

Planning for legal costs when you buy or sell a home

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Whether you're buying or selling, you know for certain that you'll need a lawyer to ensure that all of the legal issues associated with the transaction are properly dealt with. What's less certain is how much should you budget for these legal fees. This article examines the different ways in which real estate lawyers may charge for their work, so that you are in a better position to determine which fee structure is most suitable for your situation. It also outlines the legal costs you can expect to incur as a result of the purchase or sale of a home.

The first component of a lawyer's fee is for the actual, billable work the lawyer undertakes in association with the purchase. This includes any searches and inquiries the lawyer undertakes to determine, and the lawyer's work on any mortgage that the buyer takes in order to purchase the home.

The buyer is also billed for disbursements, which are the expenses that the lawyer incurs on the client's behalf. This would include items such as government fees to register the transfer (deed) and charge (mortgage), search costs and other expenses incurred by the lawyer.

Sellers' total legal costs are usually substantially lower, as the seller's lawyer incurs fewer expenses.

Whether you're a buyer or seller, you also need to understand that different real estate lawyers use different fee structures. Some lawyers will quote fees and give an estimate of disbursements. This means that a fee is charged for each billable activity that the lawyer executes on your behalf. Other lawyers will quote an all-inclusive price, but may have a list of variables to take into account unforeseeable factors that will increase the total bill. Often lawyers will not advertise how they charge their clients, but may instead prefer to meet with a potential client first to get a clear picture of all the factors involved in the particular situation. In fact, this is likely the best way to obtain a fairly accurate estimate of the legal fees and costs that will be involved in the purchase or sale of a home.

Once you find a lawyer who you think is right for you, your next step should be to set up a meeting. Some lawyers offer a free initial consultation: Take advantage of it! Let the lawyer know at the outset that you would like to discuss billing before entering into a retainer. You can ask for a written estimate of fees and disbursements, and discuss potential contingencies. But keep in mind that legal work can be unpredictable and unexpected issues may arise which will increase the total bill.

Perhaps the best question to ask is what the lawyer expects, on average, the total bill to be for this type of property, understanding that there may be variables in your case. Some lawyers will provide a client with a retainer agreement setting out the list of services that the lawyer has agreed to perform with respect to your real estate purchase or sale. A retainer agreement will give you a good idea of the fees and disbursements for which you can expect to be charged.

It may also be useful to ask specifically about separate or extra charges. For example, you may want to have your lawyer review the agreement of purchase and sale before signing it. You may also want your lawyer to draft clauses for it. Other separate or extra charges may be incurred for: a detailed review of the Status Certificate if the property is a condo; a second mortgage; or any rental or business component existing or planned for the property. If you are unsure about something, ask for clarification. Remember, your real estate lawyer is there to assist you.

Another useful resource is the TitlePLUS Real Simple Real Estate Guide, available for free at www.lawpro.ca. The guide provides important information on the role of a real estate lawyer and on the closing costs of a real estate transaction. Useful tools include a mortgage calculator (to help you determine how much of a mortgage you can afford to carry) as well as an amortization calculator (so you can see how much principal and interest you are paying over the course of the mortgage); a handy checklist for homebuyers; a special information section for condominium buyers, and a link to a suggested fee schedule for solicitors prepared by the Working Group on Lawyers and Real Estate, an umbrella group representing real estate lawyers and legal associations (see www.titleplus.ca/RSREG/homebuyersguide.asp).

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