



Community Legal Information Association of Prince Edward Island, Inc.

Real Estate and Property on PEI

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Buying or selling a home is often the largest financial decision a person makes in their lifetime. Property transactions are perceived as "routine", but significant amounts of money and risk are involved.

The legal process of buying real property (land or buildings):

1. Negotiation and execution: Once a buyer (also called a "purchaser") is found, one of the lawyers (usually the buyer's lawyer) or the realtor drafts an agreement of sale for both parties to sign. When this document is signed, it is a binding agreement. Make sure you understand and agree with all the conditions before signing. The agreement must include any necessary conditions, such as a home inspection, financing, or non-resident approval (for buyers who do not reside on PEI). Your lawyer can help make sure the agreement is in your best interests.

2. Satisfaction of conditions: Often a property sale agreement has conditions. Some common conditions include: getting financing within a certain period of time; zoning approval; subdivision approval; a home inspection; or the sale of another property. Conditions stated in the agreement must be met to complete the sale.

3. Title search: If you legally own a piece of real property (an acre of land, for example), you have title to that property. If you decide to sell your land, the buyer's attorney must verify that you have title to the property before the sale can proceed. In PEI, title to real property must be traced back a minimum of 40 years to make sure no one else has any claims to the property.

The buyer's lawyer will check for any liens, mortgages, judgments, or other potential problems. If a problem is found with the title, the buyer's lawyer will make an objection and the lawyer for the seller will work to resolve the problem. Most of the time, any objections must be raised prior to, or on, a date set in the agreement.

Despite everyone's best efforts, the title search may not reveal all potential problems. For example, deeds describe land in words, and it is difficult to reconcile what the description says with what is currently on the land. A survey plot plan showing the buildings on the land is more accurate. Generally, banks and credit unions require a survey plot plan or title insurance because of this issue.

4. Adjustments and Closing: Usually, the final sale price of the property is adjusted for various costs. These include adjustments for the real property tax, heating fuels and other utilities.

Closing is the final process of signing documents, completing fund transactions, and exchanging the keys to complete the transaction. The closing day is the day when the buyer takes title and possession of the property.

Special Notes

Lawyers do not check the physical aspects of properties. For example, lawyers cannot check municipal setbacks and permits (e.g.: whether a deck was legally built).

Individuals residing outside of PEI: People who do not live on PEI (but would like to own property on PEI) are restricted by the *Lands Protection Act*. An individual residing outside of PEI usually cannot purchase more than 5 acres of land or 165 feet of shore frontage without special approval by the government. There can be exceptions.

Joint Tenancy or Tenants in Common: If you wish to own the property with another person, you must decide whether you want to hold the property as joint tenants or tenants in common. *Joint tenancy* is ownership that means if one owner dies, the other owner immediately owns the deceased's share of the property. *Tenants in common* is ownership that means if one owner dies, that owner's share is distributed to his/her heirs according to their will or the *Probate Act*. Most legally married or "common law" spouses have joint tenancy of the marital home. In cases where land is shared by siblings, it is common for the siblings to be tenants in common, with each share of the property going to each owner's heirs.

Title Insurance: One decision the buyer must make is whether to purchase title insurance. Banks and mortgage companies will want either a plot plan survey showing the house/buildings or they will want a title insurance policy. There are benefits to having title insurance even if you aren't using a mortgage or if you have a plot plan survey. Title insurance can protect you against fraud, survey errors, underground issues, encroachments, and many other problems. It can be a very wise investment.

Shorefront Property: Generally speaking, a building cannot be built within "75 feet (22.9 metres), or 60 times the annual rate of erosion" of a beach or bank. Because of this, you (or the person to whom you sell the land) may not be able to get a building permit. The "annual rate of erosion" is based on where the land is located on PEI. If you are interested in buying shorefront property, include a condition in the sale agreement that a proper assessment (site suitability and building permit) is required.

Vacant Land: If you plan on building on vacant land, the land purchase should be conditional on successfully getting a building permit and a "perc" test (septic field soil percolation test), among other things, depending on the circumstances. A building permit is good for two years. The risk in not making the purchase conditional on these items is that, if you wait a few years, you could find that you cannot build on the land.