

nova scotia real estate COMMISSION



Practical Guide for Buyers

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What you should know about buying a home

Buying a house is a complex and sometimes stressful operation. This is why the Nova Scotia Real Estate Commission has prepared this booklet, which contains the main steps you need to follow before, during and after the purchase of your home. In it, you will find many useful tips to guide you and help you complete your real estate transaction in a satisfactory manner.

Compliments of:



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Role of real estate professionals

Why use a real estate professional?

Buying real estate requires extensive technical knowledge. This is why we recommend that you use the services of a licensed real estate brokerage to make sure that all the steps involved in buying and selling real estate are completed in accordance with good trade practices.

The main function of real estate industry members (brokers and salespeople) is to act on behalf of sellers and buyers in the purchase or sale of real estate. Industry members play a prospecting role by finding real estate for the buyer and a buyer for the seller's property; they play a negotiating role by facilitating communications between the parties involved and, mainly, they play an advisory role to complete their real estate transactions in a satisfactory manner.

Distinction between classes of real estate licenses

A broker is responsible for the supervision of a brokerage, its unlicensed staff, and its industry members. A broker ensures the business is run competently and in accordance with the *Real Estate Trading Act*, the *Commission Bylaw*, and the *Policies and Procedures*. A broker may also choose to trade in real estate, representing buyers and sellers.

A managing associate broker is authorized to operate or manage a brokerage under the supervision of a broker. An example of a managing associate broker role is a franchise branch manager. Brokers and managing associate brokers are the only industry members authorized to make management decisions and give management directives within a brokerage.

An associate broker is licensed to trade in real estate under the supervision of a licensed broker. This licence permits salespeople to achieve and be recognized for possessing a higher level of education. An associate broker has the same responsibilities as a salesperson.

A salesperson performs all the functions of a real estate professional while working under the supervision and direction of a broker.

Compulsory licensing

All industry members in Nova Scotia must hold a licence issued by the Nova Scotia Real Estate Commission. A consumer who carries out a real estate transaction through an unlicensed person is not protected under the *Real Estate Trading Act*, because the protection mechanisms apply only when the consumer deals with a professional recognized under the law. Before you do anything, check with the Commission to make sure the person you are dealing with is licensed by the Commission.

Duties and obligations of real estate brokers and salespeople

Real estate brokerage is a profession that is regulated and controlled to protect the public in real estate transactions. The *Real Estate Trading Act*, the *Commission Bylaw* and the *Policies and Procedures* define how the profession is to be practiced and hold brokerages and its industry members accountable, so that consumers are served fairly and competently.

Loyalty to the client

Industry members are bound by a strict obligation of loyalty to their clients, whose rights they are bound to promote and protect. They must act equitably toward each party to a real estate transaction.

Obligation to disclose

If your industry member has a personal relationship with the other party or if they are acting on their own behalf, they must inform you, in writing, before you sign the *Agreement of Purchase and Sale*.

Examples of personal relationships are:

- Family and self
- Business associates
- Ongoing client relationships

Similarly, if your industry member is to receive compensation from a financial institution or a professional recommended by them, they must also inform you in writing and request your approval.

Advising and informing objectively and accurately

As your representative, your industry member must advise and inform you objectively and must provide you with all the explanations you need to fully understand and appreciate the services they are providing. They must also inform you of any factors that could negatively impact the transaction.

Industry members are responsible for verifying the accuracy of all information they supply to clients and customers. Your industry member must be able to demonstrate the accuracy of the information they provide using relevant documentation.



Consumer protection mechanisms



Professional development

All industry members are required to complete continuing professional education annually. Courses are based on subjects that provide industry members with a higher level of skills and knowledge to help them perform their duties.

Entrance exam

The profession's entrance exam ensures that industry members possess the knowledge and competence required to provide professional services.

Brokerage audits

The Commission ensures that the work methods of real estate industry members are in accordance with the rules of the profession. To ensure brokerages are operating within the rules, the Commission's compliance auditors conduct yearly audits of trust accounting records and brokerage transaction files.

Complaints and investigations

As the regulatory body for real estate in Nova Scotia, the Commission handles all public complaints about the conduct and actions of industry members. Complaints must be submitted in writing, which are then investigated by the Commission's compliance department. If an investigation supports that the industry member's actions violate the *Act* or the *Bylaw*, charges may be laid. If an industry member is in violation of the *Act* or the *Bylaw*, penalties may range from letters of reprimand, to fines, to permanent licence cancellation. It is important to note that the Commission does not award damages to complainants.

Professional liability insurance

All industry members are required to carry errors and omissions insurance.

Recovery Fund

The Recovery Fund exists to compensate consumers where an industry member has caused a customer or client a financial loss through fraud or breach of trust.



Agency relationships

What is an agency relationship?

An industry member may or may not have an agency relationship with you. If you are a client, you are in an agency relationship; if you are a customer, you are not in an agency relationship. As a client, the industry member and brokerage have a much higher level of responsibility to you than if you are a customer. The following sections explain agency and the obligations industry members have to both clients and customers.

About common-law agency

In common-law agency, the agency relationship is between the client and the brokerage. Under common law, all industry members at the brokerage are deemed to know all relevant transaction information about principals (buyers and sellers with whom the brokerage has an agency relationship). When any industry member employed by a common-law brokerage represents a buyer or a seller, every industry member at the brokerage is immediately considered to be a representative of that buyer/seller and therefore owes that buyer/seller undivided loyalty, advice and advocacy.

About designated agency

In a designated-agency brokerage, the contract is between the client and the brokerage, but representation is by the industry member(s) specified in the *Brokerage Agreement* (the designated agent), not all industry members employed by the brokerage. In a designated-agency situation, a seller and a buyer can receive the full benefit of agency representation, complete with the undivided loyalty, advice, and advocacy of their respective industry members, while the brokerage remains impartial. The brokerage's responsibility is to ensure that each industry member acts in accordance with their respective agency responsibilities, and that confidential information of the seller and the buyer remains confidential.

Designated agency represents a fundamental shift from common law and as such it is necessary for buyers who choose to be represented by a designated agency brokerage to sign a *Buyer Designated Brokerage Agreement*, which contracts them out of common law and into designated agency.

Seller or buyer agency with you as a client

Most sellers and buyers have an agency relationship with the industry member they are using. When you are in an agency relationship, the industry member has the authority to represent you in real estate dealings with others.

Brokerages and their representatives are legally obligated to protect and promote the interests of their principals (clients). Specifically, the industry member has the following duties:

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

You can expect competent service from your industry member, knowing that the brokerage is bound by professional standards and the law to be honest and thorough in representing a buyer or representing a property listed for sale.

Transaction brokerage with both the buyer and seller

Transaction brokerage occurs when one industry member (designated agency) or one brokerage (common law) is representing both a buyer and seller in the same transaction. Because the industry member has promised a duty of confidentiality, loyalty and full disclosure to both parties simultaneously, it is necessary to limit these duties in this situation, if both parties consent.

Under designated agency, two designated agents may fully represent both parties and transaction brokerage is not necessary.

If you find yourself involved in a transaction brokerage situation, before making or receiving an offer, both you and the other party will be asked to consent in writing to this new relationship.





This relationship involves the following limitations:

1. The industry member deals with the seller and the buyer impartially;
2. The industry member has a duty of disclosure to both the seller and the buyer except that,
 - the industry member cannot disclose that the buyer is willing to pay a price or agree to terms other than those contained in the offer, or that the seller is willing to accept a price or terms other than those contained in the listing;
 - the industry member cannot disclose the motivation of the buyer to buy or the seller to sell unless authorized by the buyer or seller;
 - the industry member cannot disclose personal information about either the buyer or the seller unless authorized in writing;
3. The industry member discloses to the buyer defects about the physical condition of the property known to the industry member;
4. The industry member may disclose all comparable property information to the buyer and the seller at any time;
5. The industry member cannot disclose to the buyer or to the seller confidential information obtained through any other existing or former agency relationship.

When transaction brokerage is not appropriate

Transaction brokerage is not always appropriate and consumers are never obligated to enter into a transaction brokerage relationship. The Commission has outlined the following situations where transaction brokerage should be avoided:

1. When the industry member is representing family, associates, or themselves;
2. When the industry member has an ongoing agency relationship with one of the parties, like a builder or a developer;
3. When the industry member is representing a novice seller or buyer.

In the first two situations, regardless of how the transaction is handled, pre-existing relationships may result in the industry member's impartiality being called into question. In the case of a novice buyer or seller, their lack of knowledge means they need an industry member's advice and support, services that cannot be provided under transaction brokerage.

Customer status

In a no-agency relationship, the industry member represents either the buyer or the seller in a single-agency relationship. The party that is not represented is the customer, for whom the industry member performs customer services.

If you choose customer status, the brokerage does not represent you. The brokerage is not your agent and does not owe you fiduciary duties. The brokerage does not provide you with any services that require exercising discretion or judgment, giving confidential advice or advocating on your behalf.

The services an industry member can provide to you as a customer include:

- exercising reasonable skill and care
- not negligently providing false or misleading information
- complying with the *Act* and the *Bylaw*

Industry members must ensure any person who is considering customer status is fully aware of their option to choose another brokerage to represent them rather than agreeing to customer status.

An industry member who is not in an agency relationship cannot:

- recommend or suggest a price
- negotiate on your behalf
- Inform you of their principal's top/bottom line
- disclose any confidential information about their principal unless otherwise authorized

You should not provide an industry member who is not in an agency relationship with you with any information you would not provide directly to their client.

All buyers and sellers, whether in an agency relationship with an industry member, will be given an agency brochure and asked to sign an acknowledgement that they have been provided this agency information and had an opportunity to review it.



How much can I afford to invest?

Analyzing your financial capacity

Before you start looking for a new home, you should analyze your needs and evaluate your financial capacity. You must establish a realistic budget that accounts for your lifestyle and your goals. The purpose of this exercise is to set a reasonable purchase price. This way, you can narrow down your search and avoid being tempted by real estate that is above your means. The key element in this exercise is accuracy. Remember that a budget is only useful if it accounts for your overall needs and personal or family situation.

Estimating your maximum mortgage

A simple way to estimate the maximum mortgage you can get is to multiply your gross annual salary by two. Note that most mortgage lenders calculate this by multiplying the gross annual income by 2.5. However, it is more reasonable to multiply it by two to avoid overextending yourself on mortgage payments. You should consult your banker or financial planner to get more accurate information as to what you can afford. This process is called mortgage pre-approval.

Calculating your monthly housing budget

Your monthly housing budget is the amount you have to live, finance and heat your future home, after you have fulfilled all your other normal obligations. To do this, use current data that will not change when you are a new homeowner: your net household income, your debts (student loan, car loan, and so on) and your current living expenses (food, clothing, insurance, miscellaneous expenses, and so on).

The difference between your net household income and your total monthly expenses is your monthly housing budget. This amount must cover your mortgage payment (principal plus interest), taxes, heating costs and condominium fees, if applicable. Remember that a budget is only useful if it reflects reality. Your budget, more than the methods used to calculate your monthly payments, will help you determine your maximum mortgage loan.

Note: Most Canadian financial institutions use the Gross Debt Service (GDS) ratio to calculate their clients' maximum monthly payment. This method has the advantage of being easy to calculate, but the result is approximate. To calculate your GDS, determine your gross monthly household income (family's total salaries before tax) and multiply by 0.32.

How much financing do I need?



One of the main concerns of real estate buyers is mortgage financing. To determine the amount you will need to borrow, you have to know the purchase price of the property and the total expenses you will need to pay in cash. The summary of these calculations enables you to determine the financing you need to purchase your home (see Table 2).

Cash expenses

You have to plan for several cash expenses when buying a home. These costs must be estimated to determine the amount you need to borrow to finance the purchase of your new home.

Deposit

When presenting an offer to purchase, you need to make a deposit to prove your legitimacy as a buyer. For that, you have to plan on a cash outlay.

Down payment

The down payment is without a doubt your main expense when buying a home. A higher down payment means lower monthly mortgage payments. If your down payment is less than 20 per cent of the purchase price, your mortgage must be insured by high-ratio mortgage insurance, such as that provided by CMHC (see “Mortgage Insurance” on page 37). There are administration fees involved for the application.

Related expenses

Several related expenses must be taken into consideration when buying a home, such as building inspection, property appraisal, loan application, legal fees and disbursements, property taxes, deed transfer tax, fuel adjustment, insurance, and so on (see Table 1). Record all applicable expenses in Table 1.

Summary of calculations

Now that you have an overview of the expenses involved in buying a home, you need to make your final calculations (see Table 2). First, record the purchase price of the property. Add the total amount of related expenses that you calculated in Table 1. You will get the acquisition cost of your new home.

From this amount subtract the deposit, down payment and the proceeds from the sale of your current home if you already own one (use an approximate amount if the house has not yet been sold). The total determines the financing you need to acquire your new home.

Table 1

Calculating related expenses	
Building inspection	\$
Appraisal	\$
Legal fees and disbursements	\$
HST (new construction or vacant land)	\$
Deed transfer tax	\$
Adjustments and tax distribution:	\$
— mortgage interest	\$
— property taxes	\$
— utilities (oil or propane)	\$
Condominium fees (if applicable)	\$
Leased equipment buy-out (if applicable)	\$
Water quantity and quality certificate	\$
Loan insurance fees	\$
Loan insurance premium	\$
Moving expenses	\$
Renovations and repairs	\$
Furniture, appliances, window coverings, carpets, paint, etc.	\$
Utility hookup	\$
Home insurance	\$
Other	\$
Total	\$

Table 2

Calculating financing required	
Purchase price	\$
+ Related expenses	\$ +
= Acquisition costs	\$
– Deposit	\$ –
– Down payment	\$ –
– Other funds (net value of previous property)	\$ –
= Financing required	\$

You are now in a position to determine if the loan you need to purchase your home fits your budget. Do not hesitate to make any necessary adjustment and to redefine your goals if necessary.

Home Buyers' Plan

The Home Buyers' Plan (HBP) may help when you want to use funds in your Registered Retirement Savings Plan (RRSP) to purchase a home. Each buyer may withdraw up to \$20,000 from their RRSP without having to pay taxes at the time of withdrawal. The funds must be in the RRSP for at least 90 days prior to the withdrawal.

The amount withdrawn must be paid back into the RRSP over a period of fifteen years at a rate of 1/15 of the amount per year. As an example, if you use \$15,000 from your RRSP to purchase a home, you must pay \$1,000 back into the RRSP each year (or one fifteenth of \$15,000) for 15 consecutive years. Should the program user be unable to pay the money back, the amount that isn't paid back is added to the user's gross annual income.

Note: This program is available to first-time home buyers only. The buyer cannot have owned a principal residence in the last five years. For more information, contact your industry member or mortgage professional.





Buyer Brokerage Agreements

Buyer Brokerage Agreements

When you are buying your home, an industry member may ask you to sign a *Buyer Brokerage Agreement*. The brokerage agreement defines the nature of the relationship between you and the brokerage, including the industry member.

If you are working with a common-law brokerage, you may or may not be asked to sign a brokerage agreement. If you are working with a designated-agency brokerage, you must sign a brokerage agreement. See “About Designated Agency” on page 9.

Before you sign

Your industry member wants to provide you with the best service he or she can. To make the most of this relationship, it’s important to clarify your needs and expectations. To avoid misunderstandings later on, it’s important not to make any assumptions. You should also take time to ask what the broker or salesperson expects from you and what your obligations are.

Discuss all of the services that will be provided. The following contract items are always negotiable:

- duration
- commission fees
- terms for consideration
- specific services

Take the time to clarify the fees and costs related to these services and make sure the written agreement is clear.

Don’t sign anything you don’t understand

Never sign any agreement unless you know what it means, how long it will be in effect, and what the different clauses mean. It’s one of the most important steps you can take to protect yourself. Take the time to read it thoroughly and ask questions. Your industry member can’t provide legal advice, but they are familiar with these agreements and should be able to answer your questions and explain what the clauses mean and what effect they have. Feel free to seek legal advice or call the Commission at any time.

Holdover clause

The holdover clause in the *Buyer Brokerage Agreement* is designed to protect the brokerage for the work it did during the duration of the contract. The holdover clause requires you, the buyer, to pay the commission to the brokerage should you purchase a property that was shown to you by the brokerage when the agreement was in effect, and that you purchased after the agreement expired. This is to prevent buyers and sellers working with brokerages from waiting till the brokerage contracts expire so no commission has to be paid. The standard holdover clause is 180 days; however, agreements are negotiable.





Shop smart: what you need to know and ask

Zoning

Municipalities define specific areas of land for specific development, i.e. single family dwellings, multi-family dwellings, commercial, industrial, agricultural, and so on. When purchasing a property, you need to ensure the zoning permits the land use you intend to purchase it for. For example, if you are looking for a rural property to start a horse farm, you need to ensure the zoning permits horse farms. Likewise, if you want to purchase a duplex and rent out half of it, you need to ensure the zoning permits you to operate a rental property.

Easements

An easement is the right to use the property of another without possessing it. The most common type of easement is a utility easement, which grant utility companies the right to access privately owned land to service and maintain utility equipment. For example, Nova Scotia Power easements permit the servicing of power poles and lines on private property. Municipalities that provide water and septic services have easements on private property to permit servicing and repairs.

Properties may also have easements that are not related to utility companies. For example, in a community on a lake, an easement may have been granted that permits residents the right to cross private property to access a swimming hole. In a rural area, an easement may grant the neighbouring farmer the right to drive his cattle across a field he doesn't own to reach one he does.

It is important to ask your industry member and your lawyer if there are any easements on a property you are considering purchasing.

Restrictive covenants

Restrictive covenants are most commonly found in newer subdivisions. When a subdivision is in the planning stages, the developer may want to ensure that the character of the subdivision is preserved. Restrictive covenants may dictate what colour you paint your house, what type of fence you may erect, whether a lot may be further subdivided, or whether outdoor clotheslines are allowed. It is important to ask if the property deed contains any restrictive covenants, and if there are, to decide whether you are willing to abide by them or to continue your property search.

Stigmas

Certain events may cause a property to be described as a “stigmatized property.” This term is applied to a property that has had some circumstance occur in or near it, like a drive-by shooting, a suicide, a robbery, or a rumoured ghost, but does not specifically affect the appearance or function of the property itself.

Nova Scotia legislation does not define stigmatized properties. It also does not require industry members to disclose events that some may consider as stigmas, unless asked.

If there is something that occurred either in a house, or nearby a house, that you feel would make the house unlivable, you need to ensure your industry member is aware of it so that they can make the proper inquiries. In some cases, the seller does not live in the property, or has not lived in the property for long and may not know of any potential stigmas. If your concerns are crime-related, you need to make inquiries with the local police department.

Patent defects and latent defects

Property defects are divided into two types: patent defects and latent defects. A patent defect is a fault in the property that is readily observable to the untrained eye of a potential buyer (for example, a broken pane of glass, old roof shingles or peeling paint). A latent defect is a fault in the property that would not be discovered by a reasonably thorough building inspection (for example, a serious crack in the foundation that has been covered over with paneling or improper wiring covered by drywall). Material latent defects can have a serious impact on the value of the property or involve health and/or safety issues. Sellers are required to disclose any known material latent defects; otherwise they may be liable to the buyer for the cost of repairs.



Rural property considerations

In rural areas, homes are typically not serviced by municipal water and sewer lines. Instead, homeowners rely upon privately owned or shared wells as their drinking water source, and individual septic systems to treat and discharge their wastewater. When purchasing a home with a well and a septic system, the buyer must ensure that the well water is safe to drink and that there is sufficient quantity of water to service the household. Likewise, buyers must ensure that the septic system is functioning properly. A malfunctioning well or septic system can pose a health risk to your family and neighbours, and can be expensive to repair or replace. It is therefore important to conduct a detailed inspection of both the well and septic systems prior to purchasing a home.

When purchasing a home with a well and septic system, the Commission strongly recommends having both water quantity and water quality tested, as well as having the septic system inspected. These tests can be written as conditions of the offer. If the inspection results are unsatisfactory, you can terminate the transaction, or propose an amendment to the *Agreement of Purchase and Sale* requiring the seller fix the issues.

Title insurance

When a home buyer purchases title insurance, they are protecting themselves against loss resulting from title and survey defects that would otherwise have been revealed by an up-to-date survey, property report or building location certificate. Title insurance also protects the insured against losses associated with fraud and forgery as it relates to the title.

There are two types of title insurance for property owners and lenders. Title insurance for owners protects the owner against loss and title insurance for lenders makes sure that the mortgage is valid and enforceable against the property. When title insurance is purchased, the policy stays in effect for as long as the owner retains an interest in the property and is typically transferable in case of the owner's death. Title insurance is available for both residential and commercial properties.

While most properties qualify for title insurance, your lawyer will advise you if the property is eligible and if it is appropriate.





Finding the right property for you

Type of property

Are you looking for a single-family dwelling, a semi-detached or a townhouse? Do you prefer a new or older house? Do you want to own the house and the land or would you prefer a condominium in which only one unit is yours?

Neighbourhood

Are you looking for a home downtown, in the suburbs or in a rural area? Do you prefer a new area? What is your tolerance to noise and pollution? Are you looking to avoid high-traffic areas? Is the state of development of the area where you will be living important to you?

Proximity of services

What are your needs in terms of public transit and public or commercial services? Is being close to work or to schools important to you? Will you feel safer living close to a hospital or a police or fire station?

Indoor considerations

What are your needs in terms of space? How many bedrooms and bathrooms are necessary? What type of heating do you prefer? How much storage room do you need? Do you need a laundry room or a workshop?

Outdoor considerations

What are your needs in terms of parking? Do you like gardening? If so, is the exposure of the house favourable? Do you want a patio, a balcony, a pool...?

Need for renovations

Are you looking for a house that needs no improvements? If you are thinking of doing the work yourself, do you have the necessary skills? If not, have you evaluated the cost of repairs?

Organizing your search

Organizing the search for your home is not the simplest step, but it is the most important and often the longest. It is recommended to take all the time you need before buying a home.

The key to choosing the right home is to really know your needs. Talk to your industry member about your priorities and try to identify the features you are looking for but that could be subject to compromises. This way, you will avoid wasting time viewing houses that are too expensive, too big or that are simply not what you are looking for.

Choosing the area

Visit the areas that seem to fit your needs. Your industry member can help you make a list of houses that meet your expectations. They have access to detailed information on the properties being offered for sale in the areas that are attractive to you, and can save you valuable time.

Choosing well

When you have found the home you are looking for, make sure you see it at least twice, once during the day and once at night both during the week and on the weekend. This way, you can see for yourself the activity level in the neighbourhood at those hours when you will likely be at home. You can also assess the amount of traffic, ambient noise, street lighting, and so on. Check everything: carpets, drapes, light fixtures, and so on.

On the next page you will find a sample *Facts Sheet* that you can make copies of and use to take notes. Please note that the listing cuts provided by the seller's broker can also help you evaluate a property in which you are interested. This document contains a detailed description of the property in its current state and allows you to learn all the details which can help you form an educated opinion before you make a decision.

Review your list of priorities and take time to think without rushing. Losing a house to a quicker buyer carries far fewer consequences than buying a house that is not suited to your needs or which has a major flaw.

If you are looking for a home, you may view several properties on the same day. When taking stock of viewings, you should compare features of various prospective homes that caught your attention. Then you start wondering if the first house had the proper exposure, if the second was the one with the fireplace, if the one with the dormer windows had hardwood floors or if the small white one had a heat pump...

The *Facts Sheet* was designed to allow you to note the features of a property or any other comment. It can be used as a reminder as well as a useful comparison tool when deciding between two properties.

Facts Sheet

Address

Real estate brokerage

- listing salesperson's name
- phone number

Asking price

Occupancy date

Construction type

Rooms

- total rooms
- number of bedrooms
- number of bathrooms
- number of entrances

Inside

- walls
- floors
- lights
- windows
- cupboards

Square footage

- lot
- house

- baths
- showers
- storage spaces

Outside

- siding
- roof
- windows
- doors
- garage
- parking
- driveway
- parking
- eavestroughs

Environment

- noise
- safety
- air and water quality
- traffic
- businesses
- railroads
- agriculture
- playgrounds
- flooding risks

Notes

Facts Sheet

Annual fees

- property taxes
- condo fees
- private road fees

Fixtures*

- heating
- electrical
- plumbing
- air exchanger

Inclusions (Y/N)*

- floor coverings
- drapes and rods
- appliances
- shed
- central vacuum system
- alarm system
- other

Outside layout

- landscaping
- fence
- patio/balcony
- pool
- fence
- waterfront

Inside layout

- entrance
- kitchen
- living room
- family room
- bedrooms
- bathrooms
- basement

Distance

- work
- shops
- schools
- police station
- hospital
- medical clinic
- dentist
- public transit

Condominiums

- parking
- storage space
- recreational areas

Comments/likes/dislikes

* Ask about leased/rented equipment

Elements to verify

Check the general state of the house: roof, gutters, siding, paint, and so on.

Is the house energy-efficient? Is it well insulated? Are heating costs high?

How is the air quality and circulation?

Is the house damp? Are there traces of mildew? If so, check for cracks or water infiltration.

Do you have any reason to believe there are structural problems? Stuck windows or uneven floors point to this sort of problem.

Flush the toilets and check faucets to make sure there is sufficient pressure.

Be sure to include a provision for a home inspection by a qualified home inspector when you make an offer.

Researching the fair market value of a property

If you are interested in a property, it is important to get an idea of its actual value on the market. With the help of your industry member, compare the house you like to other properties in the neighbourhood and try to identify the elements which could have a positive or a negative impact on the asking price: location, size, year of construction and state of preservation of the property, number and layout of rooms, materials used, landscaping, features specific to the area, and so on. This information will help you determine the price you will offer the seller.





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The Agreement of Purchase and Sale

The *Agreement of Purchase and Sale* (APS) is a contract through which a person undertakes to purchase real estate. In return, the document also indicates that the seller undertakes to sell the real estate once the APS is accepted. A seller is under no obligation to accept an APS and a buyer can withdraw an APS at any time before the APS is accepted. However, once the seller accepts and signs an APS, it is a binding contract.

Identification of the parties

The APS must identify the parties bound by contract, (the buyer and the seller).

Time for acceptance

The time for acceptance sets a deadline after which the APS becomes null and void.

Description of the real estate

The APS contains a detailed description of the real estate, including street address and items to be included (fixtures vs. chattels) as well as conditions to be met.

If the real estate is a condominium, the contract must specify the number of parking and storage spaces and their identification numbers.

Ownership documents

The APS states the obligations of the seller regarding the titles of ownership. Thus, the seller must supply the buyer with a valid title of ownership, free of any debt, charge or other restriction of private or public law other than the usual easements. The seller must, therefore, supply authentic copies of the deed. These documents are provided to your lawyer.

Important considerations about APSs

The APS contains five standard contingency clauses:

Deposit clause

Typically, the buyer gives the deposit to the seller's brokerage to be held in trust as a show of good faith to complete the transaction. The deposit is credited towards the purchase price at the time of closing. The deposit can be as much both parties agree. In all cases, the deposit belongs to the transaction and can only be released if one of three things happens:

- The deal closes;
- The buyer and seller sign a release agreeing where the deposit is to be paid; or
- A court decides what to do with the deposit.

In most terminated transactions, the buyer and seller agree to end the transaction and sign a mutual release. However, when the parties are unable to reach an agreement deposit must remain in the brokerage trust account until a court order is obtained.

The financing clause

The financing clause ensures you can obtain satisfactory financing (amount and interest rate) to purchase the home. If you are unable to obtain financing that falls within the terms specified in the agreement, you can choose to terminate the transaction.

The lawyer review clause

The primary purpose of having a lawyer review the APS is to

- confirm whether or not the purchase contract is a binding agreement and whether there are any errors contained within the agreement;
- confirm that any representations upon which you are relying are in the APS or in an amendment or an addendum;
- discuss the subject clauses with you and confirm the timing of their removal; and
- advise you as to relevant dates and the importance of observing the strict timetable imposed upon the parties when there is a "time is of the essence" clause in the purchase agreement.

It is important to have your lawyer review and discuss the APS with you.

The insurance clause

You cannot mortgage a property without house insurance. If you need a mortgage to finance the purchase, it is critical to ensure the property is insurable and at a rate you can afford. While most properties are insurable, homes built on flood plains or homes built too close to water may not be. The type of home also impacts insurance. Older homes are typically more costly to insure than



newer homes and log homes may be costlier still. As with any type of insurance, it pays to shop around.

The Inspection/ PCDS Clause

The Inspection / PCDS Clause contains two sections:

PCDS—The *Property Condition Disclosure Statement* (PCDS) is designed to protect all parties involved in real estate transactions. The objective is to encourage full communication so that buyers have as much information as possible concerning the property. Lawsuits are expensive and frequently result from a misunderstanding, a communication problem, or a lack of information.

Without a PCDS, sellers may have difficulty establishing that a problem was disclosed to buyers, and buyers may be unable to establish that a statement was made or that information was withheld unless important information is confirmed in writing on the PCDS.

Sellers are not required to provide a PCDS, but most do. There are however, several situations where disclosure statements are not available and typically relate to a situation where the seller did not live in the house. Some examples are:

- Foreclosures—the property is owned by a bank
- Relocation—a property is being sold by a relocation company
- Estate—the property owner died and an executor is selling the property
- Rental— the property owner rented out the property to others



Home Inspections—The inspection section entitles you to have the property inspected at your expense by a professional building inspector. If the building inspection report is unsatisfactory, you can request the seller perform repairs or reduce the sale price, or you can terminate the transaction. This is one of the most common conditions in an offer. When real estate markets are extremely active and you really want a particular home, skipping the home inspection and not placing this kind of condition in an offer can be tempting. Before you make the decision, consider the benefits of a home inspection.

If there is a PCDS, you may receive a copy and have a general sense of comfort about the history of the property. However, you should keep in mind that the seller may not be aware of latent property defects and that the information provided in the PCDS is based only on their personal knowledge.

A qualified and experienced home inspector examines the major systems in the home, such as:

- Electrical
- Roofing
- Plumbing
- Heating/air conditioning
- Foundation
- Septic systems

After you have reviewed the property inspection report, you can make an informed decision about the house. You may wish to amend the *Agreement of Purchase and Sale* to require the seller to correct issues identified in the inspection, or a price reduction. Just remember that amending an agreement gives either party the ability to terminate. The seller may choose to terminate the agreement, rather than perform repairs or reduce the price. If the inspection reveals issues you feel are unacceptable, you have the option of terminating the agreement.

The building inspection is also a demonstration of your due diligence as a buyer. If a serious defect is discovered after you take possession of the property, that you had a building inspection performed shows that you took reasonable steps to safeguard your investment should the matter end up in court.

If you wish to negotiate with the seller, keep in mind that notice of an unsatisfactory inspection or an unsatisfactory PCDS also permits the seller to terminate the contract. If the repairs are minor and you really want the property, you may be better off notifying the seller that the building inspection report is satisfactory rather than risk the seller terminating the transaction. This is especially true in a hot market.

Time is of the essence!

The APS contains a series of dates and times that are of critical importance. Know the dates and times and make sure you complete the actions specified on or before the date and time in the APS. Remember, in the case of financing, inspection/ PCDS, insurance, and lawyer review, silence is assumed as consent.



Addendums and schedules

The APS may contain a reference to addendums and schedules. These addendums and schedules are other documents that form part of the APS. These documents typically contains clauses that are not part of the standard APS. Two of the most common are:

Schedule of Leased Equipment—All leased and rented equipment, such as water heaters, propane tanks, and furnaces, must be recorded on the *Schedule of Leased Equipment*. The schedule must specify whether the equipment is leased or rented, and for leased equipment, whether the leases can be assumed or bought-out by the buyer.

If the property contains leased or rented equipment, the seller must supply you with the *Schedule of Leased Equipment* and copies of the leases/rental agreements by the date specified in the APS. As with the previously mentioned clauses, you have a set period of time to review the schedule and deem it satisfactory or provide notice to the contrary. If satisfactory, the *Schedule of Leased Equipment* forms part of the APS.

Water and Septic Schedule—As mentioned previously, the buyer is responsible for ensuring that well water is safe to drink, that there is sufficient quantity of water to service the house hold, and that the septic system is functioning properly. While the PCDS, if it exists, provides information on well and septic, it only documents the seller's knowledge of these systems. The seller is a home owner, not an inspector. It is important to do your own testing, especially regarding water quantity, because what is sufficient for one family may be woefully inadequate for another, or vice versa.

Time for acceptance

The Time for Acceptance clause sets a time and date that the offer is open for acceptance by the seller. If the seller does not accept the offer before the deadline, the offer is null and void.

Pre-closing viewing

The APS contains a clause that allows the buyer to view the property, before closing, to ensure it is in the same condition as it was when the offer was made. This is not another inspection; it is a home viewing to confirm the condition of the property hasn't changed since you agreed to buy it.

Signatures

The APS must include the buyer's and seller's signatures as well as that of their respective spouses, if applicable. Each copy must bear the original signature of each of the parties. In addition, a witness's signature is strongly recommended. An APS that is not witnessed is still valid; however, it is less desirable from a legal standpoint. Should there be any changes or additions to the wording of the agreement, they must be initialed by all parties.

The Counter Offer

The seller may accept or refuse any offer presented to them. The seller may also make a *Counter Offer*. The first purpose of the *Counter Offer* is to signify to the buyer that their offer has been rejected, but that the seller would be agreeable to the offer if specific changes or additions are made.

The *Counter Offer* can also be used to include or exclude certain items, to change the selling price or simply to further clarify the offer. The buyer, in turn, may not accept the *Counter Offer* and wish to make a new offer. You cannot counter a *Counter Offer*. A new agreement must be drawn up.

Conditions of acceptance

The conditions of acceptance of the *Counter Offer* set a deadline for its acceptance and notification. Therefore, the deadline for accepting the *Counter Offer* is a date and time by which the seller cannot withdraw their *Counter Offer*, and by which the buyer must accept for the contract to be legally binding.

Any *Counter Offer* should include a reasonable deadline (usually between 12 and 24 hours) by which the *Counter Offer* must be refused or accepted.

If the *Counter Offer* is accepted, subject to the conditions stipulated in the agreement, the property is considered sold, although the transaction only becomes official on closing. However, the transaction cannot be completed until all of the conditions of the contract are fulfilled. Therefore, a final deadline must be set for the conditions to be carried out so that the closing can be finalized.

Using specialized services



Home inspector

We urge you to carefully select a home inspector and if possible, to check references. You also need to ensure that the inspector has a professional liability insurance against faults, errors, and omissions.

A home inspection is an assessment of the condition of property. It is not an inspection to determine whether or not the property meets the current building code.

Land surveyor

The land surveyor carries out either a full survey or completes a location certificate. The surveyor expresses, using a location certificate, an opinion on the location and the condition of the real estate compared to the titles and the legal description as well as any easements, laws or regulations governing the real estate. A full survey includes actually staking out the boundaries of the property. Consult your lawyer to determine which is appropriate. Purchasing title insurance may be an alternative to having either type of survey completed.

Survey information may be provided by the seller for information purposes. While it may be tempting to save money, relying on a location or survey certificate that was not prepared for you may leave you with no legal recourse if the survey is wrong. Alternatively, if you have a surveyor prepare a new certificate for you and the work is negligently done, you have direct legal recourse against that surveyor for your loss.

Mortgage broker

A mortgage broker can help you identify the best loans available on the market, based on your needs and the type of loan you want.

Lawyer

The lawyer plays a pivotal role in a real estate transaction, including reviewing the APS and title examination. One of the lawyer's main responsibilities is to complete a title search to confirm that the buyer gets clear title to the property. Your lawyer, of course, will give you advice on any legal aspects of your property purchase.



The mortgage

Most people need to take out a mortgage to finance the purchase of a home. A mortgage is a loan in which the real estate serves as collateral for the debt repayment. To evaluate your financing needs, see “How much financing do I need?” on page 14. The amount borrowed is referred to as the principal, from which the interest is calculated at interest rates in effect in the lending market.

Your monthly or biweekly payment is based on a spread of the debt and the principal to be repaid over the term (duration) of the loan, typically between six months and five years.

The number of years required to repay the loan is called the amortization period, typically between 10 and 25 years.

The net value of the real estate is calculated by subtracting the unpaid portion of the loan from the purchase price.

Types of mortgages

Different types of mortgages are available on the market. Some may or may not include prepayment privileges (open or closed term). In others, the interest rate is frozen for the term of the loan (fixed rate) or follows market variations (variable rate).

Certain types of mortgages may suit your needs better than others. This is why we recommend that you shop around to negotiate the best possible terms.

Mortgage insurance

Mortgage loan insurance is typically required by lenders when the down payment is less than 20 per cent of the purchase price. Mortgage loan insurance protect lenders against mortgage default, and enables consumers to purchase homes with a minimum down payment of five per cent with interest rates comparable to those with a 20 per cent down payment.

To obtain mortgage loan insurance, lenders pay an insurance premium, which is passed on to the buyer. The premium payable is based on a percentage of the home’s purchase price that is financed by a mortgage. The premium can be paid in a single lump sum or it can be added to your mortgage and included in your monthly payments.

Mortgage loan insurance typically ranges from 0.5 to 2.9 per cent of the total mortgage amount. The rate is dependent on the down payment amount—the more money you put down, the less you have to pay. For example, a five per cent down payment means you will have to pay 2.9 per cent for mortgage

loan insurance, while with a 15 per cent down payment you will only have to pay 1.75 per cent. Insurance premiums are higher for people who are self-employed.

For more information about mortgage insurance, see the Canadian Mortgage and Housing Corporation website: www.cmhc-schl.gc.ca

The property transfer

Once the offer or the counter offer has been accepted and the conditions have been met, the next step is to make the transaction official. The two main components at this stage are the title search and the closing. The property transfer requires the services of a lawyer, but your industry member continues to play a central role at this step of the transaction. Among other things, they will make sure that all documents required are available and will bring assistance in case any problem arises.

Title search

Your lawyer performs the necessary research to guarantee marketable title of ownership. Your lawyer also verifies that the seller is indeed the owner of the property, whether they have the right and the ability to sell, if a spouse or other person must consent to the sale, and so on. All property sales in Nova Scotia are now registered through the new *Land Registration Act* requirements and the government certifies title.

Should you have any concerns regarding zoning, legal property usage, and so on, you should consult a lawyer. The Commission recommends that you, in conjunction with your lawyer, have a surveyor review the legal description of the property and provide either an up-to-date location certificate or a full survey to confirm the location, easements and other important information about the property.

Through the title search, your lawyer can detect the charges or real rights likely to affect, limit or devalue your right of ownership. You may wish to purchase title insurance to protect against unexpected title encroachment issues or other title defects. Ask your lawyer whether you need title insurance.

The closing

The final step of the transaction is the closing which involves the completion of the necessary legal and mortgage documents. This is typically completed after the preclosing viewing.

Registration of rights of ownership

Once the closing is final, the lawyer will register the transaction with the Registry of Deeds. The lawyer may retain the funds until this step has been completed.



The Nova Scotia Real Estate Commission

Created by the *Real Estate Trading Act*, the *Nova Scotia Real Estate Commission* is an independent, non-government agency, responsible for regulating the real estate industry in Nova Scotia. The Commission's mandate is to ensure consumer confidence in the real estate industry. Among other duties, it ensures that industry members carry out their activities in accordance with the *Act* and *Bylaw*.

The Registrar, the senior staff person at the Commission, is responsible for overseeing the activities of the industry members, including auditing their records, accounts and actions. The Registrar may order an investigation and lay charges if an industry member refuses to follow the *Act* and the *Bylaw*.

At the direction of the Registrar, the Commission's compliance team is responsible for investigating if there is reason to believe that an industry member has acted improperly, and may recommend charges to the Registrar if necessary. Any industry member who does not act in accordance with the *Act* and the *Bylaw* may be charged and required to appear before the Discipline Committee, which has the authority to impose fines, suspend violators or even revoke their right to practice.

Do you have a problem?

The first thing to do is to discuss the problem with your industry member. If you are not satisfied with the outcome of the discussion, contact the broker or managing associate broker where your industry member is licensed. If this does not yield results or if you feel you haven't received information leading you to believe that everything is being handled properly, contact the Commission's compliance team who can get the information you need to clarify the situation and find out about your rights.

Amortization

Period required to pay back a mortgage in full through regular payments. The amortization is usually based on fixed terms of 10, 15, 20, or 25 years.

Appraisal

Process which consists in estimating the market value of real estate based on the general condition of its components and its specific features. The appraisal is often the result of a comparison with similar real estate up for sale or recently sold in the same area. It is done by a licensed appraiser.

Cancellation

Cancellation of an agreement or the registration of a right through which one is freed from certain obligations, under certain conditions.

Charge

Amount to be paid according to a preset deadline. Tax payable on the use of a public utility, for example.

Chattels

Personal property which is moveable and not attached, such as furniture and appliances.

Client

A client is any person that is in an agency relationship with an industry member. This relationship may be formalized, as in a Seller or Buyer Brokerage Agreement or it may be verbal or as a result of actions of the industry member. The client relationship ends once the purchase or lease negotiated closes or the expiration date of the contract. If the industry member does not provide disclosure, then it is assumed you are in a client relationship.

Common area/condo fees

Expenses related to the maintenance and management of the common areas of a condominium property. Monthly payment, usually fixed, used to set up a fund to pay

for current and unforeseen expenses (repairs, equipment replacement, and so on).

Counter offer

A response from the seller presented in reply to an offer.

Note: The first purpose of the counter offer is to signify refusal by the seller of an offer by the buyer.

Customer

A person who has not engaged or employed the brokerage in an agency capacity or as the person's transaction broker.

Deed transfer tax

Tax imposed by a municipality on any transfer of right of ownership in its jurisdiction. In Nova Scotia, deed transfer tax may be up to 1.5 per cent of the purchase price.

Deposit

A sum of money that accompanies an offer to purchase real estate to be applied against the purchase price if and when the sale is finalized. The deposit must be placed in a trust account and will be deducted from the balance payable at the closing, or will be returned to the buyer if the sale does not go through. It may also be claimed by the seller if the buyer refuses to complete the sale.

Listing cut

Document on which a brokerage has presented the features (construction year, taxes, measurements, and so on) of real estate listed for sale.

Down payment

Personal contribution of the buyer to the financing of real estate purchase. Cash portion deducted from the selling price, which determines the amount of financing required to complete the purchase.

Note: If the down payment for the purchase of the real estate is less than 20 per cent of the purchase price, the loan must be insured by the Canada Mortgage and

Housing Corporation (CMHC) or another mortgage insurer.

Easement

Restriction of the right of ownership for reasons of general interest or public use. Right of access or use of land by others, for a defined purpose (passage, parking, public utilities, and so on).

Financing

Means used by a buyer to acquire real estate. Financial resource, often in the form of a mortgage loan provided to the buyer by a financial institution for the purchase of real estate (see Mortgage).

Fixtures

Items attached to the property or a building and considered part of it, such as plumbing fixtures or a fence. If in doubt as to whether an item is a fixture or a chattel, include it in the Agreement of Purchase and Sale.

Gross Debt Service (GDS) ratio

Portion of the borrower's gross income used to pay monthly housing expenses (principal, interest, taxes, heating).

Industry member

A person who holds a license issued by the Nova Scotia Real Estate Commission authorizing them to carry out brokerage transactions on behalf of others for the purchase, sale or rental of real estate.

An industry member is only authorized to act for and on behalf of a broker. They act as a representative of the brokerage.

Inspection

General verification of the state of the main components of real estate (foundation, structure, roof, heating system, electrical system, and so on) to assess condition.

Interest rate

Percentage representing the amount of interest produced by an amount of one hundred dollars. A four per cent interest rate will produce an interest amount of \$4 payable to the lender for every \$100 borrowed.

The interest rate is used to calculate the amount to be paid to the lender in exchange for financing to allow the buyer to purchase real estate.

Licence

Operating permit issued by the Nova Scotia Real Estate Commission to any person or company, who meets the legal requirements to carry out real estate brokerage activities in Nova Scotia. The granting of a license is conditional to the successful completion of a specialized real estate brokerage course and an entrance exam.

Listing contract

Agreement under which a person authorizes a real estate brokerage to act on their behalf for a given period of time, as intermediary in the purchase, sale, rental or exchange of real estate. The Seller Brokerage Agreement documents the obligations to which the broker and the seller agree by mutual consent.

Location certificate

Document containing a report, in which the land surveyor expresses their opinion on the location and condition of real estate compared to the titles and the legal description as well as laws and regulations governing the real estate. The location certificate indicates whether or not the buildings are on the property, but does not verify any dimensions.

Mortgage

Method of financing in which the real estate is used as collateral for debt repayment.

Mortgage insurance

Insurance purchased by a home buyer to guarantee the payment of the monthly installments required to reimburse a mortgage in full.

Note: If the down payment for the purchase of the property is less than 25% of the purchase price, the loan must be insured by the Canada Mortgage and Housing Corporation (CMHC) or another mortgage insurer.

Nova Scotia Real Estate Commission

Regulatory body created under the *Real Estate Trading Act* whose mandate is to ensure consumer confidence in the real estate industry by regulating the activities of all real estate brokerages and industry members practicing in Nova Scotia.

Offer to purchase

Undertaking by a person to purchase real estate under certain conditions set by that person. Contract through which the seller agrees to sell the real estate once they have accepted the offer to purchase.

Principal

Amount of money borrowed through a mortgage.

Professional liability insurance

All industry members are required to have professional liability insurance (errors and omissions). This insurance protects industry members against the financial consequences of any fault, error, negligence or omission, which their representatives or themselves could be responsible for in the course of their activities.

Real estate broker

A licensed broker is responsible for the supervision of a brokerage, its staff, and industry members. Supervision includes being actively engaged in the management of the business and must be physically available to oversee the business. A broker ensures the business is run competently and in accordance with the *Act*, the *Bylaw*, and the *Policies and Procedures*. Brokers may also trade in real estate.

Real estate brokerage

The professional activity of industry members. Brokerage transactions and professional acts carried out by industry members concerning the purchase, sale, rental or exchange of real estate. Services which can only be practiced by individuals licensed by the Nova Scotia Real Estate Commission.

Recovery fund

Fund created under the Real Estate Trading Act, to which all industry members in Nova Scotia contribute to compensate consumers who are victims of fraud or breach of trust by an industry member.

Related expenses

Additional expenses to be paid when buying real estate, including building inspection, property appraisal, loan application, legal fees, taxes, insurance, and so on.

Right of ownership

Recognition that gives the owner of a property the right to use, enjoy and freely and fully dispose of the property, to the extent of the limits and conditions imposed by law.

Salesperson

A salesperson is a licensed to trade in real estate on behalf of a brokerage under the supervision of a broker.

Title of ownership

Official proof of the right to own a lot and buildings erected thereon.

Trust account

Deposit account in a financial institution in which a real estate brokerage can deposit sums entrusted to it in the course of a real estate transaction.

When presenting an offer, the buyer often gives the listing broker a deposit on the purchase of the real estate. This deposit must be placed in a trust account once there is an accepted *Agreement of Purchase and Sale*.



We are just a phone call away!

- Licensing information
- Standards of business practice and code of conduct
- Complaints or problems

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