

BUYING: THE OFFER TO PURCHASE

We will be happy to guide you through this process as it can become very complicated.

The Offer

The offer to purchase is a written contract setting out the terms under which the buyer agrees to buy. Upon acceptance by the seller, it forms a legally binding contract subject to the terms and conditions stated in the document.

The offer to purchase is, in most circumstances, an imposing pre-printed form. Great care should still be taken to see that it outlines the transaction accurately. Once the contract is in writing, a verbal explanation of what was meant, intended or understood, cannot be added, even in a court of law.

It is often believed that a printed contract cannot be altered. That is not so. Printing a contract is only for the convenience of the user. If you disagree with something in the contract, alter it, delete it, or amend it, but do not ignore it. When changes are made on the form, all parties should initial each change.

We will write up the offer to purchase on your behalf and submit it to the seller for consideration. The seller is then at liberty to do one of the following:

- i.** Accept the offer: signing it in the form that is presented without alteration; or
- ii.** Reject the offer outright; or
- iii.** Counter-offer, by varying some term in the offer to purchase and sending it back to you to review. As a purchaser, you can now choose to accept, reject or re-write a new offer with a different price and/or terms.

The Deposit

The deposit serves two purposes:

- i.** It is part payment of the purchase price, which is the consideration for the sale and is, as such, one of the legal requirements for a contract.
- ii.** It is a guarantee of performance.

The deposit is generally paid to the listing agent's company and held in trust, pending completion of the transaction. After the transaction has been completed, the deposit is turned over to the seller as part of the purchase price.

The seller is entitled to keep the deposit if the purchaser is at fault for not completing the transaction, therefore the larger the deposit, the more appealing it is to a potential seller.

Conditions in an Offer to Purchase

There may be a condition ("subject to" clause) in the offer to purchase. If there is, there is not a firm contract for purchase and sale until that condition has been fulfilled or been waived by the party for whose benefit it was included.

The purchaser is entitled to terminate the agreement if the conditions to purchase have not been met. Some possible conditions that may be included in an offer are:

that a satisfactory home inspection report be provided.

that a well water test indicates water meets the minimum safety standards for drinking water in Canada.

that a Seller's Property Disclosure Statement is acceptable by the purchaser.

What will be included in the purchase of the home.

Fixtures are automatically included in the price of the home unless otherwise stated.

Fixtures are non-movable items such as attached wall to wall carpeting, built-in appliances, curtain rods, built in cabinets.

Chattels are not automatically included.

Chattels are moveable items such as fridges, stoves, dishwasher that are not built in, curtains, loose laid carpeting and area rugs. If you wish to include chattels in the purchase, and in the purchase price, these items should be mentioned specifically in the offer to purchase as being included.

The Property Inspection

If you have included a home inspection as a condition in the offer this entitles you to have a professional home inspection company do a thorough inspection of the home you are in the process of purchasing. A home inspector will check the exterior, interior, structural system, roof, plumbing, electrical, heating and air conditioning systems, insulation and ventilation, fireplaces and solid fuel burning appliances as well as pools and hot tubs.

The Buyer's REALTOR® will set a time for the inspection and attend the inspection which will usually take 3-4 hours of time. Often the inspector will want to meet with a buyer as soon as the inspection has been completed to go over the written report. The report will provide an evaluation of the areas inspected and will offer recommendations for repairs and maintenance that should be done immediately or in the future. The cost starts at around \$400 for a basic inspection and the price will go higher depending on the size of the home and the complexity of the inspection.

Home inspectors will not advise you whether or not to purchase a home. The information they provide will inform you if the home has any of the following the potential issues that could prove to be costly in the future if not addressed.

Damp Basement:

Mildew odour is often the first indication of dampness in the basement. The inspector will examine the walls where possible and evaluate if there are any serious concerns.

Poorly Installed/ Defective Plumbing:

In older homes, plumbing problems and defects are very commonly found. The inspector will do a thorough inspection of the plumbing system to search for any concerns.

Older/ Poorly-Functioning Heating and Cooling Systems:

Heating/ cooling systems that are older or haven't been properly maintained can pose serious safety and health problems. An inspector will determine the age of your furnace and, if it is over the average life span of a furnace (15-20 years), may suggest you replace it. If your heating system is a forced air gas system, the heat exchanger will be examined very closely, as any cracks can result in the leak of poisonous carbon monoxide gas.

Older/ Unsafe Electrical System:

In older homes, it is common to find undersized services, aluminum wiring, knob-and-tub wiring, or insufficient/ badly-renovated distribution systems. Poorly rated electrical systems may pose a fire hazard.

Older/ Leaking Roof:

An asphalt roof will last an average of 15 to 20 years. Leaks through the roof could be a sign of physical deterioration of the asphalt shingles caused by aging, or could indicate mechanical damage caused by any number of factors, such as a heavy storm.

Minor Structural Problems:

Common in older homes, these problems range from cracked plaster to small shifts in the foundation. While this variety of problem isn't large enough to cause any real catastrophe, they should be taken care of before they grow.

Poor Ventilation:

Unvented bathrooms and cooking areas can become breeding areas for mold and fungus, which, in turn, lead to air quality issues throughout the house, triggering allergic reactions. Mold may additionally cause damage to plaster and window frames. These problems should be identified and taken care of before any permanent damage is caused.

Air Leakage:

A cold, drafty home can be the result of any number of problems, such as ill-fitting doors, aged caulking, low-quality weather strips, or poor attic seals. This nature of repair can usually be taken care of easily and inexpensively.

Security Features:

An inspector will look at the standard security features that protect your home, such as the types of lock on the doors/ windows/ patio doors, and the smoke or carbon monoxide detectors and where they're located throughout the home.

Drainage/ Grading Problems:

This may be the most common problem found by home inspectors, and is a widespread catalyst of damp and mildewed basements. Solutions to this problem may range from the installation of new gutters and downspouts, to re-grading the lawn and surrounding property in order to direct water away from the house.