, improvements, and other issues that would not be covered by the Title Insurance. Additionally, if the buyer wants other improvements after closing that require a building permit, an up-to-date survey would be required by the municipality.
- Lawyer: review the Agreement of Purchase and Sale, to perform Title Search to ensure property is in marketable condition, obtain Title Insurance to protect against items discovered after closing, and register the title in the buyer's name on the closing date.
- Land Transfer Tax: The buyer is required to pay the provincial and municipal (if applicable) Land Transfer Tax.
  - The amount depends on the purchase price (Value of Consideration) of the property.
  - A sliding scale is used to calculate the amount of tax payable.
- Commission: Although commission for most transactions is usually paid by the seller, the buyer may be liable for commission under certain circumstances according to the terms of the Buyer Representation Agreement.
- Closing Adjustments: The buyer's lawyer will provide a Statement of Adjustments with details of these expenses. -Most common adjustments are buyer's portion of property tax that seller has already paid and the cost of full tank of heating oil or propane gas.
- Provincial Land Transfer Tax Credit
  - First-time buyers of new and resale homes may receive partial refund of provincial Land Transfer Tax.
  - The maximum amount of this refund is \$4,000.
  - Qualifying Criteria for Credit:
    - Canadian citizen or permanent resident and over 18 years of age.
    - principal residence and occupy it within 9 months of purchase.
    - The buyer or buyer's spouse should not have previously owned a home anywhere in the world.

### 5.2 Mortgage Financing Mortgage Terminology

**Mortgage**: The term mortgage refers to a claim or encumbrance on a property given by a borrower to a lender. The terms and conditions of the mortgage are given in a document called Mortgage Document. A copy of this document must be provided to the borrower with 30 days of signing.

**Mortgagor**: The party that gives the mortgage and gets the mortgage loan, i.e. the debtor or the borrower.

**Mortgagee**: The party to whom an interest in property is transferred as security of the mortgage loan, i.e. the creditor or lender.

Legal Mortgage (First Mortgage): Historically, a Legal Mortgage used to directly transfer the estate or interest in land to the mortgagee to ensure repayment of loan. Under the current Land Titles Act, the actual transfer of title does not take place.

Equitable Mortgage (Second, Third, etc.): This historic term differentiates a mortgage against equity from the legal mortgage. These mortgages are used when a mortgagor requires additional funding but does not want to disturb the existing legal (first) mortgage.

A secondary lender may assume the risk of financing. (often higher interest)

Amortization: Amortization refers to retirement of the mortgage debt by means of periodic payments of principal and interest. The entire loan is paid off at the end of the amortization period.

Fully Amortized Mortgage: the loan is fully paid off during the term. In other words, the amortization and term are of equal time period. Schedule payments that include principal and interest. Amortization periods typically range from 5-30 years

Partially Amortized Mortgage: The mortgage loan is not paid off when the term comes to an end and there is a balance remaining, and the final payment at its maturity date would be required to pay off the debit in full (balloon payment). The period of term is less than the amortization period. Often they remortgage the remainder for another term.

Term: The length of time the borrower is committed to the lender. The mortgage has specified interest rate, payment schedule, and privileges during the term.

- When the term ends, the mortgagor may renew with the same lender or with a different lender.

Loan-to-Value (LTV) Ratio: This is the ratio of mortgage loan to the value of the property and is expressed as a percentage.

- Amount of mortgage is divided by the value of the property to provide a ratio. Expressed as percentage
- The higher the percentage, the more risk = loan amount is high
- Additional security or collateral is usually sought in instances when the loan-to-value ratio is high
- For example, if the mortgage is \$300,000 and the value is \$400,000, the LTV would be 75% ( $300,000 \div 400,000 \times 100$ ).

## **Interest Rates**

Fixed Interest Rates: the interest rate does not change during the term.

- In a blended payment, the amount of principal and interest may change with each payment, but the payment amount remains the same.

Variable Interest Rate: In a variable-rate mortgage, the interest rate may fluctuate periodically as per market conditions and lender's prime rate.

- Accordingly, adjustments are made to regular payments or the amortization period.

## **Repayment Options**

Interest Only: The borrower does not repay principal, but only pays interest at regular intervals. -The entire principal is due at the end of term.

- They are used for short-term mortgage loans or interim financing to avoid complex calculations.

Interest Accruing: No payment of principal or interest is made during the term.

- Both the principal and the interest are due at the end of the term.
- This type of mortgage is rarely found in the mortgage market (high risk)

Interest Plus Specified Principal: The borrower repays a fixed principal amount and interest at specified times during the term. At regular intervals, the borrower is also asked to pay interest on the outstanding balance (uncommon)

Blended (Amortized): Equal Blended (principal and interest) payments are made at regular specified intervals.

- Payment is based on the Amortization schedule and payment frequency (monthly, bi-weekly, etc.).
- This product plan is most common and dominates the residential market.

## **Mortgage Covenants**

A mortgagor makes promises (covenants) to the mortgagee (lender) these are found in the mortgage charge and set out in provincial legislation under the *Mortgages Act*

- Certain covenants that will apply to every mortgage registered → *implied covenants*
- Three Implied Covenants (obligations) of the mortgagor apply under the Land Registration Reform Act when Standard Charge Terms are not registered on title

First Implied Covenant:

- The mortgagor will make payments of principal(including interest) and pay taxes (called personal covenant"
- The mortgagor will provide insurance on the buildings the mortgagor has the legal right to give mortgage, and there are no other encumbrances other than those registered.
- The mortgagor has no other encumbrances other than those registered on the property
- If the mortgagor is in default → the mortgagee will have the right to take possession and sell property to recover (power of sale)
  - There can be no interference from any other party (granted quiet possession)

- Upon default, total monies owing shall become due and liable. If the borrower does not make scheduled payments they are in default . If that occurs, the lender informs the borrower that they will be required to pay the whole mortgage balance rather than just the outstanding
- Interest in arrears may be collected

Second Implied Covenant (Usual Covenants): The mortgagor has Fee Simple Interest in the property.

Third Implied Covenant: It related to leased properties and the mortgagor covenants that the lease is up to date.

## Mortgagee Rights

Mortgagee Rights	Mortgagor Rights
<p><b>Right to assign the mortgage:</b> The mortgage can be sold transferred or assigned without the consent of the mortgagor Mortgagor must be notified of the assignment The assignee acquires the rights of the mortgagee</p>	<p><b>Right to quiet Possession</b> Has the right to uninterrupted possession and no interference by the mortgagee when not in default Right to use the property and are not responsible to the mortgagee for ordinary wear and tear on the structures but must exercise reasonable care and maintain property</p>
<p><b>Rights to be paid</b> Right to be paid the principal sum that is loaned, and the interest based on arrangements spelled out in the mortgage document Failure on the part of the mortgagor to pay on those terms, to fulfill covenants, or to observe provisions of the mortgage will give rise to several remedies If all covenants are fulfilled and amount has been paid , discharge is provided by the mortgagee</p>	<p><b>Right to redeem the property free of the mortgage</b> Right to sell or mortgage their interest and to deal with it in the same manner as any interest in property Any attempts to prevent the mortgagor from exercising this right will be struck down as invalid</p>
	<p><b>Right to discharge the mortgage</b> When loan is fully paid, the mortgagor obtains discharge signed by the mortgagee Discharge fee is normally paid by the mortgagor Can get a court order based on supporting evidence if discharge cannot be obtained</p>

## Privileges

Prepayment: Additional payments, other than scheduled regular payments, are not permitted unless there is such a clause in the mortgage terms.

- These prepayments reduce the amortization period and the overall interest paid.

Renewal: some have a built-in renewal privilege (rare)

Transfer of Mortgage (Mortgage Assumption): Three approaches exist in market

- The mortgagor may be able to transfer without the consent of the mortgagee, but he/she may remain liable through the personal covenant.
- The mortgagee may insert an approval clause requiring approval of any person who will be assuming the mortgage.
- The mortgagee may prohibit any transfer of the mortgage.

Postponement: This privilege, given by second mortgagee, permits the mortgagor to renew or replace an existing first mortgage and retain its priority.

- This typically happens when the first mortgage expires before the second mortgage.
- The second mortgagee postpones its priority in favour of the first mortgagee.

Discharge Penalty: As per the mortgage document, the mortgagor may have to pay the discharge penalty and other legal costs if he/she decides to pay off the loan before the end of the term.

## Mortgage Default and Remedies

- Failure of the mortgagor to fulfil obligations under the mortgage terms
- It is most commonly associated with failure to make payments, but other reasons may exist for a mortgage default.
- The lender may first try to remedy the situation by non-legal methods such as correspondence and/or personal contact with the borrower.

## Legal remedies for mortgage default

1. Foreclosure: This is a court action taken by a mortgagee. The mortgagor is given some specified time to pay the loan and redeem, failing which the mortgagee forecloses. The mortgagor forfeits any equity that he or she may have in the property. Mortgagee now the owner .
2. Judicial Sale: Sale of the property by court order. The proceeds of the sale are typically paid into the court with funds applied to amounts paid to encumbrancers according to priority. Any surplus would be awarded to the mortgagor. If not enough to cover the mortgage, they can obtain judgement against the mortgagor
3. Quit Claim Deed: The mortgagor agrees to release any right in the mortgaged property including the equity of redemption.
4. Payment: The mortgagee has the right to sue the mortgagor under the personal covenant for payment of unpaid loan.
5. Possession by Mortgagee: In case of Power of Sale or Foreclosure, the mortgagee may take possession of the mortgaged property.
  - The mortgagee may remove the occupants of the property while still respecting the rights of tenants (if any).
6. Power of Sale: This is the legal right of the mortgagee to force the sale of property without involvement of a court.

Power of Sale is the most frequently used remedy by lenders when the mortgagor is in default.

- a. When the property is sold, any excess monies after deduction of loan amount and the cost of sale is returned to the mortgagor.
- b. When marketing the property for sale, the mortgagor must ensure that it is exposed to public in open market and is sold for its fair market value.

## Basics of Mortgage Funding

### Lenders

- Financial institutions (banks)
- Trust & Loan Companies → able to act as trustees (able to manage a customers individual wealth)
- Life insurance companies → regulated under Insurance Companies Act
- Pension funds
- credit unions, retirement funds, etc. are primary sources of mortgage financing.
- Alternate sources include Seller Take Back (seller financing the sale of his own property and taking back mortgage),
- private investors → not constrained by underwriter policies, not regulated

### Lender Services

Financing/Refinancing: altering the terms of the mortgage loan for taking out equity or for making additional loan payments from their savings.

Purchase Plus Improvements: when purchasing a property the buyer might want to cover closing costs + necessary improvements

Construction Loans: This is a short-term loan with higher interest rate used to cover the cost of construction.

- A builder may take this mortgage during construction and then the buyer arranges his/her own mortgage upon closing. Alternatively, a buyer may be arranging a loan during the construction phase.

Lines of Credit: This line of credit is usually secured against the borrower's home.

- No payments are required until the borrower takes out money out of the line of credit. You can use it at will

## Mortgage Markets and Borrowers

Primary Market: New loans for property financing, new construction, renovations, etc.

- Prime Borrowers: Those borrowers who have A or A Plus level credit (excellent credit rating). Lenders have lower risk with these borrowers.
- Sub-prime Borrowers: Those borrowers who have B and C level credit. Lenders have higher risk with these borrowers.

Secondary Market: Trading of existing mortgages. Sell mortgage portfolios to investment companies or pension funds in the market

## Interest Rates:

- Interest rates are largely determined by supply and demand forces in the mortgage market.
- when the demand for a mortgage loan increases, and supply remains constant, rates will increase

- Abundant supply of funds in the mortgage market usually lowers interest rates.
- When other options appear more appealing to investors, they make take out their money from mortgage market, which results in increase in interest rates.
- The government also exerts tremendous pressure on interest rates by setting the monetary policies.

Factors that impact mortgage rates

- Mortgage market versus other investment options
- Risks associated with a specific mortgage
- Government monetary policies

### **Mortgage Payment Calculations**

Number of equal payments of principal and interest in a year

Weekly – 52 payments per year

Bi-weekly – 26 ppy

Semi-Monthly – 24 ppy

Monthly – 12 ppy

### **Payment Calculation:**

Payment = Mortgage Loan x Payment Factor ÷ 1000

Note: The Mortgage Payment Factor is taken from a chart, which may be provided in the exam. Alternatively, the payment factor itself may be given in the question.

### **Example:**

Mortgage Loan = \$250,000,

Interest Rate = 6%,

Amortization = 25 Years

*Monthly Payment* = 250,000 x **6.398066** ÷ 1000 = \$1,599.52

*Semi-monthly Payment* = 250,000 x **3.195033** ÷ 1000 = \$798.76

*Bi-weekly Payment* = 250,000 x **2.949037** ÷ 1000 = \$737.26

*Weekly Payment* = 250,000 x **1.473680** ÷ 1000 = \$368.42

Note: The numbers in bold are the mortgage payment factors.

## **5.3 Mortgage Qualification (GDS/TDS) Conventional and High Ratio Mortgages**

Conventional Mortgage: borrower has a down payment of at least 20% of the appraised lending value.

When the LTV (loan to value) is 80% or more. This provides high equity protection for the mortgagor.

-However, lenders may set more restrictive limits, e.g. 50% or 60% based on individual property and associated risk.

High Ratio Mortgage: borrower has a down payment of less than 20%

Will require mortgage default insurance

This is a mortgage loan that exceeds 80% of LTV or the normal limit for a conventional first mortgage.

- ✓ Banks, trust companies, credit unions and mortgage loan companies are not permitted to lend money when it exceeds 80%

Loan to Value Ratio (LTV): percentage of the value of the properties that is being mortgaged

LTV ratios vary by lender and type of property.

- ✓ Institutional lenders (financial institutions) can use a maximum of 75% LTV for financing commercial properties.
- ✓ High LTV → high risk

### Mortgage Default Insurance

- provides protection to lenders in case of default by the borrower.
- The borrower is required to pay the one time premium at the time of closing if their down payment is less than 20%.
- In other words, lenders require default insurance when the LTV is more than 80%.
- The amount of premium depends on the actual LTV of the borrower.

Canada Mortgage and Housing Corporation (CMHC) is the government insurance provider.

- it encourages new builds + construction

Genworth financial Canada & Canada Guarantee

- Private mortgage insurer → provides mortgage default insurance

### Mortgage Default Insurance Calculations

Mortgage insurance premium → charged on the amount of borrowed funds, one time payment, which is paid when it is approved or can be added to the principle amount of the mortgage

The following explains how mortgage insurance premium is calculated. LTV Formula:

Loan to Value Ratio (LTV) =  $\text{Loan} \div \text{Value of house} \times 100 \%$

-Premium is charged as a percentage of the loan amount.

Up to and including 65% → 0.60%

Up to and including 75% → 1.70%

Up to and including 80% → 2.40%

Up to and including 85% → 2.80%

Up to and including 90% → 3.10%

Up to and including 95% → 4.00%

Up to and including 100% → 4.50%

Note: If there is a question in the exam, the above chart would be provided.

Premium = Loan amount time % =

Example: The Bush family makes an offer of \$280,000 on the property, conditional upon arranging the necessary financing. They will be making a down payment of \$45,000. Given that this is a high ratio mortgage, how much will be the premium for the mortgage default insurance?

Solution:

Purchase Price = \$280,000

Down Payment = \$45,000

Mortgage Loan =  $280,000 - 45,000 = \$235,000$  LTV =  $235,000 \div 280,000 = 83.93\%$

Insurance Premium =  $235,000 \times 2.80\% = \$6,580$

### Mortgage Approval Qualification

1. Application: Most applications assess the financial capability of the borrower; the value of the property being financed, and its marketability.
2. Appraisal and Credit Check: The lender assesses the risk, repayment capability of the borrower, his/her credit history, and hires an appraiser to ensure that the property meets lender's criteria for financing.
3. Mortgage Commitment: a letter from the lender, to commitment of loan by lender after the buyer has made an offer.
  - ✓ The commitment is subject to certain terms and conditions, which typically include evidence of fire insurance, payment of property taxes, satisfactory clean title, survey of the property, etc.

Pre-Qualifying first step in the process → how much a buyer can afford to spend

Pre-Approval: more value and significant milestone. Pre-approval letter, borrowers income, down payment etc

- A pre-approved buyer is also called a Cash Buyer. The term cash does not refer to any cash payment by the buyer.
- Pre-approval is a confirmation document setting out the maximum amount that can be borrowed, the interest rate (guaranteed for a specific time) and monthly payments. The confirmation is subject to an appraisal and verification of information provided by the borrower.
- Pre-approval letter → lenders commitment to loan the buyer money, and often guarantees a certain interest rate for a specific time (not necessarily a guarantee for loan as circumstances change)

### **Gross Debt Service and Total Debt Service**

A lender determines borrowers affordability based on the total debt service (TDS) and Gross Debt Service (GDS)

GDS ratio is a comprehensive measure of a borrowers monthly housing expenses

#### Gross Debt Service (GDS) ratio

GDS Ratio is the maximum percentage of borrower's annual income that should be allocated to principal, interest, and property tax payments.

- Total monthly expenses are divided by total monthly income = GDS ratio
- Most lenders keep this ratio between 27% and 32%. GDS Formula



- GDS (excluding heating costs)
- $GDS \text{ Ratio} = (\text{Principal \& Interest} + \text{property Tax}) \div \text{Gross annual Income} \times 100 \%$

Note: If given, add the annual heating cost.

Example: Ann has an annual income of \$72,000 and is looking for a mortgage loan. The estimated monthly principal and interest (P & I) payment would be \$1,327.50. The annual property tax is \$3,400. What is her GDS ratio?

Solution:

$$\text{Annual P \& I Payment} = 1,327.50 \times 12 = \$15,930$$

$$GDS \text{ Ratio} = (15,930 + 3,400) \div 72,000 \times 100 = 26.85\%$$

### GDS condominiums

Lender will include part of the monthly maintenance fee in calculations

For a condominium unit, add 50% of annual condo fees. All numbers must be annual for this calculation.

$$GDS = (\text{annual mortgage payment} + \text{annual property taxes} + 50\% \text{ of annual maintenance fee's}) / \text{gross annual income}$$

**Ex.** Buyer Johnson has a gross annual income of \$58,000, a \$50,000 down payment and is considering a \$170,000 condo purchase. Taxes are \$4120 per year and \$325 per month maintenance fee's (\$3,900). Johnson requires a \$120,000 conventional mortgage, amortized over 25 years, with a 5 year term. Current rates are 7.5 percent and monthly payment factor per \$1000 is 7.315549

$$\text{Monthly mortgage payment} = (120,000 / \$1,000) \times 7.315549 = \$877.87$$

$$\text{Annual Mortgage Payment} = \$877.87 \times 12 = \$10,534.44$$

$$\text{Annual mortgage payment, taxes and maintenance fee's} = \$10,534.44 + \$4,120 + (\$3,900 \times .5) = \$16,604.44$$

$$\text{Johnson GDS ratio is calculated as follows: } GDS = (\text{principal and Interest} + \text{taxes} + \text{maintenance } (\%50)) / \text{Gross income}$$

$$= \$16,604.44 / \$58,000 = 28.63\%$$

$$= \text{Johnson max } 30\% \text{ limit for this particular lender}$$

### **Total Debt Service Ratio (TDS)**

- includes everything in GDS calculation plus all other debt obligations
- maximum percentage of borrower's annual income that should be allocated to principal, interest, property taxes, and other obligations such as car loan, credit card payments, etc.
- Most lenders keep this ratio between 37% and 40%. TDS Formula

$$TDS\% = (\text{Principal \& Interest} + \text{Property Tax} + \text{Loan}) \div \text{Income} \times 100$$

Note: If given, add the annual heating cost. For a condominium unit, add 50% of annual condo fees. All numbers must be annual for this calculation.

Example: Buyer Sam has annual income of \$64,000. His monthly mortgage payment is \$1,276.30 for a property that has annual tax of \$3,240. In addition to this, he also pays \$380.36 for a car loan. What is his TDS ratio?

Solution:

$$\text{Annual P \& I Payment} = 1,276.30 \times 12 = \$15,315.60$$

$$\text{Annual Loan Payment} = 380.36 \times 12 = \$4,564.32$$

$$TDS \text{ Ratio} = (15,315.60 + 3,240 + 4,564.32) \div 64,000 \times 100 = 36.12\%$$

## **5.4 Role of Lawyers & other Third Party**

<b>Seller's Lawyer</b>	<b>Both</b>	<b>Buyers Lawyer</b>
Prepare a statement of Adjustments	Review an agreement of purchase of sale	Request and review title search
Prepare a deed of the property	Conduct closing of property	Request, arrange, and obtain title insurance
Review statements of adjustments again if sent back by buyers lawyer		Requests other searches, such as tax arrears and work orders
		Review statements of adjustment

## **6. RESIDENTIAL STRUCTURAL COMPONENTS**

### **6.1 Styles and Features of Lots Shapes of Residential Lots**

Rectangular: This is the most common lot shape, which has equal front and rear lines, and equal side lines. The frontage is usually less than the depth.

Square: All four sides of the property lines are equal. This shape is uncommon in urban areas but may be available in rural areas.

Wide-Shallow: In this type of lot, the frontage is more than the depth, which reduces the area for the back yard. The structure is built parallel to the road.

Pie and Reverse Pie: A pie-shaped lot has smaller frontage as compared to rear, which results in large rear yard.

-The reverse pie-shaped lot has larger frontage as compared to rear, which allows for more living space.

-These lots are usually on the cul-de-sac to accommodate circular roads and may provide more privacy.

Corner: Located at the intersection of two roads, these lots may have additional size and setback requirements.

-A drawback is that they have limited privacy and are exposed to traffic on two sides.

### **Residential Lot Considerations**

Additional Costs: There may be additional costs in providing services to an irregularly shaped lot, especially when the structure is located at a distance from the road.

Property Direction: Buyer's preferences with respect to exposure may add to building costs.

- Depending on the design, the buyer may want an exposure or view that allows for larger or lesser amount of sunlight.

Property Features&Topography: A lot with trees or bush area, or a lot on hilly stretch may add to the cost of construction.

Surrounding Properties: Proximity to nearby nuisances such as excessive noise, pollution, or heavy traffic could potentially decrease the value of the property.

### **Accuracy of Listing Data**

Listing Data: Salespersons must ensure that the listing data, such as the size of the lot, is accurate. It is a document containing factual information about a property

- They should rely on source documents such as the deed or survey of the property to verify lot measurements instead of relying on the information given by the seller.

Information such as irregular lot, pie-shaped lot, corner lot, etc. should be included in listing.

- Include overall size, provide additional information as required as to not mislead the buyer
- If only one dimension is needed or used you use the frontage

Source Documents to Verify Lot Size: The salesperson can verify the lot size from GeoWarehouse®, Municipal Property Assessment Corporation (MPAC), and other documents such as property tax statements, notice of assessment, etc.

### **Process of obtaining a survey**

Surveys: An up-to-date survey is essential for a real estate transaction. Additionally, lenders may also require a survey for approval of mortgage financing.

- Once it is known that a survey is required, the salesperson should refer the seller/buyer to an Ontario Land Surveyor. The cost of a new survey depends on the type of survey.
- When selling a property, the listing should indicate whether a survey is available, and provide a copy of the survey when the property is being viewed. No Survey = the buyer should be aware of the impact when obtaining approvals
- A seller is obligated to provide only the survey they have
- If a survey does not exist, the seller and buyer could negotiate who will pay

Obtaining a survey: one need is established, a leading practice for the salesperson is to provide the names of at least 3 professional land surveyors to the party paying for the survey

- Association of Ontario Land Surveyors (AOLS) is responsible for the licensing and governance of professional land surveyors

### **Receiving survey documentation**

Require a site visit and depending on the location and schedule could take up to several weeks. The land surveyor will submit a true copy of the report to the client

- Protected by copyright legislation

Risk of Old Survey: An older survey obtained from the seller may not show changes to the property after the survey was prepared.

-The current physical state of the property may not be the same as shown on the outdated survey.

Surveyor's Real Property Report: This survey consists of two parts – (i) The Plan of Survey, and (ii) The Written Report.

The information obtained from this survey includes –

- The legal description of the property.
- Dimensions of all property boundaries as well as designation of adjacent properties.
- The location and description of improvements on the property including setbacks.
- The location of any easements or right of ways, such as hydro lines, telephone lines, etc.
- Location of survey monuments and encroachments (if any) on the property.
- Date the survey was created

### Source documents to verify lot size

GeoWarehouse: in depth reports of properties

Provides → Land registry info, municipal property Assessment Corporation, Property ownership info, sales history, iages of the property, Accurate lot dimensions

Municipal Property Assessment Corporation

Enhanced Residential Market Value Report → contains the information from all other MPAC reports and can provide details about a property that can allow it to be used as a source document when verifying lot sizes

A propertys frontage, depth, and site area are all included in this document

Additional secondary Sources

Municipal property tax statement and the notice of assessment

### Converting Metric and Imperial Lot Measurements

Imperial to Metric Conversion: Feet to Metres: Multiply Feet by 0.3048

Square Feet to Square Metres: Multiply Square Feet by 0.0929

Acres to Hectares: Multiply Acres by 0.4047

Metric to Imperial Conversion: Metres to Feet: Multiply Metres by 3.281

Square Metres to Square Feet: Multiply Square Metres by 10.76

-Hectares to Acres: Multiply Hectares by 2.471

The Part, Rate and Whole Concept

The Whole (Big), Part (Small) and Rate (%) Concept:

Part = Whole x Rate % Whole = Part ÷ Rate % Rate = Part ÷ Whole x 100

## 6.2 Housing Types

### Types of Residential Structures

Attached: These houses are connected using one or more shared (party) walls. The end unit has only one side attached.

These houses are less expensive to build than others.

Detached: This house is a single structure, which is not connected to any other house and offers wide variety of architectural styles, privacy, and more living space.

Semi-Detached: These side by side houses have one common party wall which is attached to the next house.

Linked: Two or more houses are attached below grade by a concrete wall, or their garages may be attached.

-When the structures are connected below grade and not visible, the house may appear to be detached.

Townhouses: Three or more units are joined together by party walls. Every townhouse has a full basement, main living area and an upper level.

-They are cost-effective for the developer who can create more houses in lesser area of land.

-Townhouses can be freehold or can be a part of condominium complex.

Multi-Unit Residential: There is more than one unit in a single building and are referred to as duplex, triplex, or fourplex.

-The units may be joined horizontally or vertically.

-The entrance may be separate for each unit or through a common vestibule.

## Structural Styles

**Bungalow:** The entire living space is on a single floor. They are commonly found in older neighbourhoods. There are no stairs in the living area

**Bi-level/Split Entrance:** This design effectively uses the lower basement areas, and the front door foyer is located between upper and lower levels.

-The basement is raised above grade, which allows for larger windows and more sunlight.

**Ranch Style Bungalow:** Like bungalow, it has a low pitch roofline, irregular U-or L-shape layout.

-However, it offers more living space than bungalow and may have an attached garage.

**Split Level:** These 1970s and early 1980s designs offer minimum movements with lesser steps for each level.

-The side-split design has a layout from left to right whereas the backsplit design has layout from front to rear.

There may be three or more levels of the living area, up to a maximum of five levels.

**One and Half Storey:** This cost-effective design has about 60% of the total living area on the main floor and offers more square footage on similar lot area.

-It has a high-pitched roof, with some designs offering dormers.

**Two-Storey:** The two-storey design is highly popular, which offers large variety in terms of exterior shape, roof design, and floor layout.

-The living area is equal on first and second floors.

-Two-storey homes dominate the urban areas due to rising land costs.

**Two-and-Half Storey:** It is similar to two-storey structure, but there is an additional half storey top floor with limited ceiling height.

## Planning Factors Affecting Land Use and Structure Placement

**Zoning:** Zoning bylaws, enacted by the municipality, dictate the use of land and restrictions.

- There may be restrictions on placement of a structure on marshy, rocky, steep sloping, hazardous land or other related situations.
- Homeowners may apply for minor variance to the local Committee of Adjustment when their proposed building plans do not conform to existing bylaws.

**Topography:** Topography such as a sloping site or slope of the adjacent site may affect the placement of structure.

**Site Plan Control:** These municipal controls typically apply to developers (development regulation)

- The factors include adequate landscaping and buffering from adjacent properties, grading of the lot, widening of roads, provision of curbs, signs, and walkways, and provision for storm, surface, and water runoff facilities.

**Soil Conditions:** Soil conditions can affect placement of the building because foundations need stable and strong soil to retain structural integrity.

- Soil should be stable through wetting and drying cycles, so that expanding soil does not crack foundations.

**Water Tables and Flooding:** If the land is in a regulated flood plain, the owner may need approvals from the Conservation Authority for construction, fill placement, and watercourse alterations.

- This is to ensure that there is no risk to life or the property due to high water table or floods.

**Lot Size:** The size of the lot determines the maximum square footage of the house and any secondary structures.

**Available Services:** The distance between the house and the road where services such as hydro and telephone are located is an important consideration.

- Hydro company may install up to 25 meters of hydro lines free of charge, and beyond that, the owner will have to bear the expenses.

## Factors Affecting the Style of Structure

**Topography:** The size, shape, and characteristics of the building is affected by topography of land.

- Wildlife, endangered species, vegetation, rivers, lakes, or streams can also have influence on the placement of structure.

**Budget:** Buyer's budget may have overall effect on the type of structure that can be afforded.

- Contractors may add a contingency amount to their estimate in case the cost increases.

Personal Preferences: Buyer's personal preferences can affect the final design of the structure in terms of choice of materials used for construction.

Sustainability: Homes built for energy efficiency are relatively expensive and take more time to build.

Lifestyle: Depending on the age and lifestyle of the owners, several interior or exterior designs changes may be required.

Structural Conformity: Tract Housing is a development within a subdivision where several identical houses are built on a tract of subdivision. However, other subdivisions do not maintain identical design but keep unique design of different houses.

Structural Age: The year in which the house was built dominates the style of the structure.

### **Third party planning & Development Professionals**

Architect, Structural engineer, municipality

## **6.3 Parking Options Residential Parking Types**

Garages: Residential garages can be attached, detached, or built in. The attached garage is most popular due to convenience and low cost.

On-Street Parking: Some municipalities permit on-street parking with appropriate parking permits.

Parking Pad: This is the most common type of parking option in urban areas. -The parking pad can be built on the front yard with appropriate permits and permitted materials such as concrete, asphalt, or brick interlocking.

Shared/Mutual Driveway: This type of driveway is jointly used by owners of adjacent properties.

- There is a right-of-way registered on the title of both properties, which passes on to the subsequent owners.
- This type of driveway may have negative effect on the value of property.
- A shared or mutual driveway is a material fact and must be disclosed to the buyer.

Carport: A carport is not completely enclosed but may be an extension of the roof structure for covering the vehicle.

Underground Parking: It is popular in dense areas such as townhouses and stacked townhouses, but they decrease the distance between the property and the parking area.

Multi-Level Parking: This is an alternative to conventional surface parking in densely populated urban areas.

### **Building Code for Garages and Carports**

- Municipalities require the owner to obtain a building permit under the Ontario Building Code for construction of a garage or carport.
- The construction work must adhere to standards for fire and safety, means of exit, accessibility, service facilities, structural loads, foundations, design, and materials.
- Heating, ventilation, plumbing materials, and drainage requirements must be met. -Additionally, the construction work must meet the requirements under the Electrical Safety Code.

### **Driveway Finishes**

Poured Concrete: This is a common type of driveway, which can be built in sections to accommodate expansion or contraction. It is more expensive than other finishes. Need to be sealed with a chemical compound

Asphalt Paved: It is most popular of all finishes, is easy to install, and less expensive. Cracking on the asphalt surface is a common problem.

Stamped Concrete: Concrete is poured and is flattened with mould of brick pattern before drying to create a design. It is more expensive to install and needs annual sealing to maintain the appearance.

Gravel: These driveways are popular in rural areas due to minimum maintenance. Gravel compacts over time to provide a firm surface. Beware of potholes

Interlocking: Cement, concrete, or brick stones are interlocked using mortar. These driveways are expensive to install and maintain.

Exposed Aggregate: This style of driveway is made from specialized concrete mix that combines with unique aggregates exposed on the surface.

### **Parking Problems and Restrictions**

Easements: could be easement for shared driveway → limits what you can do to it

Parking Permits: used when you may not be able to park all your vehicles. Verify the permit is available, complete the application, submit application

Restrictive Covenants: Restrictive covenants found in residential subdivisions may have limitations on overnight street parking.

Availability: When the parking for neighbourhood is limited, chances are that people who frequently visit the area may have to park on the street.

Commercial Vehicles: In some municipalities, overnight parking of RV trailers, buses, boats, limousines, or any other commercial vehicles may be prohibited.

Continuous Vehicle Usage: This restriction may require that the parked vehicle must have a valid license plate and the vehicle must be in use.

Seasonal Parking: In winter months, municipalities may restrict on-street parking to prevent build-up of snow on the streets.

#### **6.4 Building Components and Water/Moisture Control Foundations**

-Foundation is the base on which the structure is built.

-Its function is to transmit the weight of the structure from the above grade walls to Footings located below the frost line.

-They resist the lateral pressure of the soil and act as a retaining wall.

- carry the weight of the structure below the frost line, preventing frost heaving, or the upward swelling during freezing conditions

Footings → widened section that helps support the foundation , so the structure does not settle

- Made from concrete with rebar reinforcement

#### **Materials Used for Foundations:**

Poured Concrete: Most common and less expensive than other materials.

Concrete Block: Pre-built concrete blocks less commonly used due to its cost and maintenance issues

Brick/Stone: They have longer life and are found in older houses. They are filled with mortar which may lead to moisture penetration and refilling may be needed.

Insulated Concrete Forms (ICF): These foundations use polystyrene in which concrete is poured. This material is more expensive due to high labour costs. Easy to use, contributes to insulation, enhanced damp-proofing and reduce fire risk

Damp Proofing: Foundations are damp proofed below grade with waterproof bitumen such as asphalt.

#### **Potential Problems with residential foundations:**

Inward deflection may occur when there is insufficient lateral support. The reason may be - (i) mechanical forces exerted during backfilling, (ii) backfilling with frozen soil, (iii) unusual frost development in the soil outside the building, or (iv) when floor system does not provide enough support.

Cracks in foundation may be caused by concrete shrinking and may lead to water penetration or infestation of insects.

Foundation moisture penetration: Moisture may cause serious damage and may cause Efflorescence to develop.

Efflorescence, which is a coating of mineral salt, may appear on interior surface of foundation wall.

- A weeping tile, made of porous pipe, is used for damp proofing of basement walls. It is buried along the foundation to avoid accumulation of water around the foundation. This keeps the basement areas dry.

#### **Posts Columns**

- ✓ They carry the weight of the beam vertically down to the footings. They are made of steel, brick or concrete.
- ✓ Problems include moisture, out of plumb (not at right angle), rust (due to moisture), sinking due to insufficient footing size, fire damage (wooden columns) or improperly fixed to the beam, undersized component (one that is too small or may have suffered mechanical damage)

#### **Recommending Foundation Inspection**

- Salespersons should inform the buyer/sellers if cracks are appearing in walls, around doors, windows, in corners, or if doors or windows appear to be misaligned.
- The soil around the foundation can cause shifting and cracking in the foundation walls.
- Poor grading may cause rainwater to run towards the foundation wall.
- The fireplace chimney may appear to be separating from the structure.

#### **Framing and Floor Systems**

Walls (exterior or interior) carry the weight of the roof and the floor to the foundation. the rough timber works of a structure including studs, plates, lintels and rafters.

Balloon Framing was used in older structures and consists of wall studs, which were built before the floor system, and were continuous up to the roof line. The floors were hung to the studs.

Platform Framing is used in most modern structures and consists of separate wood floor joists and subfloors for each platform.

Problems with Framing: (i) Large openings may lead to sags, (ii) Insufficient nails, (iii) Condensation, and (iv) Poor quality lumber.

### **Wood frame wall problem areas**

Nailing's & Openings: improper placement of nails or using inadequate number of nails can lead to complications

Condensation: occurs when insulation is being replaced in older houses

- If no plastic vapour barrier is installed over the warm side of the insulation = condensation

Low Quality Lumber: likely to warp , twist, or bow

### **Framing and Floor System Components**

Beam : Beams are made of wood or steel to carry the weight of floor or wall horizontally to the foundation.

- Laminated beams consist of five or six boards nailed together.
- Steel beams are better than wood beams because they are free from rot, termites and mechanical damage. However, they are heavy and susceptible to rust.
- Wooden beams can be weakened by notching, cutting or drilling. Undersized or over- spanned beams may sag or crack resulting in failure of entire framing system. Over-spanned beams may be remedied by adding more posts.
- Fire Concern: Fire is a serious concern for both wooden and steel beams. When a structure is on fire, wood actually burns but steel melts at high temperatures. Steel beams lose strength earlier than wooden beams

Joists : series of horizontal components to support the floor, ceiling or the roof. They are made of wood, metal or wafer boards and rest on sills or beams and provide strength to the structure.

- Bridging/Blocking in joists is done to restrain the joists from twisting. One set of either bridging or blocking is required for each joist span. It helps transmit the load of one Joist to the next Joist and reducing springiness of floor.

Sill: provides a continuous pad between foundation top and bottom of framing. It is laid flat on top of concrete foundation wall.

- Sills are anchored to the foundation using bolts and the floor joists are installed directly on the sill.
- The location where the joists rests on the sill is called a point load. IF the joists are inadequate or too wide, the increased load will crush the sill, causing the floor to sag.

Sub-floors Subfloors are attached on top of joists.

- Subfloor transmits live loads of people and furnishings to the floor joists.
- It is usually covered with a finish such as carpet, hardwood, or laminate.

### **Problems with Floor Systems**

Springy floors refer to a deflection of the floor. A certain amount is allowed and can be identified by a pliable feeling when pressures is applied

- Caused when the subfloor is too thin, may lead to the subfloor failing under concentrated load
- Solution is to add bridging or an additional layer of plywood

Squeaky sounds are heard when the subfloor is not secured properly to floor joists. This problem may be remedied by using more nails to secure the subfloor properly to joists or another layer

Water-Damaged Floors: Penetration of water may damage the wood and nails may start coming out. Discoloration, change in texture

Uneven floors can be identified by sections which are not at level with other sections of the floor. Existing plywood can be replaced to remedy this problem.

### **Bridging and Blocking**

- Used to keep the joists from twisting, help transmit loads from one joist to adjacent joists
- Cross bridging two pieces of wood attached through the centre in between gaps in the joists
- *Blocking* uses wood with the same dimensions as the floor joists except for the length

## Wood Frame Walls

- Wood frame walls carry the load of the roof and floors structure down to the foundation.
- Studs provide the support for insulation and exterior finishes such as drywall or brick veneer.
- Load bearing studs have double top plate while the non-load bearing studs have single top plate. Wooden studs (2-by-six inches) are spaced 16 inches apart.

### Potential Problems:

*Moisture:* It can cause rotting, wood swelling, and infestation of termites.

*Termites and Shelter Tubes:* Termites live in soil, close to moisture but below frost line. They travel in wood or soil but do not expose themselves to open surface. Shelter Tubes are small tunnels of earth built by termites.

*Cracked Walls:* This may be a sign of serious structural damage. Crack may be small hairline, horizontal crack or a large crack related to foundation.

*Wood Rot:* Deterioration of wood due to the effect of moisture, temperature and oxygen.

*Visible Nails:* Drywall screws and nails may begin to loosen over time, which causes drywall to bulge and move/push the nail or screw outward.

## Internal and External Drainage Systems

- Drainage system is used for removal of water and consists of piping, conduits, ditches, swales, or other drainage devices to run off water away from the building.
- Basements require proper drainage due to prolonged exposure to moisture or stagnant water.
- Ontario Building Code specifies the types of granular material needed to drain the bottom of foundation and location of drainage disposal piping.

### **Causes of Water Penetration:**

Improper Grading: When the slope of the grade around foundation wall is towards the foundation, water will not run-off away from the foundation.

Defective eavestroughs and downspouts may result in water penetrating into the structure.

Window wells (the rectangular hole in front of the basement windows) may not be properly drained and water may build-up around the base of the window or may leak inside.

sump pump is installed inside the basement in a small pit to pump the water out of the house. If water is present under the basement floor, it enters the pit, as it is lower than the surface. When water reaches a certain height, the pump will start, and the water will be pumped to the outside of the house

### **Signs of Basement Leakage**

- Repair patches on exterior or interior walls, cement parging, or use of water proofing materials are indications of repairs done by owners.
- Floor tiles starting to peel off or excessive dampness under carpets.
- Leakage from below grade windows.

Stains or discolouring of paneling, drywall or other interior finishes.

Mould/mildew forming on walls due to high moisture and poor ventilation. Might need Professional

Efflorescence is a whitish mineral deposit found on interior of foundation walls indicating that moisture was present at some point of time. However, it is not a sign of basement leakage.

Rusting: can be corrected or eliminated by installing or improving the exterior grading and drainage components

## **6.5 Roofing Systems Roof Styles and Pitch**

Gable Roof: There are two sloped sides and a gable (enclosing portion at the end of any pitched roof) on either end. V

Hip Roof: Also called cottage roofs and consist of slopes on all four sides, equal in length and join at the top to form the ridge

Gambrel Roof: They are used for barn structures and are identified by two sides that slope more steeply halfway down the length of either side. (plenty of headspace)

Mansard Roof: These roofs resemble gambrel roof but have slopes on all four sides. Mix of Gambrel roof and hip roof

Flat Roof: They are commonly used for commercial/industrial buildings but are not really flat as there is a small slope to run off water.



A-Frame Roof: They have steep triangular shape that runs directly to the ground level. They were used for one and half storey houses in mid-50s and 70s.

### Describing Roof slopes

Pitch or Slope of the roof is defined as Rise over Run. A “6 in 12” pitch indicates a vertical rise of 6 feet over horizontal distance of 12 feet.

Conventional roof has a pitch greater than 4 in 12.

Low slope roof has a pitch between 4 in 12 to 2 in 12.

Flat roof has a pitch less than 2 in 12.

### How roof style can affect Property Appeal

Roof Style	Benefit	Drawback
Gable roof	Relatively easy and inexpensive to construct Allow for more ventilation → which could provide more space for an attic or ceiling	Not idea for areas with frequent winds as this may cause the materials to peel away
Hip Roof	Recognised for their stability making them ideal for areas with high winds	Difficult and expensive to construct due to their complex truss and rafter system
Gambrel System	Structured in a way that can incorporate an attic it to the property which can serve as additional bedroom Cost effective simple design; require fewer resources making it cost-effective . Saves labour time Idea for sheds and outdoor storage buildings as the design provides for more storage space	Not ideal for high winds or snowfall More frequent maintenance than other roof styles Require proper roof vent system during installation to improve on better air circulation and ventilation
Mansard	Can allow spae for dormer window giving more natural light Extra space Saves costs from building a separate room or attic in the usable space Cuds down on heating costs as the heat is more evenly distributed	More difficult , costly and time consuming to construct because of their complex design, additional materials and labour Protruding design of the dormer windows cause more exposure to the environment + maintenance Dormers are prone to develop structural problems or damages if neglected
A frame	High durable simple to construct Steepness of the slope allows for efficient	Due to smaller size of structure the living space can be relatively limited As the roof is often used as a portion of the wall, this slope can be problematic for wall hangings
Flat roof	Cheap to construct and lower maintenance More accessible for cleaning and inspection	Building of rain and snow can place additional weight on the roof

### Components of Roof

Flashing: Thin pieces of impervious material installed in joints or gaps to prevent water penetration. The purpose of flashings is to prevent water leakage. They are installed – where the roof changes direction, where a change in material occurs (dissimilar materials meet), and where there is a joint in materials.

Roof sheathing: It supports the roof covering and transmits live loads due to snow, ice and wind to the roof rafters, trusses or roof joists. The material used is wood planks (older buildings) and wafer board panels (new buildings).

*Problems:* Condensation → loss of strength and render the nailings of the sheathing ineffective, nails are pulled out of the rafters  
Too thin → will deflect under load and result in sagging of the roof line  
Edge support → unsupported edges of roof sheathing may lead to differential movement between two panels. Can lead to horizontal edges appearing

Trusses: Trusses hold the sheathing and shingles and are mostly engineered systems and installed 24 inches apart.

- *Fink Trusses*: They have web members shaped as ‘W’.
- *Howe Trusses*: They are considered more durable and stronger than Fink Trusses. They are identified by ‘M’ shape and a vertical member going to the peak.
- *Problems:* cut → individual chords or webs that are cut or damaged can be a serious problem  
Truss uplift → involves the bottom member (chords) of the truss deflecting upward in winter  
The result of truss uplift is the centre section of the bottom chord moves upward and gaps are large as one-half inch appear at the top of the interior walls where they join the ceiling

**Rafters:** Roof rafters are used in sloped roofs to support the roof sheathing and transmit roof loads to bearing walls and beams.

- *Problems:* rafter spread/over-spanned → rafters are pushed apart as a result of not being adequately secured to the walls at the bottom ledge. Roof will sag if rafters are over spanned or spaced too far apart
  - Condensation → attics with good insulation but poor ventilation may be susceptible
  - Will attack roof sheathing and rafters

**Collar Tie** laterally placed wood members is used horizontally for each pair of opposing rafters. Halfway up the attic space

- Prevent rafters from sagging
- One collar tie should be placed for each pair of opposing rafters
- If more than 8 feet long, a rat tail or other sort of bracing should be attached at the midpoint
- *Problems*
  - buckling → inappropriate lumber size
  - Missing → securing collar ties on every third rafter was common on older houses, proven inadequate particularly with the added weight of multiple layers of roof shingles
  - Bracing → collar ties more than eight feet may buckle if they do not have a wooden bracing to support the span
  - Wrong location → often collar ties are either too high or too low, which leads to rafters spreading apart, placement should be near midpoint
  - Low slope roof → collar ties are only effective when the roof slope is four in twelve inches or greater. Larger rafters, or knee walls, are used on lower slopes

**Knee Wall** is a small wall at a proper location in the attic area to support the roof and prevent sagging of roof.

- *Problems* rot, termites mechanical damage and fire damage. might not be effective in preventing rafter sag if not located at the mid span of the rafters

### **Other Roof Components**

**Soffits:** This covers the underside of the overhang of the roof to protect the trusses from weather conditions. Improperly installed soffits or eavestrough can cause soffits to sag.

*Problems:* sagging or looseness (caused by clogged eavestroughs, water forced upward from ice dammit etc)

**Fascia:** A flat piece of wooden board that covers rafters and holds the eavestroughs in place. Clogged eavestroughs can cause damage to fascia.

*Problems:* water gets behind the board. Solutions are to resecure the fascia with nails if the problem is loose

**Eavestroughs and Downspouts:** They collect water from roof, protect the walls from water damage, and prevent local ground level erosion caused by heavy water runoff. The downspout discharge of water is into drains or onto ground about 6 feet away from the building. Holes and cracks, collection of debris, and faulty fasteners can damage the eavestroughs.

*Problems* collection of debris, holes and cracks

**Attic Venting Systems:** They provide air circulation in attic areas, which prevents formation of mould and wood rot.

Condensation or moisture in attic can cause loss of strength in the sheathing and make the nailing of the sheathing ineffective, as nails are pulled out of the rafters, or through the sheathing.

*Problems* improper fan venting, excessive insulation that results in locking the intake vents or an unbalanced ratio of intake and exhaust

### **Roofing Covering Materials**

**Asphalt Shingles:** These are most commonly used for residential buildings and are self-sealing. They are classified by weight. Most common type weighs 210 pounds per square (Square is the amount of shingles required to cover 100 square feet).

**Metal Shingles:** These are good to withstand weather influences and high winds. Advantages include low maintenance, resistance to decay and long-lasting durability.

**Wood Shingles and Wood Shakes:** Wood Shingles are machine cut while shakes are hand cut. Wood Shakes are thicker and have uneven surface. *Problem* : exposure to frequent sunlight can dehydrate them and make them riddle, and excessive shade or moisture can lead to rot and enable moss to grow

**Slate Roof:** Made of slate or sedimentary rock. They are 3 to 5 times heavier than asphalt shingles and their life span is 60 to 100 years. Durable, waterproof and fireproof

Concrete or Clay Tile: These are rarely found in Ontario. They are 4 to 5 times heavier than asphalt and have life span of 50 to 100 years. Heavy. Clay is rittle subject o mechanical damage and prone to failure of fastening such as nailings

Corrugated Plastic Tile: This type of roof covering is generally used over patios and other light structures. Their life is 20 to 100 years, based on the grade. Considered low quality

**6.6 Doors Components of Door**

Head (Top Rail): The horizontal portion of door frame located on top of the door.

Jamb: The vertical left or right portion of the door frame which runs top to bottom.

Sill (Threshold): The horizontal portion which is located at the bottom at the floor level. Raised slightly to preent water from entering the house.

Stop: The continuous projection attached to jambs to prevent the door from swinging past the frame.

Buck (Casing): The subframe around the door made of wood or pressed metal.

**Types of Exterior Doors**

Wood Doors: The most common type of door which may be hollow or solid. High end look and easy to repair. However, the downside is they absorb moisture, peel and bubble, twist and fade and can be expensive. They are the least energy efficient door and poor insulators of heat

Panel Doors: They are interior doors usually made from engineered wood such as plywood, hard board or block board.

Glass Doors: Glass panes are installed inside wooden frames.

Sliding Doors: Used for entrance to backyard. Thermal glass is cased inside metal or wood frames.

Steel Doors: These are exterior doors due to cost effectiveness and energy efficiency of steel. They require minimum maintenance.

Fibreglass Doors: Fibre material is preferable due to light weight, durability, and low maintenance. Poor conductor of heat and electricity, provide high energy efficiency.

**Problems with Residential Doors**

Door won't remain closed	Sagging or misaligned door, or a latch that has become loose and doesn't align with the door. You need to realign the hinges of the door, or readjust the height of the latch
The door frame has become loose	Frequent slamming of the door. Installing new framework to the door
When opened the door will squeak	Door hinges rubbing agsint each other. Lubricate the hinges
When closed, there is a draft	Replaced the weather stripping around the perimeter

**Energy Efficiency Doors**

Properly insulated doors keep the outdoor weather from entering the home and prevents loss of heat and air leakage.

**Doors can be made energy efficient by:**

- Replacing old doors with newer properly insulated doors. Installing energy-efficient doors which act as a seal between the inside and outside temperature inside.
- Installing storm doors to protect the home from exterior weather conditions.
- Installing weather stripping around the door perimeter to avoid air and heat transfer.

**6.7 Windows Styles of Windows**

Casement Window: This type of window is hinged at sides and opens inwards or outwards using a crank handle. The casement is made of wood, metal or vinyl.

Single and Double Hung Window: A double-hung window has two moving parts – (i) outer part on top, and (ii) inner part on bottom half. Both parts can be moved up or down. In a single- hung window, only the bottom part moves.

Awning (Transom) Window: There is a hinge at the top that allows the window to open outwards.

Bay or Bow Window: Bay → Designed as three separate windows with the central part acting as a picture window. It stops a few feet above the floor level. If it is a bow window, its structure is curved which creates a round shape.

Slider Window: This older and inexpensive style window is a single pane of glass which slides on wooden or vinyl track.

Skylights: They are made of tempered glass or plastic which provides better resistance to breakage. However, they are prone to water leakage and condensation.

**Window Components**

Panes or Lites The pieces of glass within the window itself.

Muntins: When the window within the sash is divided into several small panes, the divided vertical bars between the panes of glass

Sash: what the panes are held within so that they may move as the window is opened and closed.

Stiles : both sides of the sash

Rails: top and bottom components of the window

Jambs: the sides of the window frame. The sill is located at the bottom of the frame and head is the top

Casing or trim covers the frame edge to finish the windows edges in relation to wall finishes

### **Problems with Windows**

Drafty Windows: When a large amount of air leaks through the windows resulting in increased heating and cooling costs. The problem is caused by broken seals, poor insulation, improper installation, and cracked or broken frames. Solution is to seal the sides, top and bottom of the window with weather stripping. Another solution is to reapply the caulking along the edges of the window.

Condensation: This results in fog inside the window, which is an indication of condensation building-up. Moisture can freeze between glass panes in winter. → replace window

Damaged Material: Window frames made of wood can warp, crack or rot due to temperature variations causing penetration of moisture. Vinyl windows can typically withstand temperature fluctuations and require much less maintenance than wood frames

Inoperable Windows: This is caused by window frames that have warped or when the weather seal becomes jammed.

### **Residential Window Modifications**

Glazing: Glazing refers to the act of furnishing and/or fitting panes or sheets of glass. Glazing can be single, double or triple.

Inert Gas Fill : argon and krypton, are used as fill between glazing given their ability to reduce window heat transfer and cold spots at the window base between the panes. Both are non-toxic and colourless Krypton is more expensive

Tempering: specialized glass that is significantly stronger than the conventional glass. Processed through controlled thermal or chemical treatments to increase strength.

Scratch and damage resistant and provide better insulation

Window films and tinting : UV ray protection, heat reduction, fade and glare protection

Low conduction window spaces: the spacer of a window segments the two glass panes in a thermal window that is accompanied by a sealant

Although lightweight, durable and inexpensive. This metal is very effective at conducting heat and is a significant source of heat loss

Low conductivity spacers are made from insulating materials such as foam, butyl thermos plastic or thermally improved metals which conduct significantly less heat

### **CSA Standards for Windows**

CSA Standards for windows promotes efficient and effective standardization

Criteria for Air Tightness, Criteria for Water Tightness, Criteria for Wind Resistance and forced entry

Window Efficiency Ratings (ER): Measures thermal performance and represents the heating required for a window during the heating season based on the combined analysis of solar heat gain, loss and leakage.

*A positive number* indicates that more solar heat is produced, and lesser heat is lost.

*A negative number* indicates that more heat is lost than heat gained.

Value ranges are from low of -80 (very poor) to +12 (excellent)

-8 - +12 would correspond to an R Value of 5, and -15 - +5 would be R value of 4

### **Factors that influence Energy Efficiency for Residential windows**

Low Emissivity (Low-E): Emissivity is the ability of the surface to reflect long-wave radiation. Low-e glass allows sunlight to pass into the structure. Contains a thin metallic layer that allows sunlight into the structure during winter months and reduces unwanted heat in summer

Heat Transfer Co-efficient (U-Value): It is a measure of heat flow through an object. It is used in calculating the Efficiency Rating of Windows. U-Value is reciprocal of R- Value.

## 7. MECHANICAL SYSTEMS

### 7.1 Electrical Systems Basics Components

Voltage: Potential energy of the electrical system is measured in Volts, which is typically 120 volts or 240 volts for residential properties.

Resistance: Tendency of a material to resist the flow of electricity, measured in Ohms. Resistance is low in conductive materials.

Current: The rate at which electricity flows. It is measured in Amperes or Amps.

Power: It is measured in Watts and is calculated by multiplying voltage with current.

Watts the power measured in watts is calculated by multiplying the voltage by the current

Entrance Cable: Brings electrical service to the property from the street

- Typically, a 240 volts service is connected to the house using an entrance cable (overhead or buried).
- Older houses may have 60 amps service while newer houses have 100 amps or 200 amps service. Houses with 60 amps service may have difficulty in obtaining insurance due to insufficient power for modern appliances.

Main Disconnect: This is the main switch, typically located inside the distribution panel, that turns off all power to the house.

- It may have fuses or circuit breakers, depending on the age of the house. Serious problems with the electrical system, the fuses will blow, or the circuit breaker will trip
- A 100 amps system using fuses needs two 100 amps fuses, one each for line and neutral wires.

Distribution Panel: distributes power to various parts of the house with each circuit having one or more outlets, light fixtures, or other appliances connected to it. Many electrical codes require a minimum number of 120 volt and 240 volt circuits. Each circuit is connected to red or black busbar and a white wire is connected to a neutral busbar.

- Black wiring is known as hot wiring and never used for a ground or neutral wire and are meant to be used as a power feed for a switch or an outlet
- Red wires are secondary live wires in 220 volt circuits, you can link two red wires together or you can link a red to a black wire
- Since red wires conduct current → considered hot
- White and grey is neutral
- Each household circuit fuse is directly connected to either the red or black busbar.
- Many electrical codes now require a panel with room for 24 120volt circuits

Wiring: distribute electricity to all outlets and fixture. The current standard is grounded copper wiring. Aluminum was used in houses built in 1960s and 1970s, which can lead to fire risk due to overheating. Knob and tube wiring has become obsolete now due to safety reasons. Insurance is either not available or difficult to obtain for houses with knob and tube wiring.

Outlets: Electrical appliances are connected to outlets. *Ungrounded outlets* are older type and contain two slots of equal size and are not grounded; while grounded outlets are used in houses built after 1960s and have an extra wire to send current to each in the event of a power surge or fault

Ground Fault Circuit Interrupter (GFCI): This special outlet shuts off power when a small amount of current, as little as 0.005 amp, is leaking. These are used anywhere within three feet of water to avoid electrocution. They can be recognized by a reset button and a test button on them.

#### Key Considerations

Circuit Breakers and Fuses: These are safety devices inside the distribution panel. Most of them are rated for 15 amps and will blow if the load on the circuit is more. Insurance companies prefer circuit breakers.

Aluminum Wiring: This can be recognized by white silver wires inside the distribution panel.

- Aluminum is softer than copper and may be damaged during installation.
- Damaged wire can cause overheating or creeping when the wire creeps under the terminal screw where it is connected. When heated, aluminum expands more than copper and it can become oxidized by air or get corroded when brass connectors are used.
- Can be oxidized by air or corroded by contact with brass connectors, forms a white oxide which generates heat

Underground Outlets: Often found in homes built before 1960s, these outlets have only two slots. They can pose problems such as electrical fire, risk of electrical shock, and damage to appliances.

Knob and Tube Wiring: Problems associated with knob and tube wiring include inability to use 3-wire appliances, fire risk due to absence of ground wire, danger of electrical shock, and damaged insulation due to aging. This wiring can be recognized by an electrician in the unfinished portions of the house.

### **Indicators of Problems with Electrical Systems**

Blown fuses or tripped circuit breakers may indicate overloading, a short circuit, or a ground fault (occurs when the hot wire and ground wire come into contact, could be a result of one or both wires coming loose from a terminal) .

Hot or charred outlets may be caused by a loose connection or an aluminum wire creeping out under the terminal screws.

Flickering or dimming lights may be due to heavy load on the circuit indicates a serious problem. Wires may be creeping out from under the terminal screws resulting in a loose contact.

Electrical shocks typically occur due to a faulty appliance or a faulty light fixture.

Quickly burning out light bulbs may be caused by a light fixture which is unable to handle the power load.

Too many extension cords indicate insufficient number of outlets to meet the household needs.

- Several appliances on a single circuit increase the risk of electrical fire. Use is temporary

### **Solar Panels**

Solar panels, as a source of supplementary energy source, are usually installed on roof tops to absorb sun light and convert it into electrical power.

Benefits: Renewable energy with minimum environmental impact, low maintenance, low utility costs, and useful in areas where there is no electrical grid.

Financial Incentives: The Net Metering system helps owners produce their own renewable energy and excess energy may be supplied back to the grid for which they can get credit.

Unsuitable Houses: Lots of shaded trees that block sunlight, insufficient roof space, roofs that do not face southwest, and roofs that need continuous repair.

## **7.2 Heating and Cooling Systems Capacity and Efficiency**

The capacity of the heating system refers to the amount of heat generated and depends on the size of the house. Primary requirements of any heating system are size, reliability, cost, equal heating distribution

### Input Capacity:

*Input Capacity:* The amount of fuel energy consumed for every hour of operation. Measured in British Thermal Units per hour

*Output Capacity:* Amount of usable heating or cooling provided to the home.

Efficiency: Efficiency accounts for both input and output capacity and is expressed as a percentage. When input and output capacity is equal, the efficiency is 100%.

Efficiency Ratings: Low Efficiency is 60% or less, mid-efficiency is 80%, and high efficiency is 95%.

Builders, after December 31, 2009, are required to install high efficiency systems with over 90% rating for all new houses.

### **Types of Heating Systems**

Forced Air: These centralized heating systems rely on supply ducts and vents to distribute hot air. The return ducts bring the cool air back to the central air handler for reheating. A thermostat is used to control the temperature.

*Advantage:* Quick heating and combined duct work with air conditioning.

*Disadvantages:* Loss of heat in the ducts, more regular maintenance and problematic for people with allergies due to circulation of allergens and dust.

Steam: A boiler heats the water using oil or gas burner and turns it into steam. Steam travels through pipes to radiators, which give up heat and the cold water returns to the water tank

*Advantages:* Quiet operation and consistent heat.

*Disadvantages:* Low energy efficiency, expensive installation, inability to add air conditioning, and components may have asbestos that cause health issues.

Hot Water (Boilers): They heat water and distribute it using piping and cast-iron radiators. They use gravity (no forced air) to push hot air into the structure and bring cool air back to the system. The two types are one-pipe system and two-pipe system.

*Advantages:* They have quiet operation and do not circulate allergens.

*Disadvantages:* Expensive to install, less energy efficient, inability to add air conditioning, and they can be blocked due to rust and mineral deposits.

Often insulated with asbestos

Electric: The two types are – (i) baseboard resistance heaters, and (ii) radiant heating cables. A thermostat is used to control temperature.

*Advantages:* Quiet operation, no furnace required, and more energy efficient.

*Disadvantages:* Difficult to access when installed under the floor, requirement of minimum floor height, dry heat and inability to add air conditioning.

Radiant: These systems use infrared radiation to supply heat to the floors, walls or ceilings. Hot water is circulated in copper or polyethylene (PEX) pipes embedded in the floor.

*Advantages:* No allergies, constant temperature, and energy efficient.

*Disadvantages:* Slow heating, expensive, inability to add air conditioning, and limitations on carpet installation

Ground Source Heat Pump (Geothermal): These underground systems take heat from soil or water in winter and work for removal of heat from the structure in summer.

*Advantages:* Environmentally friendly, low maintenance, quiet, and no energy costs.

*Disadvantages:* Expensive and difficult to install.

Air Source Heat Pump: These systems work similar to Ground Source Heat Pumps but take the heat from outside air instead of using soil or water. Advantages and disadvantages are also similar.

*Advantages:* Environmental friendly, low maintenance once installed, can save on heating bills

*Disadvantages:* Expensive and significant disruption during installation

## **Types of Furnaces**

Electric Furnaces Uses electricity without the need of a heat exchanger, burner, or chimney.

The blower simply forces air into the heating elements and hot air is distributed into the structure using the ductwork.

*Advantages:* They have low upfront cost, quiet, and need less Maintenance

*Disadvantages* more expensive to operate than gas or oil furnace, takes longer to heat

Gas Furnace: It burns natural gas, which needs a heat exchanger and then into ductwork

- The four levels of efficiency are conventional, mid-efficiency, high efficiency, and high efficiency plus.

As of 2010, all gas furnaces must be high efficiency. Propane is used in areas where natural gas is not available.

*Advantages* They have low operational costs and heat up the structure faster.

*Disadvantages:* they can be expensive to install, natural gas not available everywhere and need venting for carbon monoxide emissions.

Oil Furnace: Oil furnaces function in similar way as gas furnace, they have a burner and a combustion chamber, and emit exhaust through a flue pipe in chimney. They need on-site oil storage tanks, which are regulated by the Technical Standards and Safety Authority (TSSA).

- These tanks must be inspected annually, and above ground oil tanks must be replaced every 10 years.
- Conventional furnaces have low efficiency rating of about 55% but newer oil furnaces can have efficiency of 80-89%.
- Its mandated that oil-fired residential furnaces must have min efficiency rating of 78%

*Advantages:* They last longer than gas furnaces and are not dependent on pipelines. Easy to service

*Disadvantages:* Necessity of on-site storage tank, low energy efficiency, more pollution, installation and replacement costs, and environmental problems if the tank is underground.

Gravity Furnace (Octopus Furnace): The now obsolete gas or oil furnaces work similar to conventional furnace but use gravity to force hot air into the structure and bring cool air back to furnace.

*Advantages:* They require little maintenance and run for a long time

*Disadvantages:* have very low energy efficiency of about 55%, costly to run, take up space

Boilers: These devices, powered by electricity, oil, or gas, do not actually boil water but heat it to about 71 degrees. Oil and gas boilers have a heat exchanger and a burner.

*Open Boilers* use an expansion tank located above the highest radiator in the structure. Allows for space for water to expand when heated and has an overflow pipe use gravity instead of a circulating pump. They are obsolete now.

*Closed Boilers* use water in the boiler, piping and radiators. The water is pressurized a few pounds higher than

what is required to force it up the highest level within the structure. Typically have a circulating pump to force the water through the system

## **Types of Furnaces**

### **Central Air Conditioning**

The function of an air conditioner is to distribute cool air inside the structure using a compressed refrigerant.

The compressed refrigerant becomes liquid, is cooled by a condenser, and then evaporated again.

The process cools the air which is distributed inside the structure using the ductwork.

Ductless Air Conditioners: These units are placed inside the rooms. They are useful for homes that do not have central air conditioning.

*Advantages:* they are more energy efficient, produce low noise, and are less expensive. Can be placed anywhere, can set cooling levels from individual rooms, can be used with heat

*Disadvantage* is that they require installation on the wall and restrict cooling to a specific room only.

### **Problems with Heating and Cooling Systems**

Clogged Filters: Filters are designed for intake of air from the house and should be replaced regularly. Dirty or clogged filters can restrict airflow and effectiveness of the system.

Faulty Thermostat: A faulty thermostat may result in over heating or over cooling.

Cracked Heat Exchanger: A faulty or broken air-exchanger can leak carbon monoxide, which can be fatal.

Faulty Distribution Fan: A faulty fan results in poor or inefficient operation of the system (not large or powerful)

Leaking Refrigerant: This results in warmer air returning to the house + elevated electricity bills due to the need to turn the air conditioning up higher

Leaking Ducts: Holes or gaps in the ductwork may reduce the efficiency of the heating/cooling system and increase energy costs.

Leaks in Walls, Windows, and Doors: The house must be properly sealed and free from drafts and leaks.

### **Gas and Propane Fireplaces**

- These fireplaces use incombustible logs covering gas vents and the fire burns behind a glass window.
- They are energy-efficient and draw air from outside for combustion.
- The gas/propane fireplace must be vented outside.
- They require less maintenance because annual cleaning of chimney is not required.
- Since they do not burn wood, they do not pose any risk to forests.
- Gas and propane fireplaces are considered less risky by insurance companies as compared to wood fireplaces.

### **Other Types of Fireplaces**

Wood Fireplace: These traditional fireplaces are made of masonry, but they lose more heat from the house than they produce. They are more recreational than functional.

Zero Clearance Fireplace: These fireplaces do not need much clearance from walls or ceilings and can be used in tight spaces. They are more energy-efficient and cheaper to install than traditional fireplaces.

Wood Stove: They can replace wood-burning fireplaces and consist of metal fire box with a glass window. Less prone to creosote buildup than wood fireplaces and more energy efficient. They produce lesser harmful emissions than wood fireplaces.

Gas Stove: They are gas-fired, more energy-efficient, produce less harmful emissions, and pose lesser fire risk.

Fireplace Insert: They use electricity, gas, propane, or wood pellets and can be inserted into existing masonry fireplaces. They are efficient and reduce harmful emissions.

Pellet Stove: They use electricity to burn specially designed pellets made from sawdust or wood shavings. They burn hotter and cleaner than wood stoves. Pellets are less expensive and can be purchased in small quantities

### **Components of Fireplaces**

Chimney: The function of chimney is discharge of smoke from fireplaces or furnaces. They are usually made of steel or masonry. Operate based on that hot air is less dense than cold air and thus rises. Creates pressure difference known as a draft which pulls combustion gases of the building

Chimney Cap: It is made of stone or metal and prevents water from penetrating inside the masonry chimney.



Flue: It is a channel within the chimney. Certain appliances such as gas furnace and gas water heater may share the same flue.

Smoke Shelf: Located behind the damper, it provides for deflection of downdrafts. Cool air goes down, strikes this shelf, mixes with warm air/smoke and returns to the chimney.

Smoke Chamber: It is made of brick or concrete and lies above the damper to allow smooth movement of smoke, leading up to the flue and chimney. Used to compress the by-products of the combustion into smaller space, without causing back draft.

Smoke Shelf: deflection of downdrafts and rain or snow, cool air travels down, strikes the smoke shelf, mixes with warm air, and returns up the chimney taking smoke with it

Control Damper: To seal the fireplace when it is not in use to prevent leakage of heat. Also, allows oxygen to start fire when open

### **WETT Inspections**

The Wood Energy Technology Transfer Inc. (WETT) is responsible for inspection of all wood burning equipment such as stoves and open fireplaces.

-Wood burning may be a risk to human health and the WETT inspection may be required for obtaining insurance.

-The WETT inspector checks for proper installation and working of woodstove and/or wood fireplace.

- Chimney → cap, liner, flue tiles, smoke chamber, proper flue pipe installation and venting, overall condition
- Fireplace → dampers, firebox and firebricks/linings, hearth and floor protection
- Clearances → Mantle and clearances to combustible walls and ceilings, heat shield construction for reduced clearances, combustible exterior items

-The woodstove must have a minimum clearance of 152 cm from the ceiling and 123 cm from each side (91 cm if shield is installed).

### **Heating and Cooling Innovations**

New heating and cooling technologies are convenient, cost- effective and environmentally friendly.

Zoned Heating Cooling Systems: These systems use a centralized furnace controller and different temperatures can be set for different sections of the house.

Motion Sensor Air Conditioning: These devices can turn on the equipment when the rooms are occupied.

Smart Controllers: These devices allow the homeowner to control the heating/cooling equipment using their mobile phones with apps such as Google Home® or Amazon Alexa®.

Smart Geofencing Thermostats: This technology is based on the distance of the owner from the house. The equipment turns on when the owner is coming closer to the house.

## **7.3 Plumbing Systems Basic Functions**

Water Supply: Water typically comes from municipal supply, which passes the shut-off valve on the lot line to the shut-off valve inside the structure. Water flows to cold water pipes, water heater, kitchen, bathrooms, appliances, and other outlets.

Water Disposal(Drainage): Drainage pipes bring waste water from fixtures in kitchens and bathrooms to sewers or septic tanks.

Water Disposal (Venting): Venting allows wastewater to move forward in pipes Air in front of waste to be pushed out of the way, air to be re-introduced to the piping after the water has passed and allows sewer gases to escape the house.

### **Service Pipes**

Lead: Lead pipes, which were used until 1950s, could contaminate water and make it hazardous to health.

Galvanized Steel: Was used for supply pipes until 1950s. Since steel is coated with zinc to prevent rusting

- *Water distribution*: reduced water pressure is a sign the pipe has rusted + water will be brown
  - also prone to leaking at the joints where two pipes meet
- *Drainage and venting* : only used for the purpose of venting → letting air and gases escape from the plumbing system
- *Hot and Cold Water* can be used for both, hot water increases rate of corrosion

Copper: It is most common for supply lines due to its longer life need to be replaced in harsh water or soil conditions

- *Water distribution* does not degrade and is safe with drinking water, used in shorter lengths
- *Drainage and venting*: rare as PVC is cheaper

- *Hot and cold* can tolerate high temps

Plastic (PEX or KITEC): more common as they are less expensive.

KITEC: These pipes consists of a thin aluminum pipe with plastic coating inside and outside. Its custom brass fittings have high zinc content that can corrode and restrict water pressure.

-These pipes can easily leak or even burst if water is too hot. Some insurers refuse to provide coverage if the house has PEX (KITEC) pipes.

PEX: cross linked polyethylene piping that has many advantages , cheaper than copper and won't corrode, quick install, flexible and can be bent

Water distribution: common + can tolerate high temperatures. But cannot directly to a boiler and needs a metre of copper pipe in between

Drainage and venting: cheaper than copper and used for both

PVC lightweight, low-cost, low maintenance (fittings can be pricey) most commonly used material for waste plumbing and venting

- Water distribution: affordable and does not corrode, best for indoor, great for warm and cold water
- Hot water uses no hot water or warping

CPVC: These pipes are made from PVC with addition of chlorine to make them more durable. It is flexible, less noisy, and fire resistant. Same benefits of PVC plus more durability. Less noisy when water goes through. But more expensive

- Water distribution same as pvc
- Hot water can handle up to 93 and so can be used for hot water
- Common for waste plumbing

## Problems

Leakage: Leaks in underground service pipes may not be detected and water may accumulate in basement areas.

Pressure: In a typical house, it should be around 50 psi. sometimes pressure can be as high as 80, when this happens a pressure regulator should be provided

Low pressure may be caused by partially shut-off valves, too small diameter, and shared service pipes.

Too small: too small to provide enough pressure and volume

Shared: older semi-detached houses, single service pipe splits under lawn to serve both houses

Freezing: Pipes that are outside the building should be buried below frost lines

Drainage Problems: Problems with drainage pipes may result in backup and flooding. Common reasons include combined storm and sanitary sewers, damage to external sewer pipes by tree roots, and overloaded municipal drainage pipes.

## Waste Systems

Black water → from toilets (human waste)

Grey water → water from washing dishes, showers, laundry etc.

## Problems with waste piping

Backup → when storm sewers and sanitary sewers are combined, a backup in the system may cause flooding that contains storm water and raw sewage

Sewer line from house to street → vulnerable to collapse and obstruction by trees and soil

Overloaded drain

## Indications of Plumbing Problems:

Some indications of plumbing problems include dripping faucets, leaky pipes, running toilets, low water pressure, slow drainage, excessive water bills, and unpleasant odours.

## Water Efficiency

-Water efficiency can be achieved through better design and regular maintenance of water systems and appliances, plumbing, and fixtures.

-Water efficiency can be increased by reduction the buildup/corrosion, fixing water leaks, and installing efficient appliances and low-flow fixtures.

-Additionally, dual-flush toilets, grey water systems (that reuse household wastewater), installation of pressure control valves, and cisterns to collect rainwater for outdoor use can all improve water efficiency.

## Water Heaters

-The efficiency of a water heater depends on its recovery rate, which means that high recovery rate results in more supply of hot water.

Conventional water heater function

- Cold water is pumped into a heater and heated and then leaves. Temp remains at 60 degrees. When hot water is removed, cold water is added
- *Recovery rate*: amount of hot water the water heater is capable of providing in a given period of time. Depends on size of burner or element. Oil provides fastest recovery rate, then gas, then electricity

Water Heater Efficiency may be reduced due to malfunctioning burners or elements, leakage, accumulation of sludge at the bottom of tank, build-up of lime due to water hardness, etc.

- High-efficiency gas or propane heaters need venting through the wall, which should be located away from sleeping areas and at least 45 cm above floor. Electric water heaters don't need that

Tankless Water Heaters: These water heaters are gas or propane-fired and heat water only when it is needed. They consist of a burner, heat exchanger, and venting systems but do not have a storage tank.

*Advantages*: They have low operating cost, can be mounted to wall, do not run out of water, and have longer life.

*Disadvantages*: Delay in getting hot water, limited flow, expensive than conventional heaters, and need for high- pressure gas for burner. Can take 6 to 12 years of use to cover the extra cost

**Renting a Water Heater**

Advantages	Disadvantages
Buyer can cost up to 1000 plus installation	Buying a energy efficient heater may be more efficient in the long run
Renter doesn't pay for repairs and maintenance	Buying in the long run can be more cost effective
Some contracts can be rent to own	Returning a rented water heater and terminating the contract can be difficult and costly

**Indicators of Plumbing Problems**

Dripping faucets, leaky pipes, running toilets, low water pressure , slow drainage , excessive water bills

**7.4 Water Supply Water Wells**

-The Ministry of Environment, Conservation, and Parks administers the Ontario Safe Drinking Water Act and the Ontario Water Resources Act.

Installation of wells

-Well contractors are licensed by the ministry for installation, inspection, and maintenance of water wells.

Three levels of licensing: Drilling, digging and boring, special. Only class 4 can install pumps

Maintenance of wells

- Homeowners are themselves responsible for maintenance of private water wells.
- Wells are normally tested for water flow (quantity) and potability (quality) during buying and selling process.
- Bacteriological testing (e coli) of water is done by local health authorities (Public Health) free of cost.

Decommissioning wells

- Unused water wells must be decommissioned by licensed contractors as they pose a safety threat and can contaminate ground water (owner is responsible for decommissioning it)
- A Well Record for an abandoned well must be sent to the ministry of environment, conservation and parks

**Creating water wells**

Dug Wells: constructed by digging down to the water table and are usually no more than 10 feet deep and are lined with cement and capped in concrete to reduce potential contamination by surface water draining into the well (OLD).

Drilled Wells: Drilled wells need casing and screen to ensure that do not collapse or collect sediment. The depth ranges from 100 to 500 feet. Usually sealed with grouting material

Bored Wells: These wells are created using large diameter bore or drill and are much deeper than dug wells. They tend to be shallow making them subject to running dry when water drops below water table. Also they don't have a casing

Point (Driven) Wells: A sharp pipe is driven into shallow water- bearing sand or gravel. The depth is usually 30 to 50 feet. Water from these wells is susceptible to contamination from surface water or fertilizers.

Well type	Used in ground type	Considerations
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Dug wells	Sandy and gravel areas	Shallow but can be made deeper than point wells. They need to be in areas with high yield of water as they run dry easily due to shallowness. They do not require special machinery
Dried Wells	Rock and hard soil areas	Drilled wells can go deeper than the other forms of well but are more \$\$\$. Small diameter means they don't store too much water
Bored Wells	Gravelly, sandy or silty areas	Made deeper than dug and can hold more water because of their large diameter, useful in low-yield areas. More \$\$\$
Point drive wells	Sandy and gravelly areas	Point wells are shallow and very simple and inexpensive to install. They are either driven or jetted . Well points are usually only installed where the aquifer has a shallow water table and contains few or no stones

Lake and River Water: Water from a lake or river can be brought to a cottage home using above or below ground pipes, which may be below frost lines or heated. However, even when the water looks and tastes clean, it can be easily contaminated. Water must be treated before it is used. Have it tested when selling or buying

### **Constructing wells**

Drilling: A permit from the Ministry of Environment, Conservation, and Parks is required for drilling a water well. Well is constructed before the house and its location is determined by the material under the ground. Improper location may result in low water yield or a dry well.

Minimum Distances: Provincial regulations require that water well must have minimum clearance from nearby buildings, public roads, septic tanks, and leaching beds so that water is not contaminated.

### **Components of Water Well**

Well Caps: The cap is fitted on top of the casing to keep out debris, surface water, insects, etc.

Casing: It is cylindrical in shape and prevents outside contaminants from entering the well. They are made from PVC, carbon steel, stainless steel or fiberglass. Well casing must be visible and at least 40 cm above ground.

Pump: Jet pumps are installed above ground for shallow wells for water suction. Submersible pumps are installed under water to push up water.

Well Screen: It is installed at the bottom of well to filter out sediment from water as it enters the well.

- Pipes with holes in them are screens that are not designed to filter sand and gravel as the holes are too large to filter them out.
- Continuous slot screens made of rods wrapped in plastic or wire are well screens that allow max water intake due to large open are. (widely used)
- Slotted pipe screens with slots cut in a steel or plastic casing are screens that take in less water due to less open areas

Pitless Adapter: Connects well casing with water lines to discharge water from well into the house. It is installed below frost line to prevent freezing of water.

### **Inspecting, maintaining and monitoring wells**

Inspecting: New wells are inspected with a bailer or pump for one hour to measure the rate of water flow (quantity of water). Potability of water (quality) is tested by bacteriological tests by local health authorities.

Water Well Record: This document is with the Ministry and available through Service Ontario. Every well constructed in Ontario should have one. It shows the date of construction, location, results of pumping tests, and other information.

- The well contractor must provide this document to the owner within 14 days of construction. This document may be required at the time of buying or selling the property.
- Well record also shows if a well has been decommissioned.

Monitoring and Maintaining wells: The owner is responsible for monitoring and maintaining the well once it has been constructed. They also must ensure the well and its aquifer do not become contaminated.

- Responsible for keeping it clear of foreign materials and owner should nto reduce the height of the well casing to less than 40cm above the ground.

### **Maintaining wells**

Prevent contamination	Homeowners should never do anything near a well that could contaminate it
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Control surface drain	Be in a area where nothing can drain into them. The area around the well cap should be raised to allow water to run off.
Ensure well cap and seal are firm	Firm and watertight with no cracks or damage
Check vent pipes and connections	Vent pipes should be screened to prevent matter from entering them. Any connections to the well involving water, electrical and pumps should be well sealed
Check accessibility and visibility of well casing	Easy to find if repair work is needed. 40 cm above ground.
Call experts	Seek advice and don't try to fix problem

### Well maintenance Agreements

- wells which are shared by neighbors & share the cost of maintenance and repair of the shared wells.
- It is an important document when selling/buying as well as for arranging mortgage.

### Water Treatment

- Well water needs to be tested regularly and treated to remove impurities, especially for the purpose of drinking.
- Some treatment systems remove bacteria in water whereas others are designed to remove heavy minerals.

Water Softeners: These systems remove minerals such as magnesium, calcium, and iron in hard water. Water softeners extend the life span of plumbing fixtures. Heavy minerals can leave deposits on appliances and fixtures, also make water taste bad

Reverse Osmosis: These 'point of use' water purification systems use tightly woven porous membranes to remove solids from water.

Granulated Activated Carbon Filtration: Activated carbon is used to remove odours, bad tastes, and discolouration caused by lead, arsenic, and other dangerous chemicals in local water supply. Whole-home carbon systems can be installed

Ultraviolet Systems: This most common water treatment system uses ultraviolet light to neutralize the bacteria in water.

Iron Deionizers: This system is used to remove heavy iron content in water, which leads to orange/red staining on fixtures.

Chlorine Injector Pumps: Chlorine is added to water to remove bacteria and bad odours to make it safe for drinking. They do not kill all of the bacteria or viruses but when combined with filtration they are effective

Desalinators: These systems remove salt from the water supply.

### Water Quality

#### Regular testing on wells

- Water must be tested regularly as the quality of water changes over time.
- Tests are performed at the time of installation and then at least once or twice every year.
- For rural cottages, two or three samples are taken, per season, with first sample at the start of the season. Water testing is also an important part of the buying/selling process.

Chemical Analysis: Chemical analysis of water is done to test for presence of metals, fluoride, hardness, and pesticides.

Bacteriological Testing: Bacteriological analysis of water is done to test the presence of harmful bacteria such as:

- Coliform Bacteria: These are present in the digestive tracts of animals and in plant and soil material. Presence of these bacteria may be an indication that other harmful bacteria may also be present.
- Fecal Coliform Bacteria: These bacteria are found in digestive tracts of warm-blooded animals. Their presence immediately renders water unsafe for drinking.
- Bacterial tests do not indicate anything about the chemical composition of the water, water could be completely free of bacteria but could still be contaminated with lead etc.

**Well water Supply Tests:** tested to ensure that they can provide a consistent, sufficient supply of water

Capacity: The amount of water the well can contain. Standard is 10L per foot

Flow Rate: The amount of water that can be extracted per minute (acceptable rates range from **20 - 50** litres per minute).

Average household needs 350 to 450 L per person per day

Recovery Rate: The rate at which water runs into well from rock fissures when water is being pumped out of well without running dry.

### Groundwater

Protect groundwater as it is often distributed without treatment. Well owners should;

- Test well water regularly and check colour taste and odour
- Secure well cap and check well regularly for signs of rust, wear cracks, holes or gaps
- Keep ponded water, vehicles pet waste, salt and fertilizer away from well
- Make sure the ground around the well slopes away
- Ensure accessible for repairs & 40 cm above the ground
- Check pumps efficiency
- Ensure septic tank operates efficiently and is pumped out regularly .

## 7.5 Sewage

### Municipal Sewer Systems

Combined sewers	Separate sewers
Older neighbourhoods; storm and sanitary combined into 1	Modern areas. Sanitary sewers carry waste, storm handles rain
Surge in storm water can cause water and sewage to back up through the basement floor drains in the house	When storm sewers get backed up, the basement is less likely to get flooded
Insurance premiums are higher due to risk	Insurance risk is lower
	Floor drains should connect to the sanitary sewer while downspouts and eavestroughs go to storm sewers

Backup Valves: Homeowners may install one-way backup valves in the floor drain to prevent the wastewater from coming back into the house.

### Sewage System Classes

Class 1: Include waterless toilets, pits, privy vaults, portable toilets, chemical, and composting toilets.

Class 2: Grey water systems for non-human use of wastewater such as watering the grass and plants. Have max sewage flow set by the Ontario Building Code

Class 3: Also known as cesspool, these are found in recreational areas for human waste and are often dumping stations for recreational vehicles .

Class 4: This is the most commonly used sewage system in which the septic tank breaks down solid waste and the leaching bed distributes in into the soil.

Class 5: This system consists of a holding tank which collects sewage and takes it away for treatment.

### Septic Systems

1. Household waste water leaves the home via underground pipe → septic tank
2. Septic tank is a large tank that contains bacteria to break down solid waste into liquid
  - a. Heavy solids sink to the bottom as sludge and lighter materials (oil and grease) float to top as scum
  - b. Scum and sludge are removed when the tank is pumped. (3-5 years it could be pumped)
3. Liquid in the septic tank is connected to a leaching bed via a pipe
  - a. Liquid waste moves down the pipe into the leaching bed, while baffles and screens prevent scum from enter it
4. Leaching bed is network of buried perforated pipes that disperse the effluent, allowing it to seep in to the ground where bacteria & other organisms break it down even further

### Leaching Beds

- For it to function properly, the soil needs to be permeable enough for the liquid to flow into it. The sil filters the liquid of pathogenic bacteria and viruses as it passes through it
- Percolation test is a test to establish the water absorption rate of soil and is used to determine if soil is suitable for a leaching bed
- The leaching bed in class 4 septic system needs permeable soil so that liquids can flow into the soil.

*Different types of leaching beds depending on soil conditions*

Conventional Installed where land is well-drained, and stone filled drenches can be installed below ground.

Raised Absorption bed: ex. Northern Ontario lack of soil depth for standard leaching bed, a raised absorption bed is often created. Special sand and soil filtering materials are brought to the site and a raised bed is created

Limited Space: A bed area is excavated, and a filter bed is created using filtering sand so that the leaching bed uses smaller area.

## **Ontario Building Code and Septic Systems**

Capacity: The size of the septic system depends on the number bedrooms, total living area, and the total number of water fixtures in the house.

Septic System Location: The Ontario Building Code and zoning bylaws specify the minimum clearances of the septic system from lot lines, nearby structures, trees, water well, shorelines, and neighbouring wells.

- The septic system must be at least 5 metres from any structure, 30 metres from a well without casing, and 15 metres from a well with casing, lakes, ponds, rivers, and springs.

These distances are increased for a septic system which have a Raised Absorption Bed.

Site evaluation: The Ontario Building Code requires site evaluation for installation of new and replacement septic systems.

Leaching Bed Location: The location of leaching bed depends on the percolation test or by soil classification. A minimum of three possible locations must be tested and the location with fastest percolation is selected.

Tank Design: Prefabricated septic tanks must have a minimum capacity of 3,600 litres and there must be two chambers in them.

### **Best Practices**

-Homeowners should minimize wastage of water and dry out clothes in open whenever possible. Non-biodegradable materials should not be flushed into the septic system.

-Too much household detergents or bleach should not be flushed as they can kill the bacteria used to break down solid in the septic system.

-Harsh chemicals such as solvents, brake fluid, oil, gasoline, paint thinner, prescription drugs, pesticides, etc. should not be flushed into the septic system. -These chemicals pollute the soil and water surrounding the septic tank.

## 8. INTERNAL AND EXTERNAL FINISHES

### 8.1 Exterior Walls Exterior Wall Finishes

**Brick Veneer Wall:** Consists of a single layer of bricks (wythe) and an inner wooden frame, which is load bearing. Bricks are tied to the wooden framing using 'brick ties'. The air space between the wooden frame and the bricks prevents moisture.

- Problems: If 'weeping holes' are mistakenly filled by the homeowner, water may build-up inside and damage the wooden sheathing.

**Rain Screen Principle** This principle is used in brick masonry and brick veneer walls to prevent moisture and water from getting inside the air space between the brick layer and wooden frame. Water from wind driven rain or storm may pass through the bricks, drip down, and collect inside the air space.

- Small amount of mortar is applied between two bricks
- To disperse this water, a 'weeping hole' is left after every three or four bricks in the lower most layer.

**Brick Masonry Wall:** There are two layers of bricks attached together by the 'header course', which prevents inner and outer layer from separating. Due to poor insulating quality of bricks, these walls are not used in single-family homes. Identified by its header course, used to hold the two walls together. Decorative pattern points to older property .

- Problems: Cracks may be caused by expansion of bricks due to excessive heat or contracting due to extreme cold. Failure of window arches or lintels may also cause cracks.

**Vinyl Siding:** It is made of polyvinyl chloride, is inexpensive, durable, and needs low maintenance. It is fastened on top of building paper and over flashings and butted against the exterior trim.

- Problems: Most problems are due to poor installation, lack of securing, and improper detail work at edges and corners.

**Metal Siding:** Metal siding is made of aluminum or steel and is installed horizontally or vertically. It is also inexpensive, durable, and needs low maintenance.

- Problems: Needs proper ventilation to allow air and moisture pressure to equalize.

**Wood Siding:** Wooden siding provides aesthetic appeal, styles, textures, and may be expensive depending on type of wood.

Problems: Wood may rot, and water penetration may occur at joints. If wood is in contact with soil, insects and termites may develop & moisture from the soil can cause fungi to grow, resulting in wood rot.

**Stone:** Stone bricks and blocks are made from granite, sandstone, limestone, or marble stone. These are popular due to their strength, durability, and weather resistance. They are glued to the exterior walls and do not bear any load.

- Problems: Stone may be porous and may require resealing and grouting.

**Stucco:** It is a fine, durable plaster coat which is applied wet and hardens when it becomes dry. It is cost-effective, good insulator, and energy efficient.

- Problems: Stucco can shrink and crack easily in areas of freeze-thaw cycle. It is better applied over masonry walls than wood framing. Wood and stucco may shrink and expand at different rates causing cracks or bulges in stucco.

#### Issues with Exterior Walls

**Lean/Bow:** If brick ties are not installed properly, the outer layer of brick wythe may lean or bow outwards. In serious cases, when the wall is load bearing, it may lead to structural problems.

**Rafter Spreading:** Spreading of roof rafters may result in top of the wall to tilt outwards,

**Out of Plumb:** An out of plumb wall means that it is not exactly vertical or at 90 degrees. This may be caused by an impact damage.

**Wavy:** Waviness in mortar is caused by hurried installation and not giving it sufficient time to set and gain strength.

**Cracks/Deterioration:** Cracks are caused by stress in the concrete due to shrinkage or expansion. While hairline or vertical cracks are not serious, horizontal cracks indicate problem with foundation. Cracks may cause water penetration or infestation.

**Discolouration:** Stone may change colour over time due to weather exposure.



## **8.2 Energy Efficiency**

### **Factors Influencing Energy Efficiency**

- The voluntary R-2000 program, managed by the Office of Energy Efficiency, encourages energy efficient and environmentally responsible home construction standards.
- The R-2000 home certification is based on technical standards for ventilation, minimum air leakage, and type of insulating materials used. As such, the home may be more expensive than similar non-R- 2000 homes.
- The R-2000 program is complemented by ENERGYSTAR® and EnerGuide programs. -These standards help builders protect the environment by reducing the use of fossil fuels like coal, gas, oil, and therefore, lowering greenhouse gas emissions.
- higher r value = greater resistance of heat transfer = better insulator

### Heat Gain/Loss

- Heat loss occurs when the heat from inside the house escapes to outside, often due to inefficient windows and windows.
- Heat gain occurs when the heat from outside enters the building.

Conduction: Transfer of energy through a substance. For example, the loss of heat through basement, walls and ceilings.

Convection: Movement of gas or liquid with changes in density. It can be controlled by minimizing air leakage between a structure's interior and exterior surfaces.

Radiation: Transfer of energy through a straight line between the source and the absorber, without a medium. For example, sunlight entering a structure.

### **Insulation and R-Values**

Depending on a region's climate, the R-value may be different in different areas of the house.

- The below-grade basement may have lowest R-value as it is surrounded by soil, which acts as a natural insulator.

Glass Fibre Insulation: Glass fibre insulation comes in the form of 'batts', roll, or loose fill. This pink coloured insulation is inexpensive and most commonly used for interiors.

Mineral Wool/Rock Wool: This insulation is made from fibrous materials by melting minerals or rock and provides better insulation. It is expensive but is fire resistant and long-lasting. Used in sidewalls, attics, crawl spaces, and floors.

Cellulose Fibre: It is made from 85% recycled materials such as paper and is treated with chemicals to make it fire-resistant. Cellulose Fibre has high R-values and dense properties than glass fibre. It is mostly used in the attic of the house.

Spray Foam: Spray foam consists of open cell or closed cell polyurethane and appears like sponge. Open cell gives low R-value and is mostly used for interior walls. Closed cell gives high R-value and is mostly used for exterior walls.

Foam Board: This insulation comes in various thicknesses and R-values. It provides high insulation values and can be used in floors, ceilings and interior or exterior walls.

### **Disclosures Requirements**

Salespersons must make a disclosure of the following types of insulation because there may be health implications if these insulating materials are disturbed.

Urea Formaldehyde Foam Insulation (UFFI): UFFI is a low-density foam made from plastic resins, a foaming agent and compressed air. (looks like shaving cream)

- The formaldehyde gas can irritate eyes, nose, and throat and can increase problems for asthma and allergy sufferers.

Asbestos: Asbestos is found in a variety of products including roofing materials, wall and pipe coverings, floor tiles, appliances, ceilings, patching compounds, textured paints, and door gaskets of stoves, furnaces and ovens.

- Asbestos has been declared a health hazard because it becomes a health risk when it becomes airborne. Friable Asbestos is considered most dangerous as it can easily crumble, pulverize or reduce to powder by hand pressure renovations or repairs.

Vermiculite: It is a flat shiny material, looks like silver-gold or grey-brown that expands when heated.

- It has not been used as insulation since 1980 but may exist in homes built prior to that. Some vermiculite materials may contain asbestos and its existence in insulation must be disclosed when the property is sold.

### **Retrofitting for Energy Efficiency**

Shading and glazing of windows and using smart window technologies.

- Increasing thermal resistance for all insulation.
- Using high-efficiency furnaces or integrated furnace and water heater systems.
- Using heat recovery ventilators, which reduces humidity, pollutants, and odours by replacing stale air with fresh air.
- Using zoned heating/cooling systems and improving the ductwork distribution.
- Using programmable thermostats to set different temperatures at different times.

## **8.3 Interior Walls**

### **Load Bearing and Non-Load Bearing**

- Load-bearing interior walls provide structural support to the house.
- They must not be removed or cut without consulting a structural engineer.

A drywall is prefabricated using gypsum, can be cut to any size, and can easily be fixed/repared using nails or screws. A plaster wall is thicker, consists of plaster applied on top of wooden wall, and needs skilled labour.

## **8.4 Enhancing Property Appeal How to Enhance Appeal**

Façade refers to balanced shape or symmetry of features such as windows, roof, and garage areas.

### **Ceilings**

Exposed beam

Vaulted → slopes to the shape of the roof – more light and space

Tray ceiling → build upwards with a cut out deisng, giving the celing a tray like appearance.

Coffered ceiling → repeating pattern of sunken squares or rectangular panels

Dommed ceilings → large or grand homes. Circular shape looks like the hollow upper half of a sphere (resembling a dome of a church) .

### **Wall finishes**

Wainscoting : panelling installed on the lower half of the walls to add style and contrast to a room that might not otherwise be possible with bare walls.

Crown molding → caps walls an gives a stylish finish. Normally applied where wall meets ceiling

Exposed brick & unfinished walls

Glass wall

### **Floor Finishes**

Hardwood → Vary in price, popular

Bamboo → popular due to style and durability, considered greener. Generally less expensive

Polished concrete

Slate flooring → durable and stylish but is expensive and cold underfoot

Ceramic and vinyl tiles → ideal for waterproofing . durable. Vinyl → ease of installation and maintenance

Laminate → recycled hardwood and is a popular choice due to its low cost, durability, range of colours and ease of installation. Strong, easy to maintain, good option for high traffic. Problems → scratch easily and not considered a luxurious material, and not waterproof.

Marble → most durable and versatile materials. Waterproof, easy to clean and maintain , easy to install. More expensive

Cork → Sustainable material, making it a popular choice for environment friendly designers. Popular due to durability, warmth and comfort. Can be costly.

Carpet → modest to expensive pricing, colours, designs , warmth, comfort. Stain easily and not waterproof.

## 8.5 Conversions, Retrofits, and Renovations Building Permit

### Steps for obtaining a building permit

1. Application: An application with detailed plans and property survey is submitted to the building development department of the local municipality.
2. Review: The plans must comply with mechanical and structural/architectural requirements under the Ontario Building Code and zoning bylaws.
3. Permit: Issue of permit is the legal permission to start construction. It must be posted on the site. If there are any changes, they must be reviewed and approved.
4. Inspections: Requests for inspections must be made 24 hours before work can proceed beyond stages set in the permit. Failure to request inspection may result in a 'work stoppage' order.

### Building inspector

Enter a property subject to a building permit at any reasonable time. If violation found, corrective action can be taken.

They can also issue a stop order

### Unincorporated townships

Rather than a municipal government, lowest level of government within these unincorporated townships could be provincial or regional. No municipal authority and building permits cannot be issued. Some, however, may still be subject to zoning laws → contact Municipal services office of the Ministry of municipal affairs and housing

### **Conversion of a Structure to residential use**

- Factors that impact such decisions include choosing the right property, obtaining approval for rezoning, heritage designation of the old building, buying in conservation areas, and budget considerations.
- Fire Code as well as the Electrical Safety Authority (ESA) regulations must be met during the conversion process.
- Fire Code Requirements: compliance criteria for the safety of occupants. *Fire protection and Prevention Act*, in addition to providing the enabling legislation for the Ontario fire code, sets out responsibilities for fire protection services, the duties and powers of the fire marshal and those appointed

### **Accessory Apartments**

- A second self-contained unit within a house makes it a two-unit residential structure and the owner must follow certain legal requirements.
- The retrofit provisions of the Ontario Fire Code address various requirements including safety of the occupants, fire separation, escape (egress or exit) from each unit, fire alarms, fire suppression, and electrical safety.
- Approval of such additions require two separate inspections – (i) an electrical inspection, and (ii) an inspection by the fire department.
- Salespersons must exercise caution when dealing with properties with two dwelling units and ensure that appropriate disclosures are made to the buyers.

### **ESA**

- Investigate before a purchase to determine whether the property has any open electrical permits
- Inspect the electrical work previously done on the property to determine the history and condition and whether it was conducted using a permit & inspect by the ESA
- Ensuring the necessary permits have been issued before electrical work
- Only hiring licensed electrical contractors for all installations etc.
- Request ESA inspection after. And obtain a certificate of inspection

### **Insurance**

- Some insurers may refuse to provide coverage, or the premiums and deductibles may be high, in case they feel the risk is high in providing insurance.
- Age of the structure is important, and the insurer may need details of roofing, heating, plumbing, and electrical systems. Insurers may also need proof of compliance with Ontario Building Code, Fire Code, and Electrical Safety Code.

The most important consideration is that mortgage lenders will not provide financing for purchase if the buyer is unable to obtain insurance.

## 8.6 Trends and Innovations Residential Construction

Insulated Concrete Forms (ICF) provides permanent interlocking interior/exterior form into which the concrete is poured and can extend beyond basements to replace all exterior walls.

*Benefits:* stronger, more energy-efficient, added insulation, improved damp-proofing, fire hazard reduction.

*Disadvantages :* high labour costs

Exterior Insulation and Finishing Systems (EIFS) provide an attractive continuous exterior surface, consisting of several layers. Outermost layer is sprayed on acrylic/stone finish, applied over mesh and insulation attached to the building

*Benefits:* expelling moisture, limiting air leakage, and providing effective building envelope. Minimize heat and cool air loss

Compressed Wood Fibre with weather resistant adhesives may be used for baseboards, crown mouldings, and cabinetry instead of expensive solid wood.

### Factory Built Homes

Manufactured Homes are completely built in a factory, transported on large truck beds to the site, and placed on concrete piers or cement pylons. They are less expensive than modular homes.

Modular Homes are built in sections in a factory, delivered to the site, and assembled there. They have pre-built truss floors that go on a basement or foundation.

- Can also be used as additions which is cheaper, faster, more convenient than construction

### Flex Housing

Flex Housing, promoted by the Canada Mortgage and Housing Corporation (CMHC), offers home options that meet the needs of young singles as well as aging parents.

- It is a compilation of individual features such as access needs for people with disabilities that can be installed easily and cost-effectively during initial construction.
- Flex housing offers adaptability, convertibility, and cost-effectiveness in the sense that they do not become functionally obsolete and do not need frequent upgrades.

### Universal Appeal and Accessibility

-Universal construction designs include barrier-free access and make homes accessible for everyone, regardless of their age or abilities as they provide better access, safety and convenience. These designs offer wider door widths, level door handles, lower light switches, no-step entries, elevators, large and accessible bathrooms, adjustable hanging arrangements, and wider hallways.

- Several private and government programs provide various types of funding to homeowners to convert their homes to universal designs.

### Safety Systems for Residential Structures

Smoke alarms → on every storey and outside all sleeping areas

Carbon Monoxide alarms → CO be installed adjacent to each sleeping area of a single family dwelling that contains a fuel burning appliance, fireplace or attached storage garage.

Radon Detectors → occurs naturally in earth's crust, not dangerous but is hazardous when it breaks down into smaller components that cling to dust and soil. Some areas in ON it's an issue, which is where radon detectors can be installed

### Volatile Organic Compounds (VOCs)

- Building materials usually contain paint, adhesives, resins, caulking, fillers and finishes which can produce VOC
- They produce gas emissions inside the structure.
- These compounds can be toxic and cause harmful health effects to occupants who are hypersensitive to chemicals and gases. Selection of low-VOC materials and proper air filtration/ventilation systems reduce problems.

### Sick Building Syndrome (SBS)

- SBS involves circumstances under which building occupants experience health related problems due to the time spent inside a structure.

- SBS conditions can cause dizziness, nausea, and lack of concentration, allergy, throat irritation, headaches and asthma. The main reasons for SBS are inadequate building ventilation, lack of proper air filtration, inappropriate measures to control moisture that causes mould, etc.

### **Green Building**

Medium density fibreboards (MDF) containing urea formaldehyde has traditionally be the mainstay of house construction.

In recent years both formaldehyde free and low emission MDFs became available

Adhesives the use of water-based adhesives or plant resins has reduced the incidence of toxicity resulting from VOC

Painting various zero or low emission paintings and finishing products are available

## 9. MARKETING A RESIDENTIAL PROPERTY

### 9.1 Meeting with Sellers Research Property Information

**Review Documents:** All information provided by the seller should be reviewed from source documents, which include ownership from title/deed, property tax from tax bill, lot size from GeowareHouse®, total square footage, surveys, permits, contracts for rental equipment, etc.

**Previous Listings and Sales:** Listing history will provide information on previous listing and sale prices as well as disclosures made by the previous owners.

**Past Misuse/Stigma:** Information from local police department and internet search may reveal any stigma or past misuse of the property for illegal purposes.

**External Factors:** Anything surrounding the property may have a negative or positive impact on the property value.

-The neighbourhood may be improving or may be in declining stage. Noise, pollution, local traffic, and/or flooding etc. in the area may also impact value.

**Neighbourhood:** Information on the neighbourhood can be obtained from GeowareHouse®, or from a mapping service such as Google Maps®.

### Listing Presentation

**Benefits of Pre-Listing Presentation:** It demonstrates to the seller that the salesperson has the knowledge, expertise, and confidence to sell their property.

- The salesperson must ask the sellers if they are already working with another brokerage.

**Benefits of Working with a Brokerage:** The salesperson can explain that he/she has the required education, knowledge, skills, experience to market the property.

**Determine Sellers' Needs:** The salesperson must listen carefully to the seller to determine their needs such as what they are expecting and how soon they want to sell.

**Service Alternatives:** Explain the difference of obligations and services between a 'client' and a 'customer'.

**Completing the Listing Agreement:** The document package contains the Listing Agreement form and the Data Sheet, which must be completed accurately.

- Ask the sellers for their photo identification to complete the FINTRAC forms.

### 9.2 Visual Inspection

#### Disclosures

They should ask questions about the property, use a Seller Property Information Statement (SPIS)

A known latent defect should be disclosed as soon as possible; in the listing as well as in the Agreement of Purchase and Sale by inserting appropriate conditions.

#### Visual Inspection

- Interior inspection includes attic area, basement, staircases, foundation, heating, ventilation, and air conditioning, plumbing, electrical wiring, walls, and the ceiling. Exterior inspection includes walls, porches, doors, windows, front and back yards, roof, and secondary structures.
- Any areas of the property that cannot be accessed for inspection should be documented. For example, an air conditioner cannot be inspected in winter or the condition of the roof is not visible due to snow.
- If any areas are not visually inspected, this should be disclosed to the buyer by inserting a clause in the agreement. Since salespersons are not experts in home inspection, repairs, or construction, they have an obligation to recommend the seller to hire a third-party professional if a more thorough inspection is required before listing.

#### Asking Questions

- seller should be asked questions before conducting visual inspection of the property so that the listing is accurate and there is no misrepresentation. responses should be compared to the personal visual inspection.
- **General Questions:** These include length of ownership, persons on the title of the property, and if there is any spousal interest.  
Age of the house, availability of a survey, rights-of-way, easements, and/or encroachments.
- Source of water (municipal or private well), septic system, and whether permits and/or inspection reports are available. Any issues regarding zoning compliance, notices, claims, work orders, or deficiency notices from the municipality.

- *Environmental Questions:* These are related to soil contamination, type of fuel tank, flood plain location, any existing waste dumps in the surrounding area, soil erosion, or if the property was previously used for an illegal purpose.
- *Structural Questions:* These questions are related to additions or alterations to the property and associated building permits, problems with heating, ventilation, and air conditioning, plumbing, moisture, and roof leakage.

### 9.3 Gathering Information Verification of Property Information

#### Key Property Info

Chattel → personal property that is tangible and moveable (furniture), fridge, stove

Fixture → permanent improvement to the house & part of the property (chandelier)

Ownership and title, land use restrictions (encroachments, easements, rights of way, heritage property)

Zoning property taxes → based on assessment by Municipal Property Assessment Corp, special assessments

Utility bills

Lot size verified from survey, tax bills, or assessment notices. The frontage, depth, and any irregularity must be noted.

Total Living Area: verified from - GeowareHouse®, builder's plans, or may be measured manually as per guidelines from the local board.

Room Sizes: Individual rooms may be measured manually, or the measurements may be obtained from builder's plans in case of a new house.

#### Verification of Physical Aspects

Heating, Ventilation, and Air Conditioning (HVAC): age, condition, and whether the equipment is owned or rented.

Review with source documents (utility bills, statements, receipts, reports)

Determine the source of fuel for heating such as gas, oil, electric, wood, or propane.

Well and Septic System: building permits, testing & inspection. Shared? Last pump?

Electrical Wiring: type of electrical wiring (60 amps, 100 amps, or 200 amps), copper or aluminum, and whether there are fuses or circuit breakers.

Plumbing: type of plumbing for supply lines, which may be copper, PVC or PEX (Kitec). If Kitec, recommend inspection and written report to be completed by licensed plumber

Rental Equipment: Obtain the details of any rental equipment (e.g. water heater or propane tank) from the seller. Check how the rental contract would be transferred to the buyer.

Rent-to-Own: Any rent to own equipment should be identified and the seller be advised that the balance may have to be paid upon sale of the property if the buyer does not assume the contract.

*How to verify info* 1. Talk to seller and ask questions. 2. Consult source documents 3. Prepare list of action items

#### Impact of Neighbourhood on Property Value

Conformity: A property maintains its value if land use reasonably conforms to existing standards in the neighbourhood in terms of building styles.

Progression: A property located in a neighbourhood where properties are not similar, the presence of a superior property will have a positive impact on the value of the inferior property

Regression: A property located in a neighbourhood where properties are not similar, the presence of an inferior property will have a negative impact on the value of a superior property

External Factors: Availability or unavailability of services and amenities in the neighbourhood may have an impact on property values.

Neighbourhood features such as schools, public transportation, municipal water and sewage systems, parks, and shopping centres may have a positive impact on value. Features such as proximity to industrial areas, environmental hazards, sources of noise, pollution, waste disposal sites, etc. may have a negative impact on value.

Local Economic Conditions: Municipal plans regarding new roads, highways, re-zoning, etc. may also impact the property values negatively or positively.

## 9.4 Calculating Areas and Linear Measurements Guidelines from Appraisal Institute of Canada (AIC)

The Appraisal Institute of Canada (AIC) provides guidelines for measurement, which are helpful in estimating the value of the property.

**Guidelines for Calculating Areas and Linear Measurements**-The total living area is calculated using external measurements of all above grade living areas that are heated year-around.

One story:  $L \times W$  at base of dwelling. Multiply Exterior length times with of projections

In most common styles such as one storey, one and half storey, two storey, and split levels, the exterior length is multiplied by exterior width to calculate the area.

- Basement areas (even when finished and heated) and crawl spaces are excluded from measurements.
- Areas that are finished with walls, floors and ceilings, heated year around, and are directly accessible from other living areas are included.
- A laser measuring device, digital measuring wheel, or a simple retractable tape measure may be used for all linear measurements.

### Units of Measurement and Conversions

-Metres and feet are commonly used for linear measurements, while area is expressed in terms of square metres or square feet.

-Acres or hectares are used for larger areas of farm, rural/recreational, vacant land and building lots.

#### Conversions:

Metres → Feet: Multiply Metres by 3.281.

Feet → Metres: Multiply feet by 0.3048.

Acres → Hectares: Multiply acres by 0.4047

Hectares → Acres: Multiply hectares by 2.471

Square Meters → Square Feet: Multiply square metres by 10.7639

Square Feet → Square Metres: Multiply square feet by 0.0929.

### Formulas for Area

Rectangle or Square: Length X Width

Right Angle Triangle:  $1/2 \times \text{Base} \times \text{Perpendicular Distance}$

Parallelogram: Length X Perpendicular height

Trapezoid:  $1/2 \times (\text{Sum of Parallel Sides}) \times \text{Perpendicular Distance}$

\*\*Total living area in a residence is based on exterior measurements\*\*

### Calculation of areas & Linear Measurements

One story → Exterior length X width.

One and one half storey with Dormers → first floor is  $L \times W$  , Second storey Interior  $L \times W$  to knee wall, plus  $L \times W$  of dormers \*\* additional 15-20 cm may be included to account for exterior wall

## 9.5 Improvements Before Listing Basic Improvements

-Upgrading windows and doors, repainting the interior and/or exterior of the house, changing bathroom and kitchen fixtures, and finishing the unfinished areas of basement are some of the recommended improvements.

Interior Staging Techniques

-The interior may be made to look bright and airy by opening drapes to let in maximum light.

-Areas of the house that are easily visible should be kept neat and clean. Clutter in kitchens, bathrooms and other parts of the house should be removed.

It is recommended that personalized items such as pictures and photos should be removed.



## **10. PROPERTY CONDITIONS AND DISCLOSURES**

### **10.1 Environmental Issues and Regulatory Authorities Septic Systems**

#### Ontario Building Code

-The Ministry of Municipal Affairs and Housing works with local municipalities (lower tier or regional) to regulate and enforce, usually reviewed every 5 years.

#### Building code Act & Septic Systems

- municipalities are responsible for issuing permits, collecting fees, inspections, septic tank installation docs.
- OBC sets out eligibility criteria for septic system inspectors and licensing of technicians & requirements for installation, repair, maintenance, and cleaning of septic systems.
- Salespersons should ensure that the septic system is inspected before the property is listed.
- Buyer's salesperson may include a condition in the agreement regarding inspection of the septic system by a licensed inspector.

#### **TSSA and Fuel Tanks**

- Fuel tanks (underground or above ground) pose a risk of contamination to the environment.
- All such tanks must be registered with Technical Standards and Safety Authority (TSSA).
- TSSA regulates the activities of contractors for installation, testing, maintenance, repair, removal, replacement, inspection and use of appliances, equipment, components and accessories where oil is used as fuel.
- Existing underground oil tanks must be upgraded with leak and spill prevention equipment or should be removed.
- Unused oil tanks must be removed by TSSA registered technician and contamination must be cleaned up. They may remain abandoned on the property only if approved by TSSA after applying for a TSSA variance

Disclosures: Salespersons should inspect the property during listing process and make enquiries to determine if any underground fuel tank exists.

- They should verify the information with TSSA since its existence is a material fact as well as a latent defect. Existence of an underground fuel tank must be disclosed to the buyer by inserting appropriate clauses in the Agreement of Purchase and Sale
- If a seller sells a property and does not disclose an unused underground oil tank, a legal action can be taken by buyers.

#### **Ministry of Environment, Conservation and Parks**

- The provincial Ministry of Environment, Conservation and Parks handles the Environmental Protection Act (EPA) to ensure clean and unpolluted safe air, land, and water.
- The ministry is authorized to investigate matters concerning pollution, waste management, waste disposal, and litter management in order to protect and conserve the natural environment.
- It grants approvals to businesses to emit a certain amount of pollution in order to restrict the impact on air quality.

Licenses and Approvals: The ministry reserves the authority for the following –

- Permits for private water wells.
- Approvals for herbicide use by cottage owners to control aquatic plants.
- Remediation of contaminated lands.
- Land development and associated sewage works. Haulage of septic waste from medical facilities.

#### Environmental protection Act

- Provides various types of order that can be invoked by the minister
- Type of order
  - o Remedial order
  - o Preventative order
  - o Waste removal order
  - o Control order
  - o Stop order

#### **Ministry of Natural Resources and Forestry**

responsible for protecting and managing the province's diverse natural resources and improving quality of life. It manages

- manages fish and wildlife resources, forests,
- manages Crown lands, oil, gas, salt, and aggregate resources.
- Ensures sustainable management of Crown Forests

- It protects fish habitat, including discharge of pollutants into watercourses, on behalf of the federal government under the Fisheries Act.
- The Ministry issues permits for work on shorelands adjacent to navigable waters.

Wetlands: The ministry protects and conserves wetland areas.

- Wetlands are areas covered either seasonally or permanently by shallow water or where the water table is at or near the surface → swamps, bogs, fens, marshes, and open water less than 2 metres in depth.

### **Current and Previous Uses of Property**

- investigate current and previous uses of the subject property which may potentially create detrimental conditions, and as such, may become material latent defects. Hoarding of useless or discarded items (no value) on the property, which may lead to build-up of grease, dust, dampness, mould, or even infestation with mice, termites, bats, etc.
- Illegal narcotics lab (other than cannabis or marijuana) of synthetic or other drugs.
  - o Mould, roof vents, fresh paint on floors, windows, tempering of electric meter, unusual or modified wiring, brownish stains, patterns of screw holes, fireplace alterations
- Use of garage as an auto repair shop, which stores and uses lubricants, solvents, and engine oil.
- Renovation of the property without appropriate permits, which may not be in compliance with Ontario Building Code or the Ontario Fire Code.

-Salespersons should advise the sellers to consult an appropriate third-party professional to identify and correct the detrimental condition of the property.

### **Potentially Detrimental Conditions**

Deferred Maintenance: Lack of routine maintenance results in conditions such as rotten walkways, broken wooden structures, leaky roofs, insufficient insulation, growth of mould, etc.

Aluminum Wiring: Homes built during 1950s and 1960s may have aluminum wiring.

- OBC permits use of aluminum wiring if appropriate aluminum or copper wire connectors are used.'
- The 'Aluminum' or 'Alum' mark on the casing identifies such wiring. In this case, the seller may be advised to consult a licensed electrician.

Knob & Tub Wiring: fire risk as it is not grounding, cannot carry heavy electrical load or be used in outdoor locations, and its rubber insulation breaks down.

- Material fact. Many insurance companies will refuse to insure a property with knob and tube wiring. Give 60-90 day period during which the new owner must replace

Poor Insulation: Typical wall insulation is made up of batt insulation, a vapour barrier, and interior finishing with drywall or other panels.

- Insulation is rated based on R-Value, and higher R-Value means good insulation. Signs of poor insulation results in higher energy bills, fluctuating room temperatures, and chilly drafts. Salespersons should ask the sellers if they have cold floors and walls in winter or if there is any growth of mould.

Galvanized Piping/Plumbing: Used until 1950s, these pipes may have begun to rust or corrode from inside and outside.

-This results in reduction of water pressure, restricted water flow, increased risk of leaks or ruptures, and potential for flooding.

-Galvanized pipes that run from municipal service pipes to property taps have been banned on Ontario.

### **Detrimental conditions relating to the environment**

Mould growth of minute fungi associated with decaying vegetable or animal matter. Lack of ventilation (air-tight building) and modern building materials are also a reason for growth of mould.

- requires moisture and water to grow and can generally be found in damp areas of a building.
- Furnace and air conditioners recirculate internal air and further complicate the problem. Should be cleaned regular

Lead-Based Products bluish-grey metal found in various products, e.g. grooved bars in stained glass windows.

- Major health risk and designated hazardous substance. Used to join pipes together

Asbestos found in a variety of products including roofing materials, wall and pipe coverings, floor tiles, appliances, ceilings, patching compounds, textured paints, and door gaskets of stoves, furnaces and ovens. Asbestos has been declared a health hazard as it becomes a health risk when it becomes airborne.

- Asbestos is both a patent defect (visible) and a latent defect (not visible), and as such, it is a material fact that must be disclosed.

- Friable Asbestos is considered dangerous as it can easily crumble, pulverize or reduce to powder by hand pressure during renovations or repairs.
- Asbestos may be found in
  - o Insulating materials in homes built between 1920s and mid- 1960s.
  - o Insulated water pipes that are deteriorating, old stoves, ovens, and furnace gaskets. -Pipes wrapped in a foil-like or canvas-type material
  - o Attic ceiling or wall materials that are crumbling due to water damage.

Urea Formaldehyde Foam Insulation (UFFI) low- density foam made from plastic resins. and compressed air.

- The formaldehyde gas can irritate eyes, nose, and throat and can increase problems for asthma and allergy sufferers.
- UFFI was used as insulation material in buildings built between 1975 and 1979 but was later banned in 1980. Generally, it is not scientifically or medically decided whether it is actually a health hazard or not.
- Presence of UFFI in a property is a material fact and must be disclosed by inserting an appropriate clause in the Agreement of Purchase and Sale.

Radon invisible, odourless and tasteless gas produced by natural decay of uranium in earth's crust.

- The gas itself is not dangerous but becomes hazardous when it breaks down into progeny that cling to dust and soil particles inside the structure.
- These radioactive particles attach themselves to lung tissues when Radon is inhaled. -Homeowners can buy a Radon test kit, or they can hire a radon measurement professional.
- *Remedial Action for Radon:* Covering exposed earth in a building, ventilation of the basement, sealing cracks and openings within basement areas and sealing service entrance points

### **Salesperson Obligations for Disclosures**

-These material facts include, but not limited to, potential hazards and environmental issues.

Best Interests: The best interests of the seller clients must be protected and promoted.

Conscientious and Competent Service: Salespersons must have reasonable knowledge, skill, judgement, and competence to provide services to clients and customers.

Material Facts: Salespersons must take reasonable steps to determine material facts about the subject property, discuss the issues with their clients, and make requisite disclosures. This duty applies to both clients and customers.

Services from Others: If the salesperson is unable to provide services with reasonable knowledge, the client must be advised to obtain expert services from other third-party professionals.

### **Environmental Site Assessment**

Phase 1: visit to the property for visual evidence of possible contamination.

A review of documents, aerial photographs, title search, information from the ministry, and municipality are conducted.

- It determines if reasons exist to believe that a property may have some form of contamination.

Phase 2: collecting samples of soil and water (by on-site drilling), which are sent to a laboratory for analysis. The tests determine the extent of contamination and suggests a remediation plan.

-The purpose of this phase is to have a conclusive evidence whether a property is contaminated, and if some remedial action is required.

Phase 3: remediation of the contaminated land, which may take from a few days to a few months.

-The environmental clean-up report is a confirmation for contamination removal, treatment, and current status of the site.

-Unsuccessful remediation may result in a Site-Specific Risk Assessment, which specifies the type of development that can be done on the site.

## **10.2 Stigmatized Properties Stigma**

- murder or suicide in the property, criminal activity, grow operations, natural or unnatural death of a person, death of an infant in the crib, haunted house, etc. Media exposure and rumours also impact the value.

### **Ask Questions and Make Disclosures**

*Questions for the Seller:* Ask the seller if anything happened on the property that would possibly be considered a stigma.

*Questions for the Buyer:* Ask the buyer if an event or circumstance that occurred on the property would affect their decision to buy the property.

Disclosure Requirements for Stigma: In Ontario, there is no legal requirement for the seller to disclose stigma.

- However, when this issue is appropriately discussed with sellers, recommend the seller that a disclosure will protect them from possible lawsuits from the buyer after the closing.

### **Stigma and Potential Buyers**

- Stigma is subjective, and what is important to one buyer may not be an issue for another buyer.
  - Salespersons should discuss relevant stigma issues with buyers and conduct additional research to protect a potential buyer.
- A Representation and Warranty clause can be inserted in the Agreement of Purchase and Sale

### Salesperson Disclosure Obligation Under Multiple Representation

- Need to explain that any info known about the stigma will have to be shared with the buyer as part of the brokerages duties to the buyer
- If the seller objects, they do not have to consent to multiple representation, and the brokerage will have to release one of the clients to seek alternative representation
- Caveat emptor (let the buyer beware)

Real vs. Perceived Risk: There may not be any real risk or danger due to stigma, but the perceived impact may arise when a buyer is informed that the house they just purchased is haunted.

Impact on Value: Stigma causes negative impact on value, but it is difficult to estimate the actual loss of value.

### Salespersons Leading Practices Regarding Property Conditions

- Accurate and current property description and not falsify
- Fairness and honesty when dealing with others
- Consult with a third party
- Steps taken to address issues relating to property conditions
- Accurate advertising & other promotional materials
- Conscientious and competent service to promote a client's best interest

### Minimize a salespersons risk concerning disclosure

Document any info provided by the seller

Advise the seller to obtain services from third party

Marketing reflects the property

Discuss obligations for disclosure by the brokerage to buy

Details brokerages policies regarding non-required disclosures

Document steps you have taken representing the seller

## **Module 11: Property Value and Listing Price considerations**

### **11.1 Opinion on Property Value and List Price Value vs. Listing Price**

Two organizations designate appraiser

- Appraisal institute of Canada (AIC) National Society of Professional real estate appraiser
  - o
    - *Canadian Residential Appraiser* (CRA) → valuation and consulting assignment on dwellings containing not more than 4 self-contained family housing units
    - *Accredit appraiser Canadian Institute* (AACI) any valuation and consulting assignment
- Ii) Canadian National Association of Real Estate Appraisers (CNAREA)
  - o a non-profit, independent association that certifies and regulates real property appraisers in Canada.
    - *Designated appraiser Residential* (DAR) → residential property types consisting of not more than 4 housing units and non-complex commercial properties with a residential component
    - *Designated Appraiser Commercial* (DAC) → valuations on all real property types
    - *Certified Appraisal Reviewer* → DAC + DAR designated members who have achieved a higher level of training and certification in appraisal review. Qualified to author either field or technical appraisal review reports on all types of appraisal reports.
- The value of the property is different than its listing price.
- When estimating a reasonable listing price for a property, salespersons may use the Comparative Market Analysis (CMA) form.
- The market value of a property is best estimated by professional appraisers who have the required knowledge, ability, skills, and experience in the appraisal profession.
- REBBA prohibits registrants (Brokerages, Brokers and Salespersons) from providing value opinions to clients or customers when they do not have knowledge, skills, judgment, competence, education or experience related to valuation of real estate..
- RECO Errors and Omissions Insurance does not cover a registrant for appraisal assignments.

### **Appraisal Reports and Benefits**

The Form Report: systematic presentation

- Provides appraisal reports to financial institutions, relocation companies, government agencies.
- Preprinted info that must be checked off when relevant
- Self-contained, summary, restricted report

The Narrative Report

- logical systemic and detailed approach by presenting in writing the theory, facts, analysis , application and methodology
  - Narrative Report is generally lengthy, time consuming to prepare, and may be from 50 to 100 pages.
  - It is typically used for evaluation of apartment buildings, office/commercial/industrial buildings, and agricultural land. The purpose of appraisal may be financing, transfer of ownership, capital gains tax, etc.
    - It can also be used for single family homes, duplexes, triplexes and fourplexes where the purpose would be for legal/court proceedings.

Benefits of Appraisal:

- It allows for an independent third-party advice on property value.
- The advice is from professionals who regularly appraise real estate.
- The property owner is able to get an unbiased opinion on the value of their property.

### **Comparative Market Analysis (CMA)**

- -A CMA is used to establish a reasonable listing price for a property and is not meant for estimating the market value.
- Most salespersons would prepare a CMA for the seller instead of completing the Form Report.
- The seller is shown how his property ranks in comparison to similar properties that are- (i) now on sale, (ii) have sold in the past 12 months, and (iii) listed but expired in past 12 months.

**Components of the CMA Form:**

- Comparable for Sale Now.
- Comparable Sold in the Past 12 Months.
- Comparables Expired in the Past 12 Months. Recommendations and Net Proceeds.

**Recommendations for the Seller:** Adjustments to comparable properties are made in the CMA form to arrive at a reasonable listing price for the seller's property.

Sources → local listing service, municipality, geowarehouse

**Strategies for Presenting CMA**

Cautions on Overpricing: The seller should be informed that an overpriced property may remain in the market for more than average time period. An overpriced property may remain as a 'comparison property' that attracts many showing but there are no offers.

**11.2 Factors That Impact Value Highest and Best Use**

- Factors considered include permitted uses as per zoning by-laws, demand, and financial feasibility.

-The amount of money a buyer would pay is based on the use and enjoyment (residential) and future income or profit (commercial) that the buyer would derive from the property.

-If the current use is not the highest and best use the appraiser would look at an alternative use.

Example: Consider a residential building where the zoning by-laws permit construction of a three storey commercial complex.

**Location and Neighbourhood**

Value is also affected by local economy, government regulations, and nearby services or amenities.

**Three Approaches to Estimate Value**

The Cost Approach

- focused on objective value, which means the cost to create is the main criterion. Guided by the principle of substitution
  - o Buyer will pay no more for a property than the cost of producing or creating it

Advantages	Disadvantages
People understand it	Difficult to estimate depreciation
method to use in appraisal of special-purpose properties	Different construction methods yield varying costs
Relatively easy to make a cost calculation	Construction costs change

- The Cost Approach is useful when either good comparable sales are not available, or the subject property is unique.
- This method cannot be used for valuation of condominium units. This method is preferred by those consumers who give more importance to costing and depreciation (loss in value due to aging, wear and tear, etc.).

Income Approach

- valuation of commercial, investment, or income producing properties.
- based on the fact that the value of an investment property is the Present Worth of Future Cash Flows. Appraisers review the Annual Operating Statement of the owner, which represents one year's analysis of income and expenses.
- Used to estimate the value of income-producing property only
- *Disadvantages* → difficulty in selecting an appropriate capitalization for direct capitalization
  - o Estimating income and operating expenses can prove difficult
  - o Limited use in the appraisal of owner-occupied or special purpose properties

Direct Comparison Approach

- an informed buyer will pay no more than the cost of acquiring an existing property with same Utility
- It is widely accepted by courts, lenders, insurance companies and is understood by general public.
- Lack of recent comparable sales may be a problem because the older the comparable sales, the less reliable they are.
- This method may pose problems for evaluation of Special Purpose industrial/commercial properties and certain unique properties because comparable sales data may not be available. Investors do not prefer this method as they look for economic performance of the property. They will rather prefer the Income Approach or Cost Approach.
- Steps:

1. *Select comparables* → Time and market conditions, value, similarity + Proximity
2. *Make Adjustments* → Time (past), Location (different neighborhoods Increase or decrease value) Lot size + physical characteristics
3. *Establish adjusted sale price* → all adjustments are totaled, then subtracted or added to a time-adjusted sale price
4. *Complete* → reconciliation, reasoning process to arrive at a final estimate of value

Reconstructed Operating Statement: The statement provided by the owner may not be reliable and hence, the appraiser may have to make certain modifications.

This is the revised operating statement prepared by appraiser with adjustments and modifications made according to comparable properties.

#### 11.4 The Direct Comparison Approach Qualities of Good Comparable Sales

Physical Characteristics: These adjustments relate to differences in square footage, room sizes, number of bathrooms, etc.

Adjusted Sale Price: The adjusted sale price reflects the effect of time, lot size, location, and feature adjustments.

##### Calculating Time Adjustment

Example: A comparable property was sold 3 months ago for \$350,000. The prices in the market have decreased by 4% over the last 8 months. What is the amount of Time Adjustment and Time Adjusted Sale Price?

Since the given percentage is not 'per month', divide it by 8.

Time Adjustment =  $350,000 \times 3 \times (4\% \div 8) = -\$5,250$  (Minus adjustment because prices have decreased)

Time Adjusted Sale Price =  $350,000 - 5,250 = \$344,750$  Special Note: Time Adjustment is NIL if the comparable is sold

—

Few Days Ago; 1 Week Ago, 2 Weeks Ago, 3 Weeks Ago or 4 Weeks Ago. 30 Days Ago, or This Month.

Note: Watch out for above words in the exam. In this case, the Time Adjusted Sale Price is equal to the Sale Price.

##### Feature Adjustments

Features of each property are compared with the subject. Remember a simple rule – More is Less and Less is More.

Plus (+) Adjustment: If a feature in the comparable is worse than the subject, the adjustment is Plus (+).

Minus (–) Adjustment: If a feature in the comparable is better than the subject, the adjustment is Minus (–).

Value Difference: Calculate the difference in values for bathroom and garage. DO not use their cost.

Note: If both Cost and Value are given, use Value and ignore the Cost.

##### Reconciliation process of selecting one value estimate out of two or more.

The most recent sale is most reliable because the social, economic, and political changes in the local market may have resulted in significant changes to real estate values.

Least number of adjustments would mean that a comparable is very similar to the subject property.

##### Final Estimate

-The final estimate of value may be given as a single value or a value range. If a value range is provided, it must be useful and meaningful for the client.

-The final estimate is given as a rounded number because the estimate of value is an opinion and may not be accurate.

-The estimate of value must be Convincing and Defensible.

## **12. LISTING AND MARKETING PROPERTIES**

### **12.1 Preparing to List Documents Required for Listing**

-One such important form is the Data Sheet, which provides detailed information about the property.

-Documents that may be required for gathering additional information for listing include the title/deed, survey, municipal tax bills and assessment notices, GeowareHouse® report, transferable warranties for the home and the equipment, copy of lease (if any), utility bills, repairs or testing of water well and septic systems, any capital improvements, etc.

#### **The Data Sheet Information**

Legal Description: The source documents for verification of legal description are the title/deed and the survey.

- An up-to-date survey will not only show property boundaries but also show any easements or encroachments.
- *Minor Easements:* Easements for municipal services (water and sewage), and utilities such as hydro, telephone, gas, etc. are considered minor.
- *Major Easements:* These include mutual/shared driveways or rights of way, which must be clearly identified.

Lot Size: The lot size must be verified from source documents such as a survey, property tax bill, from GeowareHouse®, etc.

- First dimension identified is Lot frontage

Age of Principal Structure: The buyer may need to know the age of the principal structure for obtaining insurance.

- This information may be obtained from the seller, the original builder, municipal records, or from GeowareHouse®.

Living Area: It is usually the overall square footage of the house, based on exterior measurements. (not basement or garage)

- This information may be obtained from builder's plans (if the house is new), from GeowareHouse®, or a professional company may be hired for the purpose.  
-Including square footage of the house is not always mandatory, and a range of square footage may be given.

Room Sizes: Salespersons should not rely on old listings for room sizes and take their own measurements.

#### **Additional Information**

Taxes/Assessments: Taxes and assessments should be verified from source documents such as tax notices from the municipality. Tax notices should be final taxes for the year and not the interim taxes.

Zoning: The zoning of the property must be confirmed from the municipality.

Wiring: The electrical service size (60 amps, 100 amps, or 200 amps), type of distribution panel (fuses or circuit breaker), and the type of wiring (copper or aluminum) should be identified.

Plumbing: The salesperson should be able to distinguish between various plumbing types such as copper, PVC, Kitec, etc.

HVAC: The type of heating, ventilation, and air conditioning system should be clearly identified.

Chattels and Fixtures: Chattels included in the sale and fixtures excluded from the sale must be clearly identified so that there are no confusions or problems.

Rental Equipment: Besides the hot water tank, rental or rent-to- own equipment may include furnace, water softener, satellite dishes, security systems, etc.

- The agreement or contract may be transferable to the buyer or the seller may be able to pay off the balance amount upon completion.

#### **Commission Fees**

- start and expiry date of the agreement, the services provided, and the amount of commission payable to the co-operating brokerage.

A La Carte/Fee Commission: This means that there are flat fees for various services, which the seller can select. This arrangement is used when the brokerage is not providing full services to the seller.

Special Commission Agreements: A collateral agreement provides for a reduction in commission if no other brokerage is involved and the property is sold by the listing brokerage. This may also apply when the seller sells the property to a known buyer.

- All such agreements must be in writing and disclosed to other brokerages and buyers.



## **Seller's Directions for Marketing and Disclosures**

Under REBBA, salespersons must present all offers to the seller as soon as possible. However, if the seller wants to delay this process, this direction must be in writing.

SPIS and Disclosures: Information regarding the property, known to the seller, is typically given in the Seller Property Information Statement (SPIS) form.

- Since this form is not mandatory under REBBA, the salesperson should explain the seller that important disclosures can be made on this form.

Verification of Ownership → title or deed, geowarehouse

Gathering Property Information → Certain information may be obtained from the internet by using the property address.

- The municipality as well as the Municipal Property Assessment Corporation (MPAC) may also provide vital information. GeowareHouse® can provide information on taxation, zoning, photos, and previous sale prices.

## **Documents Retention by Brokerage**

-Copies of listing documents must be provided to the sellers immediately upon signing.

-Salespersons must provide the brokerage with original copies of all listing documents. They are permitted to keep a shadow copy for their records while ensuring compliance with the federal Privacy Act and the Personal Information Protection and Electronic Documents Act (PIPEDA).

- These documents include the Listing Agreement, data sheet, seller's permission for lockbox, collateral agreement, FINTRAC identification forms, disclosures, copies of survey, etc.
- All trade related documents must be kept in the brokerage main office or, in case of a branch office, at a location specified by the Registrar of RECO for 6 years
- If the Registrar has not specified a location for keeping trade documents, all documents must be kept at the main office of the brokerage.

## **12.2 Listing a Residential Property Saleable Listing**

### **Consequences of Overpricing the Property**

- Other salespersons may not show the property, or it may become just a 'comparison property', which is only shown as an evidence of salability of other properties.  
If the property does not sell for a long-time, people may think that there is something wrong with the property.
- The reputation of the listing salesperson may be negatively affected.

### **Promoting the Property**

Local Listing Service: The local listing service is a database of current and past listings for the area and the salesperson must abide by its rules and regulations for posting the listing.

- The 'Broker Load Practice' allows a brokerage or a salesperson to load the listing on the database including photos and other attachments.

House Tours: House tours for salespersons from other brokerages provides them an opportunity to view the property without appointment and obtain more information from the listing salesperson.

Advertising: The listed property may be advertised using 'For Sale' or 'Open House' signs and on social media platforms such as Facebook, Twitter, Instagram, and blogs

### **Competition Act**

-The Act prohibits misleading advertising and deceptive business practices in promotion of products or services.

-The Canadian Real Estate Association (CREA) has published Principles of Competition to comply with the provisions of the Act.

- The trademarks REALTOR®, REALTORS®, and the REALTOR® logo can only be used by members of CREA.
- Trademark misuse → Authorized use by a member + improper use by a member

## **12.3 Salesperson's Obligations Listing Obligations**

Accurate Representation: Under the REBBA Code of Ethics, salespersons cannot knowingly make inaccurate representations or statements, either verbally or in any advertisement but takes steps to correct any

- Due diligence → such as verifying the listing information to ensure accurate.

Mere Postings/limited service representations: the brokerage only lists the property on the local listing service but does not provide any further service.

- The seller remains responsible to book appointments for showings, holding open houses, marketing, and negotiating offers.

- The brokerage still has the responsibility to verify the accuracy of property information and providing a copy of the agreement to the seller immediately upon signing.
- *Services*: The brokerage may have to document each service that will be provided to the seller individually, giving the accurate cost of each service, and ensure that there is no misunderstanding.

### **Potential Errors and Omissions in the listing process**

Potential errors that may lead to disputes include documentation errors, misrepresentation of facts, and verbal misunderstandings.

#### Representation Duties, disclosures, and related procedures

- Failure to document the services, non-disclosure of material facts, not providing copies of agreement, and failure to verify ownership of the property.

#### Misrepresentation of facts concerning listed properties

Non-verification of facts such as lot size, square footage, information on wells or septic systems, encroachments or easements, structural defects, electrical and mechanical systems, and zoning information.

#### Documentation errors

- Failure to read and analyze source documents and incorrect transfer of information from these documents.
- Improper document preparation regarding taxation

Verbal Misunderstandings with sellers . Incomplete list of items the seller will include/exclude, status of rental items, explanation of services being provided, agreements to showing the property

### **Leading Practices for Advertising**

Photographs → photographs are considered proprietary under law

Print and Marketing → unique and creative advertising is important

- Personal information of the seller must never be included in the advertisement.
- Permission to advertise must not go on indefinitely. You will need permission
- Salespersons must be aware of their obligations under the Canada's Anti-Spam Law (CASL), the Privacy Legislation (PIPEDA), the Competition Act, and the National Do Not Call List (DNCL).

## **12.4 Advertising Requirements Under REBBA Four Minimum Requirements**

### **Advertising under REBBA**

Advertising → any notice, announcement, representation directed at the public that is authorized, made by or on behalf of a salesperson . Print, radio, television, business cards, letterhead, or fax cover sheets.

Broadcast & Electronic any advertisement in any electronic medium, including the internet, radio and television

Disclaimer → disclosure that must be included in an advertisement to explain, modify, or qualify claims etc.

### **Advertising Obligations**

#### Rebba Requirements

1. *Identification of the Registrant*: The name of the registrant placing the advertisement must be clearly identified. The font size should be such that it is clearly noticed and visible. (broker, brokerage, or salesperson)
2. *Identification of the Individual*: The name being advertised must be exactly as registered with RECO. However, registrants are permitted to use a trade name, provided it is registered with RECO.
3. *Identification of the Brokerage*: The name of the employing brokerage, as registered with RECO, must be included in every advertisement.
4. *Description of the Registrant*: The permitted descriptions are 'Salesperson', 'Real Estate Salesperson', 'Sales Representative', 'Real Estate Sales Representative', 'Broker', 'Real Estate Broker', 'Broker of Record', 'Brokerage', and 'Real Estate Brokerage'.
- 5.

### **Ensuring Compliance**

#### False and Inaccurate Advertising:

Comparative Claims and Awards: REBBA Code of Ethics requires that a comparative claim referring to business volume, an award, or honour the basis for claim must be included \*Purchased awards and honours cannot be advertised \*\*

Promises and Offers: Claims for reducing the commission or savings must be accompanied by a disclosure of conditions or circumstances in which the commission would be reduced.

Disclaimers: Advertisements that need additional information to avoid ambiguity, confusion, deception,

## Advertising a Property

- Seller's permission to advertise the listed property is typically included in the Listing Agreement.
- After the property is sold, a 'SOLD' sign may be placed on the property but distributing 'SOLD' flyers with address of the property and/or its sale price requires seller's written consent.
- The advertisement must not include anything that identifies any party to a transaction or the property, unless written consent of the owner is obtained.
- Consent of the Seller: If the sold property is advertised before the closing date.
- Consent of the Buyer: If the sold property is advertised after the closing date.
- Consent of Both the Seller and the Buyer: If any terms or details of the agreement (e.g. percentage of list price, sold in xx number of days, etc.) are to be included in the advertisement.

## Social Media and Internet Advertising

- every advertisement you create, must comply with REBBA.
    - o Name as registered with RECO
    - o Description of your role
    - o Name of the brokerage
    - o Words brokerage or real estate brokerage
- For a website, the name of the salesperson, the brokerage, the description, contact information, and disclaimers (if any), must be clearly shown.

## 12.5 Open House - Marketing and Interactions Basics of Open House

### Benefits

- Allows preview of the property to ensure it meets criteria booking book an appt.
- The buyers get a comfortable atmosphere to view the property and gain knowledge and perspective.
- The sellers get the opportunity to fully prepare the home in advance and increase exposure, which may result in multiple offers.
- The salesperson can demonstrate that he/she is working hard for the seller and may get additional clients during the open house.
- Salespersons must check with the local municipality regarding placement and removal of 'Open House' signs.

### Considerations

- Some buyers may just be curious but not interested in buying the property and there is no guarantee that the house will sell during the open house.
- Crime + damage
- Always as open house guests for identification but potential buyers are not required to give their contact info unless they want to be contacted with real estate info
- Code of Ethics requires that the salesperson must ask the visitors if they are working with another brokerage.

### Open House for Different Properties

- permission from the management or board of directors for the open house signs.
- Some high-rise apartment buildings may not allow open houses, and if they allow, multiple salespersons may be required; one for showing the property and one to greet the visitors at the building entrance.
- For high-end properties, security and privacy are some of the major concerns and the salesperson must ensure that valuable items of the owner are safely stored.

### Collaborating with Sellers

- marketing strategy with sellers with regards to appropriate timings for the open house and the ways sellers can assist in the open house.
- Security concerns should be adequately addressed, including the responsibility of the salesperson and the sellers.
- Salespersons must not leave the house anytime during the event, which allows him/her to have discussions with potential buyers. Seller should vacate so you can discuss property openly, view more freely, not have seller interject, ensures the seller does not overhear any negative comments

## Marketing Materials for Open House

- Advertising the open house in advance has several benefits which include –It allows potential buyers to schedule their visits.
  - o Other salespersons, who might have buyers in that neighbourhood, come to know about the open house and show the property
  - o It results in more exposure to the property and more attendees to the open house.

### 12.6 Open House - Leading Practices

#### Compliance

Disclosures: REBBA Code of Ethics requires that a salesperson must not interfere with clients of other brokerages during the open house and, if any such buyer wants to make an offer, he/she should be directed to their own salesperson.

Client's Best Interests: Salesperson conducting the open house must ensure that safety and privacy of the seller client is protected at all times during the open house.

CASL: The marketing materials for the open house, which include emails and messages, must be in compliance with Personal Information of Visitors: If personal information of the visitors is collected during the open house, it should be safeguarded and used only for the intended purpose.

#### Open House Leading Practices

Unregistered Assistants → can help but not do anything considered trading

- Placing and removing open house signs and compiling feature sheets.
- Greeting visitors and monitoring the safety and security of the property.
- asking the visitors to sign the guest register.
- Directing any property related questions to the salesperson.
- Placing and removing open house signs

### 13. SHOWING AND ADVISING ON PROPERTIES

#### 13.1 Meeting with Buyers Sources to Find Buyers

Incoming Calls: Create first impression + arrange for a face to face + ask if they are represented .

Duty Time in Brokerage: Some brokerages have a policy of allocating floor duty time at the brokerage, which in turn, can be a good source of finding buyers.

Farming in the Neighbourhood: Farming refers to selection of a specific territory and targeting the marketing efforts in that area.

- The salesperson must be aware of social, political, physical, and economic features of the farm territory.
- By farming in the target neighbourhood, the salesperson can get to know potential buyers.
- A Customer Relationship Management (CRM) software program can also be used for organizing the farming activities.

#### Buyer's Information Package

- The salesperson can use a readymade package from the brokerage that provides details about hidden costs involved in the buying process.
- The package should include referral information for third-party professionals such as home inspectors, mortgage brokers, lawyers, etc.
- Optional information such as neighbourhood information related to schools, hospitals, social media links, and other frequently asked questions (FAQs) can be added to the information package.

#### Questions to Identify Buyer's Needs

- Budget
- Lifestyle
- Timing
- Contact method

### 13.2 Obligations to Buyers Buyer Client vs Buyer Customer

#### **Reminder Contents of Written Agreement**

- Effective Date + Expiration Date
- Specify commissions or remuneration → and how it is to be made
- Outline Services Provided

Item	CLI	CUS
Disclosure of commission and other remuneration the brokerage may receive in the same trade	X	X
Conscientious service + demonstrate reasonable knowledge , Skill, Judgement and competence	X	X
Treat every person fairly, honestly and with integrity. Disclose buyer with any material facts known	X	X
Take reasonable steps to determine the material facts relating to a property	X	
Promote and protect the best interests of the buyer	X	
Duty of confidentiality and loyalty to the buyer	X	

#### **Obligations When Showing Properties**

- Fairness honestly, conscientious competent service etc
- Providing opinions
- Dealings with other salespersons
- Services from others
- Info before agreements
- Seller proper
- Seller Property Information Statement (SPIS) form,
- Material facts

\*\*\*\*CUSTOMER YOU DO NOT NEGOTIATE\*\*\*\*

### 13.3 Selecting Properties Buyer's Needs and Wants

Buyer Profile: detailed interview with the buyer to understand property specifications and requirements.

- the type of the property, price range, natural characteristics, accessibility, availability of utilities, services, amenities, etc.

Area Information: The buyer should be provided information on property values, market conditions, services or amenities (schools, shopping, transportation, etc.) in the neighbourhood.

Target Properties: identifying properties that meet buyer's search criteria

Viewing and Showing: view the selected properties beforehand, shortlist properties after

Comparing Properties: The features, prices, and key trends in the area should be discussed with the buyer to compare different properties that have been viewed.

Need for Outside Professionals: should be recommended based on buyer's specific needs and selection of a specific property.

#### Profile Buyer Sheet

1. Must have all the preferences that a buyer has communicated
  2. Updated regularly
- Keep track of preferences. Include place to record potential buyer's "Deal Breakers"
  - *Basic Info* → lot size, location, bedrooms, bathrooms etc
  - *Environment* → lakefront, view, wooded area
  - *Access and Accessibility* → Cul-de-sac, highway access, availability of public transit, schools, # of stories
  - *Utilities* → municipal or private water, natural gas, central air etc.
  - *Amenities* → services available to the area
  - *Additional section* → no standards for property profile sheets, can add house style, types of school,

Local Listing Service: The buyer profile can be set up in the local listing service as a 'client portal' so that the system automatically pulls every property that matches the buyer's search criteria. "hot sheets" show all new listing, price changes conditions and properties that are sold, expired, suspended or cancelled

### 13.4 Showing Properties Preparations

- The appointments for the showings are generally made through the listing brokerage
- Typically allow 1 hour to show
- Buyer takes their own car

#### Leading Practices

- go to each property well-prepared with the listing data sheet (one for buyer one for me), lockbox code, business cards, After viewing the property, the lights are turned off, a business card is left on the counter, house locked
- After the buyer has seen some properties, the salesperson should follow up with them to gauge their interest in the properties and if they would prefer to revisit one of them.

#### Asking for Offer

- Compare properties the buyer likes (benefits and features)
- When comparing, some buyers may divert from major differences and focus on minor details such as chattels and fixtures and overall finish of the selected properties.
- Using the well-known 'Benjamin Franklin' technique, a line can be drawn to compare the advantages and disadvantages of the properties, and their negative and positive features can be compared.

- Confirm advantages of property and draw away from minor details

### **Protecting the Buyer**

- Privacy and safety two most fundamental interests of the buyer, which must be protected before, during, and after the showings
- safety is related to ensuring that the home is inspected for mould, broken stairs railing, or rotten wood planks on the deck, etc.
- Safety can also be in regard to confidential personal information that the buyer may disclose during showings.
- If personal information is not safeguarded, it can be used against the buyer in further negotiations with the seller.
- Remember some houses have security cameras inside

### **13.5 Showing When Seller has Limited/No Services Types of Listings**

Mere Postings: seller's brokerage only lists the property on the local listing service but does not provide any other services. Typically, the seller is contacted directly to show the property.

For Sale by Owner (FSBO): The seller is working independent of any brokerage to make arrangements for showings and negotiations. The buyer's salesperson contacts the seller directly for showings and negotiating commission.

Full Listing Service: The seller is represented by a brokerage for all activities in regard to listing, marketing, showings, and offer negotiations.

### **Providing Limited Services to Seller**

#### Contacting the Brokerage

- Listing brokerage typically grants permission to other brokerages to contact the seller for 3 purposes
  - o Make arrangements for showing the property to a buyer
  - o Negotiate commission to be paid to the buyer's brokerage by the seller
  - o Make arrangements to present and negotiate any offers directly with the seller
- Buyer's salesperson must have clear instructions from the listing brokerage on when they can contact the seller directly
- The buyer's brokerage informs the seller that they have an interested buyer and that, prior to showing, establish commission if the property is sold to that buyer.

#### Commission agreement with the seller

- In the event the seller is unwilling to pay a commission to the buyer's brokerage then the buyer may be required to pay a commission to their brokerage, as outlined in their buyer representation agreement
- Seller is not obligated to agree to pay the buyer's brokerage any commission unless that forms part of the commission agreement between the seller and listing brokerage
- The agreement between the seller and the buyer's brokerage would confirm the seller's obligations to compensate the buyer's brokerage should that buyer agree to purchase the property during a specified period

#### Informing the buyer

- The buyer must be informed about this commission obligation and, if the buyer does not agree, the brokerage may advise him/her not to buy that property.
- If a buyer is obligated to pay some or all commission it might impact what the buyer would do. Important to disclose commission prior to showing → may choose to
  - o Not see the property
  - o Agree to pay the brokerage the required commission

### **For Sale by Owner**

- The actions of private sellers are not regulated, they have no relationship with any brokerage
- The seller is contacted directly to make arrangement for showing the property. The salesperson can ask the seller if they would agree to pay commission in case the buyer purchases their property.

- Significant more work
- The salesperson may offer the seller to sign a non-exclusive Seller Customer Service Agreement with the buyer's brokerage for a commission.
- If the seller does not agree to pay the commission, the buyer brokerage may charge a commission from the buyer as per the terms of the Buyer Representation Agreement.

#### Informing the Buyer

- The buyer must be informed about this commission obligation and, if the buyer does not agree, the brokerage may advise him/her not to buy that property.

#### Added due diligence Actions

- Conduct a registry record search online or ask a lawyer to check the title and see what liens are on the home
- Call the township or go to the municipal office for easements/encroachments, right of way and all building permits are satisfied
- No outstanding work orders or building permits
- Measure each room
- Talk to neighbors
- Advise to arrange property inspection
- Do closer due diligence on appliances and fixtures
- Explain documents to the seller to ensure they understand legalities

#### **Commission Agreement with a Mere Posting Seller**

- A special form, such as the Seller Commission Agreement with Co-operating Brokerage, can be used for detailing the commission arrangement and obligations.
- 'Commission' section, the seller agrees to pay the brokerage a specific commission for a valid offer to purchase or lease during the term of the agreement.
- The 'Deposit' section of the form identifies who will hold the deposit in trust, which may be the seller's lawyer or the co-operating brokerage. (most commonly sellers brokerage)
  - o The deposit is first applied to reduce the commission obligation of the seller.
- Permission to contact seller → brokerage confirmation that the brokerage obtained written consent from the listing brokerage to communicate directly with seller

### **13.6 Due Diligence and Third-Party Advice Third-Party Service Providers**

- Buyers usually ask for advice on different aspects of the home such as mortgage, electrical, plumbing, home inspections, insurance, etc.
- REBBA Code of Ethics requires that the salesperson should advise the buyers to obtain services from third-party experts and must not discourage them from doing so.
- Names of at least three professionals in a particular field should be referred to the buyers, without insisting that the buyers work with any specific professional.
- The salesperson should not show any favouritism to any service provider or appear like getting any referral fees from them.
- Home inspectors, lawyers, and insurance companies can provide vital material facts about the property and all these facts must be disclosed to the buyer.
- The salesperson should personally be present at the time of home inspection to protect the interests of the buyer.

#### Third party

Lawyer: Lawyers are involved in title searches and requisitions before closing and advise the buyers if there are any second or third liens registered on the title of the property.

Mortgage Broker: Mortgage brokers help buyers with pre-approvals so that the buyers know how much financing they can obtain for the purchase.

Insurance: In some situations, such as a home with 60 amps service or knob and tube wiring, the insurance company may not be ready to provide coverage, or the premiums would be very high.

Inspector: A home inspector assesses the structural integrity of the home and, if there are any issues, they can be discussed with the seller during the negotiation process.



## 14. THE OFFER PROCESS AND REGULATORY OBLIGATIONS

### 14.1 The Offer Process

#### The Agreement of Purchase and Sale

- Most important document + must be in writing and signed by parties
- Although there is no standard or specific agreement form, any form that is used must include all the statutory obligations of the parties under the Vendors and Purchasers Act.
  - o Buyer is required to search the title at their own expense and make objection within 30 days of when the agreement is made
  - o Seller has 30 days to remove any objection, if the seller is not able or unwilling to remove any objection that the buyer does not agree to accept → agreement can be terminated and the buyers deposit is returned
- All adjustments made to the purchase price (property taxes, rents, and interests ) are adjusted as the date of closing with the day of closing apportioned to the buyer
- Deed is prepared by the seller and registered at the expense of the buyer

#### Offer Versus Agreement

- During negotiations, the agreement of purchase and sale from is referred to as an **offer**
- Once the terms are agreed to the offer can be reference as one of two types
  - o *Accepted, conditional offer* → conditional upon an event
  - o *Agreement* → offer is legal binding contract
  - o

#### Key Components of the Agreement

1. Names of Buyers and Sellers: Accurately identifies the parties to the transaction with their full legal names.
2. Address and Legal Description: Provides municipal address and complete legal description of the property.
3. Purchase Price: The amount that the buyer pays to the seller for purchase of seller's property.
4. Deposit: Although there is no legal requirement for a deposit, it is paid as a sign of good faith and buyer's commitment.
5. Irrevocable date: The time given by the person making the offer (buyer or seller) to the other party to consider the offer. If the other party does not accept the offer within this time period, the offer becomes null and void.
6. Completion Date: This is the date set for closing when the title of the property is legally transferred to the buyer and the seller is typically required to provide vacant possession of the property.
  - a. The completion date must be a business day as the Land Registry Office is closed on Saturdays, Sundays and statutory holidays.
7. Title Search Date (Requisition Date): This is the date by which the buyer's lawyer must complete the title search in Land Registry Office records.
8. Chattels and Fixtures: This section identifies the chattels (personal and movable items) that are included in the sale and fixtures (seller's personal items but fixed to the property) that are excluded from the sale.
9. Conditions: Most conditions are included for the benefit of the buyer, with a few exceptions. Common conditions include financing, home inspection, etc.

#### The Offers Process: Buyer's Perspective

##### Step 1 - Initiating the Offer

- *Review the listing*
- Typically, the buyer's salesperson initiates the offer process when the buyer is ready to submit an offer.
- The salesperson must ensure that the agreement is accurate, complete, and includes all the required terms and conditions. The listing should be reviewed to ensure that it includes all the information required to draft the offer.
- Certain legal information such as owner's name, legal description, etc. must be confirmed from original source documents.
- Discuss specific details with the buyer → offer price, deposit, completion date, chattels, fixtures etc.
- The buyer's salesperson contacts the listing salesperson before drafting the offer to see if any other offer(s) is already registered on the property.

- If any other offer is already registered, it may lead to multiple/competing offers and the buyer may change his/her decision to proceed with the offer.
- A CMA can also assist the buyer in deciding about the right price that should be offered.

#### Step 2 - Draft the Offer

- Draft the offer based on buyers instructions for terms and conditions.
- Review entire offer with buyer; including pre-printed and inserted clauses
- The buyer must understand that the agreement would be signed under seal resulting in legal obligations.

Step 3 - Register the Offer: After the buyer signs the offer, send it to brokerage, offer is presented to seller → known as registering the offer

- If there are other offers also registered on the property, the listing salesperson is required to say

Step 4 - Present the Offer: The seller's salesperson presents the offer to the seller and the buyer's salesperson may attend the offer presentation.

Step 5 - Wait for Seller's Response: The buyer and buyer's salesperson now wait for seller's response, which must be received within the irrevocable time period.

#### **The Offer Process: Seller's Perspective**

Step 1 - Arrange Offer Presentation Time : Once the offer is registered, arrange for the offer presentation to take place as soon as possible .

- Follow up with any other salesperson who have shown the property and inform them that an offer has been received.
- Generating competing offers is considered working in the seller's best interests.
- If additional offers are received → notify all of the brokerages , with registered offers, how many

Step 2- Prepare the seller for offer presentation : explain how many offers they will receive and how the presentation will be conducted

- If other salesrep present, discuss any confidential info privately & They can ask questions if they want

Step 3- Update the seller on current market conditions: Update the previous CMA (comparative market analysis) to show any recent activity that occurred wince the most recent update. Prepare the seller's net proceeds based on CMA

Step 4- Review& Analyze the offer do we each offer. Review additional aspects of each offer → Deposit, completion date, chattels included , rental or lease to own, conditions included, time period of the conditions

- Assess the entire

Step 5- Discuss options to address the offer: The seller has the option to accept, reject, counter the offer, or send all or some offers back for improvement if there are competing offers within the irrevocable time given in the offer.

- Only allowed to counter one offer at a time.
- A counter offer (sign back) from the seller is considered a new offer and the seller is free to extend the irrevocable time for the buyer.

Step 6 – Negotiate the Offer : The buyer's salesperson is informed whether the offer is accepted, rejected, or is being countered by the seller.

- REBBA requires the seller's brokerage to retain copies of all written offers that it receives.

#### **The Offer Acceptance Process**

1. Accept the offer
  - a. all sellers must sign and initial the agreement, and the acceptance must be communicated to the other party within the irrevocable time period.
2. Confirm Acceptance
  - a. Agreement of purchase and sale will provide for the time and date of acceptance to be identified. Signed by the last party who accepted the offer
3. Distribute Copies
  - a. Copies of the accepted offer are distributed to each party to the agreement and the salesperson retains a copy for the brokerage.

- b. The brokerage will provide these copies and obtain the parties signature acknowledging they have received their true copies
- c. When the seller accepts, a copy is provided at the time for each seller, the buyers' salesperson will obtain copies for each buyer, have them sign acknowledgement of receipt and deliver to brokerage (copy)
- d. Each brokerage is authorized by its respective client to forward copies of the agreement to their lawyers.
- e. Paper based or electronic
4. Sign Commission Trust Agreement:
  - a. When two different brokerages are involved in the transaction, a trust agreement is created which protects the co-operating brokerage's commission should the listing brokerage become insolvent or bankrupt
  - b. Salesperson can sign on behalf of brokerage
5. Retain a copy for the Brokerage
  - a. Copy of Fully signed and accepted agreement of purchase and sale.
6. Forward Copy to the Lawyer
  - a. Brokerage will provide copies for all documentation relating to the trade

## 14.2 Deposits and Other REBBA Criteria Deposit and Time Frames

### Define the Deposit

- The Agreement of Purchase and Sale typically includes a section which details the amount of deposit, when it is paid, how it is paid, and to whom it is paid. One of three options used to identify when it will be delivered
  - o Herewith: The deposit is paid when the offer is initially sent to the seller.
  - o Upon Acceptance: The deposit is paid within 24 hours of the acceptance.
  - o As Otherwise Specified in the Agreement: A clause can be added in the Schedule of the agreement specifying how and when the deposit will be paid.
- Whichever option is identified, if a salesperson is to deliver the deposit, they must follow these instruction
  - o Deposit funds from the buyer must be according to the Agreement of Purchase and Sale .
  - o Ensure the deposit is payable to the deposit holder identified on the A of P and Sale
  - o Provide the deposit when required.
- Deposit is only a sign of faith and level of commitment being made by the buyer.
- There is no set minimum amount for the deposit, and it can be paid by any valid means such as a cheque or a bank draft.
- Typically held in trust by listing brokerage
- The amount of deposit is applied towards the purchase price at the time of completion of transaction.
- The deposit cheque must be currently dated, valid, and capable of being immediately presented for payment.

### Time requirements for Deposit

- The listing brokerage must deposit the funds in Real Estate Trust Account within 5 business days of receipt (excluding Saturdays, Sundays, and statutory holidays). -If the deposit is not received in 5 days, the seller must be advised of this fact. Delays by co-operating brokerage in delivering the cheque to listing brokerage are closely scrutinized by RECO.

### Real Estate Trust Account

- When a brokerage is named in the agreement as the deposit holder, the fund are placed in the brokerage's real estate trust account
- This account must be separate from the general business account of the brokerage and a separate Trust Ledger must be maintained.
- Trust account imposes fiduciary and legal responsibilities on the brokerage
- REBBAs specific requirements
  - o The trust account must be designated as 'Real Estate Trust Account' and all transactions (deposits and withdrawals) must be authorized by the broker of record.
  - o If trust account incurs bank charges, its to be paid from other account
  - o All cheques must be signed by broker of record
  - o Only one trust account, unless otherwise authorized by the Registrar of RECO.
  - o The brokerage must prepare a monthly reconciliation of the trust account within 30 days of the monthly bank statement.
  - o Payments to salespersons & cooperating brokerages are not made from the real estate trust account, but from the separate 'Commission Trust Account' or the general business account of the brokerage.

## **Deposit Protection under RECO insurance Program**

- Funds are protected under RECO insurance program

## **Documenting a Deposit**

- The listing brokerage typically receives the deposit from the buyer as provided in the Agreement of Purchase and Sale and issues a receipt to the buyer. deposits the funds in its real estate trust account within 5 business days.
- Co-operating brokerage
  - o Obtain the buyers deposit as identified on the agreement of purchase and sale and provide a receipt to the buyer. This will confirm the buyer's compliance with the terms of the agreement
  - o Deliver the buyers deposit to the listing brokerage as soon as possible and obtain a receipt from the listing brokerage.

## **Interest on Deposit Funds**

- If the deposit funds are deposited in an interest- bearing trust account, the brokerage must disclose this & interest rate to the person making the deposit.
- The standard Agreement of Purchase and Sale includes a pre-printed provision that no interest would be earned.
- If the brokerage has an interest-bearing trust account, this fact must be disclosed by inserting an appropriate clause in the Agreement of Purchase and Sale.
- If the clause is missing from the agreement and the brokerage is receiving interest, then all interest is payable to the owner of the trust funds, the buyer.

## **Interest Bearing Trust Account:**

Payment of All Interest: pays the full interest earned. The seller and the buyer acknowledge in the Agreement of Purchase and Sale

- full amount of interest earned by the brokerage on the deposit amount will be paid.
- Interest rate
- Payment of interest at the same rate as the brokerage earns
- Identify who will receive interest
- 

Payment of Interest Less than Percentage: pays less than the interest earned on the account . A of P and S would include clause where the seller and buyer acknowledge. The terms, interest rate earned, lower rate of interest paid, who will receive the interest

Payment of Interest Less than a Fee: Pays less than what is earned on the account by creating a min payment threshold.

The A of P and S would include a clause acknowledging and agree:

- Terms of deposit, interest earned, the interest payable is the amount equal to or more than a specified amount
- Who receives interest
- Deposit holder may retain any interest earned that is less than the specified amount.

Term Deposit Bearing Interest: The brokerage may place the deposit money in an interest-bearing security and all interest is paid to the buyer. The A of P and sale would include clause acknowledging

- Terms of deposit
- Interest rate
- Interest will be paid to the buyer as soon as possible
- Agreement to accept short term rate for any deposit withdraw before term is expired.

Electronic Funds Transfer (EFT): If the deposit is paid using EFT, the brokerage must retain a paper trail for each transfer in and out of the real estate trust account.

- The agreement must include EFT in the deposit section of the agreement.
- The brokerage must obtain confirmation of deposit from the financial institution.
- Details of the EFT must be documented in the deposit book and the trust ledger
- EFT is also mentioned clearly in other trade documents such as the Trade Record Sheet.

## **Conditions for Return of Deposit**

- Proper course of action is one of the following
  - o Mutual consent with a release or direction signed by the seller and the buyer agreeing to disbursement
  - o A court order authorizing the disbursement if either the seller or the buyer does not sign a release or direction
- Listing and co-operating brokerage's broker of record will also sign the document

### **REBBA Requirements During the Offer Process**

Obtaining an Offer: REBBA does not permit a salesperson to indicate that they have obtained an offer unless the offer is in writing and is signed by the buyer (verbal offers or verbal interest in a property is not considered a valid offer)

Conveying/Presenting Offers: All offers received by the brokerage must be presented to the seller or the buyer client as soon as practically possible. This must be done without any regards to the identity of the person who sent the offer, the contents of the offer, or the commission to the brokerage.

- The requirement to present offers 'as soon as practically possible' can be changed by written instructions from the seller or the buyer.
- Some sellers do not want the offers to be presented until a specific date or time, and in this situation, the brokerage must obtain written instructions and convey them clearly to all buyers interested in making an offer.

Copies of the Agreement: Signed copies of the accepted agreement must be provided to each party involved in a transaction immediately.

- In case the offer was sent electronically to a seller or a buyer, the party is deemed to have received and retained a copy of the agreement.
- Copies of the agreement to lawyers or mortgage brokers can also be sent electronically.

Dealing with Other Registrants: fairly, honestly, and with integrity.

- Clients of other brokerages must not be induced to break their agreement in order to sign up with the salesperson's brokerage.

## **14.3 Multiple Representation**

### **Multiple Representation and Situations**

- In a Multiple Representation situation, the brokerage must act impartially and equally protect the interests of both the buyer and the seller
- The brokerage has a fiduciary relationship with both buyer and seller clients, but the interests of both parties are opposite to each other and the brokerage may find itself in a difficult position.
- Multiple representation occurs when
  1. One Brokerage representing both the seller and the buyer through different salesperson
    - a. Employed within the same brokerage office or located in different branches
  2. One brokerage representing competing buyers who are placing offers on the same property at the same time through different salespersons
    - a. Employed within the same brokerage office or located in different branches
  3. One brokerage representing both the seller and the buyer with the same salesperson working with all parties
  4. One brokerage with the same salespersons working with competing buyers for the same property
    - a. Buyers represented by the brokerage
    - b. In this scenario, seller is being represented by a different brokerage

### **Limitations to Services**

- The brokerage must make a written disclosure of multiple representation and obtain written consent of both parties at the earliest practical opportunity but before an offer is made.
- Info NOT disclosed and services NOT performed
  - o The amount that the seller may or will accept, which means that the salesperson cannot advise the buyer that the seller may or will accept an amount less than the offered price.
  - o The amount that the seller should accept or the amount they should counter the offer.
  - o The buyer must not be advised on the amount of offer price or the counter offer price.
  - o The terms of any other competing offer including the amount, terms, conditions, closing date, etc.

- The personal or motivational information of the seller or the buyer.
- The information that the brokerage is permitted to disclose includes:
  - Full disclosure of material facts about the property to both parties.
  - Market information about comparable properties.
  - Information about potential uses of the property.

### **Disclosure Requirements under REBBA**

Information Before Agreement: The brokerage must inform the buyers and sellers about service alternatives and explanation of multiple representation before a representation agreement is signed.

Nature of Relationship: The brokerage is required to disclose to every party in a transaction its relationship with each party at the earliest practical opportunity but before an offer is made. Applies also to customer + client relationship

Disclosure Before Agreement: The Code of Ethics requires that the brokerage must disclose before signing the representation agreement that the brokerage may enter into a representation agreement resulting in a multiple representation situation.

Multiple Representation: → obtain written consent from all parties when multiple representation occurs. Informed consent is consent given by an individual who has a clear understanding of the facts and implications.

- If one refuses to consent → must release one or more of the clients to seek alternate representation
- the brokerage will do this only with written consent of both parties.
- This disclosure and consent are typically included in the standard Listing Agreement form.

### **Disclosure Requirements to Operating in a Multiple Representation Situation**

Step 1 → Disclosure before agreement

- Consent in writing

Step 2 → Disclosure before offer

- Occurs during the offer process when the brokerage is representing buyer and seller
- Before offer, consent in writing
- Might not know it is happening when brokerage ends up representing two buyers
  - Listing brokerage is expected to pass on this information to the buyer's brokerage

### **Disclosure and written Consent**

#### Before a representation agreement

- Provide info on service alternatives → they determine type of relationship they would like to establish
- To comply with code of ethics, seller or buyer might be asked to sign the document confirming they have received the information → would be retained by the seller or buyer as well as brokerage

#### When entering into a representation agreement

- Confirm the following
  - Description of the services that will be provided to the seller or the buyer
  - Explanation of the possibility of multiple representation and how the services the brokerage would provide will be altered in that situation
  - Confirmation of the requirement to obtain written consent from all parties for the brokerage to operate in a multiple representation situation
- Signed by the salesperson on behalf of the brokerage and presented to the seller or buyer for signature

#### During the term of a representation agreement

- When viewing properties remind them about multiple representation agreements when coming into contact with your brokerage (for ex selling or buying same house etc)

#### Before an offer

- Confirm fully understands the impact of multiple representation and to document this consent in writing. Retain copies

### **Confirmation of Co-operation and Representation**

- This form is a written document that confirms the relationship between the brokerages and the parties.

- In a multiple representation situation, the form provides a box for mandatory disclosure wherein both the seller and the buyer provide their consent by inserting their initials. This form accompanies every Agreement of Purchase and Sale and is signed by the buyers and sellers before they sign the agreement
- In addition to recognizing each brokerage, the form also defines the commission payable to the co-operating brokerage in the transaction.

#### **CREA WEBforms**

- Access to their forms a complete document and transaction management solutions

#### **Confirm Co-operation and Representation for Single Representation: Two Brokerages**

- Commission due is clearly defined.
- Total commission being paid by the seller to the listing brokerage is not documented here; seller representation agreement identifies
- Listing brokerage identifies the amount of commission being offered to a co-operating brokerage on the document confirming co-operating and representation

#### **Multiple Representation: Leading Practices**

- written consent needed and disclosure on how it impacts the brokerages obligations
- The brokerage must act impartially and must treat every person involved in the trade fairly, honestly, and with integrity.
- The brokerage must explain to the client that services may be limited in case multiple representation occurs.
- When the salesperson recognizes a potential for multiple representation during the listing or selling process, a disclosure must again be made at the earliest practical opportunity and consent should be obtained.

## **15. THE RESIDENTIAL AGREEMENT OF PURCHASE AND SALE**

### **15.1 Parties, Property, Price, and Deposit The Offer Date**

Date of Offer → date the document was initially signed (The date of offer is the date when the offer is first drafted)??

- If after modifications the date of offer does not change

Names of the Buyer and the Seller → full legal names as shown on their identification documents or on title/deed.

Names on Title: The names that would be registered on the title may be different from the names shown on the agreement.

It is up to the buyers to decide whose names would be registered on the title.

Identification: Each buyer must be identified on a separate form to comply with the FINTRAC requirements.

- Verify ownership → deed, land registry office, Municipality Property Assessment Corporation

Matrimonial Home for Buyers: A property may be purchased by a single buyer and it can still become a matrimonial home.

Seller's Matrimonial Home: If both spouses are on the title, they are both shown as owners.

- However, if only one spouse is on the title, the non-owner spouse signs the Spousal Consent section on the signature page.

Corporations: Full legal name of the corporation, as given in the Article of Incorporation, is inserted.

- The individuals identified as officers of the corporation must sign and use Seal or write "I/We have the authority to bind the corporation".

Partners: All partners must be fully identified in the agreement and all must insert their signatures.

Estate Trustees: All Estate Trustees must sign the agreement and copies of documents showing their authority must be seen by the listing brokerage.

- The Certificate of Appointment of Estate Trustee should be seen.
- The name of the seller reads like 'The Estate of Jim Cram' and the trustee signs using the words 'Estate Trustee'.

Power of Attorney (POA): When the sellers have given this authority to someone to sell the property on their behalf.

- This document is registered in Land Registry Office and the listing brokerage must obtain a copy of this document.

### **Real Property**

Address: Full municipal address including name of the town and the region. Rural Property include lot number, concession number and township.

- Include side of the road on which the property is front

Lot Size: Specify the frontage and dept, verify the dimensions of the property by using a source document such as a survey, property tax bill or notice of assessment.

- If appropriate attach survey
- "more or less" allows for minor discrepancies

Frontage: If you are standing in front of the house, the direction you are facing

Legal Description: Complete legal description, as given in the title/deed or the survey, Reference to any easement, mutual driveway, etc. must also be given.

- If not available a secondary document such as property tax statement or property assessment notice can be used

### **Purchase Price, Deposit, and Balance**

Purchase Price: Also called the Offer Price. The amount is written in words and figures. For acreage/frontage, the amount is given as Per Front Foot, Per Front Metre or Per Acre.

Deposit: There is no minimum amount set for deposit. The Deposit Holder is typically the listing brokerage.

Deposit is to be held in Trust Account until completion or other termination of the agreement.

Payment of Deposit:

- Herewith: The deposit is given with the offer.
- Upon Acceptance: The buyer agrees to give the deposit within 24 hours of signing the Confirmation of Acceptance. As Otherwise Described in this Agreement: If some other arrangement is to be made, a clause may be inserted in the Schedule A. Additional deposits are given in Supplementary Deposit clause in Schedule A.
- The clause wording clarifies that if nothing else is specified in the agreement, the deposit holder does not earn any interest on deposit and no interest would be paid.

Deposit Clauses – added to the schedule

- Specific number of days



- Deposit by electronic funds

**Balance:** The buyer agrees to pay the balance of purchase price upon completion, as provided in the 'Balance Due on Completion' clause in the Schedule.

### **Common FAQ on Deposit Funds**

*How Can the Buyer Pay the Deposit?* By cheque, bank draft, money order or Electronic Funds Transfer (EFT).

*Who Holds the Deposit?* Typically, the deposit is held by the listing brokerage in its Real Estate Trust Account.

*When are the Funds Deposited?* REBBA requires that the brokerage holding the funds must deposit it in the trust account within 5 business days of receipt.

*Does the Deposit Earn Interest?* The agreement has a pre-printed wording that no interest is earned but if the brokerage has an interest-bearing trust account, it must disclose the interest and it should be paid to the buyer.

*What if the Agreement Fails?* The deposit is returned to the buyer when both parties sign the Mutual Release form. If not, a court may order return of deposit funds.

*Who Gives Receipt for the Deposit?* The co-operating brokerage issues a receipt to the buyer and the listing brokerage gives a receipt to the co-operating brokerage. The deposit is documented in the trust ledger of the deposit holder.

## **15.2 Pre-Printed Clauses**

### **Irrevocability**

- The time period given by the offeror (buyer or seller) to the offeree (other party) to consider the offer.
- No min required, but should be reasonable
- If offer not accepted → null and void
- Must address three items
  - o Party making the offer
    - Who offer is being made by rather than who the offer is being made too
  - o Time limit
  - o Consequences of failure to achieve an accepted offer
    - If the offer is not accepted, the offer automatically expires and is considered rejected by the other party
- The other party may extend this date and time when making the counter offer during negotiations.

### **Completion Date**

- This is the date when the title of the property is legally transferred to the buyer (AKA closing date)
- Although the transaction can be completed electronically, this date must not be Saturday/Sunday or a statutory holiday.
- If nothing else is agreed, the buyer will be provided Vacant Possession of the property on completion.
- If the property is rented and the buyer agrees to assume the tenants, appropriate clauses must be inserted in the Schedule.
- If the buyer does not want to assume the tenants, the situation should be addressed according to the Residential Tenancies Act.
- Lease → cannot terminate before lease end date

### **Notices**

- The parties authorize their brokerage to send and receive notices on their behalf.
- Fax numbers and/or email addresses of the listing brokerage and the co-operating brokerage are provided for delivery of documents.
- Notices are deemed delivered when sent electronically by fax or email.
- This section is left blank – (i) if the buyer is a Customer of the listing brokerage, (ii) if there is Multiple Representation, and (iii) when so instructed by parties.

### **Chattels, Fixtures, and Rental Items**

**Chattels Included:** Personal that is movable. List of chattels that are to be included with sale. The seller has the right to remove all chattels if not specifically included in the agreement. Chattels are excluded from purchase price unless they are specifically noted in agreement

**Fixtures Excluded:** Permanently attached to. Property List of items fixed to the property that the seller does not want to give.

- Salespersons must be careful about ‘built-in’ items such as the dishwasher.
- The seller cannot remove any fixture if not specifically excluded in the agreement.

Rental Items: Items that are not owned by seller and cannot be included in the agreement. The wording of the clause specifies that the buyer agrees to assume the lease of such rental items.

## HST

- CRA collects HST on new home purchases
- Most residential resales are exempted from HST. If half was used for commercial on that % HST applies
- ‘Included In’: Means that the seller is responsible, in case HST applies.
- ‘In Addition To’: Means that the buyer is responsible, if HST applies.

## Title Search

- Completed by buyer’s lawyer → encumbrances, mortgages, liens etc
- *Requisition Date*: Date for complete of title search by lawyer. This date should be after the date in conditional clauses (not Saturday, Sunday, or holidays)
- Could uncover
  - o *Root of Title objections* → fundamental issues related to the title, e.g. seller cannot transfer title because a previous severance was not legal under the Planning Act
  - o *Matters of Title objections* → issues that the seller cannot remove, e.g. an easement registered on the title.
    - Must report these prior to requisition date
- Non title searches (sub-search)
  - o Date for matters such as outstanding work orders, deficiency notices, fire insurance
  - o Two option for determining this second date, earliest of which applies
    - 30 days from the requisition date or the date when the conditions are fulfilled or waived.
    - 5 days before closing

Present Use: The permitted use of the property such as ‘Single Family Residential’ is inserted here. Zoning of the property must not be inserted in this space.

- If this space is left blank, then it implies that the seller represents that the present use of the property may be lawfully continued, and it may be insured against risk of fire.

Future Use The buyer and the seller agree that there is no warranty that the future intended use of the property by the buyer would be lawful.

- If the buyer wants to use the property in a way other than the present lawful use, an appropriate clause should be inserted in the Schedule.

Title The buyer is assured that the title is good and free from all restrictions, charges, liens and encumbrances other than those specified in the agreement.

No Objection: Registered Restrictive Covenants (Deed Restrictions) that run with land and complied with, registered easements for public utilities, and any minor easements that do not materially affect the use of property are not an objection to the title.

Valid Objection: If the property cannot be insured against risk of fire, there is any deficiency notice or work order against the property, or the present use may not be lawfully continued, the buyer may have a valid objection to the title.

- The buyer’s solicitor must send the objections to the seller’s lawyer before the Requisition Date.
- If the seller is unwilling or unable to remove any valid objections and the buyer is unwilling to waive the objections, the buyer may terminate the agreement.

## Documentation Review Related to Title

- Source documents, property disclosure form, buyer plans/uses

## **15.3 Pre-Printed Clauses - II Closing Arrangements**

### **Closing Arrangements**

- The seller’s lawyer prepares the Transfer/Deed of Land for electronic registration.
- The buyer’s lawyer completes the electronic registration of the title and/or other documents such as the Charge/Mortgage of Land.
- Certain documents that are prepared by the lawyers but are not registered include undertakings, directions, declarations, etc. key closing funds, garage opener

### Documents and Discharge

- The seller is only required to produce documents (title/deed, survey, etc.) that are under his possession or control.
- Obligations for mortgage discharge, title and property survey → lawyer might withhold funds to discharge mortgage
- 

### Insurance

- Seller responsible for insurance up until completion date. If substantial damage should occur to the property prior to the closing two options available to buyer
  - o Terminate the agreement
  - o Complete the transaction and collect any insurance proceeds provided by the seller's insurance policy

### Planning Act

- Agreement must comply with the *Planning Act*, for the transaction to be completed.
- In case of land, which is subject to severance, the seller can accept an offer, but the agreement will be completed only after receiving Consent for Severance before completion.
- Property has to comply for it to be transferred.
- If it does not comply with the planning act
  - o Invalid if not complete
  - o Required prior to completion (seller must comply with provisions)
  - o Seller involvement (obtain necessary consent – must proceed diligently)
    - Can take 3-6 months
    - Seller is responsible for any costs to ensure the agreement complies to the planning act

### Document Preparation

- This clause identifies the party which is responsible to pay the cost of document preparation.
- The seller pays for the transfer/deed of the title.
- The buyer pays for the cost of mortgage documents and the applicable Land Transfer Tax.
- Helps ensure compliance with the planning act

### Residency

- Non-resident sellers must pay Capital Gains Tax within 10 days of completion of sale.
- If the seller fails to pay, the buyer becomes responsible.
- The agreement provides the following options to the seller–
  - o Seller will Provide a Statutory Declaration to the buyer that they are not, and will not on completion be a non-resident of Canada → received no liability under *Income Tax Act*
  - o If seller is a non-resident, the seller can provide a certificate from the Minister of Revenue showing that the seller has filed the necessary documents and paid the taxes.
  - o If seller is non-resident and certificate has not been provided, the buyer may claim a credit towards purchase price with the amount needed to pay minister of national revenue

### Adjustments

- This clause specifies that certain costs will be apportioned at the time of closing.
- Typical adjustments include property tax, unmetered utilities, heating fuel, rents for rental property, etc.
- Adjustments are based on the number of days the seller and the buyer have owned the property.
- The buyer is responsible for the costs from the actual day of closing.

### Property Assessment

- By Municipal Property Assessment Corporation (MPAC)
- Buyers and sellers cannot make any claim against each other or the brokerages for assessment matters.
- Property assessments are done by municipalities on an annual basis.

### Time Limits

- This clause specifies that time limits given in the agreement must be strictly adhered to.
- If there are any changes, these must be agreed to by both parties in writing.

## Tender

- Parties tender their obligations under the contract (documents and funds) at the time of completion.
- If one party breaches the contract, the other party can still tender documents or funds on the day of completion, but not before completion
- Transfer deed → seller and funds by buyer
- Confirms readiness and willingness to complete transaction → refusal → seek remedies under breach of contracts
  - o Recession → contract void
  - o Damages
  - o Specific performance → contract completed

## Family Law Act

- The seller warrants that Spousal Consent is not required under the provisions
- matrimonial home → the non-owner spouse must give written consent by signing the Spousal Consent section.

## UFFI

- UFFI (Urea Formaldehyde Foam Insulation) was used in properties built during 1970's.
- This clause is a disclosure and warranty from the seller that the seller has not installed UFFI in the building, and UFFI was never used as insulation in the building (to the best of their knowledge)
- If the property is a unit in a multi-residential building, the provision applies only to the unit and not the entire building.
- Since this representation and warranty survives the closing, the buyer can make a claim against the seller if they find that the property contains UFFI.

## Legal, Accounting and Environmental Advice

- The parties agree that the information provided by the brokerages is not to be considered as any expert advice on legal, accounting, and environmental matters.

## Consumer Reports

- This disclosure is required under the Consumer Reporting Act → report containing credit/personal info
- The buyer is informed that a consumer report may be obtained in connection with this agreement, if it is appropriate.

## Agreement in Writing

- Any information inserted into the agreement takes precedence over the pre-set text should there be a conflict
- Parties agree that nothing has been 'said or done', other than specifically given in the agreement.
- All representations, warranties, collateral agreements, or conditions affecting the agreement must be included in the agreement

## Time and Date

- dates and the timings given in the agreement refer to the place where the property is located.

## Successors and Assigns

In the event that a seller or a buyer dies before completion, the agreement states that their heirs, executors, administrators, successors, and assigns are bound by the terms of the agreement. The salesperson should advise their clients to seek legal advice in this matter.

## **15.4 Signatures**

### **Buyer and Seller Signatures**

- All parties to the agreement must sign and insert date.
- For a property in Joint Tenancy, both owner spouses should sign as Sellers.
- The parties must understand that they are signing under seal.
- If the buyer/seller is a corporation → the officer must sign and use Seal or write "I/We have the authority to bind the corporation".
- In partnership → all partners should sign the agreement.
- Power of attorney → written underneath the signature
- Reasonable efforts to ensure that a person signing an agreement

*Buyer Signatures & seller* → usual signature in lieu of the full legal name identified earlier in the agreement

### Initials

- Initials of the buyers and sellers are required at the bottom of every page where signatures are not present. This ensures that the parties have read and understand the contents of the page.
- Initials indicate that the parties agree to the contents of the page being initialed.

### Witness

- Any competent person can sign as witness. If a dispute arises, the witness may be called to testify.
- Typically, the salespersons for each party insert their signatures as witness.
- The witness must be - (i) physically present, (ii) must have attained the age of maturity, and (iii) must be a third party (must not be a party to the contract).
- In case of multiple representation, the same salesperson or salespersons from same brokerage sign as witness.

### Signing under seal

- Essential element of a valid contract is consideration
- Mark put on the document to indicate the party's intention to be bound even though the other party has not given consideration

### Spousal Consent

- Applies only to seller
- Spousal Consent is required if the property is a matrimonial home and one of the spouses is not on title. The signatures of the non-owner spouse must also be witnessed.
- Not on title – not needed

### Confirmation of Acceptance

- The last party to accept all changes signs and dates this section.
- This section must be completed before the Irrevocable date and time given on page 1.
- If the seller accepts the original offer without any changes, then this section is signed by one of the sellers.
- If this is a counter offer, where the seller has made changes and buyer accepts the changes, then this section is signed by one of the buyers.

### Information on Brokerages

This section provides information on the listing brokerage and the co-operating brokerage. In case of multiple representation, or when the listing brokerage is providing customer service to the buyer, the space for the co-operating brokerage is left blank.

- Brokerage name, phone number + representative from brokerage

### Acknowledgement

- Each party acknowledges that they have read, understood, and received a Signed copy of Accepted agreement.
- This section is completed after the Confirmation of Acceptance has been signed.
- also authorizes the brokerages to forward copies of the accepted agreement to the lawyers of their respective clients.
- The lawyers' information may be completed right away or may be completed later.

### Commission Trust Agreement

- When two different brokerages are involved in the transaction, the salespersons of each brokerage sign on behalf of their brokerages.
- The Commission Trust Account protects the commission of the co-operating brokerage in case of misuse of funds or bankruptcy of the listing brokerage.
- Typically listing brokerage receives the gross commission paid for the trade
- This section is left blank when there is multiple representation situation or when the listing brokerage is providing customer service to the buyer.

### Electronic Signatures

- The parties agree to electronic signatures under the Electronic Commerce Act.
- The consent is recommended to be in writing but, in certain cases, it can be an implied consent.
- Requires Authenticated, ability to confirm the signature is from the person it is supposed to be
- Protected from unauthorized use, permanent and tamper proof

### Schedules

- Used to insert additional terms, conditions, warranties, etc that are agreed to
- The names of the buyers, the sellers, and the property address must be inserted as reference.

- The date on this page is same as on page 1 of the agreement.

Buyer agrees to pay the balance as Follows

- Clause would contain the following 6 things as well as method of payment
  - o By whom
  - o Amount
  - o Adjustments
  - o To Whom
  - o When it will be paid
  - o How it will be paid
- Purchase Price minus
  - o **S** → seller take back mortgage
  - o **A** → assumed mortgage
  - o **D** → deposits

Buyer agrees to Pay the balance examples

**Example 1:** buyer is offer \$500,000 for a property. Buyer has 200,000 to use as a downpayment out of which, he will submit a 50,000 deposit. Buyer will be arranging a new first mortgage for the required funds of 300,000. Seller not will to take back mortgage.

Purchase Price	\$500,000
Less Seller take Back	0
Less assumed mortgage	0
Less deposits	- \$50,000
Balance Due	=\$450,000

**Example 2:** A buyer is offering \$500,000 for a property. They have 200,000 to use as a down payment out of which, he will submit a \$50,000 deposit upon acceptance. Buyer will assume the sellers first mortgage with current balance of 300,000.

Purchase Price	\$500,000	
Less seller take back	- 0	
Less assumed mortgage	-\$300,000	
Less deposits	-50,000	Balance Due \$150,000

Payment of Balance Clause Examples

- Seller take back → seller is providing financing for the buyer's purchase
- Or the buyer is assuming the sellers existing mortgage

## 16. COMPLETING THE AGREEMENT OF PURCHASE AND SALE

### 16.1 Drafting the Agreement

#### The Offer Plan (used to show you are organized prior to drafting offer)

1. Offer Mathematics: The SAD formula for the balance due on completion is used to calculate the balance amount to be paid by the buyer on closing date.
2. Required Dates: offer date, irrevocable date, requisition date, and the completion date. These dates must be in chronological order.
3. Information Required on Schedule: The salesperson needs to identify the clauses that would be inserted in the Schedule A, which is a part of every offer.
4. Additional Information: This includes information on chattels included in the agreement, fixtures excluded from the agreement, rental items that would be assumed by the buyer, HST ('Included In' or 'In Addition To'), and easements (if any).

#### Signatures and Initials

- Once the offer has been drafted and reviewed, the buyers will sign and date the offer on the signature page.
- initials at the bottom of every other page and the Schedule to acknowledge that they understand the terms of the offer.
- The signatures are typically witnessed by the salespersons.
- If the offer is accepted, the sellers sign the offer and insert their initials on every page except the signature page.
- The last party to accept the terms of the offer signs the Confirmation of Acceptance section, which also includes the date and time of acceptance.
- After this, the Acknowledgement section is completed, and the salespersons sign the Commission Trust Agreement on behalf of their brokerages.

### 16.2 Inserting Clauses for Terms of the Offer Deposit and Supplementary Deposit

- The initial deposit paid by the buyer is inserted on the first page of the offer and other supplementary or additional deposit clauses are inserted in the Schedule.
- The deposit is typically held in a trust account by the seller's brokerage as per the Agreement of Purchase and Sale.
- If the trust account is an interest-bearing account, an appropriate clause would be inserted in the Schedule, giving details on how it is calculated and who will receive it.
- When the deposit amount is large, the buyer may request that the amount be placed in a Guaranteed Investment Certificate (GIC).

#### Supplemental or additional deposits

- Additional deposits are paid by the buyer before the completion date when the amount of total deposit is large, which also increases the chances of acceptance of the offer by the seller.

*Essential Elements of the Clause: The clause includes the information as follows:*

The buyer agrees to pay a further sum of \_\_\_\_\_ This amount is to be credited towards the purchase price.

*Supplemental Deposit by a Specified Date: The clause format is as follows:*

The buyer agrees to pay a further sum of cheque not later than p.m. on the day of, 20 as a supplementary deposit to be held in trust in the same manner as the initial deposit pending completion or other termination of this agreement. This amount is to be credited towards the purchase price upon completion of this transaction.

*Additional Deposit Upon Fulfillment/Waiver of a Condition:*

The buyer agrees to pay a further sum of to by to by negotiable cheque, at the time of fulfilment or removal of the condition pertaining to , as an additional deposit to be held in trust pending completion or other termination of this agreement. This amount is to be credited towards the purchase price upon completion of this transaction.

#### **Acknowledgement Clauses**

No Warranty on Chattels → This clause is used when the seller does not provide any warranties on appliances.

- The buyer acknowledges that there are no express or implied warranties on chattels included in this Agreement

Water Access → to ensure the buyer acknowledges no road access at a clause

Discharge of Existing Mortgage → Seller to pay prepayment charges or fees for discharging mortgage

Growth of Illegal substance – Acknowledgement → buyer aware that the subject property was being used for growth or manufacture of illegal substances.

Buyer Acknowledges – Kitec Plumbing → buyer is making an offer on a property with Kitec

Underground tank Seller has removed → buyer wants assurances that tank was removed and contaminated soil cleaned

Ontario Heritage Act designation → buyer aware that the property is designated as a Heritage Property.

### Acknowledgements or Agreements

-This clause serves as an acceptance of an existing condition by both parties to an agreement, an affirmation of a fact that could affect one or more parties to the agreement.

-An acknowledgement is simply a written statement by one or more parties that something exists or does not exist.

-This helps avoid assumptions and clarify items that could lead to misunderstanding.

### **Representation or Warranties**

- The representation and warranty clause is intended to protect either the buyer or the seller regarding an existing fact or event that could be basis for rescinding (terminating) the agreement if found to be false.
- Since all matters in an agreement are merged or extinguished on closing, this clause assures that the seller is responsible for the condition of the property until the date of closing.
- The typical clause wording includes a statement that the representation and warranty will survive and not merge (extinguish) on closing but apply only to the state of the property on the day of closing.

Chattels and Fixtures: This clause is added to ensure that on closing the chattels and fixtures are in good working order.

- The seller is responsible until the closing date and if there is a problem after closing, the buyer is responsible.
- The seller represents and warrants that the chattels and fixtures included in this Agreement of Purchase and Sale will be in good working order and free from all liens and encumbrances on completion. The parties agree that these representations and warranties shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction.

Swimming Pool: In case there is an inground swimming pool in the property, this clause provides an assurance to the buyer that it meets provincial and municipal requirements:

- The seller represents and warrants to the best of seller's knowledge and belief that the swimming pool, its equipment, and the fencing of the said pool, comply with all applicable bylaws, regulations, and legislation. The parties agree that these representations and warranties shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction.

General Representations by the Seller: The buyer may notice water stains on the walls and wants assurance that the home has no water leakage or flooding problem.

- The seller represents and warrants that on completion there is no known water damage to the basement, roof, or elsewhere caused by water seepage or flooding. The parties agree that these representations and warranties shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction.

Specific Time Period: The buyer may want the seller to warrant the condition of the furnace, but the seller may only agree to for as long as the manufacturer's warranty.

### **Directions or Consents**

This clause gives authority or instruction for a party to take some action or do something to proceed with the agreement.

Examples:

The buyer may authorize the seller to deliver notices to the tenants regarding the new owner (buyer).

The seller agrees to provide reasonable access during daytime hours to the property for the purpose of a home inspection at the direction of the buyer between ---- - (date) --

--- to ----- (date) -----, 20xx.

*The clause: The clause is written in the following format:*

The buyer/seller authorizes and directs the buyer/seller to .. (pay,provide,assume,)

### **Covenants**

- A covenant is a promise by one party to the other party and can be either permissive or restrictive.



- This clause is used when there is an enforceable restriction or obligation with the subject property that binds all subsequent buyers.

*Permissive Covenant:* It may be in terms of a promise by the property owner to do something, such as pay money to use the land.

- For example, a buyer may agree to honour the existing rights granted to the neighbouring properties.

*Restrictive Covenant:* It may be in terms of a promise by the property owner that restricts the use of land for a specific purpose.

- For example, a buyer may acknowledge that the municipality has a bylaw that restricts renting or leasing the property.
- *The clause:* The clause is written in the following format:  
The buyer/seller agrees that/to.(Rights/Covenants/Promise)

### **Conditions**

- A conditional clause requires the occurrence of some event or performance of some act to be fulfilled.
- Common examples of conditional clauses include arranging mortgage financing, home inspection, sale of buyer's property, arranging insurance, etc.
- Condition Precedents are most commonly used and can be waived.
- Condition Subsequent, which are mostly used in commercial transactions, are self- fulfilling.

## **17. CONDITIONAL CLAUSES**

### **17.1 Types of Conditional Clauses Condition Precedent**

#### **An intro to Clauses**

- No conditions = binding once accepted and confirmation signed
- Conditions set out stipulations that can result in a binding contract either upon occurrence or non-occurrence of a specific event
- Minimizes risk of liability, and protects the interest of client

#### Conditional Clauses

- Two methods of drafting conditions
  - o *Condition Precedent* → calling for an event to happen, or act to be performed, before agreement is binding (most often used)
  - o *Condition subsequent* → Future even that, upon its occurrence, causes the contract to be no longer binding to the parties
- Notice must be provided to the party within the time period identified in the condition for proposed transaction to proceed
- Binding agreement is formed when the notice is provided indicating the condition is either fulfilled or waived
- If the notice is not provided indicating the condition is either fulfilled or waived the offer becomes null and void

#### Elements of Condition Precedent → 6 steps

1. *Who is to do it?* Identifies the party which is required to complete the task.
2. *Who is to pay for it?* Identifies the party which is responsible for the cost of the task.
3. *What is to be done?* Identifies the nature of the due diligence to be completed.
4. *Within what time limit?* Gives the time limits within which the task is to be completed. The buyer must either send a Notice of Fulfillment of Conditions or a Waiver within given date and time. This makes the agreement a legally binding contract.
5. *What happens if it is not done?* Most conditions state that the agreement will become null and void if a notice regarding fulfillment of the condition is not received within the specified time. If the party does not want to proceed with the agreement, no notice is required.
6. *Can it be waived?* The waiver provision allows the party to waive the condition instead of fulfilling it. This waiver must be received within the time period specified.

#### Waiver Provision:

- The Waiver provision in the clause allows the party for whose protection the condition was included to remove that condition entirely rather than fulfilling the condition.
- Binding agreement regardless of whether the specific terms have been fulfilled
- Party with the option to release their rights associated with the condition and proceed with the proposed transaction.
- Reads “ this condition is included for the benefit of the Buyer and may be waived at the Buyer’s sole option by notice in writing to the Seller as aforesaid within the time period stated herein

#### Conditions Drafted as a condition precedent

- Common conditions
  - o Financing, having the property inspected, confirming insurance can be obtained, sale of buyers property
- Different property types require different conditions
  - o Condo → review status certificate
  - o Multi-unit residential → an inspection to confirm fire and building code compliances
  - o Rural → testing the well or septic
  - o Waterfront → confirming the legal status of improvements
  - o Investment property → lease and financial info
  - o Vacant land → obtaining a building permit or confirming services

### True Condition Precedent

- Condition must be fulfilled exactly as its detailed in the offer for the proposed transaction to proceed
- Must be met , not waived
- No waiver provision is possible
- Used when the nature of the condition requires the approval or consent of a third party
  - o Mortgage Assumption, which is conditional upon approval of the buyer by seller’s lender.
  - o Sale of a parcel of land, which is conditional upon Consent to Sever by the municipality.
  - o A condition that the seller needs to be released from a previous offer.
- The agreement becomes legally binding when the Notice of Fulfillment of Conditions is sent by the party who needs to fulfil the condition.

### Drafting a true condition precedent and providing notice

- Same format as condition precedent with the exception of the waiver provision

### Condition Subsequent

- Provides that if the party does not wish to proceed with the proposed transaction, they must take action to terminate the agreement within the time limits
- The wording starts with – ‘The buyer may terminate this agreement □’
- Termination of the agreement can only be based on defined circumstances in the condition.
- No Waiver is necessary as a binding contract already exists.
- The buyer must send the Notice of Termination if he wants to terminate the agreement within the given time limits.
- If no notice is provided, the conditions within the agreement are deemed to be waived and either party can demand the agreement to be completed
- Unless the buyer terminates the agreement within the time limit, the conditions are deemed to have been waived and the agreement remains firm and becomes fully binding.
- Only time a party needs to give notice is if they are terminating the agreement
- Condition requires the consent of a 3<sup>rd</sup> party to be fulfilled
- **\*\*primary risk \*\*\*** “deemed waiver” this means that a buyer who forgets to deliver a notice may unintentionally automatically buy a property

	Condition Precedent	Condition Subsequent
<b>Terminology used</b>	Uses the term <i>offer</i>	Uses the term <b>agreement</b>
<b>Action Required</b>	Notice is required to <b>create</b> a binding agreement	Notice is required to <b>terminate</b> a binding agreement
<b>Waiver Provision</b>	Waiver provision <b>must be added</b> to the clause	Waiver provision is <b>deemed included</b> in the clause

### Common Conditions in a Residential Offer

- Arranging mortgage financing – new, seller take back, or mortgage assumption.
- Having the home inspection done by a professional home inspector.
- Confirmation that insurance can be obtained for rural property or a property with outdated systems.
- Sale of buyer’s property.
- Review of condominium status certificate by buyer’s lawyer.
- Fire and building code compliance for a multi-unit building.
- Testing of well and septic tank in rural properties. Confirming legal status of dock or boathouse for a waterfront property
- Obtaining building permit or availability of services for vacant land.

### 17.2 Financing Conditions Arranging a New Mortgage

- As a salesperson you could include min terms that a buyer would be willing to accept to ensure that all fundamental mortgage particulars are identified including
  - o Required min principle amount
  - o Max interest rate
  - o Min term

- Clause will also include a waiver provision which would allow the buyer the option to remove the condition whether the buyer receives the planned financing or not
- Time period for the condition to be fulfilled should be based on market conditions (typically 5-10 days)

#### Arranging a new mortgage satisfactory to the buyer

- Could include a clause stating that the offer is conditional upon arranging financing satisfactory to buyer
- Written as condition precedent → include waiver and notice of fulfillment
- If purchase price increased → no need to change working of the clause
- Well written condition precedent mortgage clause would include
  - o Waiver provision
  - o Estimated mortgage payment
  - o Required min
  - o Max interest rate
  - o Min term
- Clause Format:
- This offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new Charge/Mortgage satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than p.m. on the day of, 20, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

#### Arranging a New Mortgage (condition subsequent)

- same mortgage specifics as the condition precedent → no waiver provisions
- NOTE: condition subsequent is used and the financing is not approved, a notice of termination must be completed and delivered to the seller prior to the expiration on the time period
- This condition is included for arrangement of New First/Second Mortgage by the buyer at Buyer's Own Expense.
- The given amount includes the wording 'Not Less Than' to specify the minimum loan.
- If there are two mortgage loan conditions included in the offer, then the amount should be written as 'Not More Than' in order to prevent over-financing of the property.
- The annual interest rate includes the wording 'Not More Than' to specify the maximum interest rate.

#### Assuming an Existing Mortgage

- The buyer may assume seller's existing mortgage if the financing terms are attractive, such as a lower interest rate, as compared to current interest rates.
- However, the seller must be cautioned that unless they are specifically released from the personal covenant by the lender, there is a chance that they may be responsible if the buyer defaults on mortgage payments.
- May save on appraisal fees, legal costs, survey costs and seller saves on penalties or interest differential
- The clause must include the name of existing lender, the amount of loan to be assumed, the annual interest rate, the payment amount and the due date.
- Clause Format:  
The Buyer agrees to assume the existing Charge/Mortgage held by for approximately (\$), bearing interest rate of % per annum, calculated semi-annually not in advance, repayable in blended monthly payments of (\$), including principal and interest, and due on the day of, 20. This offer is conditional upon the Buyer obtaining the approval of the Chargee/Mortgagee to assume the existing Charge/Mortgage. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than p.m. on the day of, 20, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein. The Buyer hereby agrees to proceed immediately to make an application and provide such material as may be required by the Chargee/Mortgagee for approval of the Buyer as the Chargor/Mortgagor.

#### Three Essential Parts of Mortgage Assumption clause:

- The first part is an agreement that the buyer is assuming seller's existing mortgage.
- The second part is a condition that the buyer needs to be approved by seller's lender.
- The third part of the clause is an agreement that the buyer will proceed immediately to make an application to lender and provide required documents.

- Since the condition needs the consent of a third party (the seller's lender) to be fulfilled, this condition cannot include a waiver provision, and hence, it becomes a True Condition Precedent.
- The buyer must send a Notice of Fulfillment of Conditions to make the agreement a legally binding contract.

#### Impact on Conditional Clauses Related to Financing: Time Frames

- *Seller's Market*: include shorter timelines
  - o More buyers competing for properties + Seller has a larger buyer pool
  - o Seller may not want to tie up their property with too many conditions
- *Buyer's market*: include longer timelines
  - o More properties on the market + Homes are more likely to sit unsold
  - o Buyers have more chances and more leverage
- Other factors → lender requirements such as documents
- High ratio mortgage → approval may required by the lender
- Appraisal needed → longer conditional period

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#### **Seller Take Back Mortgage (STB)**

- This clause is used when the seller gives a mortgage loan to the buyer and takes back mortgage of the same property.
- This is an Agreement clause and not a conditional clause, which allows for negotiation of more creative terms between the seller and the buyer.

#### Benefits to the Seller

- Higher interest earnings and monthly income → can set interest rates higher = increased return on investment
- Improved Marketability of Property → an attractive feature in slow market or for a hard to sell property.
- Higher Purchase Price

#### Benefits to the Buyer

- Alternate Mortgage Financing → buyer who requires additional funds.
- Savings on cost and Timing on Financing → various costs through banks and approval time
- Negotiable interest Rate and Terms → allow buyer more flexibility in negotiating the rate of interest and terms of the mortgage

#### Conditional Clauses related to STB

- Clearly state the terms agreed to by the seller and the buyer.
- Document exact amount, interest rate, monthly payments, term of the mortgage
- The seller agrees to take back a Charge/Mortgage in the amount of(\$), bearing interest at the rate of % per annum, calculated semi-annually not in advance, repayable in blended monthly payments of (\$), including principal and interest, and to run for a term of years from the date of completion of this transaction.

#### Credit Check:

- This clause may be required with Seller Take Back (STB) mortgage if the seller wants to ensure repayment credibility of the buyer.
- The clause specifies that the seller must be satisfied with personal information and creditworthiness of the buyer.
- This condition is for the benefit of the seller and may be waived by the seller.

#### Postponement:

- Privilege given to a mortgagor to pay all or part of the mortgage debt in advance of the maturity date
  - o Allows to make payments in addition to mortgage payments
  - o Options include:
    - Fully open → prepay any amount any time
    - Open → pay all or part of the principal on the next mortgage day
    - Open on anniversary date → pay a percentage of the original principal amount on each anniversary date without notice or bonus
    - Prepayment subject to a bonus → pay a percentage of the original principal amount on each anniversary date subject to a bonus of a specified number of months interest on the principal being prepaid
- This clause permits the mortgagor, when not in default, the privilege of prepaying all or part of the principal sum amount any time or times without notice or bonus

#### Renewal:

- This clause gives the mortgagor (the buyer) a privilege to renew the STB mortgage once the term is completed provided the loan is in good standing.

- The buyer may want to renew on the same interest rate if the rates are increasing but the seller may want to take advantage of the current higher interest rates.

#### Postponement Clause

- Commonly used in second and subsequent mortgages such as a STB, gives the buyer the right to arrange a new first mortgage or renew the existing mortgage in priority to the second
- Upon default, the first mortgage would be paid before an existing second or subsequent mortgages are paid. If the second mortgage term extends beyond the first mortgage term, a postponement clause is a must
- Protects the first mortgagee + the mortgagee for the second mortgage is also protected by this clause

#### Over Financing Prevention:

- When the new first mortgage includes the wording 'not less than' the buyer may borrow more than the specified amount from the lender.
- In case the agreement involves STB mortgage as well, these words are replaced with 'not more than' to prevent overfinancing.
- The seller has agreed to a set amount of the second mortgage based on their comfort
- Because of the wording "not less than" the buyer could arrange a mortgage for a higher amount and the seller would be unaware of the amount, higher amount = the less the buyer's down payment which could put the seller's mortgage at risk
- Clause would state that if the buyer arranges a mortgage amount higher than stated in the clause, the excess monies would need to be applied to reduce the second mortgage
- In the event that the first mortgage arranged by the Buyer has a principal amount in excess of (\$), the principal amount of the second mortgage will be reduced by the excess amount, with a corresponding reduction in the payment for the second mortgage. The Buyer agrees to provide the Seller or the Seller's lawyer with a confirmation of the principal amount of the first mortgage to be arranged.

#### Right to Sell the Mortgage:

- This condition is included for the protection of the seller in case the seller decides to sell the mortgage to another lender.
- An acknowledgement or agreement clause can be included for the buyer to ensure that they understand and agree that the mortgage may be sold, and the buyer agrees to provide any information required to sell the mortgage.
- Lenders involved in purchasing an STB mortgage normally require the following
  - o Seller to declare that there is good title other than encumbrances declared in the purchase agreement and allow a time limit to check out that title. It should be noted that title insurance can be required
  - o Seller to sell at a discounted value, to increase the rate of return to the investor, unless the mortgage already has terms that are favourable
  - o The seller to supply an assignment of mortgage
  - o The seller to supply affidavit attesting to the balance of the mortgage and that such mortgage is up to date
  - o Inspection

#### Discharge of Existing Mortgage:

- This clause ensures that the seller understands there may be a penalty to discharge their mortgage before expiry of the term. This may reduce the net amount the seller will receive from the sale.

### **17.4 Supplemental Conditional Clauses Home Inspection**

#### Property Inspection

- The home inspection condition is used so that the buyer may hire a professional home inspector to check the condition of the property.
- As per the wording of the clause, the buyer pays for the cost of home inspection.
- The clause wording specifies that the inspection report must be satisfactory to the buyer, in buyer's sole and absolute discretion.
- The seller agrees to provide access to the property for the purpose of this inspection.
- Can include wording that allows the seller to remedy any deficiencies found during a property inspection
- Can limit scope too ex... limit to mechanical
- *Sellers market* → allow the seller to remedy any deficiencies *buyers market* → not to offer the opportunity for the seller to remedy any deficiencies but to choose to have the inspection as their sole and absolute discretion

This offer is conditional upon the inspection of the subject property by a home inspector at the Buyer's own expense and obtaining of a report satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than p.m. on the day of, 20, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property for the purpose

of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

General Home Inspection: Typical residential home inspection covers the physical structure, electrical system, roofing, plumbing, heating, air conditioning, insulation, and general interior/exterior condition.

- The report specifically includes general and property specific limitations of inspection.
- The home inspection is not done according to the Ontario Building Code.
- A standard home inspection does not cover the Water Well or the Septic Tank in rural properties.

#### Obtaining Insurance

- Clause stating that prior to completion the buyer will confirm that the property can be insured against fire
- The decision to include this condition is based on the age of the structure, its location, and condition of the property.
- *Factors influencing insurance*
  - o rural property is far from a fire station and the distance will impact the insurance premium.
  - o Outdated wiring in the property, underground oil tank, or other matters may require remedial action and can impact the insurance premiums.
- Due to the nature of the clause, a short time frame is recommended for this condition.
- Clause Format:
  - o This offer is conditional upon the Buyer arranging insurance for the property satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than p.m. on the day of, 20, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property, if necessary, for any inspection of the property required for the fulfilment of this condition. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

#### Sale of Buyer's Property (SBP)

- This conditional clause makes the agreement conditional upon sale of buyer's property.
- This clause might include a lengthy time period to fulfill (e.g. 60 or 90 days).
- An agreement with such a condition is generally accepted by seller in very slow market or if the property is unique.

#### Clause Format:

This offer is conditional upon the sale of Buyer's property known as

. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than p.m. on the day of

, 20, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property, if necessary, for any inspection of the property required for the fulfilment of this condition. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

- Typically, the SBP clause is followed by an Escape Clause.

#### The Escape Clause

- An Escape Clause is typically used with any condition that involves a lengthy condition in the agreement, such as a condition involving Sale of Buyer's Property.
- Allow the seller to continue offering the property for sale and to accept a second offer during the conditional period of the first offer
- Buyer would then need to decide to waive the condition and continue with the transaction or release the seller for it
- Typically includes a time period of 24-72 hours for the first buyer to make decision to waive and release seller

#### Clause Format:

Provided further that the Seller may continue to offer the property for sale and, in the event that the Seller receives another offer satisfactory to the Seller, the Seller may so notify the Buyer in writing by delivery to the Buyer personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto. The Buyer shall have hours from the giving of such notice to waive this condition by notice in writing delivered to the Seller personally or in accordance with any other provisions for delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto, failing which this offer shall be null and void, and the Buyer's deposit shall be returned in full without deduction. The seller can continue to market the property after the Confirmation of Acceptance has been signed. In case the seller receives a better offer, he would give 48/72 hours' notice to the buyer to waive conditions and make the agreement firm. If the buyer does not respond within the given time period, the offer becomes null and void.

- The seller can now sell the property to the other buyer with a better offer.
- More likely to be accepted in a buyers market

## Lawyer's Approval

- Some sellers or buyers may refuse to accept any offer unless their lawyer has reviewed the offer and approved the terms included.

### Clause Format:

This offer is conditional upon the approval of the terms hereof by the Buyer's Solicitor. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

## **17.4 Supplementary Conditional Clauses: Environmental Issues**

### Oil tank → aboveground or underground Clause

- *Aboveground*: This conditional clause allows the buyer to get the aboveground oil tank tested to determine that the tank system is safe and meets the current requirements of the Technical Standards and Safety Authority (TSSA).
- *Underground - Seller Has Removed*: In this clause, the seller makes a disclosure that the underground oil tank was removed by a contractor licensed by the Technical Standards and Safety Authority (TSSA).
  - o It provides assurance to the buyer that the tank was removed properly, the surrounding soil was tested, and any contamination was removed
- *Underground – Seller to Remove*: In this clause, the seller agrees to get the underground oil tank removed by a contractor licensed by the Technical Standards and Safety Authority (TSSA).

### Vermiculite and Asbestos

- This condition is included to ensure that the subject property is not insulated with vermiculite or asbestos.
- Vermiculite is a mineral that does not burn and when heated, it expands and is suitable for insulation.
- Vermiculite itself is not a health hazard but it may contain asbestos which when airborne and inhaled can cause health issues.
- If the seller is aware that the property is insulated with vermiculite containing asbestos, this fact must be disclosed to the buyer as this is a material latent defect.
- There may be a concern if the buyer wants to renovate the property because the dust from broken tiles may become airborne and create health problems.
- The buyer may want to get the property inspected, and if the report is not satisfactory to the buyer, he may terminate the agreement.

### Water systems

- Typically, the buyer hires a professional to collect water samples from the actual water supply, which is sent to the local Public Health department for testing.
- The buyer has the right to walk away from the agreement if the condition is not fulfilled.
- Three Parts of Condition:
  - o Quantity: There must be adequate water supply to meet the buyer's household needs,
  - o Equipment: The pump and all related equipment serving the property must be in proper operating condition, and
  - o Potability: The buyer can obtain a Bacteriological Analysis of drinking water from the authority having jurisdiction indicating that there is no significant evidence of bacterial contamination.

### Septic System

- Must be adequate to meet the needs of the buyer's family
- May want to include this conditional clause to make sure that the system is located totally within the property boundaries and meets the setback requirements.
- It also ensures that the septic system is installed correctly and with applicable permits from the municipality.
- An additional representation and warranty clause can be included to address the working condition of the septic system.

### Zoning

- This clause is used when the buyer wants to apply to the municipality for change in zoning of the property to allow for a different use.
- It can also be used if the buyer wants to apply for a minor variance.



- In case the change in zoning or minor variance is not approved, the buyer may not want to proceed with the transaction.
- Since the required consent for fulfilment of condition is by a third party (the municipality), the condition becomes a True Condition Precedent.
- If the buyers wish to retain the right to purchase the property, even though the rezoning is not approved, then a waiver should be included
-

## **18. COUNTER OFFER AND COMPETING OFFERS**

### **18.1 complete an Agreement of Purchase and Sale with Conditions**

#### Information to identify in an Offer Plan Related to Conditions

- **Required Dates (step 2 of the offer plan)**
  - o The offer plan should itemize these dates in chronological order
    - Offer date
    - Irrevocable
    - Expiry of conditions – condition date
    - Requisition – title search date
    - Completion or closing date
- **Required Clauses (Step 3 of the offer plan)**
  - o Clause identifying the balance due on completion must be included in every offer
  - o To organize these clauses → use these steps as a guidance
    - List the conditions with short timeframes A) financing B) inspection, C) insurance
    - For a condition with a longer period, such as D) the sale of a buyers property, the conditional period will be longer for example 30 days
    - Use one condition with the same timeframe for A, B, C
    - A separate condition should be used for D as the conditional period will be longer and the condition may include an escape clause
  - o Using one date for conditions A, B, C will simplify the process and allow better tracking

#### **Guideline for Writing Multiple Clauses**

- Review Clauses
- Be Precise (avoid vague wording)
- Group Clauses when possible simplify by grouping similar requirements For ex. Rental property might want to include a review of the following → tenant records, rental amounts, fire safety issues, building code compliance
  - o You might group these items under on condition that states the property meets these requirements
- Be concise
- Redraft Offer

#### Stacked Conditions

- Several conditions can be stacked one over another when they have the same date and time for fulfillment.
- All stacked conditions must be either Precedent type or Subsequent type.
- The conditions are written in the sequence of the tasks to be completed.
- Single fulfillment or waiver date for multiple conditions (helps avoid repetitive language)

#### Typical Format:

“This offer is conditional upon:

1. The Buyer arranging a new first mortgage☐.
2. The inspection of the subject property by a home inspector☐

This is followed by:

“Unless the Buyer gives notice in writing delivered to the Seller☐”

## **18.2 REBBA Requirements for Counter Offers Copies of Offers**

### **Complete A Counter Offer**

#### Retaining Copies of offers

- According to REBBA, a valid offer must be in writing and signed by the buyers, otherwise a salesperson cannot indicate that they have an offer.
- The brokerage must convey all written offers and counter offers to the client as soon as practically possible.
- REBBA requires brokerages to retain documents and records relating to trade for min 6 years

- If the seller rejects the offer without making a counter offer, the listing brokerage must retain a copy of the original offer for a period of at least one year after the brokerage received the written offer
- If the seller counters the offer but it is not accepted, the listing brokerage must retain copies of the original as well as counter offers.
- For unsuccessful offers → retain a summary document instead
- Copy of original offer, during a counter offer, must be retained by the listing brokerage for a period of at least one year (summary document can be used)
- For every written offer that is received on behalf of a seller, whether it is a buyers original or an agreement of purchase and sale with changes made during negotiations, the offer is considered a separate offer and the listing brokerage is required to retain a copy of the agreement of purchase and sale and all related documents and records

### Summary Document

- A summary document may be used by the brokerage instead of retaining all offers and counter offers that are not accepted by the seller.
- Can be used for the following conditions
  - o Seller's brokerage receives the offer on behalf of the seller
  - o The offer is made through a brokerage on behalf of the buyer
  - o The offer did not result in a transaction, the offer was not accepted
  - o The summary contains all required information
- Specific information to be included
  - o Buyers name and signature
  - o Seller's name and contact
  - o Name of the buyers brokerage + representative
  - o Name of the sellers brokerage + representative
  - o Address, legal description of property
  - o Date and time the offer was made
  - o Date and time the offer was received by the brokerage and how the offer was received
  - o Date of presentation
  - o Date and time until offer is irrevocable
- Although a summary document may be used instead of retaining copies of all unaccepted offers, it is not a substitute for the Agreement of Purchase and Sale during negotiations.

### *Legibility*

- If the offer becomes illegible
  - o Create a new offer for the next counter offer, make sure each amendment is written and legible

### **Counter Offer**

- Ensure the seller or buyer fully understand any changes they make releases the other party of their obligations
- A counter offer is a new offer from the seller to the buyer. The seller now makes it Irrevocable for the buyer. The word 'Buyer' in the Irrevocable clause is replaced with the word 'Seller'. The seller may extend the Irrevocable time, if required.
- 3 options
  - o Amend the original offer → insert required changes , delete terms not acceptable and add terms
    - Initial each change
  - o Draft a new offer → significant changes and inserting changes is difficult
  - o Prepare Counter offer form → itemizes each change in detail, rather than seller signing purchase of sale, they sign this form

### Amending the Original Offer

- All changes need to be initialed by the party to indicate agreement
- Prior to any changes to a buyers offer, the sellers brokerage should ensure a copy of the unsuccessful offer, is retained
  1. Make copy of the original
  2. Amend offer by crossing out the original text and inserting the change
  3. Change the irrevocable

4. Initial changes
5. Present the counter offer to the buyer
6. Complete confirmation of acceptance and acknowledgement

#### Seller Accepts the Original Offer

- The seller initials at the bottom of all pages and inserts signatures.
- The salesperson signs as a witness.
- The Confirmation of Acceptance is signed by one of the sellers.
- All above steps must be completed before the specified Irrevocable time.

#### Typical Changes in a Counter Offer

Purchase Price: The seller's price in counter offer may be somewhere in between the list price and the buyer's offer price.

Deposit: The amount of deposit is an indication of good faith between the parties and the seller may want to increase this amount if it is too low. A deposit with certified cheque increases the chances of acceptance.

Completion Date: A change in completion date for negotiations may impact the financial aspects of the seller or the buyer.

For example, the seller may have a firm date for purchase of a new home.

Conditions and/or Terms: The seller may reject certain condition(s) in the offer or may want to insert some other clause or condition.

Chattels and Fixtures: Salespersons must ensure that there is no confusion regarding chattels included and fixtures excluded.

- The sellers do not sign the Confirmation of Acceptance. The offer is sent back to the buyer before the specified Irrevocable time.
- Assuming that the buyer accepts these changes, the buyer initials all changes confirming the acceptance of changes.
- The Confirmation of Acceptance is now signed by one of the buyers.

#### Changing the balance Due on Closing in a Counter Offer

When a counter offer contains a change to the purchase price and/or deposit the change impacts the balance on closing

- Might need to amend the amount under *Buyer agrees to pay the balance*
  - o S (seller take back mortgage)
  - o A (assumed Mortgage)
  - o D (deposits)

#### Changing the Irrevocable

- In a counter offer need to change irrevocable
- Irrevocable specifies who the offer is coming from as well as the deadline for making the decision about the offer.
- If the party making the counter offer is changing the time or date, the change is made in the same way by placing a line through the time or date and inserting the new deadline (remember to initial)

#### Accepting a Counter Offer

- To accept a counter offer from the seller, the buyer must
  - o Initial all changes made by the seller
  - o Complete and sign the confirmation of acceptance on the A of P and Sale
  - o Complete and sign Acknowledgement portion on the A of P and Sale
- As the salesperson for buyer
  - o Provide a copy of the accepted offer to each buyer
  - o Sign the commission trust agreement on the A of P and Sale and obtain the listing brokerages signature when providing documents to the listing salesperson
  - o Provide copies of the accepted offer to the listing salesperson
  - o Retain a copy of the accepted offer for the brokerage records

#### Acknowledgement

- The parties Acknowledge that they have received copies of the Accepted agreement. -Typically, the last party to accept the terms of the offer signs the Confirmation of Acceptance and then signs the Acknowledgement section.

- The Address for Service section is completed.
- Lawyer's information may be completed at this time or at a later date.
- Salespersons of the listing brokerage and the co-operating brokerage sign the Commission Trust Agreement.

### 18.3 Completing a Residential Agreement, counter offers + working with Competing Offers

#### Working with Competing Offers

##### Requirements

- All written offers must be presented to the seller in the order they are received.
- Must disclose the existence of all competing offers to each buyer, and
  - o If from the same brokerage, the seller's salesrep should advise them
- Must not disclose the content of any competing offer to any buyer.
- If an offer has not been presented to the seller, the buyer may withdraw the offer if they decide not to participate in the multiple offer situation.

#### Disclosure of Agreements relating to commission

- When a brokerage offers a commission reduction, it is essential to create an appropriate agreement.
- All commission reduction agreements negotiated by a salesperson are binding on the brokerage so ensure you check with the brokerage for policies
- Code requires the disclosure whenever a commission agreement could impact the sale and whether it is accepted
- This could occur when a brokerage seller are signing or seller is being presented one or more offers
- In any commission reduction situation, the listing salesperson must disclose the details and terms of the commission reduction agreement in writing to all buyers who have made a written offer
  - o Must occur before the seller accepts any offer
- An agreement to reduce gross commission by a brokerage may be effective only when
  - o One salesperson is working with both the seller and the buyer in a transaction (commission will be ↓↓)
  - o When two salespersons from the same brokerage are working with both the seller and buyer
  - o When a competing offer situation exists, the brokerage may exclude any commission reduction identified on the collateral agreement
- Most common
  - o One brokerage → working with both the seller and buyer
  - o Two brokerages → the co-operating brokerage offers to reduce the commission being paid to that brokerage

#### Disclosure of multiple representation (requirements under the code)

- If there are competing offers and one offer is from the buyer client of the listing brokerage; this creates a multiple offer and multiple representation situation.
- A disclosure of multiple representation must be made to all parties.
- Written consent of the parties must be obtained at the earliest practical opportunity but before an offer is presented.
- Occurs when
  - o Brokerage represents the seller and buyer
  - o Brokerage represents multiple buyers

#### Buyers

- Risk for buyers
  - o Price – with competing offer, a higher price will be more successful
  - o Removing the condition of property inspections
- Strategies for buyers
  - o Best offer first (make sure you research comparable sales in area)
  - o Pre – Approved Mortgage – should know the max amount they could get from their lender
  - o Deposit → larger deposit
  - o Proof of funds → have seller speak with their lender indicating the buyer's financial ability
  - o Completion date → when is the seller's optimal closing date, be flexible
  - o Unconditional or firm offer might be more desirable
  - o Inclusion, maybe leave out chattels you were hoping the seller would sell
  - o Right price with shortened irrevocable time period can help put the buyer in a better negotiation position

## Sellers

- Risk
  - o Conditions → if conditions are not met the risk is the potential loss of transaction
  - o Countering offers → they may not accept the offer + other buyers might have put offers on other houses
  - o Seller can reject all offers and advise buyers to bring back their best offer at a specific time which can be dangerous
- Strategies
  - o Irrevocable time difference → ensure everyone is identified
  - o Offer presentation time → opportunity to have many buyers view the property and consider placing an offer before addressing any offer (generates interest, builds competition, and produce more offers for the seller to consider)
  - o Property inspection report → seller could obtain one and make it available to any buyer during the property viewing indicate seller is providing as much information as possible

Best Offer First: In a seller's market, the sellers tend to look at the best offer first and there is little room for negotiations.  
-The buyer should be advised to make their offer strong after a research of comparable sales in the subject neighbourhood.  
Pre-approved Mortgage: If the buyer has a pre-approved mortgage, combined with a large down payment, it will increase the chances of acceptance.

Deposit: A large deposit gives the seller more confidence about the seriousness of the buyer. This also indicates that the chances of mortgage approval are strong.

Proof of Funds: Whether the offer includes a financing condition or not, the chances of acceptance of offer are increased if the seller gets an assurance that the buyer has sufficient funds available to complete the transaction.

Completion Date: Buyers should pay attention to the completion date given in the listing.

Conditions: In a multiple offer situation, an unconditional or firm offer is desirable by sellers. However, the buyer needs to be cautious about the risks associated with an unconditional offer.

Inclusions: The buyer might want to leave out some chattels included if they are insignificant.

Irrevocable: A right price combined with a short irrevocable time can put the buyer in a strong negotiating position in a multiple offer situation.

Risk and Strategies for the Seller

Irrevocability: The seller must be made aware of irrevocable time in each competing offer as several offers may appear to be similar.

Presentation Time: The seller may ask the salesperson to withhold offer presentation until a specific day and time to have as many buyers view the property and make offers. -During this time, offers can be registered but no offers are presented.

Property Inspection: The seller can have the property inspected and make the report available to buyers, which may result in fewer conditions and a higher offer price.

Three possibilities

The seller has three options in case of multiple offers, and each has different consequence.

Possible actions by sellers during offer negotiations -

-One Offer Accepted – It may be conditional, and the condition may not be fulfilled. -One Offer Countered – This buyer may wait until the Irrevocable time expires and the offer becomes Null and Void.

-All Offers Rejected – All buyers may look for other properties.

Real Risk: The seller must not counter more than one offer at a time as more than one buyer may accept the counter offer.

-This may result in competing contracts and lawsuits as the seller cannot sell the property to two buyers.

-This strategy should never be seriously considered.

## 19. ADDITIONAL DOCUMENTS AND LEGAL OBLIGATIONS

### 19.1 Additional Sale Related Documents Amendment to Agreement of Purchase and Sale Amendment

- An Amendment to Agreement of Purchase and Sale form is used by the parties to make changes to an accepted agreement.
- Delete any term agreed to, revise any term agreed to, or add any term agreed too
- Completion date, purchase price, chattels and fixtures, seller or buyer names
- Does not void the agreement, the amendment adds, deletes or revises it.
- Will include a irrevocable time period
- If the amendment is not accept or counter offer to the amended is not made by the other party in the irrevocability, the amendment is null and void and the terms originally agreed to remain in affect
- The following is required to document an amendment
  - o Cross reference the amendment to the agreement of purchase and sale
  - o Insert the wording being delted exactly as shown
  - o Insert the new working (when required) exactly as it should be shown
  - o Insert the irrevocable date
  - o Have all parties, sign
- The party making the changes signs the amendment form before it is sent to the other party.
- If changes are acceptable, the other party signs the Confirmation of Acceptance and the Acknowledgement sections.

#### Accepting the Amendment to the Agreement of Purchase and Sale

- Other party initials and signs to confirm their agreement
- All parties who signed the original A of P and S also sign the agreement of purchase and sale
- Confirmation of acceptance also signed
- Amendment can be imitated by either party (seller or buy) and a counter offer made to any offer to amend the originally accepted offer

#### **Notice of Fulfillment of Conditions**

- An accepted offer containing one or more conditions will require written notice to be provided to the other party within the due diligence time period provided in the agreement of purchase and sale.
  - o whether the party has fulfilled the conditions exactly as provided for in the other, will impact the type of notice provided
- This form is used to notify a party that a Condition Precedent or a True Condition Precedent has been fulfilled.
  - o *Condition precedent* → requires notice that the condition is either fulfilled or waived within the specified time period otherwise its void. *True condition* precedent can only be fulfilled
  - o *Condition subsequent* is binding upon acceptance of the offer with the ability to terminate the agreement within the specified time period. No notice is required for a condition subsequent to identify a condition has been fulfilled or waived.
- When signed by all parties, this form makes the Agreement of Purchase and Sale a legally binding contract.\
- The form must be sent by the party which was to fulfill the condition before the date and time specified in the condition to notify the other party.
- When completing this form, a cross reference is given to the original agreement, the condition being fulfilled is inserted, and the parties sign the form.
- The Acknowledgement must be signed either by the party or the brokerage before the expiry of the time period specified in the condition.
- Copies of the signed notice are provided to each party and the brokerages retain a copy for their records.
- When a condition fulfilled exactly as in agreement → notice of fulfillment

#### Completing a notice of fulfillment of conditions

- Cross reference the notice to the agreement
- Insert the exact clause
- The party providing the notice signs and dates the notice
- The party receiving the notice signs, dates and inserts the time

- Brokerage representing a seller or buyer may sign the acknowledgement on behalf of the client. If they are a customer, they have to sign it themselves.
  - o If it's a multiple representation the brokerage is also not authorized to sign
- Copies of the notice are provided to each party and a copy is retained by the brokerages

### **Providing Notice – Using a Waiver**

- Notice of fulfillment → used to indicate a condition has been met
- Waiver → waive or remove a condition that is in the agreement
  - o Can only be used if the clause in the accepted offer contains a waiver provision
- Waiver provision is included in most conditions
- If the clause does not contain waiver provision, it is a true Condition Precedent
- When completing this form, a cross reference is given to the agreement, the condition being waived is inserted, and the parties sign the form.
- The Acknowledgement must be signed either by the party or the brokerage before the expiry of the time period specified in the condition.
- Copies of the signed notice are provided to each party and the brokerages retain a copy for their records.
- Multiple representation + customer , brokerage cannot acknowledge receipt

### Situations requiring the use of a waiver provision

*Property inspection* → benefit of the buyer to obtain limited inspection and report findings of anything over an \$\$ ex.

Condition to report deficiencies can be remedied at not cost greater of \$2000. Inspection report indicates remedied for \$3000. Buyer says that is okay and wants to proceed. He would provide a waiver which removes the condition.

*Obtaining Insurance* → benefit of the buyer to arrange insurance on the property

Unsure if he can get insurance in the area as its rural. Condition indicate the cost for insurance was not to exceed \$1,000 a year. Proper has been inspected and annual policy is \$1,150. Buyer is okay and notices a waiver.

### **Competing a Mutual Release**

- Is signed to release all parties and the brokerage from any claims or obligations from the proposed transaction, and to identify how the disbursements and deposit will occur
- This form also authorizes the listing brokerage to withdraw the deposit from its Real Estate Trust Account and return it to the buyer.
- When completing this form, a cross reference is given to the agreement, the terms for disbursement of deposit are inserted, and an irrevocable time period is provided.
- The party receiving the Mutual Release signs and dates the form and the Confirmation of Acceptance section.
- The form is signed by the broker of records of both the listing brokerage and the co- operating brokerage.
- Copies of the form are provided to all parties and are also retained by both brokerages.
- Broker of record signs the mutual release

### *Binding agreement can occur when*

- Conditional offer was accepted and the conditions have been fulfilled or waived by the party
- A conditional offer was accepted, and the conditions were written in a condition subsequent format
- An unconditional offer was accepted

### Termination of Agreement by Buyer

- Recap: when a condition subsequent is included in an offer, there is a binding agreement once the offer has been accepted. The condition provides an opportunity to terminate the agreement within the time period of the condition. If time period expires without the agreement being terminated, the agreement remains binding.
- No matter what the cause, a binding agreement must be terminated as a mutual release does not serve this purpose.
- This form is used when the buyer initiates the termination of a legally binding agreement.
- This form is typically accompanied by the Mutual Release form.

### Termination of Agreement by Seller

- This form is used when the seller initiates the termination of a legally binding agreement.
- This form is typically accompanied by the Mutual Release form.



## 19.2 Requirements Under REBBA Disclosure of Sale/Purchase by a Registrant

- Interested party → registrant is seller or buy, a relative, shareholder of a company, providing financing etc.
- Direct interest → seller or buy of the property
- Disclosure requirements
  - o written disclosure must be made to the other party and signed acknowledgement must be received.
  - o All facts within your knowledge that affect or will affect the value
  - o Notice of any negotiation, offer or agreement that you have conducted
  - o Details of any payment that will be paid to you by anyone as part of the transaction, other than what is listed in a listing or other service agreement
- The disclosure notice must include –
  - o A statement that the individual is a salesperson, broker, or brokerage.
  - o Full disclosure of all known facts that may affect the value of the property.
  - o Details of negotiations with any third-party for subsequent sale of the property.

### Written direction for Receiving Offers

#### Written Directions from a Seller

- REBBA requires that the brokerage must convey all written offers to the client at the earliest practical opportunity regardless of the person making the offer, the contents of the offer, and the nature of commission.
- In some situations, the brokerage may have written directions from the client to delay receiving an offer.
- In a typical seller's market, the seller might direct the brokerage to delay the offers in order to generate competing offers.
  - o Must say the pros and con's of
    - Pros → generate interest in their property
    - Con → buy who does not want to wait could decide not to place an offer

Pre-emptive Offers: This occurs when a buyer directs the salesperson to ignore seller's directions and present the offer prior to the time specified by the seller.

The irrevocable time of a pre-emptive offer typically expires before the seller's offer presentation time.

#### Changes to the Direction

- Seller or buyer can change direction at any time ; however a new written direction is required to do so
- Following steps must be taken
  - o The notes to any listing for the property must be changed to accurately reflect the new offer process
- Notify, in writing, anyone who has expressed an interest in the property of the change to the offer process
  - o Anyone who booked an appt, viewed the property, submitted an offer etc

### Retention of Documents

- Salespersons may retain copies of sale related documents for their personal records.
- However, they must ensure that the documents are safeguarded and meet the privacy requirements under the Personal Information Protection and Electronic Documents Act (PIPEDA).
- The brokerages must meet document retention requirements under REBBA, which includes additional requirements for the listing brokerage to retain copies of all unaccepted offers.
- Summary documents can be used for unsuccessful offers (may not be used when the person making the offer is not a client or a customer of a brokerage)
- Retain documents for 6 years
- The offer process is a closed offer process, which means that offers remain confidential and contents of any offer are not provided to anyone except the seller.

### Safeguarding Information

- All information related to sellers, buyers, potential transactions, and completed transactions must be retained in compliance with the provisions of the Personal Information Protection and Electronic Documents Act (PIPEDA).
- Salespersons may retain 'shadow files', which include copies of the relevant documents, notes taken during inspections, and copies of emails or other communication with the clients.

Types of Information: Personal information of an identifiable individual is that which is easily associated with that person such as their name, address, etc. Sensitive information includes financial information of the person.

Brokerage Policy: Brokerages must have internal privacy policies for handling, retention, and destruction of personal and sensitive information, and a privacy officer must be designated to ensure compliance.

Mailing List: When creating a mailing list on a website, explicit consent must be obtained for collection of information and to send promotional emails. This must be in compliance with Canada's Anti-Spam Legislation (CASL).

Implementing Safeguards: The sellers and buyers must be informed how the information would be used, written consent for collection of information must be obtained, information should only be used for the purpose it is collected, and adequate security arrangements should be in place to safeguard information.

### **Trade Record Sheet**

- A Trade Record Sheet (or transaction file) is created by each brokerage for its activities which result in a real estate transaction.
- Each trade is uniquely identified with a sequential identifying (trade number)
- This document is required irrespective of the fact whether a party is a client or a customer.
- Prepared by the seller's and buyer's brokerages when offer is accepted
- All documents, communications and details relating to a trade should be included in the transaction file
  - o Ensure copies are given to brokerage
- Most common things included are
  - o Representation or customer service agreement
  - o Agreement of purchase and sale
  - o Amendments
  - o Notices (fulfillment or waiver)
  - o Receipts for deposits
  - o Communication with lawyers and other brokerages
  - o Trade record sheet
- it must be signed by the salesperson and the broker of record.
- Also completed when a brokerage receives any payment with respect to a trade including any referral fees or appraisal fees.
- When two salespersons from the same brokerage are involved in a transaction, separate -Trade Record Sheets are created for the listing salesperson and the co-operating salesperson detailing their commissions.
- When the brokerage holds a buyer's deposit in its real estate trust account, the Trade Record Sheet includes information relating to receipt and distribution of funds.

### Typical Information in Trade Record Sheet:

- *Nature of the Trade:* Sale, purchase, lease or rent, etc.
- *Description of Real Estate:* Municipal address or legal description of the property.
- *True Consideration:* Purchase price, amount of rent, etc.
- *Parties:* Names of the individuals involved in the transaction.
- *Lawyers:* Names and contact information of the lawyers of the sellers and the buyers.
- *Registrants:* Names and contact info of the listing brokerage, the co- operating brokerage and their salespersons.
- *Deposit:* The amount of deposit and its description.
- *Commission:* The amount of commission payable to the listing brokerage and the co-operating brokerage.
- *Completion Date:* The date when the transaction would be closed.

### Additional Info

A brokerage may customize the format and add additional information provided that all min requirements for trade record sheets are met. Additional info can include

- Date of the trade record sheet
- Internal reference number related to the transaction, such as a number provided by local listing service
- Commission distribution
- Interest earned on a buyer's deposit
- Commission trust agreement between the brokerage and salesperson

### **19.3 Document Requirements Under FINTRAC**

#### **Proceeds of Crime (Money Laundering) and Terrorist Financing Act**

- This Act is administered by Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).
- It applies to all businesses including real estate brokerages with respect to suspicious activities or transactions.

#### **Compliance Requirements for Brokerages:**

Compliance Officer: Every real estate brokerage must appoint a compliance officer to implement FINTRAC requirements.

Written Policies & Procedures : Every brokerage must have written policies and procedures to guide decisions and actions to comply with the provisions of the Act. Update as required

Risk Assessment: Every brokerage must complete a Risk Assessment of their business activities to analyze potential threats and vulnerabilities.

Training: Every brokerage must provide documented and up-to-date training to its employee salespersons and brokers.

Program Review: Every brokerage must conduct an evaluation every 2 years to check the effectiveness of its compliance program.

Know your client, reporting, record keeping

#### **Individual Identification**

- Registrants must know their client and ascertain their identity to ensure that they are not involved in some irregular or suspicious transaction.
- A one or two step verification should be carried out from the following documents –
  - o *Photo Identification:* A valid government issued photo ID should be viewed and the client name, ID type (driver license, passport, etc.), issuing jurisdiction, expiry date, etc. should be recorded.
    - Foreign license or passport is acceptable
  - o *Credit File:* The credit file of the client may also be checked (minimum 3 years record from Equifax of TransUnion) to verify information such as name, address, date of birth, etc.
    - Record source of credit file and reference number
  - o *Dual Process:* Two or three different and reliable source documents from CRA or other government agency should be checked for verification (Tax Assessment Notice from CRA, T4 slips, Record of Employment, date of birth certificate, etc. gas or electric bill, statement by employer etc.)
    - The source document being used for identification must be current and not an expired one.
    - For electronic documents → individual can email the original document, show document on their phone, tablet, or laptop, print the electronic document or show the document in the original format
    - Documentation must verify the client's name and contain two out of the 3 requirements
      - Clients name and date of birth (original birth certificate)
      - Clients name and address (utility bill or property tax assessment)
      - Clients name and confirmation of financial bank account

#### **Additional Considerations when Verifying Individuals**

Previously Identified Clients: A client who was previously identified need not be identified again and a photocopy of the previous form may be kept in the transaction file. If any info changed, update the client info record

Unrepresented Individuals: It is recommended that an unrepresented seller or buyer should be identified

- However, if the individual refuses to provide identification information, a note should be made along with the date of refusal, the reason for refusal, and the steps taken for obtaining identification.
- Salespersons may also need to consider any requirement for a Suspicious Transaction Report (STR) to FINTRAC.

Excluded Activities: Activities related to residential and commercial property management are excluded from identification requirements. Leases or rental management also excluded

## **Know your client: Verify a Corporation or Entity**

### **Corporation**

- Information required
  - o Name of corporation
  - o Corporate address
  - o Nature of principal business
  - o Names of all directors
- To confirm existence refer to
  - o Corporations certificate of corporate status
  - o A record that confirms the corporation's existence (annual report, letter or notice of assessment)
- Paper → copy it
- Electronic
  - o Confirmation must be from a provincial or federal database that is accessible by the public
- Verify the individual acting under the authority of the corporation

### **Entity**

- Trust, fund, partnership unincorporated association or organization
  - o Name and address, articles of association, partnership agreement or similar document

**Foreign Clients:** If the registrant cannot personally meet a foreign client, an agent or mandatary must be used who has identified the foreign client on behalf of the registrant.

- Agent → individual who is representing the client
- Mandatary → individual who has been retained specifically to identify the client
- Must be written agreement in place prior to identifying the individual on my behalf
- FINTRAC requires
  - o Full name of the agent or mandatary that ascertained client identity
  - o Client identification method used
  - o Info gathered according to the method used
  - o Date the identify of the client was verified
  - o Date the brokerage referred to the client identification info
  - o Copy of the agreement with the agent or mandatary

**Third Parties:** A third-party is that who is not interacting directly with the registrant but is supplying funds or giving instructions for a real estate purchase.

- Obtain the third party's name and address
  - o If an individual include date of birth and principal business or occupation
  - o If an entity include principal business
  - o If a corporation include principal business, incorporation number and place of issue
- Record the relationship between the client and third party
- 

**Businesses relationships:** a business relationship is established when a brokerage conducts two transactions with a seller or a buyer within a five-year period where identification verification is required

- o Ex. *business relationship established* → Sells their current property and at the same time, purchases a new property using the same brokerage
- o Ex. *No business relationship established* → individual sells their current property and at the same time, leases a residential apartment using the same brokerage. As the leasing does not require identification verification, only one transaction for the purposes of establishing a business occurred
- The 5 year period requirement would begin again, should the brokerage and client complete a transaction at any time during the 5 years following the latest transaction
  - o Ex. Client who last transacted three years ago now entering into another transaction with the brokerage, the 5 years would start again with the new transaction
- Requirements by brokerage
  - o Keep a purpose and intended nature record → describes the business dealings with the client and will help anticipate the types of transactions and activities the client may conduct

- Ensure client info is kept up to date → ongoing periodic monitoring of the business relationship to keep their info and purpose accurate
- Keep the record of measures taken to monitor the business relationship
- Dependent on risk level
- Once 5 years has passed from last transaction → business relationship no longer exists and does not need ongoing monitoring

### Risk Assessment

All clients whether they are individuals, corporations, or other entities must be assessed based on their level of risk in relation to their being involved in money laundering or terrorist financing. The assessment can include client groups based on profiles that share similar characteristics according to brokerage policies. When a client is high-risk, the brokerage may obtain additional information about the client, their source of funds, and the reason for the transaction.

### **Reporting**

Large Cash Transaction Report (LCTR): This applies when a registrant receives \$10,000 or more in actual cash in a single transaction or multiple transactions within 24 hours.

- The LCTR must be submitted to FINTRAC within 15 days of receipt.

Suspicious Transaction Report (STR): This report must be submitted to FINTRAC when a registrant has reasonable grounds to believe that a financial transaction is related to money laundering or terrorist financing.

- The STR must be submitted within 30 days of determining a suspicious transaction.
- There is no such requirement that money was actually involved in the transaction and whether the incident was verified or not.

Terrorist Property Reporting (TPR): This report is submitted to FINTRAC immediately after the registrant knows or believes that the property they are dealing with is owned, or controlled by, or on behalf of a terrorist or a terrorist group.

- Contact RCMP or CSIS immediately to report any suspicions of terrorist financing activity
  - Submit a TPR report without delay to FINTRAC
  - Also submit a STR if there is a completed or attempted transaction
- The registrant must also immediately inform the RCMP or CSIS.

### Indicators of Suspicious activity

- When obtaining deposits indicators include
  - Client refuses to identify source of funds or provides incorrect or conflicting info
  - Client appears to be structuring amounts to avoid reporting (several cash deposits within short time)
  - Client appears knowledgeable about reporting threshold when paying by cash
  - Unrelated parties with no apparent connection to the person making purchase provides the deposit
  - Client uses multiple accounts at several banks for no reason
  - Client arrives at closing with loads of cash
  - Client pays substantial down payment in cash, and balance is financed by unusual source or offshore bank
- Indicators dealing with the purchase and sale of properties
  - Client exhibits a lack of concern about higher than normal costs
  - Client appears to be purchasing property beyond financial capabilities
  - Size or type of transaction not typical of client
  - Sudden change in client's financial profile, pattern or activity
  - Client insists on providing a signature on documents by facsimile only
  - Client purchases property without inspecting
  - Client purchases multiple properties in a short time period with few concerns about location repairs etc.
- Indicators for identification
  - Not possible
  - Provides misleading, vague, or info that cannot be verified
  - Provides copies of identification rather than original
  - Inconsistency in info such as address, date of birth phone number
  - Address is a post office box rather than physical address
  - Client alters the transaction after being asked to verify identity

## **Record Keeping**

- The brokerage must retain the following records for a minimum period of 5 years –

### Client identification documents

- full legal name, address, date of birth, nature of their principal business or occupation, info used to verify their identity, info on unrepresented parties, verification of third parties, client risk + business relationship
  - o \*\*\* EXCLUDE any activity related to leases or property management

### Corporation or other identification record

- name and address, nature of business, directors info, type of verification record, registration number, identify who is shown as having authority, info on unrepresented entity, verification of third parties, client risk, business relationship

### Receipt of Funds, including cash receipts.

### Suspicious Transaction - - Reports (STR). Large Cash Transaction Reports (LCTR).

- Record of reasonable measures, which were unsuccessful.
- The brokerage is not required to retain records of the unrepresented parties.
- There is no time frame for retaining records related to Terrorist Property Report (TPR)

Reasonable Measures → keep record of reasonable measures that have been taken to comply with the obligations but were unsuccessful. Include: measures taken, date, why they were unsuccessful

## **Fraud Prevention**

### **Mortgage Fraud:**

- Mortgage fraud occurs when the personal and financial information of an individual is falsified in mortgage applications for approval of loan.
- Stating the borrower will reside in the residence when they will not, obtaining monetary compensation to obtain a mortgage from a specific lender
- Being offered an interest rate or mortgage amount that appears very competitive when the borrower has been declined by others

### Types of Mortgage Fraud

- *Straw buyers* → individual who is paid to apply for a mortgage on someone else's behalf.
- *Falsifying info* → to qualify for a larger mortgage than your income or credit history would allow, not disclosing a second mortgage to the primary lender
- *Identity Theft* → Identity fraud occurs when criminals use stolen credit card numbers, social insurance numbers, bank PINs, etc. to borrow large amounts of money, make major purchases and/or empty bank accounts.
  - o In real estate, the criminal may steal the items used to get access to electronic land registry system (POLARIS).
  - o They may possibly transfer titles of property, register a discharge of mortgage, or register mortgage lien on some property and get away with the funds.
- *Value Fraud*: Value fraud occurs when the actual value of a commodity is much less than indicated value or has no value. In real estate, it is related to significant increase in the sale price of the property.
- *Escalating Price*: This involves large scale and complex schemes such as escalating property prices in order to over finance a property.
- *Property Flipping*: This may involve a fraud buyer, fake appraisals, etc. to increase the value significantly and pocket the funds.

### Identifying Fraud

- Listing price or sale price is not supported by market data, individual could use a falsified data sheet to obtain a mortgage
- Significant down payment no assets, limited employment history who has accumulated significant assets
- Buyer who has drastic increase in income, large credit to the purchase price
- Unusual requests → buyer wants property removed from listing service and sale price not reported
  - o Property info doesn't align with facts
  - o Buyer request the deposit held by someone other than the listing brokerage for no reason

### Steps to deter

- Verify identity, keep client info secure, advise buyer to provide a deposit to a lawyer or brokerage, ask seller for copies of documents that an owner would have (deed etc), research the ownership history of property, provide copies of A of P and S , educate sellers or buyers

### **Requirements to ensure accuracy and ethical Practice in a Trade**

Inaccurate Representation: Registrants must not knowingly make an inaccurate representation about a trade or the service provided.

- They must not knowingly provide false or misleading information about a property that contributes to a mortgage fraud.

Prevent Error, Misrepresentation, and Fraud: Registrants are not only required to avoid error, misrepresentation, or fraud but must also take reasonable steps to prevent it.

## **19. 4 – Putting It Together - A Residential Agreement of Purchase + Sale**

### **Leading Practices for the Offer Process**

#### Transaction 1: Registering an Easement

- Legal description
  - o Should include the easement that is identified including as much info as possible about it
    - Size , the location and description of the purpose should be stated
- Title
  - o Includes provision that requires the buyer to accept title when certain encumbrances are registered on the property.
- Certain easements must be accepted → minor easement for supplying utilities and telecommunications services, drainage, sewer, cable television etc
  - o also include if the easement is considered minor or major
- Circumstances which would allow objection to title if the buyer has not been made aware of the easement
  - o Easement that materially affects the use of the property
  - o Easement for any purpose other than drainage, sewer, utilities, and telecommunications ,
- Include any condition in the offer as required to allow the buyer to perform the required due diligence
- Explain the ramifications to both a seller and buyer should the easement not be properly documented or investigated
  - o Seller → offer might be terminated
  - o Buyer → offer might be binding which results in the purchase of a property that does not meet requirements

#### Transaction 2: The Mortgage

##### *Drafting an offer*

- Completion date → property will transfer from the seller to the buyer
  - o Not statutory holiday or weekend
- Title search → completed by the buyer's lawyer within a specified time period prior to the completion of the transaction
  - o Also confirm legal description and the names of the owners
- Documents and discharge → seller only obligated to provide documents that are in their possessions

## 20. COMPLETING THE REAL ESTATE TRANSACTION

### 20.1 Due Diligence During Conditional Period Interactions Between Salespersons

- Most offers contain terms and conditions that must be completed by the parties to successfully close the transaction.
- Salespersons must co-ordinate and communicate effectively to ensure that issues arising during this time are resolved.

These activities include:

- Confirming appointments and attending visits or inspections of the property by third-party professionals such as the home inspector, appraiser, etc.
- Confirming that terms agreed by parties have been met. Addressing any issues that arise from due diligence steps such as repairs identified during home inspection.
- Obtaining and delivering documents such as survey, condominium status certificate, etc.

Buyer's Salesperson

Deliver Documents and Deposit: All original trade related documents must be submitted to the brokerage including the representation agreement or customer service agreement, -Agreement of Purchase and Sale, FINTRAC forms, etc.

- Delivery of deposit cheque, providing receipt to the buyer, completing the Receipt of Funds form, obtaining a receipt of deposit from the listing brokerage, etc.

Interactions with Third-Party Professionals: The buyer may ask for referrals for home inspector, lawyer, appraiser, mortgage broker, insurance broker, etc.

- The salesperson may be requested to make appointments with these professionals.

Condominium Unit: Since the review of status certificate is time sensitive, the salesperson must act diligently to obtain and deliver status certificate to the buyer.

- The buyer's decision to purchase the condominium unit depends on lawyer's opinion.

Managing Issues Related to Conditions: If any issue arises during fulfilment of conditions, such as repairs to the property, these must be negotiated in good faith with the other party.

- Conditions fulfilled or waived by the buyer allows the parties to proceed with the transaction.

Seller's Salesperson

Interactions with Buyer's Salesperson: The seller's salesperson must communicate with the buyer's salesperson to ensure that the transaction proceeds to closing. -He/she must ensure that timely access is provided to the buyer or third-party professionals for inspection, appraisal, etc.

- At the same time, the seller must be kept up to date on the status of buyer's conditions.

Deliver Documents and Deposit: All original trade related documents must be submitted to the brokerage including the representation agreement or customer service agreement, Agreement of Purchase and Sale, FINTRAC forms, etc.

- Deposit cheque received from the buyer's salesperson/brokerage must be submitted to the brokerage without delay and a receipt should be provided to the co- operating brokerage/buyer.

Co-operate for Fulfilment of Conditions: Arranging and confirming any appointments for inspections or visits at the seller's property. Providing any documents required by the buyer for fulfilment of conditions as per the offer.

### 20.2 Due Diligence Obligations Until Closing

Buyer's Salesperson

-Maintaining contact with the buyer throughout the time period after conditions are fulfilled or waived to ensure that any terms of the agreement are carried out diligently and up to date information is provided to the buyer.

- Forwarding all sale related documents to the buyer's lawyer for review and assist him with any issues that may arise.

-Arranging additional visits to the property as per the terms of the negotiated offer and ensuring that any repairs required have been completed.

-Performing pre-closing inspection or walk-through of the property, which is typically done within the week of closing to confirm that the sellers have completed any agreed-upon repairs.

- Providing referral of moving companies to the buyer, if so requested.

Buyer's Salesperson

-Maintaining contact with the seller to ensure any obligations of the seller have been diligently completed and the seller is kept up to date with the information.

- Forwarding all sale related documents to the seller's lawyer for review and assist him with any issues that may arise.

-Assisting the seller in fulfilling their obligations specified in the offer, such as minor repairs, replacing fixtures, etc.

-Confirming appointments for additional inspections or viewing of the property by the buyer.

-Making the seller aware and help him understand their obligations regarding moving. -Removing the 'SOLD' sign from the property as the permission to place the 'For Sale' or 'SOLD' sign is only up to the date of closing.

Obligations of Both Salespersons



-Salespersons of both the buyer and the seller should be available on the closing day to ensure that any issues or problems faced by their clients are resolved in a competent manner.

-Any issues that arise after the closing day could require assistance of the salespersons. For example, minor damage during removal of fixtures, cleanliness of the property, missing keys or remote controls, etc.

Delivering keys of the property to the buyer, which is typically done by the lawyers.

### 20.3 Conveyance of Title

#### Buyer's Perspective - Title Search

-Buyer's lawyer performs the Title Search to verify that the title is good and in marketable condition.

-The buyer's lawyer performs various searches to identify matters that must be addressed for the transaction to close.

-The ownership registration may be under the Registry Act or the Land Titles Act.

Land Registry Act: The Registry system records ownership interest on geographic basis in Abstract Books. The title search is performed for a period of 40 years on Chain of Title. Any gap or error in the chain is called Cloud on Title.

Land Titles Act: The Land Titles system is based on the premise that the Land Titles Register (Parcel Register) is the sole source of information for the buyers.

-In other words, this system provides guarantee of title to the buyers.

-The title search is done only on current records in the Parcel Register, which is less time consuming.

Title Related Searches: These include - outstanding encumbrances/liens, restrictive covenants (deed restrictions), non-resident status of the seller, expropriations, matrimonial home status and seller's compliance with the Planning Act.

Non-Title Related Searches: These may include - zoning conformation, work orders, executions, unregistered easements, personal property liens under the Personal Property Securities Act, outstanding amounts for utilities, status of realty taxes, survey documentation, compliance with subdivision or site plan agreements, etc.

Rural Properties: Additional searches are done on local health and municipal records for well water, septic tanks, fuel/oil tank, waterfront improvements, etc. to ensure compliance with applicable regulations.

Requisitions: If any issues are discovered in the title search, the buyer's lawyer would send a notice to the seller's lawyer.

Final Reporting Letter: After successful completion of the sale, each lawyer prepares a Final Reporting Letter for his respective client and the brokerage, which includes the Statement of Adjustments.

#### Seller's Perspective

-The seller's lawyer prepares the certain documents that affect both parties, such as the deed/transfer, which are forwarded to the buyer's lawyer for approval.

Response to Requisitions from the buyer's lawyer includes the following information: -Declaration that the seller is not a non-resident.

-Declaration that the seller possessed the property during the ownership period. -Seller's direction for payment of funds upon closing.

-Seller's undertaking to settle payments and provide vacant possession upon closing. -Evidence from the seller or his solicitor that there are no tax arrears, no construction liens, no executions, no contraventions of the Planning Act, no unregistered liens, no rights-of-way, no expropriations, etc.

-Evidence that the building complies with applicable zoning bylaws.

-Declaration from the seller that the sale is not subject to HST.

Undertakings: An Undertaking is a personal assurance given by a lawyer or a client (through a lawyer) to resolve any last-minute closing issues.

-Undertakings typically relate to unanswered requisitions concerning outstanding liens, encumbrances, an encroachment, etc., which may otherwise delay the closing. For example, the seller's lawyer typically gives an undertaking that he will diligently take the necessary steps to discharge seller's existing mortgage lien using funds received from the buyer.

#### Title Registration Using E-registration

E-Registration refers to title documents being created, submitted, and maintained in electronic format.

-This automated process used for title registration eliminates the need for signatures on documents and permits remote access to electronic records by the lawyers.

E-Registration Document Flow: Create/Update: The seller's solicitor drafts the Deed/Transfer of Land document.

-Messaging: The document is forwarded to the buyer's solicitor, who may update/append it, if necessary.

-Complete: The solicitors confirm that the document is acceptable electronically using e- signatures.

-Release: Both solicitors electronically release the document for registration.

#### Statement of Adjustments

-The Statement of Adjustments provides the details of financial transactions (adjustments, payments, commission deducted, legal fees, etc.).

-It is prepared by the seller's lawyer and is reviewed by the buyer's lawyer to ensure that it is accurate.

-It includes the items that are adjusted or apportioned between the seller and the buyer, with the date of closing apportioned to the buyer.

Typical Closing Adjustments:

-Property Tax: Property tax is apportioned on a daily basis, the seller being responsible for up to one day before closing and the buyer is responsible onwards.

-Fuel: If the property is heated by oil or propane, the seller

will get the tank filled before the closing and the buyer would be charged for the full tank. -Metered Utilities: The seller or seller's lawyer would request a meter reading coinciding with the date of closing so that no adjustment is done.

-Insurance: The seller is required to keep the property insured up to the date of closing, no adjustment is done for property insurance, and the buyer arranges their own insurance.

-Rent: Rent adjustment is based on the number of days in the month and the buyer receives credit if it is pre-paid to the seller.

-Condominium Fees: Condominium fees are apportioned on daily bases in a similar manner as the property taxes.

Impact of Adjustments: The buyer's closing costs may increase due to closing adjustments while the seller's net proceeds may decrease.

20.4 Cost of Title Conveyance Typical Costs for the Buyer

-Property tax adjustments.

-Lawyer's disbursement such as legal fees, title search costs, certificate of compliance fees, enrolment fee for Title Insurance, etc.

-Home insurance premium. Mortgage interest adjustment.

-Provincial land transfer tax and municipal land transfer tax (if applicable).

-Condominium Status Certificate.

-High-ratio mortgage insurance (if applicable). Non-resident speculation tax (if applicable).

Life insurance for mortgage (optional).

-Personal expenses on moving and new household goods.

Harmonized Sales Tax (HST): HST is applicable for new home purchases (with qualifying rebates) whereas it is not applicable for resale residential properties.

HST may be applicable on the chattels included in the

Agreement of Purchase and Sale.

Calculating Land Transfer Tax

The provincial Land Transfer Tax is based on provisions of the Land Transfer Tax Act.

It is calculated on the actual Purchase Price (Value of Consideration).

A graduated scale of tax rates is used instead of single tax rate. Residential Single-family and Duplex Properties:

On the first \$55,000

next \$150,000

Example 1: Single-family home, Purchase Price \$48,000. Amount is below \$55,000.

Land Transfer Tax =  $48,000 \times 0.5\% = \$240$

Example 2: Purchase Price \$165,000.

The amount is over \$55,000 but below \$250,000. Break up the amount:  $55,000 \times 0.5\% = 275$

$110,000 \times 1.0\% = 1,100$

Land Transfer Tax =  $275 + 1,100 = \$1,375$

Example 3: Purchase Price \$320,700.

The amount is over \$250,000 but below \$400,000. Break up the amount:  $55,000 \times 0.5\% = 275$

$195,000 \times 1.0\% = 1,950$

$70,700 \times 1.5\% = 1,060.50$

Land Transfer Tax =  $275 + 1,950 + 1,060.50 = \$3,285.50$

2.5% Single-Family and Duplex Residential Properties.

Balance Over \$2 Million

0.5% On next \$195,000

1.5% Between \$400,000 and \$2 Million

1.0% On 2.0%

Note: The 0.5% Surcharge over a Value of \$2,000,000 Applies Only to

Example 4: Purchase Price \$448,300.

The amount is over \$400,000. Break up the amount:  $55,000 \times 0.5\% = 275$

$195,000 \times 1.0\% = 1,950$

$150,000 \times 1.5\% = 2,250$

$48,300 \times 2\% = 966$

Land Transfer Tax =  $275 + 1,950 + 2,250 + 966 = \$5,441$

Example 5: A house purchased for \$2,300,000.

The amount is over \$2,000,000. Break up the amount:

$55,000 \times 0.5\% = 275$

$195,000 \times 1.0\% = 1,950$

$150,000 \times 1.5\% = 2,250$

$1,600,000 \times 2.0\% = 32,000$

$300,000 \times 2.5\% = 7,500$

Land Transfer Tax =  $275 + 1,950 + 2,250 + 32,000 + 7,500 =$

\$43,975

Vacant Land and Commercial Properties:

On the first \$55,000 0.5% On the next \$195,000 1.0% On the next \$150,000 1.5%

On balance over \$400,000 2.0%

Note: Up to a value of \$2,000,000 there is no difference in calculations for residential property and vacant land.

Example 1: Vacant parcel of land purchased for \$240,000.  $55,000 \times 0.5\% = 275$

$185,000 \times 1.0\% = 1,850$

Land Transfer Tax =  $275 + 1,850 = \$2,125$

Example 2: A commercial building purchased for \$650,000.  $55,000 \times 0.5\% = 275$

$195,000 \times 1.0\% = 1,950$

$150,000 \times 1.5\% = 2,250$

$250,000 \times 2.0\% = 5,000$

Land Transfer Tax =  $275 + 1,950 + 2,250 + 5,000 = \$9,475$

Example 3: A commercial building purchased for \$2,650,000.

$55,000 \times 0.5\% = 275$   $195,000 \times 1.0\% = 1,950$   $150,000 \times 1.5\% = 2,250$   $2,250,000 \times 2.0\% = 45,000$

Land Transfer Tax =  $275 + 1,950 + 2,250 + 45,000 = \$49,475$

First Time Home Buyer's Refund:

First time home buyers are eligible for a refund of up to \$4,000 on payable Land Transfer Tax.

The refund is available for purchase of detached, semi-detached, townhome, mobile home, condominium and duplex, triplex and fourplex properties.

Qualifying Criteria for Refund:

-The purchaser must be at least 18 years of age and must occupy the home as their principal residence within 9 months of purchase.

-The purchaser must not have owned a home anywhere in the world.

-The purchaser's spouse cannot have owned an eligible home anywhere in the world.

-The refund is available to Canadian citizens and permanent residents or who will become so within 18 months of transfer of ownership.

-The refund is based on the percentage of interest in the property.

-The refund can be claimed through the buyer's lawyer on the same day as the closing date or within 18 months of closing.

Title Insurance Policies

-Title Insurance is different from the property insurance and from the Land Titles Assurance Fund.

-It provides a method to address various errors that could potentially occur through fraudulent activity or simple errors made by solicitors when preparing documentation. -Title insurance does not cover personal problems of the property owner.

-Two primary coverages are the Duty to Indemnify (covers actual loss) and the Duty to Defend (covers legal costs).

There are two types of policies – (i) Owner Policy, and (ii) Lender Policy.

-Most policies state what risks are covered, what is excluded, and what are exceptions.

-Separate policies exist for commercial and residential properties.

-However, it is notable that the title Insurance may not cover all issues related to the title.

Benefits of Title Insurance:

-When there is no reliance on lawyer's opinion on title in case the title was registered under the Registry Act.

- It protects the buyer against title related frauds and/or errors made during the transfer of title.
- The seller may purchase title insurance to assure the buyer that any title problem discovered during title search would be addressed by their title insurance.
- The seller may have a marketing advantage if they already have title insurance.
- It may address minor title related issues that arise during the closing process.
- It may protect the buyer against title related problems that are discovered after the closing.

Typical Issues Covered by Title Insurance:

- A document registered on title is defective or improperly signed.
- Some fraud or forgery in documentation affects the title.
- The property may not be legally accessible by road or by a vehicle.
- A violation of zoning bylaw, such as a setback requirement is uncovered, or a structure was made without a building permit.
- Some construction lien is discovered.

Certain restrictive covenant is discovered, and it affects the use of land.

#### 20.5 Trust Account Disbursements When the Transaction is Completed

- The listing brokerage receives a Notification of Completion of Sale from the solicitor.
- The seller would have signed a direction to their solicitor for use of funds from the Real Estate Trust Account for payment of commission.
- The deposit in Real Estate Trust Account is first transferred to the Commission Trust Account.
- If there is any surplus money, it is sent to seller's solicitor. If there is any discrepancy, the seller's solicitor sends the money to the brokerage.
- Commission is typically disbursed in following order: Distribution – Payment to the Co- operating Brokerage. Split - Payment to the salesperson/broker. Payment to the listing brokerage itself.
- HST is payable on the amount of commission.

#### Return of Deposit

The brokerage that holds the deposit in its real estate trust account must receive written consent from both parties to return the deposit to the buyer.

This may happen when an accepted agreement fails due to non- fulfilment of conditions. Mutual Release: Both parties sign a Mutual Release that authorizes the deposit holder (typically the listing brokerage) to return the deposit to the buyer. Court Order: If there is any dispute or the transaction fails, the parties may approach a court with respect to disbursement of deposit funds.

#### The Commission Trust Account

- This account is used by brokerages for disbursement of commission.
- The account ensures payment of commission in the event of bankruptcy or misuse of funds by a brokerage.

-This trust account is not mandatory as per REBBA and brokerages may still hire salespersons/brokers.

-Some real estate boards may require real estate brokerages to maintain this account as a pre-requisite for getting membership.

-RECO's Commission Protection Insurance does not cover any salesperson or broker when the brokerage fails to maintain a Commission Trust Account and the salesperson/broker is aware of this fact.

#### 20.6 Issues Before the Closing

##### Issues Uncovered During Title Search

Untraceable Previous Lender: The seller may have paid off the mortgage, but the mortgage lien is still registered, and the lender cannot be located, or an institutional lender may have merged with another bank.

Restrictions: There may be a noise pollution caution on all properties in a subdivision or a restrictive covenant may be found that restricts buyer's intended use of property.

Undisclosed Easements: Certain easements related to utilities, drainage, or right of way may be undisclosed and the buyer may want to terminate the agreement due to non- disclosure.

-However, not all easements allow for an objection to the title or termination of the agreement.

Missing Heirs/Spousal Consent: The transaction may fail to close if someone else, such as a non-owner spouse, has an interest in the property but consent has not been obtained.

**Seller Unable to Fulfill Terms:** In case the seller was required to fulfill certain terms of the agreement, such as repairs to the property, the seller may not be able to fulfill those terms.

-The buyer may find it out during the final walk-through and refuse to close the transaction.

#### Other Issues Before Closing

**Change to Condition of Property:** The seller is required to maintain the property until the date of closing but some undesirable incident, such as fire, flood, falling tree on roof, etc. may change the condition of the property and the buyer may refuse to proceed with the transaction.

**Increase in Buyer's Liability:** A change in buyer's financial situation may no longer qualify him/her under the GDS/TDS requirements of the lender who may now refuse to advance the mortgage funds.

**Unforeseen Circumstances Affecting Insurance:** If the insurer, after inspecting the property, feels that the risk to the property is more than expected or if the buyer makes a large claim before closing, the premium may increase significantly or the insurer may refuse to provide insurance.

**Missing Chattels or Fixtures:** The buyer may find during the final walk-through that the sellers have removed certain chattels or fixtures, which may upset the buyers and they might want these items to be returned as per the terms of the agreement.

#### Resolving the Issues to Ensure Closing

-If the issue is legal, the buyers or sellers may seek advice from their respective lawyers. -The salesperson may seek guidance or assistance from their broker of record or another experienced salesperson in the brokerage.

-To correctly address the issue, it is important to understand whether the issue is really a problem or merely a misunderstanding between the parties.

-Salespersons should ensure that due diligence is carried out in a competent manner and necessary steps are taken on time to ensure that there are no problems during the closing process. Since the contract is legally binding between the parties, both the sellers and the buyers must understand the legal consequences if the transaction does not close.

-In certain cases, such as a defect found in the property during final walk-through, buyers may be willing to close the transaction provided an appropriate adjustment is made in the purchase price to offset the deficiency.

#### 20.7 If the Transaction Does Not Close Return of Deposit

-If a transaction fails to close, the salespersons and the brokerage still have certain obligations that must be completed. The buyer's deposit is to be returned and the property is to be placed back in the market for sale.

-The buyer's deposit, which is held in the real estate trust account, can only be returned when the parties sign the Mutual Release form.

-In case of a dispute between the parties, a court may authorize the return of deposit.

#### Salespersons Obligations:

Salespersons should recommend that their clients to seek legal obtain advice from their lawyers.

Based on the advice of the lawyer, the salesperson may help their client complete the Termination of Agreement of Purchase and Sale and the Mutual Release.

The listing salesperson should help the sellers re-list the property as soon as possible.

#### 20.8 After Closing - Leading Practices for the Salesperson

**Maintaining Credibility with the Clients:** Salespersons should maintain contact with their clients, ask if they were satisfied with the services, ask for their written consent to be placed on the mailing list, and suggest that they can call whenever they need other real estate services.

**Seeking Expert Advice:** Salespersons should seek appropriate expert advice regarding their personal legal matters, insurance requirements, and financial as well as taxation matters.

● **Maintaining Business Journal:** When dealing with multiple transactions or clients, it is

recommended that salespersons maintain a business journal to keep track of appointments, critical dates, financial details, etc.

**Setting Up a Filing System:** Documents related to transactions should be maintained in a safe and secure filing systems so that they can be referred to quickly as and when required.

**Making Required Remittances to CRA:** Most independent contractor salespersons are registered for HST and they must keep records of HST received with commission, their input tax credits, and the amount to be remitted to CRA.