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selling**real**estate



Decision to Sell

Selling or buying a home is the largest investment most of us will ever become involved in. Yet people sometimes take less time over it than they do when choosing a suit of clothes. That's because it's unfamiliar territory to many of us. We don't all understand the process. We don't know what questions to ask. We may take things for granted, rely on others when we shouldn't and sometimes we later wish we had known more about the process involved. We feel it is important that you understand the procedures and documents you will encounter during the sale of your property as well as the role of other people who may be involved in the transaction. Selling a home is a major event. This booklet will help you understand the whole process much better.

You can sell your own house without the services of a real estate licensee, but selling a home is a complex process.

- *What is the best possible price?*
- *Where do you find a buyer?*
- *What facts must you disclose?*
- *What paperwork is required?*
- *Will the contract be legal and binding?*
- *How is ownership transferred?*
- *What about the existing mortgage?*
- *Can the buyer qualify for a mortgage?*
- *Who ensures you will get your money?*

To handle these problems and many other situations that may arise, you might wish to employ a licensed real estate professional to act as your agent.

What is an agent?

In many types of business dealings, including real estate transactions, an agent represents someone else called the principal, in dealing with other people. The agent becomes a "substitute" for the principal: he or she acts, speaks and listens for the principal. This relationship between a principal and an agent is called an agency relationship. People often use the services of an agent to accomplish what they do not have the ability, time or desire to do themselves.

What is a real estate agent?

If you decide to employ someone to help you sell your home, that person becomes your agent for the sale of that specific property. You will probably refer to him or her as your "real estate agent." It is important to understand that in British Columbia, the person you hire as an agent to assist you to sell your home must be licensed as either a real estate salesperson or a real estate agent. A real estate salesperson must be employed by a real estate agent, and both must be licensed. In the discussion that follows, the term "agent," in its general sense, will be correctly used to refer to both types of real estate licensees.

How do you choose an agent?

There are many ways to find a real estate licensee with a reputation for excellence. Word-of-mouth is one good source. You might meet an agent you like at an open house showing of one of the properties for sale in your neighborhood. Or, you could contact several local real estate companies to inquire if they have an agent who specializes in selling homes similar to yours. Make appointments with agents to discuss their range of services, background knowledge and fees or commission rates. After these interviews, choose the agent who seems best able to render the services and produce the results you are seeking.

What will an agent charge?

In general, agents work on a commission basis and receive payment only after the successful completion of a sale. As the seller, you will be asked to agree to pay this commission as a fee for the agent's services. The commission is usually stated as a percentage of the total sale price or as a fixed dollar amount. The commission rate is fixed neither by law or any Real Estate Board. It is negotiable between you and the agent you engage to help you.

Offers to Purchase

Once you have selected an agent to work with, that agent will use market research along with his or her knowledge and expertise to assist you in setting the best possible listing price for your home. However, you must keep in mind that the price you set must be attractive to potential purchasers under the current market conditions. Before finalizing the listing price, you may wish to ask your selected agent to prepare an estimate of the net cash proceeds you will receive on completion of the sale, based on the suggested listing price and the financing arrangements currently in place. After a listing price has been established, you will be asked to sign a listing agreement.

Types of Listing Agreements

In British Columbia, the two most common types of listing agreements are:

THE EXCLUSIVE LISTING

THE MULTIPLE LISTING

Each type of listing lasts only for the time period that is specified in the agreement.

An Exclusive Listing gives the listing agent the sole right to sell the property. This means that even if you sell the property to a prospect of your own during the term of the listing, you must pay the agreed commission to the listing agent, unless the prospect was specifically excluded on the listing agreement. The listing agent may agree, at his or her option, to share the commission with any other real estate licensee who is able to find a buyer for your property. The other licensee will be referred to as the selling agent. You should be aware that even after the exclusive listing expires, you may be obligated to pay the listing agent a commission if you sell your property to a person who purchases because of the agent's actions during the time of the listing.

A Multiple Listing differs from an Exclusive Listing only in that the listing agent agrees to register your home in a Multiple Listing Service (MLS) so that its availability is made known to all real estate licensees who are members of the local real estate board. In this case, the listing agent agrees to share a specified amount of the commission with any other member of the real estate board who is able to find a buyer for your property. Discuss your objectives with your agent before deciding which type of Listing Agreement will best suit your needs.

Terms of the Listing Agreement

The Listing Agreement legally defines your arrangement with the agent, setting out, at a minimum:

- *the price and terms at which you are willing to sell your home.*
- *the existing financing arrangements and whether this financing can be assumed by a new owner.*
- *a list of items attached to the building (normally called fixtures) which are NOT to be included in the sale; for example, a fireplace insert or a crystal chandelier.*
- *the date on which you can give possession of the home to a new owner.*
- *the commission payable to the agent on the completed sale of your home.*
- *the time period for which the agreement will be in effect, ending on a specific calendar date.*

Responsibilities of the Agents

Once you have listed your property for sale, the listing agent has a legal duty to protect and promote your best interests at all times. He or she owes you - the PRINCIPAL - his or her undivided loyalty and must disclose to you any and all information, obtained from any source, which might influence your decision. Further, he or she may not reveal any confidential information to another person that might jeopardize your bargaining position. During the period your home is on the market, there will probably be a number of selling agents showing your home to prospective purchasers. Your listing agent and these selling agents all have a duty to avoid misrepresentation of the property, to exercise due care when answering questions and to treat all parties fairly and honestly. Potential purchasers sometimes refer to the agent who brings them to your home as "my real estate agent". This may cause some confusion as to the selling agents role.

A selling agent can choose to represent you, the seller, in the same unconditional manner as your listing agent represents you, OR he or she can choose to represent the buyer. The selling agent should provide you with full disclosure about his or her relationship with you and with the buyer. If the selling agent discloses that he or she is representing the buyer, keep in mind that any information you give to him or her must be passed on to the buyer. If you are in doubt as to whom a selling agent is representing, ASK that agent to clarify his or her position for both you and the buyer.

Responsibilities of the Seller

When you employ an agent, you are responsible for providing him or her with accurate information concerning your home; for example, its age, the current financing arrangements, the condition of the roof and hot water heater, the property taxes, etc. You must disclose both the good features and the defects, including the fact that the basement leaks when it rains! Be honest with your Agent. The agent will need your assistance and/or authorization to gather information about such things as the ownership details, the outstanding balance owing on the mortgage, the property's assessed value and the current zoning of the property. You may be required, or may volunteer, to complete a Property Condition Disclosure Statement. This form is used to provide uniform information about the state of the property to all potential purchasers. During the period of the listing, you should refer any inquiries about the property to your agent and allow him or her to deal with them.

Offers to Purchase

Once an interested buyer has been found, a written offer to purchase your property will be prepared. This offer is usually recorded on a standard form entitled: CONTRACT OF PURCHASE AND SALE. Your listing agent will explain to you the process of receiving and reviewing offers. Do not be surprised if you are presented with offers which differ dramatically from your listed asking price; the listing agent is under an obligation to bring all written offers to you for your consideration. If several offers are brought to you at once, you are under no obligation to accept any one offer over another. What should the offer contain? All offers to purchase your property will contain a number of important details that you must consider. The offer should include:

- *Date of the offer.*
- *Full legal names and addresses of both the buyer and the seller.*
- *Full legal description of the property.*
- *Amount of the deposit.*
- *Sale price.*
- *Amount of cash down payment and how the remainder of the purchased price will be financed.*
- *Date for completion of the sale.*
- *Date for possession of the property.*
- *A list of the conditions which must be fulfilled before the sale can take place (normally called subject clauses or conditions precedent).*
- *A list of items which are not attached to the building (normally called chattels) but which are not to be included in the sale price; for example, drapes, refrigerator, stove, etc. Date and time at which the offer expires.*
- *Signature of the buyer and his or her occupation.*

What are your options?

When you receive one or more offers to purchase your home, it is in your own best interest to give considerable time and attention to reviewing each offer carefully. Your listing agent will assist you to understand the terms and conditions contained in the offer, and will provide you with any advice you request, but ultimately the decision is yours. Before you decide, you may wish to have your agent prepare a revised estimate of the net cash proceeds you will receive on completion of the sale, based on the sale price and financing arrangements stated in the offer. You have three options:

1. Accept an offer EXACTLY as it stands.

If you decide that you would like to accept an offer, be sure you know the precise meaning of each term in the written offer BEFORE you sign the document. Once you, the seller, sign a Contract of Purchase and Sale agreeing to its terms, and your acceptance has been conveyed to the buyer, it becomes a legally binding contract. Legally binding means both you and the buyer will be bound by the terms of the contract and must perform your respective obligations as stated. Your performance can be enforced in a court of law. If you are uncertain about any of the clauses contained in the offer, you may wish to consult a lawyer before signing the contract; however, keep the expiry date of the offer in mind if you decide to postpone acceptance!

2. Make a counter-offer.

If you change anything at all in the original offer, you are considered to have rejected that offer and to be making a new offer from you to the buyer. This new offer is usually referred to as a "counter offer". The risk in making a counter-offer is that if the buyer has changed his or her mind and rejects the counter-offer, you do not have the option to return to the original offer and accept it. But, the buyer may decide to make another counter-

offer back to you and the process of counter-offers could continue until an agreement is reached. If after making a written counter-offer you decide you don't want to sell the property, it may be possible to revoke the counter-offer. Many legal problems can result from the revocation of a counter-offer, so you should seek professional advice about the correct procedure to follow.

3. Reject the offer.

You are under no obligation to accept any offer or to make a counter-offer. If, however, you reject an offer that exactly meets all the terms you agreed to in the Listing Contract that you signed with your listing agent, you could be/are legally obligated to pay the commission.

More about "Subject" Clauses

The purpose of a subject clause contained in an offer to purchase is to set out a specific condition that must be fulfilled before the sale can go through.

One common subject clause you might encounter is one in which the purchasers make the sale conditional upon their finding the exact amount and type of financing which will enable them to purchase your home. Remember that, if you accept an offer that contains a subject clause, you are effectively taking your property off the market for the period in which the purchasers are attempting to meet the condition they have set. Therefore, you should ensure that an agreed upon time for the condition to be met is specified in the offer to purchase. If one of the conditions contained in a subject clause cannot be met after every reasonable effort has been made to do so, the contract ends and there is no legal obligation to complete the purchase or sale. As a seller, you may wish to accept an offer containing a subject clause (e.g., subject to the purchasers selling their own house) yet still leave yourself free to consider other offers, just in case the purchasers are unable to remove the

condition. You can do this by having the buyer agree to insert a time clause in the contract. A time clause will permit you to require the buyer to remove all subject conditions within a short, specified time period if you receive another offer that you would like to accept. If the buyer does not remove the conditions within that time, the conditional contract comes to an end and you are free to accept the second offer.

Financing... from a Seller's Perspective

An offer to purchase will contain information about how the buyer intends to finance his or her purchase.

Existing Financing: If you currently have a mortgage loan on your home, you may be faced with one of two situations:

1. The buyer wants to pay cash and have no mortgage.

This situation will require you to pay out your existing mortgage and there will probably be an interest penalty for doing this. Remember that having to pay an interest penalty effectively reduces the price you will be receiving for your home.

2. The buyer offers to assume, or take over, your remaining mortgage loan.

In this situation, before agreeing to allow the buyer to assume your mortgage loan, you should ensure that your mortgage lender will release you from any future obligation to repay the monies owing (if the buyer defaults). Contact the financial institution that holds your mortgage to obtain information about your position in each of the above situations. It is a good idea to do this well in advance of signing a Listing Agreement so you will be able to give your listing agent accurate information.

Financing by the Seller:

If you have no existing mortgage, an offer to pay all cash is ideal and, of course, would be your preference. But the buyer's offer might state that part of the purchase price is to be paid in cash and part is to be paid in payments over a specified period of time at a specified interest rate. In effect, the buyer would be asking you to become the lender. When you are considering an offer containing a request for "seller financing" (sometimes referred to as a seller take-back mortgage), think about whether or not you want the responsibility of collecting payments over an extended period of time. If you do feel comfortable with such an arrangement, be sure that you verify the buyer's source of income and credit history before making a decision. Ask your listing agent or a financial counselor to fully explain the financial significance and the possible consequences of the terms offered.

Seller Beware!

If it is possible, as some individuals suggest, for many people to quickly become very wealthy by dealing in real estate, then unfortunately, other people on the opposite side of the same transactions must, just as quickly, lose some of what they invested. Usually, those who stand to lose are vendors who agree to be a party to a buyer's unorthodox financing arrangement in which the seller assumes the risks.

Essentially, there is nothing wrong with most innovative or creative financing if all parties are fully aware of the potential risks and fully understand the possible consequences of such risks. However, the fact is that many owners (vendors) are not aware of the potential disasters that may occur. It is strongly recommended that you secure competent advice from a real estate agent or legal counsel before finalizing any real estate contract. This recommendation is much more urgent when the offer you are considering includes terms which could jeopardize you financially. Be wary of offers that require any of the following:

- *No cash paid as a down payment*
- *An amount of cash being returned to the buyer.*
- *Your equity participation.*
- *A promissory note without a registered mortgage.*
- *An agreement to withhold registering a mortgage.*
- *The seller (you) to secure a new loan before closing.*
- *Terms said to be included, but are not written in the offer.*
- *Concealing information from a lending institution.*

Completing the Sale

The Contract of Purchase and Sale that you signed will state the completion day for the transaction. On that day legal ownership will transfer from you to the new owner in exchange for the purchase price of the property. Do you, as seller, need a lawyer or notary public to complete the sale? While it is the normal practice for the buyer's lawyer or notary to prepare the documents necessary to transfer the legal ownership, it is recommended that you, as seller, engage legal counsel to act solely on your behalf. Among other things, he or she will protect your interests by:

- *Checking the documents prepared by the buyer's lawyer and explaining them to you.*
- *Ensuring that your old mortgage has been properly discharged if this is required.*
- *Ensuring that you have no further obligation regarding your old mortgage if it is being assumed by the buyer.*
- *Confirming that all payments for which you are responsible have been made.*
- *Arranging for you to sign the transfer documents.*
- *Preparing a statement for you outlining where all the purchase money was disbursed and giving you a check for the balance.*

What costs can you expect?

In the transfer of ownership, there will be many financial adjustments between the seller and the buyer. Some of the costs you can expect to see deducted from the purchase price are:

- *The commission you agreed to pay the listing agent.*
- *The legal fees to discharge any existing mortgage whether or not you engage your own lawyer.*
- *The Goods & Services Tax on the real estate commission and on your legal fees.*
- *Any prepayment penalty levied by the financial institution for early pay out of an existing mortgage.*
- *Your share of the property taxes for the year if the current year's taxes have not yet been paid, plus any penalties due for late payment of unpaid taxes.*

The day has arrived!! You have signed the documents, packed your boxes, received your cheque and turned over your keys.

YOUR HOUSE IS SOLD!

Complaints about a Licensee

What to do...

What should you do if you have a complaint about the conduct of one of the agents involved in the transaction?

If a problem or misunderstanding arises between you and an agent that you are unable to resolve by discussion with that agent, there are steps you can take:

Discuss the problem with the manager in charge of the real estate office.

If you are still not satisfied, contact the local Real Estate Board that will attempt to resolve your problem without the necessity of legal expense to you.

Enquire about the problem by contacting the offices of the Real Estate Council of British Columbia. The Real Estate Council of British Columbia can investigate any written complaint about the conduct of a real estate licensee in their handling of your real estate transaction. The Council is authorized to discipline a licensee found guilty of wrongdoing. It should be noted, however, that the Council does not have the authority to require a licensee to perform under the terms of a contract, nor can it award damages to a complainant from a licensee. Those matters may require legal action.