



# The Residential Selling Process

This brochure will help you understand the process of selling your residential real estate. The information provided is not all-inclusive. If you require further information, please seek expert advice so that you can make informed decisions that are in your best interest.

## You've Decided to Sell. Now What?

### ***Gathering your Documents***

In order to facilitate the marketing of your home you will need a current Real Property Report with evidence of municipal compliance. If your home is a condominium, you will need to gather your condominium documents. If you are not certain what these are, contact your property management company directly or discuss this with your Industry Member.

### ***Disclosures***

Sellers cannot conceal defects or mislead buyers about the condition of their property. You must honestly answer questions that may be asked. You must disclose any *material latent defects* to potential buyers if you are selling the property yourself. If you are represented by an industry member, you must disclose any material latent defects to your industry member, who will share this information to any potential buyers.)..

- A *latent defect* is one that is not discoverable through the exercise of reasonable vigilance during an inspection of a property;
- A "material defect" is one that reasonable persons would agree is a significant shortcoming in a property in light of the particular transaction.

Possible material latent defects may:

- render a property dangerous or potentially dangerous to the occupants;
- render a property unfit for habitation;
- render a property unfit for the purpose for which the buyer is acquiring it, at least where the buyer has made this purpose known to the seller or seller's brokerage.

and may include:

- defects that would involve great expense to remedy;
- local authority and similar notices received by the seller that prejudicially affect a property; and
- lack of appropriate municipal building and other permits for a property.

It is the responsibility of the buyers to take the necessary steps to satisfy themselves about the condition of the property, but sellers must disclose material latent defects that are known to them and answer any questions with honesty.

### ***Dower Rights***

In Alberta, spouses who are not on title have a right to make decisions about selling the home in which they live (or lived) with their spouse. These are called Dower Rights and are derived from the *Dower Act*. The untitled spouse must waive their Dower Rights, in writing, in order for the home to be sold. See your lawyer for further information if this applies to you.

### ***Inclusions/Exclusions***

When selling you must decide on which attached and unattached goods you will be taking with you, and which ones you will be selling with the property. Items that are glued, screwed or nailed to the property are considered to be attached. Attached items that you want to take with you must be excluded in the Purchase Contracts. Their inclusion or exclusion in a Purchase Contract can be negotiated. Some features of the home have both attached and unattached items, such as a built-in vacuum system where the motor/canister are attached, but the hose, fittings and power head are not. It may be prudent to ensure that the Purchase Contract reflects your intentions with these types of items. You will also need to know if any goods are leased and leased to own (e.g. water softeners), as they may carry contractual obligations. In addition, you will need to determine if there are any long-term contracts, such as alarm systems or utility suppliers. Clarity with inclusions and exclusion helps you and the buyer have a smoother closing and possession.

### ***Costs***

#### *Taxes*

Sellers and buyers need be aware that the purchase and sale of a home may have tax implications, particularly GST. In the Purchase Contract it states that the seller pays the GST. If you choose to hire a brokerage to sell your home, they will make no representations or recommendations regarding GST on the sale of your home. It is the sole responsibility of the Seller to seek expert advice (e.g. an accountant) regarding the applicability of payment of GST on the sale of the home.

Capital gains tax (tax on the increase or decrease in property value) does not normally apply to the sale of your primary residence. However, there are a number of situations that may trigger capital gains. For example if you are selling a vacation home, a rental property, or a residence where a home business was run. For further information on capital gains tax consult a tax accountant or lawyer.

#### *Lawyer*

When you sell your home you will need to involve a lawyer for such items as title transfer and mortgage discharge. Property Title transfers from the seller to the buyer must be recorded in the Alberta Land Titles Office to protect the new owner's

interests. All the necessary documents will be signed in the lawyer's office shortly before the possession date. Select a lawyer early in the selling process and contact him or her if you have any legal questions and once you have accepted an offer. Some law firms specialize in real estate transactions, and costs vary. Your transaction depends on the timely and professional conduct of your lawyer, so it pays to do some research. For further information on real estate lawyers contact the Alberta Law Society.

### ***Time is of the Essence***

When selling a home, time is an important factor. When an offer is made, the Purchase Contract will include a variety of deadlines, from how long the offer is open for your consideration to the number of days the buyer has to satisfy any conditions (e.g. home inspection, financing, etc.). These dates are important to monitor and your industry member can help you coordinate the multiple timelines.

## **Financial Considerations**

Perhaps the most important financial consideration when selling your home is the price you and the buyer ultimately agree upon. However, there are other financial factors that could impact your decisions during the selling process. Your industry member, lender, lawyer or accountant will be able to explain these in more detail. Before you sell, call your mortgagee (lender) to verify the status of your mortgage and discuss your options. Here are a few mortgage situations you might encounter:

### **Discharging your Mortgage**

It's important to understand the terms of your mortgage when you plan to sell your home. Review your mortgage documents and contact your lender to discuss your options. If working with an Industry Member, you will be asked to sign a mortgage verification form, which grants him or her permission to verify the terms and conditions of your mortgage.

Some people, when selling their home, use the proceeds from the sale to *discharge* or pay out their mortgage loan. If you have an *open* mortgage, you will probably be able to discharge it without penalty. If you have a *closed* mortgage, you will probably have to pay some type of penalty to do so. You should clarify your financial obligations with your mortgage lender.

### **Avoiding the penalties**

There may be ways to avoid discharge penalties and it is important that you discuss these options with your mortgage lender. These methods may include the buyer *assuming* your mortgage, or you *porting* your mortgage with you to the home you will be buying. There are costs and potential liabilities if you choose these options, so you should consult your mortgage lender well in advance before committing to either option.

## **Taking back a mortgage**

People who have owned their homes for years may have built up *equity* in the property. To help a buyer purchase the home, some sellers will take back a mortgage by lending money to the buyer in order to purchase the home; in essence funding their own sale. This arrangement is commonly called a *vendor-take-back* mortgage. An *agreement for sale* is another option. If you are thinking about these options, you should consult your lawyer well in advance.

## **Representation Relationships**

### ***Know your Options***

If you have contacted an industry member for assistance you should have discussed with them the different types of relationships that you can have with a brokerage. These relationships include:

- Common Law Agency
- Designated Agency
- Customer Status
- Transaction Brokerage

The industry member is obligated to present the *Agency Relationships Guide*, which provides you basic information about your rights and responsibilities and those of an industry member for each type of relationship. The industry member's obligations to you will vary depending on the relationship that is chosen.

You should choose the relationship which best suits your needs and confirm your choice by signed documentation.. Further information on the different relationships is provided at [www.reca.ca](http://www.reca.ca)

### ***Purchase Contract***

The Purchase Contract a standard form developed by the real estate industry in Alberta that is used to set out the terms and conditions of a transaction between a buyer and seller. Potential buyers and sellers should ask for a copy of this document so they can be familiar with its clauses. These standard form agreements may be modified to reflect the particular requirements and concerns of buyers and sellers.

Accordingly, familiarity with the clauses will help you:

- know what questions to ask their brokerage (Industry Member) or legal representative;
- know what to expect in the preparation of an offer or acceptance;
- be better equipped to negotiate the purchase or sale of a home.

## Offer, Counter-offers & Acceptances

Potential buyers will present their offer on a standard Purchase Contract. You may accept, reject, or counter the offer. You can only counter one offer at a time if you have more than one to consider. If you choose to counter the offer, the negotiations continue until both parties agree to the terms, or the offer expires.

If both the buyer and seller have brokerage representation, they should know that their representative:

- cannot make or accept an offer on behalf of a buyer or seller unless they have been clearly authorized to do so.
- are their agents for the purposes of communicating and receiving notice of offers, counter-offers and acceptances unless this authority has been clearly withheld.

You should also be aware that, in general:

- an offer or counter-offer may be withdrawn at any time before it is accepted;
- the withdrawal or acceptance of an offer or counter-offer is only effective once this withdrawal or acceptance is communicated to the other party or to the other party's agent.
- when an offer or counter-offer has been accepted there is a binding contract between buyer and seller, despite the fact that it may be subject to certain conditions having to be satisfied (eg. mortgage approval).

## Multiple Offers

Your industry member must communicate all offers to you as they are received. However, there are no rules that govern the order in which you respond to multiple offers; nor are you obliged to accept the highest offer. The seller decides which offer, if any, will be accepted, countered, or rejected.

You and your Industry Member are under no obligation to disclose to a buyer that other buyers have also made offers for the home. Nevertheless, such disclosure may be in your best interest. Your industry member should explain your options, so you can make a decision that is in your best interest.

You cannot unconditionally accept more than one offer at a time. However, you can unconditionally accept one offer, while making a counter-offer to a second buyer, agreeing to sell to the second buyer if the sale to the first buyer does not go through. It is for the second buyer to decide whether such a condition is acceptable.

## Terms and Conditions

Buyers commonly insert conditions to meet their needs. Such conditions include, but are not limited to, obtaining:

- satisfactory financing
- satisfactory property inspection
- sale of the buyer's current home
- third party approval of the transaction (e.g. parent, lawyer, employer, etc.)
- confirmation of tenancy information
- confirmation of seller's mortgage details
- confirmation of renovation costs

Other terms include the possession date and the inclusion or exclusion of attached goods (affixed to the home) and unattached goods (not affixed to the home).

## Property Insurance

It may happen that, through no fault of the seller, a home can suffer damage from accidental causes (fire, flooding, high winds, etc.) between the date the contract is entered into by a buyer and a seller and the date set for completion of the transaction.

In Alberta, the risk of loss or damage to the property lies with the seller until the purchase price is paid. If loss or damage to the property occurs before the seller is paid the purchase price, then any insurance proceeds shall be held in trust for the buyer and the seller according to their interests in the property. As a best practice, keep insurance on the property until you receive the money agreed to as the purchase price for the property.

If the property will be vacant at any time during the selling process, it is important to let your insurance company know, and to comply with their requirements in order to maintain your insurance on the property while it is vacant.

## Further Consumer Information

The Real Estate Council of Alberta is mandated to protect the interests of consumers.

For further information on selling and buying residential property, your potential relationship with an industry member, please visit the Real Estate Council of Alberta website ([www.reca.ca](http://www.reca.ca)).

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