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DOCUMENTS YOU'LL SEE WHEN SELLING A HOME

A step-by-step guide to forms and contracts

“WORKING WITH A REAL ESTATE AGENT”

Buyers and sellers are presented with this brochure at the earliest contact with a real estate agent. Industry regulations have now made it mandatory for a real estate licensee to disclose the capacity in which the agent will be working with you: i.e. as a buyer's agent, a seller's agent or as a dual agent, before assisting or representing you in a real estate transaction. The agent will then ask you to sign a statement acknowledging that this disclosure of agency representation has taken place. He or she will then tear off and keep the signed statement and give you the brochure for future reference.

Signing the disclosure statement in the Working with a Real Estate Agent brochure does not bind you to any obligation to that real estate agent. It merely confirms that you have discussed your agency representation options with the agent.

MLS® LISTING CONTRACT

The Multiple Listing Service® Listing Contract outlines the terms of the listing contract, including the length of time for the listing, the price, the commission to be paid, all the parties to the listing, the address and the legal description of the property to be sold, how the seller is to be paid, the preferred possession date, the financial obligations and other information regarding the property.

The listing agreement is the seller's agreement with the listing agency, not the salesperson individually. If the salesperson leaves that company, it is up to the seller and the listing company to decide whether or not the listing will go with the salesperson, or whether it will stay with the original company and be assigned to another salesperson.

As with other services, there is GST payable on commission, so when you are calculating your proceeds, take that into consideration.

CHANGE ORDER FORM

A Change Order form is used whenever a change is made to the original MLS® Listing Contract. This may involve extending the date, changing the price, altering wording on the printout, correcting measurements or tax or financial information, etc. It must be signed by the manager of the listing agency.

At times, it is necessary to stop the marketing of a property for awhile because of illness or other personal circumstances of the seller. By definition, when your home is listed on MLS®, all REALTORS have an opportunity to find a buyer for your property. The Change Order form can communicate your wishes to all REALTORS who have access to MLS® that you wish to delay the sale of your home.

PROPERTY CONDITION DISCLOSURE STATEMENT (PCDS)

This form is filled out by the seller prior to the listing being placed on the MLS® system. The seller indicates his or her knowledge of various aspects of the property, defects of which he or she is aware, and any upcoming expenses (as in special assessments in strata-titled properties). Should the seller refuse, or be unable for any reason to complete the form, then notification to this effect is included in the listing information. The REALTOR is not permitted to fill out the form but will keep a copy on file.

The form does not cover every aspect of the property. A buyer is still advised to consult an independent inspector if there are questions or concerns that are not adequately answered.

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LIMITED DUAL AGENCY AGREEMENT

This form is used when the agent represents both the buyer and the seller in a single transaction. It is used when the situation involves either one salesperson who represents both the buyer and the seller, or when two salespersons from the same company are involved.

This agreement modifies the prior Listing Contract and the Buyer's Agency Contract (or verbal buyer's agency agreement) and gives the agent the authorization to represent both parties in a limited capacity. It authorizes the agent to maintain both parties' confidences regarding motivation, negotiating positions and personal information (unless either party gives the agent written permission to disclose such information).

CONTRACT OF PURCHASE AND SALE

The Contract of Purchase and Sale standard form is the basic contract signed by the parties (the sellers and the buyers). It outlines every aspect of the transaction, including the price, the terms and conditions, the dates, the inclusions and exclusions, the handling of existing tenancies, the deposit and increase (where applicable) and other legal matters as described in the preprinted contract and added as clauses.

ADDENDUM (WITH PRINTED CLAUSES)

The basic contract will be accompanied by a special addendum form with preprinted clauses where there is either financing to be cleared from the title before the seller can provide clear title, or where there is financing to be put into place after the title is registered in the buyer's name. The addendum also includes clauses covering the treatment as originals of reproductions of signatures that are sent via telecommunications, issues relating to deposit monies and acceptance by the buyers regarding the size of the property.

ADDENDUM (WITHOUT PRINTED CLAUSES)

The basic blank addendum form is used to write additional clauses on the contract when there is not adequate space to do so on the contract itself. When that has been done, the buyer signs this form indicating that this clause is being removed.

AMENDMENT TO CONTRACT OF PURCHASE AND SALE

This form is used to remove conditions (subject removal) when they have been satisfied, as in the situation where a buyer has to find financing by a certain date.

OTHER DOCUMENTS

Leases

Usually leases are used more in commercial transactions than in residential ones, but you may be a landlord or a tenant who prefers to use a lease for a specified time period for any number of reasons, including stability of tenure. A commercial lease is very involved and should be drawn up by a specialist in the commercial field and reviewed by a lawyer for each party. A residential lease is less complex and normally involves little more than a standard rental agreement with an outline of the rules and regulations of the building or complex, or expectations of the owner and tenant above and beyond what the Residential Tenancy Act sets out. If you have any doubts about how to draw a lease or how to interpret specific clauses, consult a lawyer or a REALTOR.

Mortgages

Mortgages come in a wide variety of formats, depending on the lending institution. Now, many institutions use a simplified form and make reference to the larger form where any deviations from clauses in their standard form may occur. The buyer should check that the document matches the commitment letter they have signed outlining the

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terms, including the interest rate, the term, the amortization period, the prepayment privilege ("penalty"), the options (if any) for increasing the number of payments or making lump sum payments, whether the mortgage can be assumed if the property is sold, and the portability of the mortgage if the seller wishes to use it on another property.

If you are a seller who is carrying financing for a buyer of your property, make sure that your lawyer reviews the documents before you sign them. If you are a buyer who is asking a seller to carry financing, make sure your own lawyer reviews the documents as well. Many serious issues may arise where the parties are unfamiliar with the law concerning mortgage financing.

PARTS OF THIS ARTICLE WERE ORIGINALLY PUBLISHED BY THE B.C. REAL ESTATE ASSOCIATION IN 1994 AND HAVE BEEN REPRINTED WITH PERMISSION AND UPDATED BY THE VICTORIA REAL ESTATE BOARD IN 2004 FOR THE INFORMATION AND BENEFIT OF CONSUMERS.

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