



CHINNECK LAW

***“Your LAWgical Solution...
For Peace of Mind.”***

First Time Home Buyers Information Package



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CONGRATULATIONS!

First Time Home Buyers

If you're a first time home buyer, you're probably a little nervous about the prospects of buying a new home. You're not alone. Thousands of people have done it and survived. You can too!

The process is actually not that complicated, and if you make some good decisions at the outset, it should be a positive and happy experience.

The process is simple in theory:

1. Find a house that you like and can afford;
2. Sign an offer that protects you and that is accepted by the Seller;
3. Close the purchase and move in.

But in fact it's a little more complicated and there can be pitfalls.

Check out our recommendations.

Recommendations

If you surround yourself with a good team, your experience of buying a new home should be a good one. Benefit from their experience and expertise, and allow them to deal with the issues and problems that may arise in the course of finding and buying the right house for you.

1. Get Informed
2. Get a Good Mortgage Broker
3. Get a Good Real Estate Agent
4. Get a Good Home Inspector
5. Get a Good Lawyer

This section is intended to provide general information to first time home buyers only. It is not intended to, and does not provide legal advice nor is it intended to be relied upon. You should consult **Chinneck Law** about your specific circumstances if you need legal advice.

1. Get Informed

The more you understand about the process of buying a home, the better your experience should be.

Canada Mortgage and Housing Corporation (**CMHC**) has an excellent publication for first time home buyers called Home Buying Step by Step—A Consumer Guide and Workbook. We highly recommend it.



It provides a simple, understandable overview of the process of buying a home for the first time, along with helpful checklists, a glossary of terms that you may not be familiar with, a simple explanation of the agreement of purchase and sale and mortgages, a mortgage calculator, and other helpful information.

2. Get a Good Mortgage Broker

A good mortgage broker will help you find a mortgage that works best for you by “shopping” your financial information to a number of lenders to get the best rates and terms, without any cost to you.



They can also help “pre-qualify” you with a lender so that you will know how big of a mortgage you can get before you submit an offer to buy a house. This will help you to set realistic goals about the price of a new home. It may also be very helpful if you find yourself in a competition to buy a particular house. You will know what you can afford and you may be able to avoid using a condition for financing in your offer, which may make your offer more attractive.

Some mortgage brokers are better than others at looking after their client’s best interests. We deal with a number of respectable mortgage brokers whom we would be pleased to refer. Just send us a request for referral to deals@chinneck.ca

3. Get a Good Real Estate Agent

A good realtor will take the “pain” out of finding the right house, in the right location, in the right neighbourhood for you.

They combine their knowledge and experience of the local market, with their understanding of your finances, wants and needs. Your agent will examine properties listed in the local multiple listing service (**MLS**) of the London and St. Thomas Real Estate Board to produce lists of properties for inspection by you.

It is important to understand who the realtor is working for (you, the Seller or both) because a realtor’s loyalty is to the person that is paying him/her. Ask your realtor about the different arrangements that are possible and ensure that you have a relationship with a realtor who is loyal to you.

Some realtors are better than others about looking after the best interests of their customers. We deal with a number of respectable realtors whom we would be pleased to refer. Just send us a request for referral to deals@chinneck.ca

4. Get a Good Home Inspector

A good home inspector will perform a full inspection (with you present, if you wish) of the home that you propose to purchase, and provide you with a full written report of any deficiencies, defects or problems that he or she observes.

The home inspector does not inspect or provide any opinion about portions of the property that cannot be inspected easily, such as piping or wiring behind walls, but should inspect and provide his opinion about things like foundation cracks, water leakage, roof, insulation, electrical, water, plumbing, heating, air conditioning and electric systems.

We highly recommend that your offer contain a condition that you be satisfied in every respect with a home inspection to be conducted within a reasonable time following acceptance of your offer by the Seller.

As with mortgage brokers and realtors, the standards of service and care vary with the home inspector.

5. Get a Good Lawyer

A good lawyer will attend to all matters, enquiries and documentation to transfer title to the property that you have agreed to buy, in accordance with the written agreement and to provide you with assurance of good title (by way of his opinion, title insurance or titlePLUS). A good lawyer checks for problems with the title and the property and deals with them.

A good lawyer also works well with the other members of your real estate "team" to coordinate the smooth closing of your purchase.

If asked to do so, a good lawyer will draft an offer to purchase a property and include clauses designed to protect the buyer such as conditions for financing, home inspection or use. This is not a common practice in the London area because most offers are drafted by realtors who are trained to do so, however, it is recommended that you have a lawyer review your offer before signing. The cost is nil to minimal and is well worth it.

As with other professionals in real estate, some lawyers are better than others at looking after their client's best interests. See legal fees and disbursements for a review.



The Offer to Purchase

Once you have identified a home that you wish to purchase, the next step is to have your agent or lawyer draft an offer to Purchase (**an "Offer"**) which sets out the price, terms and conditions on which you are prepared to purchase the home.

The Offer must be in writing, signed by you and witnessed before it is submitted to the Seller. Once the Seller accepts it by signing with a witness who also signs, the Offer becomes an Agreement of Purchase and Sale (**an "Agreement"**).

The two most important things to know about Offers and Agreements are:

1. The general rule is that they must be in writing, signed and witnessed to be enforceable. This also applies to all modifications and amendments. It is important to remember to get things signed and witnessed.
2. The other general rule is that the Offer or Agreement once signed by the Seller(s) and the Buyer(s) and witnessed becomes the only agreement between the parties about the home. Therefore, it is important to ensure that it contains clear language about everything that is important to you.

Price

It is important to carefully consider the price that you are prepared to offer for your new home. Your realtor will be able to advise you about the prices that other similar homes have sold for in the neighbourhood and about the reasonableness of the asking price.

Some factors to consider include: Seller's circumstances, length of time the property has been on the market, the number of times the asking price has been reduced (and the amounts), competitions for the property, the season, general market conditions, zoning and proposed use of the property, etc.

As a general rule, you should consider only what you are prepared to pay for a particular property (and not what the Seller wants) in deciding the price to put in your offer.

As another general rule, it is advisable to submit an offer that is below the asking price in hopes of purchasing from the Seller at a price that is below the asking price.

Remember not to get too attached to any particular house before you offer to purchase it. There are plenty of available houses out there, and if you do not get a particular one, there may be a good reason for it that may not be obvious to you at the time.

Deposit

A deposit is money paid by the Buyer to the Seller (or his realtor or lawyer) usually in trust, as “good faith” or “earnest” money to show the Buyer’s sincere intention to close the deal. It will be lost if the deal fails to close due to the default of the Buyer.

All Offers and Agreements provide for the payment of a deposit which can be large or small. It is normally \$500 or \$1,000, although circumstances may warrant much smaller or larger deposits.

Terms, Representations & Conditions

Terms:

All Offers and Agreements contain terms and conditions. Ask your agent or lawyer to give you a copy of a standard Offer or Agreement and read it. Many of the paragraphs contain standard terms which will become part of your deal once your offer is accepted.

An example of a standard term is that **time is of the essence**. This means that tasks that are to be completed within a certain timeframe must be done within that given timeframe.

Representations:

A representation is a statement by a party about something that is relevant to the deal. It is recommended that your offer contain statements by the Sellers about things that are important to you.

The general rule here is that if something is important to you, make sure that it is in the Offer or Agreement, properly worded, to protect you and your interests. Be sure to ask your realtor or lawyer to assist you. An example of a representation that you may wish to include in your Offer is: “The Seller represents that the pool and all related equipment is in good working order on the date hereof and will be in good working order on the date of closing. This representation shall survive closing”.

Be sure to ask to see a copy of the Seller's Property Information Statement (SPIS) that the Sellers may have completed and signed when they list a property for sale. Seek your realtor or lawyer's advice about incorporating the representations in the SPIS into your Offer. It is usually a good idea. Your lawyer or realtor can draft representation clauses to deal with anything that is important to you. The SPIS is not commonly used anymore, but the caveat of "Buyer Beware" still prevails.

Conditions:

A condition is a term of a contract or Offer that must be satisfied, usually by a certain date, failing which the contract will be at an end. These are extremely important clauses and it is essential that you review carefully with your lawyer or realtor those conditions that you need to protect you.

It is very common for Offers and Agreements to contain conditions respecting financing, home inspection and, in the case of condominiums, review and approval of Status Certificates.

Chattels & Fixtures

Simply put, chattels are items that are not attached to or affixed to the Lands. Fixtures are chattels that are affixed to the Lands. Kitchen tables, chairs and lawn mowers are examples of chattels. Built in tables and furnaces are examples of fixtures.

There are often issues about whether or not an item is a fixture (in which case it is included in the purchase price) or a chattel (in which case it is not usually included in the purchase price).

The best rule of thumb is: If you want to ensure that any chattel or fixture is in the house when you close, make sure that the written offer specifically referenced it as a chattel or fixture that is included in the purchase price. This eliminates uncertainty and is well worth doing.

Counter-Offers or Sign-Backs

A **counter-offer or sign-back** occurs when the Seller accepts your Offer with changes that the Seller initials and returns to you, your lawyer or your realtor. This operates as a rejection of your offer and becomes a new offer by the Seller to sell the home to you on the revised terms. If you agree with the revised terms, then you can accept them by initialing the revisions and delivering a copy to the Seller(s), their lawyer or realtor before the irrevocable date in the Offer.

It is much more likely that the Seller will sign-back or counter your offer than it is that they will accept your offer as originally presented. It is wise to expect that there may be several volleys of offers and counter-offers before an agreement is finalized. You may think of it as a game of tennis with the ball (Offer) being “volleyed” several times until the parties come to an agreement on all of the terms.

Requisition Date, Escrow Closing & Closing Date

Requisition Date:

The requisition or “req” date is an important date in real estate deals. It is the date before which the Buyer’s lawyer must make written demand to the Seller’s lawyer to correct issues or problems with the Property that do not go to the root of title.

Escrow Date:

“Escrow Closing” means that all of the deliveries of each of the lawyers are delivered to the other lawyer to be held until the “escrow” is released, in which case the lawyers can register and release the documents, or if the escrow is not released, returned to the lawyer that delivered them in the first place. Deals are often closed in escrow if the Buyer’s lawyer has not received mortgage funds from the Buyer’s lender but has all other deliverables.

Closing Date:

This is the day when the Agreement of Purchase and Sale is “closed” by the lawyers for the Buyer and Seller. Simply put, the lawyers exchange the money and documents required by the Agreement of Purchase and Sale, and register the relevant documents, usually a transfer or deed of title to the Buyers, and the Buyer’s mortgage to their lender. The Buyer’s lawyer does some standard sub-searches before closing the deal and delivers the keys to the Buyer.

Fees & Disbursements

Legal Fees are what a lawyer charges you for acting on your behalf. It is a service fee. He or she must pay all of the overhead expenses including rents, insurance, professional dues, equipment and personnel from this.

Disbursements are expenses that a lawyer charges you for out-of-pocket expenses that you would otherwise be required to pay if you handled the transaction yourself. Because the lawyer generally pays these expenses, he asks you to reimburse him by including these items in his account.

Examples of disbursements include:

Registration Costs: It costs approximately \$75 plus HST to register a deed, a mortgage or any other document that affects the title to land.

Title Search Fees: Usually a lawyer will hire a searcher to conduct a search of the title on his behalf because it is cheaper for you than having the lawyer do the search. The lawyer then reviews the search on your behalf.

Teranet User Fees: Usually a lawyer will “charge through” to you, any costs associated with linking up to the Teranet system that contains all the land registration documentation in electronic form.

Photocopies, Faxes and Postage: Usually a lawyer will charge you a reasonable amount for these items.

Off-Title Search Costs: In addition to searching the title to your new home, your lawyer may make various “off-title searches” to determine whether there are any problems that may affect your title. Each such enquiry usually has a cost associated with it which your lawyer will ask you to reimburse him for by including it in your account.

Off-Title Searches include:

- Tax Search: to ensure that there are no taxes outstanding on your property;
- Zoning Search: to ensure the use of the property is in compliance with the zoning that applies to it, and to determine the coverage, set-back, height and other restrictions that may apply;
- Unregistered Easement Search: to determine whether or not your new home is subject to any easements that may not be registered against the title to your new home;
- Property Standard Search: to determine whether or not

the property is in compliance with the property standards regulations and whether or not there are any outstanding work orders that affect the property;

- Gas Search: to determine the status of the gas account, if any, and to notify the gas provider of the change of ownership;
- Hydro and Water Search: to determine the status of the hydro and water accounts and to notify the utility company of the change of ownership;
- Corporate Searches: to ensure that any previous corporate owners of your home were in good standing and capable of owning and selling land.

Other Searches:

- If your property has 2 or more units or is located in a rural environment, then any of the following enquires may also be necessary:
- Fire Department Compliance Search: this may be necessary to ensure that fire safety standards required where a building consists of more than one living unit are complied with;
- Hydro Compliance Search: this may be necessary where a building holds more than one dwelling unit to ensure compliance with safety regulations;
- Drainage Act and Tile Searches: these may be necessary to ensure the rural property is not encumbered by a drainage act or tile debenture.

Some or all of these off-title searches and their related costs may be eliminated if title insurance is used, in which event your account will reflect the fee for the policy of title insurance as a disbursement (but not the fees for the searches that were not required).

Costs

HOME PURCHASE HOME SALE REFINANCE

For current fees and disbursements please refer to our website:

www.chinneck.ca

With particular reference to the following:

**[www.chinneck.ca/practice-areas/
real-estate-and-mortgage-transactions/](http://www.chinneck.ca/practice-areas/real-estate-and-mortgage-transactions/)**

Land Transfer Tax (LTT)

The Ontario Government imposes a land transfer tax on the “value of consideration” on every conveyance of real property in Ontario. Therefore, every time someone gives consideration for an interest in land, LTT is payable to the Ministry of Finance. Some or all of this LTT is refunded to “eligible” buyers if that buyer has never owned a home anywhere in the world before.

Use our online-tool at www.chinneck.ca to help calculate land transfer tax for your purchase.

First-Time Home Buyers (FTHB) in Ontario are eligible for a credit of up to \$4,000 against LTT otherwise payable, so depending on the consideration paid a FTHB may be able to purchase a home without paying LTT.

There are some situations that involve different calculations, so be sure to consult with your lawyer to get the proper calculation.

First-Time Home Buyers’ Federal Tax Credit

The costs associated with purchasing a home, such as legal fees, disbursements and land transfer taxes, can be a particular burden for first-time home buyers who must pay these costs, as well as save money for a down payment. To assist first-time home buyers with the costs associated with the purchase of a home, the Government of Canada introduced a FTHB Tax Credit in 2009 – a \$5,000 non-refundable income tax credit amount on a qualifying home acquired after January 27, 2009. For an eligible individual, the credit will provide up to \$750 in federal tax relief starting in 2009.

Non Resident Speculation Tax (NRST)

In 2017, the provincial government imposed a tax of 15% of the consideration for certain purchases of land by non residents in the Greater Golden Horseshoe. The tax is refundable in certain situations.

Assuring Title

“**Assuring Title**” refers to the methods by which you are given assurance that you are acquiring good legal title to the new home that you are buying when your new home deal closes.

In Ontario, there are 3 methods of assuring title:

(a) Lawyer Opinion - this is the traditional method that has always been available, and which is still available. After closing you will receive a letter from the lawyer which states that in his/her opinion you have a good and valid and marketable title to your new home subject to certain exceptions such as your new mortgage;

(b) Title Insurance - this is the newest and most widely used method of assuring title in Ontario. After closing, you will receive a letter from your lawyer enclosing a policy of title insurance which protects you against certain title risks, instead of a lawyer’s opinion. The policies are issued by different title insurance companies, such as Stewart Title and First Canadian Title. This office uses Stewart Title almost exclusively;

(c) TitlePLUS - this is a method that was developed by the Law Society of Ontario, the governing body for lawyers in Ontario, essentially in response to the American Title Insurance Companies that began to sell policies in Ontario. It provides title insurance coverage at competitive prices.

Proponents of title insurance argue that it provides wider coverage than a lawyer’s opinion and at a lower cost because the fee for the title insurance is usually less than the searches the lawyer would be obliged to obtain to provide an opinion (searches which are not usually required for title insured properties).

Proponents of legal opinions argue they would rather know about a problem and have it fixed by the Seller before closing, than afterwards.

Tarion Warranty Corporation

[formerly Ontario New Home Warranty Plan (O.N.H.W.P.)]

Tarion Warranty Corporation is a very important program in Ontario that is designed to protect buyers of new homes in the Province.

Before the original Ontario New Home Warranty Plan became law in Ontario, there was no real method of protecting new home buyers from defective workmanship or unscrupulous builders short of litigation, which is expensive, time-consuming and not a very satisfactory way to resolve problems with new homes.

Tarion Warranty Corporation requires all builders of new homes to be registered with them, and requires each new home that is to be built to be registered. Builders are required to post a bond with Tarion Warranty Corporation as security for their promise to Tarion Warranty Corporation to build homes in a good and workman-like manner in compliance with all building codes and other regulations. If you are buying a new home, or having one built for you, it is important that you read and understand Tarion Warranty Corporation literature to be found at www.tarion.com/home/, so you know your rights.



It is also important that you inspect your home carefully and that you and the builder complete the Certificate of Completion and Possession, before you take possession and reference in the Certificate.

Be sure to list all of the defects, problems and incomplete work in a schedule that you can attach to the certificate.

It is wise to diarize the dates that the various warranties expire. Be sure to make written demand to the builder and Tarion Warranty Corporation for the rectification of any defect or problem before the expiry of the warranty.

The Importance of a Will

Everyone should have a Will. In the same way that you have authority over what to do with your property during your lifetime, you can take responsibility for what happens to it after your death.

A Will expresses an individual's "last will and testament". In other words, it expresses his or her last wishes that take effect upon his or her death. It is only one part of a proper Estate Plan.

There are a number of formal requirements that must be complied with for a Will to be valid. That is why Will Kits are not generally recommended, and why it is best to have a lawyer draft your Will.

If you do not have a Will, make it a priority to get one, especially now that you are a new home owner. A Will takes much of the uncertainty out of what you want if you were to die suddenly. Imagine for a moment that you have just died unexpectedly. Don't you think that it would be easier for your family and loved ones if you have a Will and an inventory of your assets and liabilities? They will know who you wish to act as your estate trustee (formerly called Executor), who your beneficiaries are and what goes to whom. A Will relieves your loved ones of the burdens of uncertainty at a very stressful time.

Simple Wills are inexpensive, usually costing around \$250. Complex Wills and dual wills are more involved and usually cost more.

Simple or Complex:

You can do virtually anything you want with your last Will. We usually recommend that you keep your Will simple unless there are specific things that you wish to accomplish or certain things you wish to do with specific assets. For example, you may wish to establish a "spousal trust" for your spouse, or special trust for a child with special needs. We generally try to help structure Wills to minimize the tax consequences of death.

Prior to attending the lawyer's office to complete the documentation on the purchase of your new home, you can visit our website at www.chinneck.ca to obtain and complete a Will questionnaire.

Meet Our Lawyers

Jed Chinneck, H.BSc (Honours Geology), LLB



Jed Chinneck has practiced law since 1981. His practice includes litigation, real estate conveyancing/mortgaging, corporate commercial, succession planning, estates law, farm law and energy law. He has appeared successfully as Counsel in all levels, including the Federal Court, the Superior Court of Ontario, Divisional Court of Ontario, the Court of Appeal of Ontario, the Ontario Energy Board, the Mining Commissioner & Private Mediation/Arbitration.

Jed is a member of the Middlesex Law Association and the Canadian Association of Farm Advisors (**CAFA**).

Todd Devitt, HBA, J.D



Todd attended the University of Western Ontario where he was enrolled in the HBA/JD Combined Program. In 2011, Todd graduated with an Honors Business Administration Degree (with Distinction) from the Richard Ivey School of Business and a Juris Doctor (Law Degree) from the Faculty of Law.

Todd's real estate and business law practice includes litigation, conveyancing/mortgaging, family and commercial real estate transactions (including purchasing and selling) and succession planning.

Jordan T. Overholt, H.B.Sc., J.D



Growing up locally, Jordan attended the University of Western Ontario before obtaining his law degree from Queen’s University. Now years later, he feels privileged to be able to provide legal services to the residents of London and surrounding communities.

Jordan regularly advises on residential and commercial real estate purchase, sale and refinance transactions, as well as corporate/ commercial, tax and municipal-related matters.



Practice Areas

REAL ESTATE

BUSINESS

WILLS AND ESTATES

AGRI BUSINESS

AGRI SUCCESSION

OIL AND GAS

LITIGATION - CIVIL AND ESTATES



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