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## Community Legal Information Association of PEI, Inc.

### **Buying Property in Prince Edward Island**

Many people in Prince Edward Island will buy a home or land at some point in their life. This is one of the biggest financial decisions any person makes. It usually involves spending a lot of money and making payments on a mortgage for many years. It is important to learn as much as possible about the process of buying property before you make decisions. This pamphlet will give you an overview of what is involved when buying property in PEI.

#### **What do Real Estate Agents do?**

Most people who sell property use the services of a Real Estate Agent to do so. Real estate agents in PEI are governed by the Real Estate Trading Act and must be licensed in order to sell property. Licensing ensures that they follow certain standards of ethical practice or they risk losing their license. It is important to understand that the Real Estate Agent is hired and acts for the Seller, not the Buyer. The agent advertises the property, handles inquiries about the property, books viewings for those interested, and follows the instructions of the Seller in any negotiations.

The Seller, also called the Vendor, signs a contract or “Listing Agreement” with the real estate agency for a period of time - usually 3 months. In this agreement, the Seller agrees to pay the real estate agent a commission when the property sells - usually 5 or 6 percent of the selling price of the property, but this is negotiable. The Seller may contract for a multiple listing (MLS), which means other real estate companies also have information about the property and can offer it to clients who are looking to buy. The commission for MLS is generally 6 percent. If the property has not sold after the term of the contract is over, the Seller can re-list with the same agency, list with another company, or try to sell it on his own.

Some Sellers decide to sell privately in order to avoid agency fees. They may place a sign on the property, list it in newspapers, or advertise it over the internet. If you are looking to buy, it is a good idea to check out private sales as well.

#### **What happens first?**

Before you begin a search for a suitable home or piece of land, you should look at your financial situation to decide what you can afford. Often this can be done together with a mortgage company or bank. The bank will tell you about their lending range and conditions you must meet to qualify for a mortgage. The bank may give pre-approval for a mortgage up to a certain value even before you have found a place to buy.

Once you know your price range, you must find the place you want to buy. If your plan is to buy land and build on it, it is important to check the provincial laws and all municipal and community by-laws for that location. There may be restrictions on land use or on type of development or on access to the highway. Some subdivisions have Restrictive Covenants that govern construction specifications and land use. The developer may be trying to ensure that all homes within a subdivision are of a similar size or built to a certain standard. It is the Buyer's responsibility to make sure that your construction plans are possible before you make an offer to buy. One way to do this is to include, as part of the Agreement of Purchase and Sale, conditions that must be met before the Purchase goes ahead - for example, you could include that "this offer is conditional upon the purchaser obtaining a building permit for a duplex".

### **What happens once I've found a property I want to buy?**

Once you find a property, you make an "Offer to Purchase," listing the offered purchase price and any conditions you want included. The conditions could be things like being able to get a mortgage, being able to sell your present home, or having the Seller agree to get specific work done to the property before the deal closes. It is recommended that you hire a qualified home inspector and have a satisfactory inspection included as a condition to completing the sale. It is important to be very clear about what the conditions are and to have them in writing.

The Seller will either accept the offer and sign it, or refuse the offer and make a counteroffer.

Some negotiation usually takes place before a final agreement is reached. Generally, the offers and counter-offers include time limits to respond.

If you need more time to meet conditions, it is important to get a written extension through the lawyers or real estate agent. Time limits are taken very seriously in real estate transactions.

### **Do I need a lawyer?**

Both Buyer and Seller need the services of separate lawyers to complete a sale. The lawyers' job is to protect their clients and to ensure that their client, either the Buyer or the Seller, is treated fairly. Using lawyers from the same law firm raises concerns about a conflict of interest. The Law Society requires that, if lawyers from the same firm act for both sides of a property transaction, they must advise their clients of this and have a conflict of interest form signed. If an actual conflict arises that cannot be resolved, then both lawyers must withdraw from the transaction and new lawyers must be hired.

A Seller with no title problems or mortgage lien on the property may not need a lawyer, but this is a rare occurrence. Your lawyer searches the title and prepares the Deed, Bills of Sale for any appliances or other things you are buying with the property, warranties and the Mortgage. He or she will check to make sure that liens like property taxes and sewer and water charges are paid to the date of closing. Adjustments will be made to the amount you must pay to cover expenses like legal fees and registration costs, or unused heating fuel left with a house. Your lawyer will

get declarations that the furnace, hot water heating systems and propane tanks are owned and not leased.

### **Do I need a title search?**

It is in your best interests to have the title to the property searched. A standard clause in Agreements of Purchase and Sale gives time limits for your lawyer to perform the title search. In a title search, the ownership of the land is traced back at least 40 years and a chain of ownership is completed to be sure that the Seller actually owns the land he or she is trying to sell, and that no one else has a claim to that land. A claim could come about, for example, if there were judgments against the owner for unpaid bills or if the description of the land is inconsistent with other deeds for land around it. If there is no clear title to the property, it is the responsibility of the Seller to correct this within a set period of time. If the Seller cannot obtain clear title, your deposit will be returned and the deal cancelled. If there is a dispute between Seller and Buyer, you can take the problem before a judge for a ruling under the *Vendors and Purchasers Act*.

Sometimes a lawyer may recommend that you get Title Insurance. This can be used to cover expenses arising from any problems with title. Title Insurance is relatively new to Prince Edward Island, but is used extensively in other parts in North America. Sometimes mortgage companies will accept Title Insurance as a substitute for a survey plot plan.

### **What if I am a non-resident ?**

If you are a non-resident of PEI or a corporation, and your total land holdings exceed the limits of the Lands Protection Act, then you must apply to the Island Regulatory and Appeal Commission (IRAC) for consent to purchase the land. The land holding limits are 5 acres and/or shore frontage of 165 feet. You can still make an Offer to Purchase, but should include as a condition of the purchase that you apply for and receive IRAC approval.

### **What happens after I have reached a deal with the Seller?**

The signed accepted offer is referred to as the "Agreement of Purchase and Sale". This is often on a real estate company's standard form. It is a binding contract, so both sides should have it reviewed by a lawyer before signing it. If not done before signing, your lawyer should go over the form with you later to explain any conditional clauses so you follow them to the letter. No contract for purchase and sale of land is binding unless it is in writing.

The Buyer often makes a deposit on the property to be held "in trust" by the real estate company or the Seller's lawyer until the closing date. If you break the deal, this deposit will be forfeited and you may be responsible for other costs as well, such as legal fees or other costs incurred by the Seller in preparing for the sale. Depending on the circumstances, the Seller may have the right to force the completion of the sale through court action.

### **How do I get a mortgage?**

When you have a signed Agreement of Purchase and Sale, you will need to approach a mortgage company unless you are paying in cash. If you are approved for the mortgage, the mortgage instructions will be sent to your lawyer and the lawyer will prepare the documents required for the mortgage and the closing of the sale.

If there are buildings on the property, the mortgage company will require fire insurance to be in place by the closing date. The fire insurance policy should have the loss payable first to the mortgage company. This is usually for the replacement value of the home.

The mortgage company or the insurance company will also require that the Seller provide a clean water certificate and a warranty that hazardous products like ureaformaldehyde insulation are not used in any buildings on the property. It is a good idea to check the property, especially outbuildings, to be sure stockpiles of hazardous materials have not been left behind. Also make sure Waste Watch carts have been left with the property – the Seller must pay to replace them if they are missing.

### **Do I need a survey done? Why?**

If the purchase is financed with a mortgage, the mortgage company will usually require a survey plot plan or a Title Insurance policy to protect their investment.

The mortgage company wants to be sure that any buildings are actually located within the property lines and that you are actually receiving what has been sold.

Usually a deed describes boundaries of a property in words and makes no reference to buildings on the land. Often the wording in deeds is very old and the only way to be sure that the deed reflects exactly what you were shown is to have a surveyor pin the boundaries of the property and draw a survey plan from which a more accurate description can be drawn.

### **What happens if I find problems with the property?**

Any defect known to the Seller and not apparent to the purchaser on a visual inspection must be disclosed before purchase. If you find yourself in a situation where full disclosure was not made, you should speak with a lawyer. If you have been deceived or misled by the Seller or the real estate agency, you can sue to recover losses. If you or a real estate agent has suffered losses because of deliberate misinformation, a lawsuit is also possible. Depending on the circumstances and seriousness of the situation, a criminal charge of fraud is also a possibility. Do not forget, however, that the old expression “Let the Buyer beware” applies in real estate transactions.

### **What happens at closing?**

On the closing date, each party meets with their lawyer to sign all documentation. You, the Buyer, will be required to pay all fees connected to the transfer, such as deed registration costs, mortgage registration fees, title search fees, lawyer fees, Title Insurance premiums, and so on. Your lawyer then distributes the money to the appropriate places, gives or delivers a cheque for the balance of the selling price to the Seller’s lawyer, and sends the new deed and mortgage to the Registry of Deeds. The sale is then complete.

Your lawyer will send a reporting letter to you after the closing confirming all the details of the transaction and either certifying title or providing the Title Insurance policy. In PEI, the Deed and the majority of closing costs are the responsibility of the Buyer. The Seller must pay out any existing mortgage, leases and other encumbrances in order to provide good and clear title.

Be sure to ask your lawyer to explain anything you do not understand in the paperwork or the process, at any step along the way. It is your right to have things explained to you so that you understand what you are agreeing to and signing. Any competent real estate lawyer will usually do this as part of the transaction fee.

If you do not know a lawyer, you can call Community Legal Information Association (902-892-0853 or 1-800-240-9798) to get a referral through the Lawyer Referral Service. Through this service, you can speak to a lawyer for 45 minutes for \$25 plus tax.

### **How can I get more information?**

To get more information about the laws that govern buying and selling property in PEI, you can view the Acts and their accompanying Regulations at the provincial government website ([www.gov.pe.ca](http://www.gov.pe.ca)) or you can get paper copies at Island Information Service at 11 Kent Street in Charlottetown. Acts you might want to review are:

1. *Environmental Protection Act* - laws about wells, sewer systems, waterways and other environmental issues;
2. *Investigation of Titles Act* - law concerning claims to land;
3. *Mechanics Lien Act* - law concerning judgments or liens on property;
4. *Planning Act* - law about how land can be used, community plans, restrictions on development, etc;
5. *Quieting Titles Act* - law about obtaining clear title to property that does not presently have clear title;
6. *Roads Act* - law that regulates roads, lanes and driveways;
7. *Real Estate Trading Act* - law concerning licensing and standards for real estate companies and salespeople;
8. *Real Property Act* - law about deeds, leases, mortgages, estates that include property, partition of land, land passing to infants or those declared mentally incompetent, and foreclosures;
9. *Vendors and Purchasers Act* - law about the rules and obligations for Buyers and Sellers of property;
10. *Lands Protection Act* - law concerning the limits on land holdings on Prince Edward Island

This pamphlet contains general information about the law. It is not a complete statement of the law in this area and is not a substitute for legal advice. To receive legal advice, you need to speak to a lawyer. Community Legal Information Association of PEI Inc. (CLIA) is a charitable organization that receives funding from Justice Canada, the Prince Edward Island Office of the Attorney General, the Law Foundation of PEI and other sources. CLIA provides Islanders with understandable and useful information about the law and the justice system in Prince Edward Island.

For more information, you may telephone CLIA at 902-892-0853 or 1-800-240-9798.  
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