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WORKING GROUP ON LAWYERS AND REAL ESTATE

on **February 14, 2020**

 **CONDO BUYERS RETAINER**

Dear Client,

Re: Your purchase of a resale condominium at (address)

 Closing date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Introduction**

Thank you for retaining me/us to act as your lawyer for this purchase. This retainer is based on the understanding that the agreement of purchase and sale between you and the sellers (the “**APS**”) is on the most recent version of the standard Ontario Real Estate Association (“OREA”) Agreement of Purchase and Sale form.

The purchase of a condominium unit raises many complex issues. The documentation is lengthy and much of it is written in a manner which requires legal interpretation. It is my job as your lawyer to assist in the interpretation of the documents. It is also my job as your lawyer to conduct the investigations you require and to undertake the tasks necessary to complete the transaction on your behalf.

To assist condominium buyers and their lawyers, the Working Group on Lawyers and Real Estate (the “Working Group”) has prepared a chart of the tasks which may be undertaken by lawyers (hereinafter referred to as the “Chart”) and a description of those tasks. Buyers are encouraged to look at the Chart in detail and, if necessary, question the lawyer about the tasks to be performed.

Effective communication between us is essential for a smooth closing. As your lawyer I/we must know what you expect in the purchase of the condominium unit.

**Work to be undertaken**

It is important that you identify the tasks that you expect me/us to perform on your behalf as part of our basic retainer. A chart, which may be found at <https://www.lawyersworkinggroup.com/condominium-documents-subcommittee> (the “Chart”), identifies the tasks I/we will perform and other tasks I/we will not undertake except by specific request from you. You should review the Chart and consider whether or not additional services are required from your lawyer. A guide, which can be found at the above link (see more details below in the paragraph entitled “Buyers’ Condominium Guide”), provides an explanation of each of the items of the Chart. As your lawyer I/we will conduct a brief review of the most important documents relating to the condominium and to the present purchase. A more detailed review will be beyond a lawyer’s basic retainer and will only be performed on your specific instructions.

**Joint Retainer**

Lawyers are not permitted to act for more than one person in a transaction (including a mortgage lender), except in limited circumstances. If there are multiple buyers involved in your purchase and you retain us to act for more than one of you, this will constitute a joint retainer; if we are retained to act for both you and your mortgage lender, this too will constitute a joint retainer. With any joint retainer you must give written consent for the lawyer to act for all buyers and mortgage lenders. If a conflict arises among the parties to the transaction the lawyer may not be permitted to act for any of them. Although all information your lawyer receives is confidential, no information may be withheld from any joint clients (co-buyer or lender).

**Identity and Buyer Information**

We must make copies of two pieces of identification from each buyer and may be required to send copies to your mortgage lender. One of them must contain a photo of the person being identified. Please note that we are not permitted to make copies of Ontario Health Cards.

We attach a “Buyers’ Information Form” which we ask you to fill in and return to us as soon as possible. Please (mail / fax /email) this form to us at our coordinates in the letterhead above.

**Buyers’ Condominium Guide**

The Working Group has prepared a guide for your reference (“Buyers’ Guide”). It provides helpful information relating to the items set out in the Chart. We encourage you to review the Buyers’ Guide at <https://www.lawyersworkinggroup.com/condominium-documents-subcommittee>.

**Fees**

We confirm that our legal fees for the completion of a standard condominium purchase of average complexity are $\_\_\_\_\_\_\_, plus HST. These fees include services rendered in a standard condominium resale purchase with one mortgage loan or secured line of credit. Legal fees for the review of the status certificate, preparation or registration of agreements, additional mortgages, transactions with tenancies, powers of attorney, transmission or survivorship applications or for negotiations or transactions that are complex or out of the ordinary will be charged in addition to the standard fees quoted above.

[*OPTIONAL -* We note that additional fees of $\_\_\_\_\_\_ will be applicable if mortgage instructions are not received within three business days of the closing date.. ]

Our fee will be based on the standard services identified in the Chart. You may wish to instruct us to perform some of the optional services shown on the Chart. We will bill you additional fees for any optional services and will discuss such additional fees with you before we begin the additional work.

In some real estate transactions, there may be unforeseen issues or difficulties that arise as a result of matters beyond our control; if this occurs, we will contact you to discuss same. At that time, any services we provide beyond the standard transaction will be based on our hourly rate of $XXX.

**Disbursements**

In addition to the fees described in the paragraph above, you will be billed for amounts paid by us on your behalf in the course of completing the transaction. In most cases, disbursements will range between $xx.xx to $xx.xx.[[1]](#footnote-1) A standard condominium transaction may include disbursements, such as: title search, off-title searches (e.g. municipal taxes and water), status certificate, copies, courier costs, certified cheque/bank draft fees, wire fees, title insurance, execution searches and document registration fees.

**Land Transfer Taxes**

In addition to the foregoing, you must pay Land Transfer Tax to the Province of Ontario (& the City of Toronto) on closing. Based on your purchase price, we estimate that the Land Transfer Tax payable to the Province of Ontario will be $xx.xx (and to the City of Toronto will be $xx.xx in addition to an administrative fee of $84.75 levied by the City of Toronto). You might be eligible for a rebate of part or all the Land Transfer Tax if you are a first-time buyer. A land transfer tax calculator is available at <https://www.lawyersworkinggroup.com/suggested-fee-schedule>

**Statement of Adjustments**

The statement of adjustments is the balance sheet of the transaction that will set out all debits and credits for the buyers and sellers e.g. the deposit, an adjustment for taxes, common expenses, rent (if applicable) and any other items that may be required to be adjusted on closing.

The balance due to the seller is required on the closing date in order to complete the transaction.

**Money Required on Closing**

In order to complete the transaction on the closing day, we will require enough money to pay the balance due on closing, our fees, disbursements and Land Transfer Taxes. Our office will contact you shortly before closing to indicate the amount required from you. We ask that you provide us with one amount by certified cheque or bank draft, or wire, which will be the difference between the total required as described above and the net amount received from your Lender. Due to banking requirements, we may request your funds 8-10 days prior to the closing. We will provide a full explanation of all amounts when you attend our offices to sign the closing documents and we can answer any question you may have.

**Keys/Possession**

It is important to remember, that although we attempt to have the keys available to you as soon as possible on the day of closing, the electronic registration system closes at 5:00 p.m. and most transactions close late in the day. Therefore, as you cannot be assured of receiving the keys to your new home until the end of the day, please do not expect to be able to move in until the evening on the day of closing.

**Insurance**

We recommend that buyers seek advice of their insurance broker as to their insurance requirements as the condominium’s insurance may only cover some portions of the unit. Please refer to the Buyers’ Guide for a full explanation of the condominium corporation’s obligations to insure. It would be helpful to the broker to provide them with the condominium’s insurance certificate and the standard unit by-law.

For some lenders, we will require proof of unit owner’s insurance in advance and will contact you if your insurance is a condition of your mortgage.

**Status Certificate**

Review of the status certificate is a time sensitive matter, so please send us your Buyers’ Information Form ASAP. We will conduct a review of the certificate and provide you with a report. You should carry out a detailed examination of the certificate as described in the Buyers’ Guide. It is important that you review the certificate and accompanying documents as soon as possible. If you require any further explanation please contact us.

**Document Registration Agreement**

This transaction is to be completed under the electronic land registration system (e-reg®). In e-reg documents are created, submitted and maintained in electronic form. The most recent version of the APS obligates your lawyer to enter into and close your transaction under the terms of a Document Registration Agreement (“**DRA**”) with the seller’s lawyer. The DRA authorizes the exchange of the closing funds, keys and other documents (defined as “**Requisite Deliveries**” in the DRA) and obliges both lawyers to hold the Requisite Deliveries in escrow until registration of the closing documents.

We will ask you to sign an acknowledgment and direction, which will authorize the use of the DRA and confirm the contents of the electronic documents. It will also confirm that you understand that by entering into the DRA, our firm will incur professional obligations in accordance with its terms

**Title Investigation**

Prior to the title search/requisition date set out in the APS, we will perform a title search for your property which we will review with you.   The title search will show plans for your unit(s) plus documents registered against title that may affect your ownership of the property.

We will write to the seller’s lawyer to request the appropriate action to rectify any problematic items.

**Financing**

If you are obtaining financing for the purchase, your lender will send the funds directly to our office prior to closing. You will need to ensure that you have provided all documentation to the broker or banker well in advance of closing so that there are no delays in closing your transaction. We will receive instructions directly from the lender and prepare the documentation for your financing both on your behalf and that of the lender. We will advise you if there are any outstanding conditions that you will need to satisfy and the amount of net proceeds that we will receive from the lender.

**Utilities**

You are responsible for setting up new accounts for your utilities and we suggest that you make such efforts in advance of closing to ensure a smooth transition of ownership.

If required, we will provide a copy of the transfer after closing but this should not be necessary to set up such services in advance.

**Title Insurance**

We recommend that all buyers of real estate obtain title insurance and recommend further reading as set out in the Buyers’ Guide on this topic.

**Privacy/Email**

In order to complete your purchase we must collect and disclose certain personal information. Only information necessary for the conduct of the transaction will be collected and disclosed. Be advised that we use secure cloud services when dealing with your information. If you have any concerns about privacy of your personal information please discuss them with us at your earliest convenience. For a more complete discussion of our privacy policy you may obtain or review a full copy at our offices or on our website.

Please note that we cannot guarantee the privacy of any email correspondence and by communicating with us via email you demonstrate that you agree to all email security risks.

Thank you for entrusting this matter to us.

Your lawyer

1. Highlighted parts may be kept or deleted by the lawyer when completing the letter. [↑](#footnote-ref-1)