

## NEGOTIATING AN OFFER ▶

Once a prospective buyer decides on your property, do not think that the hard part is over. An offer is a sales contract and is binding. This is another great place to utilize a lawyer's expertise. For this reason we encourage you to utilize the free legal consultation located in this guide. It is always best to negotiate with your buyer face to face. Never be insulted by a low offer, it's always a start. Another great way to negotiate with your buyer is through email. This process may take more time, however, it will give you more time to respond appropriately. In some cases the purchaser may bring you a written offer prepared prior to verbal negotiations. When looking at an offer, watch for any special clauses that can work in the buyer's favor. Make sure the buyer has been pre-approved for financing and do not sign any offer you have not looked at carefully. If, after reviewing the offer you decide it is insufficient, you can either make a counter offer or reject the offer outright. Remember that negotiating is part of any business deal. Never take anything personally and do not scare off potential purchasers by being hasty. Consider every serious offer on its merits, establish trust with buyers and always make a counter offer if you are not pleased with the first offer. In a lot of cases the first offer is the best offer.

### 1.1 DETAILS TO NEGOTIATE

Prior to filling out any paper work you should begin by negotiating the details of the sale. It is pointless to prepare an offer to purchase if you or the buyer have not come to an agreement on the selling price, or other important details of the sale. The following are items to negotiate prior to preparing any agreement.

**1) The Selling Price** - most offers come in at an average of 97% of the asking price. On an asking price of say \$200,000 we would expect the offer to finalize at \$193,000. Keep in mind that this is a general rule of thumb. Some homes sell for the asking price or above, in most cases however, this is due to the fact that they were underpriced to begin with. If you encounter a bidding war, you have most likely underpriced your home!

**2) Chattels** - also known as the inclusions/exclusions of the sale. These are typically movable items such as appliances, window fixtures, light fixtures, or other items to be included or excluded from the sale. Items that are attached to the home such as light fixtures or window coverings are included in most cases. If you are removing such items be sure to list them as exclusions.

**3) Completion Date** - commonly referred to as the closing date or date of possession. This is the day that the deed is transferred to the new owners and all monies are exchanged. The home is to be vacant prior to the completion date so be sure that you will have ample time to make moving arrangements.

**4) Sale Conditions** - Please refer to section 1.2 for further information.

## 1.2 CONDITIONS

Offers are often conditional. During the negotiation stages it is important to determine what conditions, if any, will be a part of your agreement. Most offers are conditional upon financing. If your client has been pre-approved for financing they will still be required to present a copy of the agreement of purchase and sale for final approval on their financing. In some cases the lender may proceed to do an appraisal on your property prior to giving final approval for your buyer. Another common condition may be based on a home inspection. Your buyer will have the right to choose the home inspector. They will also be liable to pay the fees for the inspection. The inspection must be completed within the time frame that you have mutually agreed upon. If your buyer has a home to sell before they buy yours, their offer may be conditional on the sale of that property. Before accepting such an offer we urge you to seek professional legal advice, this is another great place to utilize your free legal consultation. A great negotiation tactic is to offer the buyer a longer closing date, providing that you have the flexibility. In any real estate market the time that it takes to sell a home is largely dependent on its price. By allowing a longer closing date this should accommodate the sale of your buyer's property, allowing you to avoid the condition of their sale in your final agreement. If you cannot accommodate a longer closing date, your client will simply have to price their home competitively to acquire a quick sale. The formula is quite simple.

# FINALIZING THE OFFER AND PAPERWORK ▶

This is the easiest part of your sale. Here your hard work is about to pay off, your reward is the thousands of dollars you are about to save in commission. You negotiated in your own best interest, with no pressure, you were in control. Your final agreement will be prepared by a real estate lawyer. In any case you always need a real estate lawyer to close the deal, the cost will be the same regardless of how you sell. You may obtain legal information at anytime calling the toll free legal hotline at 1-877-529-8195. A real estate lawyer will require all the details of your sale in order to draft the agreement. All the information necessary should have already been negotiated as per section 4. We have made it a breeze for you to deliver that information to a lawyer and make sure that everything is complete. Prepare to be shocked at how easy this is!

## 2.1 MEMORANDUM OF INTENT TO PURCHASE

The included Memorandum of Intent To Purchase is to be used as a guide for obtaining all the information necessary to draft the final agreement. On pages 9 and 10 you will find a copy of these worksheets. You may obtain additional copies in the members section of our website. Here you may also fill and submit all forms electronically to obtain the final Agreement of Purchase and Sale. If you do not have access to the internet be sure to make multiple photo copies of this form prior to filling it out. It is best to fill out all the information with your buyer.

## 2.2 INSTRUCTIONS FOR USING THE MEMORANDUM

The Memorandum of Intent is not legally binding, however both parties are encouraged to proceed in good faith as agreed. Please answer all questions on "Schedule A" to the best of your knowledge. Once completed please contact the toll free legal hotline at 1-877-529-8195 to obtain your final paperwork. That's it!

The Memorandum of Intent is not a legally binding document. Once the worksheet is completed you must take it to a Lawyer to have a formal Agreement of Purchase and Sale form drafted. If you do not already have a lawyer we recommend that you contact the toll free legal hotline where you will find assistance in preparing the final documentation. The timeline to have the offer prepared should not be lengthy. Generally two to three business days should do it, during which time you should not be negotiating any other offers.

**Property:** This is the municipal address of your property. Also known as the legal description (Lot & Plan #) which can usually be found on your tax bill.

**Purchaser:** The name of the purchaser. Be sure to specify the full name (i.e. John Thomas Smith).

**Vendor:** Your full name.

**Purchase Price:** The final sale price that you have agreed upon with your buyer.

**Deposit:** Specify the amount of the deposit check received. This check should be made in trust of the lawyer that you will be delivering the memorandum to. It is up to you to negotiate the amount of the deposit. A standard rule of thumb is 1% of the selling price.

**Completion/Closing Date:** The closing date as negotiated. Described in section 1.1

**Conditions:** Check off any conditions that are applicable to your agreement with the buyer. If there are any other conditions please specify below.

**Chattels Included:** Specify any items that are included with your sale as per section 1.1.

**Fixtures Excluded:** Specify any items that are excluded from the sale as per section 1.1.

**Rental Items:** Specify any rental items that the purchaser has agreed to assume rental contract of.

## 2.3 DRAFTING THE FINAL AGREEMENT OF PURCHASE AND SALE

The final Agreement of Purchase and Sale is typically prepared by a Lawyer. You may bring a copy of the Memorandum to any Real Estate Lawyer. If you have your own lawyer, you may wish to utilize their services to complete the paperwork. Your purchaser can also bring the Memorandum to a Lawyer to obtain the paper work. We encourage you to complete and submit the Memorandum electronically in our members section. Alternatively, please contact the toll free legal hotline at 1-877-529-8195 to arrange the completion.

## **2.4 FINALIZING THE OFFER**

Once a final copy of The Agreement of Purchase and Sale has been drafted, both you and the purchaser will have to accept the final offer by signing and dating the appropriate areas of the form. Once signed and dated you will need to bring the signed copy of the offer back to the Lawyer who will now look after the rest of the sale. Your purchaser will also have to bring a copy back to their Lawyer. Please be sure to deliver an original form to your Lawyer, you may wish to keep a photocopy for yourself.

## **2.5 DRAFTING THE AGREEMENT OF PURCHASE AND SALE ON YOUR OWN**

For those of you who feel comfortable drafting The Agreement of Purchase and Sale on your own, a standard copy of this form is available on our website in the members section. Although we always encourage you to utilize professional counsel, you may have previous experience. It is our hope that should you choose to fill it out yourself, you understand that this is a binding legal document.

## **All Regions Toll Free 1-877-529-8195**

Legal Hotline, Agreement Preparation, Advice

### **QUESTIONS?**

**Brokerage:** 1-866-336-9637

**Email:** [info.on@comfree.com](mailto:info.on@comfree.com)

**THE LARGEST COMMISSION-FREE REAL ESTATE NETWORK IN CANADA**

# MEMORANDUM OF INTENT TO PURCHASE ▶

This document will form the basis upon which a formal Agreement of Purchase and Sale will be prepared by the Vendor's lawyer and reviewed by the Purchaser's lawyer. No binding Agreement of Purchase and Sale will be entered into prior to the signing of the formal, lawyer prepared agreement.

**Property:**

\_\_\_\_\_  
(Municipal Address) (Street) (City) (Postal Code)

**Purchaser:**

\_\_\_\_\_

**Vendor:**

\_\_\_\_\_

**Purchase Price:**

\_\_\_\_\_

**Deposit:**

\_\_\_\_\_  
(Check payable to Vendor's lawyer, in trust, delivered with this Memorandum, to be held in trust pending completion or other termination and to be credited to the Purchase Price on Closing in accordance with the terms of the formal Agreement to be entered into)

**Completion/  
Closing Date:**

\_\_\_\_\_

**Conditions:**

(X) beside the appropriate conditions to be inserted in the Formal Agreement

10 days to complete satisfactory home inspection

10 days to find satisfactory financing

3 business days for satisfactory review of the formal Agreement by Purchaser's lawyer

Sale of Purchaser's Property  
Number of days: \_\_\_\_\_

\_\_\_\_\_  
(Address) (Street) (City) (Postal Code)

**Additional  
Conditions:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Chattels Included:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Fixtures Excluded:**

\_\_\_\_\_

\_\_\_\_\_

**Rental Items:**

\_\_\_\_\_

(Items not included in Purchase Price and Purchaser agrees to assume rental contract, hot water heater is a common example)

If the Property is a condominium, the Agreement will be conditional on the Purchaser obtaining a satisfactory Status Certificate. The Vendor represents that the monthly common expenses are \_\_\_\_\_ and include: \_\_\_\_\_.

**The Vendor and Purchaser agree that the terms and conditions herein will form the basis of a formal Agreement of Purchase and Sale prepared by the lawyer for the Vendor in the usual form within three business days of the date hereof. In the event that a formal Agreement of Purchase and Sale is not entered into by the Vendor and Purchaser, the deposit provided with this Memorandum of Intent shall be returned, in full without interest, to the Purchaser and this shall constitute the Vendor's irrevocable direction to his/her lawyer so to do.**

Dated at the City of \_\_\_\_\_, in the Province of Ontario, this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
**Vendor:**

\_\_\_\_\_  
**Purchaser:**

**Purchaser's Legal Contact (if known):**

Solicitor's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

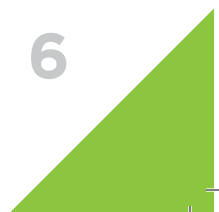
Fax: \_\_\_\_\_

**Vendor's Legal Contact (if known):**

Solicitor's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_



Fax: \_\_\_\_\_

## SCHEDULE "A" ▶

### Memorandum of Intent to Purchase

By submitting this form you will be retaining William F. Bastien of the law firm McHugh Mowat Whitmore Ionico MacPherson LLP to prepare on your behalf a binding Agreement of Purchase and Sale respecting the property referred to in the Memorandum of Intent to Purchase. Upon submission of this form, completed in its entirety, a solicitor/client relationship will be formed between the Vendor(s) herein and William F. Bastien of McHugh Mowat Whitmore Ionico MacPherson LLP. The Agreement of Purchase and Sale will not be prepared on your behalf unless this Schedule "A" is completed. Ensure that Schedule "A" is completed accurately.

The formal Agreement of Purchase and Sale will be returned to the Vendor(s) via e-mail (PDF attachment) within three business days of submission. The Vendor(s) will be solely responsible for the proper execution (signing) of the agreement, in quadruplicate, with the Purchaser(s).

### VENDOR/CLIENT INFORMATION:

Vendor(s)' name(s): \_\_\_\_\_

Marital Status: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Nos.: \_\_\_\_\_

Occupation(s): \_\_\_\_\_

Email: \_\_\_\_\_

### PROPERTY INFORMATION:

1. Legal Description (if known):
2. Is the Property a matrimonial home?
3. How long have you owned the Property?
4. Is the Property a residence without commercial use?
5. Will the sale of the Property be GST exempt?
6. Are you a Canadian resident and will you be so at the date of completion of the sale?
7. Is the Property subject to mortgages, liens, work orders or court judgments? If so, describe.
8. Are there any leases, conditional sales contracts or service contracts(e.g. hot water tank, furnace, a/c)? If so, describe.
9. Are there any tenants?
10. Is there more than one residential unit on the Property? If so, how many?
11. Is the Property connected to municipal water, sewer and hydro service?
12. Is there a well or septic system on the Property?

13. Are there any easements, rights of way or encroachments affecting the Property?  
If so, describe.
14. Are there any property line disputes?
15. Is there a fuel oil tank on the Property? If so, how old?
16. To your knowledge, have the buildings ever contained urea formaldehyde insulation (UFFI)?
17. Are there any environmental problems with the Property or in the immediate surrounding area?
18. Is the Property subject to or near hydro installations?
19. Is the Property located on a ravine, waterfront or highway or adjacent to any significant physical feature?
20. Is the Property presently insured against fire?
21. Are you aware of any problems or deficiencies with the Property that could not be revealed upon a reasonable inspection by the Purchaser?

**The lawyer preparing the formal binding Agreement of Purchase and Sale will be relying upon the representations contained in the Memorandum of Intent to Purchase and this Schedule "A". The Vendor(s) is/are solely responsible for the accuracy of the representations contained in this Schedule "A".**