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## *Negotiating an Offer*

Once a prospective buyer decides on your property do not think that the hard part is over. An offer is a sales contract and is binding. This is another great place to utilize a lawyer's expertise. For this reason we encourage you to utilize the free legal consultation located in this guide. It is always best to negotiate with your buyer face to face. Never be insulted by a low offer, its always a start. Another great way to negotiate with your buyer is through email. This process may take more time, however it will give you more time to respond appropriately. In some cases the purchaser may bring you a written offer prepared prior to verbal negotiations. When looking at an offer, watch for any special clauses that can work in the buyer's favor. Make sure the buyer has been pre-approved for financing and do not sign any offer you have not looked at carefully. If, after reviewing the offer you decide it is insufficient, you can either make a counter offer or reject the offer outright. Remember that negotiating is part of any business deal. Never take anything personally and do not scare off potential purchasers by being hasty. Consider every serious offer on its merits, establish trust with buyers and always make a counter offer if you are not pleased with the first offer. In a lot of cases the first offer is the best offer.

### **1.1: Details to Negotiate**

Prior to filling out any paper work you should begin by negotiating the details of the sale. It is pointless to prepare an offer to purchase if you or the buyer have not come to agreement on the selling price, or other important details of the sale. The following are items to negotiate prior to preparing any agreement.

**1) The Selling Price** - most offers come in at an average of 97% of the asking price. On an asking price of say \$200,000.00 we would expect the offer to finalize at \$193,000.00. Keep in mind that this is a general rule of thumb. Some homes sell for the asking price or above, in most cases however this is due to the fact that they were underpriced to begin with. If you encounter a bidding war, you have most likely underpriced your home!

**2) Chattels** - also known as the inclusions/exclusions of the sale. These are typically movable items such appliances, window fixtures, light fixtures, or other items to be included or excluded from the sale. Items that are attached to the home such as light fixtures or window coverings are assumed to be included in most cases. If you are removing such items be sure to list them as an exclusion.

**3) Completion Date** - commonly referred to as the closing date or date of possession. This is the day that the deed is transferred to the new owners and all monies are exchanged. The home is to be vacant prior to the completion date so be sure that you will have ample time to make moving arrangements.

**4) Sale Conditions** - Please refer to section 4.2 for further information.

### **1.2: Conditions**

Offers are often conditional. During the negotiation stages it is important to determine what conditions if any will be a part of your agreement. Most offers are conditional upon financing. If your client has been pre-approved for financing they will still be required to present a copy of the agreement of purchase and sale for final approval on their financing. In some cases the lender may proceed to do an appraisal on your property prior to giving final approval for your buyer. Another common condition may be based on a home inspec-

tion. Your buyer will have the right to choose the home inspector to do the job. They will also be liable to pay the fees for the inspection. The inspection must be completed within the time frame that you have mutually agreed to. If your buyer has a home to sell before they buy yours their offer may be conditional on the sale of that property. Most real estate agents are cautious of accepting such offers, as often they favor the buyer. Before accepting such an offer we urge you to seek professional legal advice, this is another great place to utilize your free legal consultation. A great negotiation tactic is to offer the buyer a longer closing date, providing that you have the flexibility. In any real estate market the time that it takes to sell a home is largely dependant on its price. By allowing a longer closing date this should accommodate the sale of your clients property, allowing you to avoid the condition on their sale in your final agreement. If you cannot accommodate a longer closing date, your client will simply have to price their home competitively to acquire a quick sale. The formula is quite simple.

## ***Finalizing The Offer and Paperwork***

This is the easiest part of your sale. Here your hard work is about to pay off, your reward is the thousands of dollars you are about to save in commission. The best part being that if you listed your home with an agent you would have done the same amount of work up to this point. The agent would not get the home ready for the sale, the cleaning, the painting, the gardening is always your responsibility. You were not inconvenienced by having to leave your home during showings, or accommodating the agents schedule. Who better to show your home than you! You negotiated in your own best interest, with no pressure, you were in control. Essentially the paper work is the only difference in the entire process. The difference being that your final agreement will be prepared by a real estate lawyer instead of the agent or their secretary. In any case you always need a real estate lawyer to close the deal, the cost will be the same regardless if you sell through an agent or privately. You may obtain legal information at anytime calling the toll free legal hotline at 1-877-529-8195. A real estate lawyer will require all the details of your sale in order to draft the agreement. All the information necessary should have been already negotiated as per section 4. We have made it a breeze for you to deliver that information to a lawyer and make sure that everything is complete. Prepare to be shocked at how easy this is!

### **2.1: Memorandum of Intent To Purchase**

The included Memorandum of Intent To Purchase is to be used as a guide for obtaining all the information necessary to draft the final agreement. On pages 9 and 10 you will find a copy of these worksheets. You may obtain additional copies in the members section of our website. Here you may also fill and submit all forms electronically to obtain the final Agreement of Purchase and Sale. If you do not have access to the internet be sure to make multiple photo copies of this form prior to filling it out. It is best to fill out all the information with your buyer.

### **2.2: Instructions For Using The Memorandum**

The Memorandum of Intent is not legally binding, however both parties are encouraged to proceed in good faith as agreed. Please answer all questions on "Schedule A" to the best of your knowledge. Once completed please contact the toll free legal hotline at 1-877-529-8195 to obtain your final paper work. That's it!

The Memorandum of Intent is not a legally binding document. Once the worksheet is completed you must take it to a Lawyer to have a formal Agreement of Purchase and Sale form drafted. If you do not already have a lawyer we recommend that you contact the toll free legal hotline where you will find assistance in preparing the final documentation. The time line to have the offer prepared should not be lengthy. Generally 2-3 business days should do it, during which time you should not be negotiating any other offers.

**Property:** This is the municipal address of your property. Also known as the legal description (Lot & Plan #) which can usually be found on your tax bill.

**Purchaser:** The name of the purchaser. Be sure to specify the full name (i.e. John Thomas Smith).

**Vendor:** Your Full Name.

**Purchase Price:** The final sale price that you have agreed on with your buyer.

**Deposit:** Specify the amount of the deposit cheque received. This cheque should be made in trust of the lawyer that you will be delivering the memorandum to. It is up to you to negotiate the amount of the deposit. A standard rule of thumb is 1% of the selling price.

**Completion/Closing Date:** The closing date as negotiated. Described in section 4.1

**Conditions:** Check off any conditions that are applicable to your agreement with the buyer. If there are any other conditions please specify below.

**Chattels Included:** Specify any items that are included with your sale as per section 4.1.

**Fixtures Excluded:** Specify any items that are excluded from the sale as per section 4.1.

**Rental Items:** Specify any rental items that the purchaser has agreed to assume rental contract of.

## 2.3: Drafting the Final Agreement of Purchase And Sale

The final Agreement of Purchase and Sale is typically prepared by a Lawyer. You may bring a copy of the Memorandum to any Real Estate Lawyer. If you have your own lawyer, you may wish to utilize their services to complete the paper work. Your purchaser can also bring the Memorandum to a Lawyer to obtain the paper work. We encourage you to complete and submit the Memorandum electronically in our members section. Alternetivley, please contact the toll free legal hotline at 1-877-529-8195 to arrange the completion.

## 2.4: Finalizing The Offer

Once a final copy of The Agreement of Purchase and Sale has been drafted, both you and the purchaser will have to accept the final offer by signing and dating the appropriate areas of the form. Once signed and dated you will need to bring the signed copy of the offer back to the Lawyer who will now look after the rest of the sale. Your purchaser will also have to bring a copy back to their Lawyer. Please be sure to deliver an original form to your Lawyer, you may wish to keep a photo copy for yourself.

## 2.5: Drafting The Agreement of Purchase and Sale on Your Own

For those of you who feel comfortable drafting The Agreement of Purchase and Sale on your own, a standard copy of this form is available on our website in the members section. Although we always encourage you to utilize professional council, you may have previous experience. It is our hope that should you choose to fill it out yourself, you understand that this is a binding legal document.

All Regions Toll Free 1-877-529-8195

Legal Hotline, Agreement Preparation, Advice

# MEMORANDUM OF INTENT TO PURCHASE

This document will form the basis upon which a formal Agreement of Purchase and Sale will be prepared by the Vendor's lawyer and reviewed by the Purchaser's lawyer. No binding Agreement of Purchase and Sale will be entered into prior to the signing of the formal, lawyer prepared, agreement.

**Property:** \_\_\_\_\_  
(municipal address)

**Purchaser:** \_\_\_\_\_

**Vendor:** \_\_\_\_\_

**Purchase Price:** \_\_\_\_\_

**Deposit:** \_\_\_\_\_

(cheque payable to Vendor's lawyer, in trust, delivered with this Memorandum, to be held in trust pending completion or other termination and to be credited to the Purchase Price on Closing in accordance with the terms of the formal Agreement to be entered into)

**Completion/Closing Date:** \_\_\_\_\_

**Conditions:** (X) beside the appropriate conditions to be inserted in the

Formal Agreement

\_\_\_ 10 days to complete satisfactory home inspection

\_\_\_ 10 days to find satisfactory financing

\_\_\_ 3 business days for satisfactory review of the formal Agreement by Purchaser's lawyer

Additional Conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Chattels Included:** \_\_\_\_\_

**Fixtures Excluded:** \_\_\_\_\_  
\_\_\_\_\_

**Rental Items:** \_\_\_\_\_

(items not included in Purchase Price and Purchaser agrees to assume rental contract, hot water heater is a common example)

If the Property is a condominium, the Agreement will be conditional on the Purchaser obtaining a satisfactory Status Certificate. The Vendor represents that the monthly common expenses are \_\_\_\_\_ and include: \_\_\_\_\_  
\_\_\_\_\_.

**The Vendor and Purchaser agree that the terms and conditions herein will form the basis of a formal Agreement of Purchase and Sale prepared by the lawyer for the Vendor in the usual form within three business days of the date hereof. In the event that a formal Agreement of Purchase and Sale is not entered into by the Vendor and Purchaser, the deposit provided with this Memorandum of Intent shall be returned, in full without interest, to the Purchaser and this shall constitute the Vendor's irrevocable direction to his/her lawyer so to do.**

Dated at the City of \_\_\_\_\_, in the Province of Ontario, this \_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_

\_\_\_\_\_

**Vendor:**

**Purchaser:**

**Purchasers Legal Contact (if known):**

Solicitors Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax: \_\_\_\_\_

**SCHEDULE “A”**  
of  
Memorandum of Intent to Purchase

By submitting this form you will be asking William F. Bastien of the law firm, Thoman Soule LLP. to prepare on your behalf a binding Agreement of Purchase and Sale respecting the property referred to in the Memorandum of Intent to Purchase. Upon the submission of this form, completed in its entirety, a solicitor/client relationship will be formed between the named Vendor(s) herein and William F. Bastien. Thoman Soule LLP. and William F. Bastien will not act on your behalf unless this Schedule “A” form is completed in its entirety.

The formal agreement will be returned to the Vendor via e-mail (PDF attachment) within three business days of submission. The Vendor will be solely responsible for the proper execution (signing) of the agreement, in quadruplicate, with the Purchaser.

**VENDOR/CLIENT INFORMATION:**

Name(s):

Marital Status:

Address:

Phone Nos.:

Occupation(s):

**PROPERTY INFORMATION:**

1. Is the Property a residence without commercial use?
2. Is the Property a matrimonial home?
3. How long have you owned the Property?
4. Will the sale of the Property be GST exempt?
5. Are you now a Canadian resident and will you remain so at the date of completion of the sale?
6. Is the Property subject to mortgages, liens, work orders or court judgments?  
If so, describe:
7. Are there any leases, conditional sales contracts or service contracts (e.g. Hot water tank/furnace)?  
If so, describe:
8. Are there any tenants?
9. Are there any easements, rights of way or encroachments?  
If so, describe:

## **SCHEDULE “A” Continued**

10. Are there any property line disputes?
11. Are there any environmental problems with the Property or in the immediately surrounding area?
12. Is there a fuel oil tank on the Property?
13. Have the buildings ever contained urea formaldehyde insulation (UFFI)?
14. Is the Property presently insured against fire?
15. Are you aware of any problems or deficiencies with the Property that could not be revealed upon a reasonable inspection by the Purchaser?

The lawyer preparing the formal binding Agreement of Purchase and Sale will be relying upon the information contained in the Memorandum of Intent to Purchase and this Schedule “A”.