

REAL ESTATE BROKERAGE

Practical Guide for Buyers



REAL ESTATE BROKERAGE:

The consumer is protected by an effective control and information system

The supervisory structure of real estate brokerage helps ensure and promote competence and integrity within the profession. For consumers, it is reassuring to be able to rely on an independent system whose mission is to ensure their protection.

What you should know about buying a home

Buying a house is a complex and delicate operation. This is why the Nova Scotia Real Estate Commission has prepared this brochure, which contains the main steps you need to follow before, during and after the purchase of your home. In it, you will find many useful tips to guide you and help you complete your real estate transaction in a satisfactory manner.

With the compliments of:

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Role of the real estate Industry Members

Buying real estate requires extensive technical knowledge. This is why we recommend that you use the services of a real estate brokerage to make sure that all the steps involved

in buying and selling real estate are completed in accordance with good trade practices.

The main function of real estate Industry Members (brokers and salespeople) is to act as intermediary in the purchase, sale or rental of real estate. Thus they play a prospecting role by finding real estate for the buyer and a client for the seller; they play a negotiating role by facilitating communications between the parties involved and, mainly, they play an advisory role and helps the parties define their needs and complete their real estate transaction in a satisfactory manner.

Distinction between a real estate broker and a salesperson

A broker is responsible for the supervision of a brokerage, its staff, and Industry Members. A broker ensures the business is run competently and in accordance with the Act, By-Law, and Policies and Procedures.

A managing associate broker is authorized to operate or manage a brokerage under the supervision of a broker, for example, a franchise branch manager. Brokers and managing associate brokers are the only Industry Members authorized to make management decisions and give management directives within a brokerage.

An associate broker is licensed to trade in real estate under the supervision of a licensed broker. This license permits salespeople to achieve and be recognized for possessing a higher level of education. An associate broker and a salesperson have the same responsibilities.



Compulsory licencing

All Industry Members in Nova Scotia must hold a licence issued by the **Nova Scotia Real Estate Commission**. A consumer who carries out a real estate transaction through an unlicensed person is not protected under the *Real Estate Trading Act*, because the protection mechanisms only apply when the consumer deals with a professional recognized under the law. **Before you do anything, check with the Commission to make sure your Industry Member is licensed by the Commission.**

Duties and obligations of real estate brokers and salespeople

Real estate brokerage is a profession that is regulated and controlled to protect the public in real estate transactions. The *Real Estate Trading Act*, the *Commission By-Law* and *Policies and Procedures* define how the profession is to be practiced, so that consumers are served fairly and competently.



Loyalty to the customer

Industry Members are bound by a strict obligation of loyalty to their clients, whose rights they are bound to promote and protect. They must act equitably toward each party to a real estate transaction.

Obligation to disclose

If your Industry Member has a personal relationship with the other party or if they are acting on their own behalf, they must inform you before signing the Agreement of Purchase and Sale.

Similarly, if your Industry Member is to receive compensation from a financial institution or a professional recommended by them, they must also inform you in writing and request your approval.

Advising and informing objectively and accurately

The Industry Member must advise and inform the parties to a transaction objectively and must provide them with all the explanations they need to fully understand and appreciate the services they are providing. They must also inform the parties of any factor which could negatively impact the transaction.

The Industry Member must also be able to demonstrate the accuracy of the information they provide using relevant documentation. This information verification principle must be upheld throughout the sales process, as the Industry Member is responsible for the information they are providing.







Consumer protection mechanisms

Professional development

All Industry Members are required to complete continuing professional education annually. Courses are based on subjects that provide Industry Members with a higher level of skills and knowledge that will aid them in protecting the public.

Entrance examination

The profession's entrance examination ensures that Industry Members possess the knowledge and competence required to provide adequate service.

Brokerage audit

The Registrar ensures that the work methods of real estate Industry Members are in accordance with the rules of the profession. To verify this, the Commission's Compliance Auditors carry out brokerage inspections and make recommendations as necessary.

Registrar

The Registrar is the senior staff person at the Nova Scotia Real Estate Commission and is responsible for the administration of the *Real Estate Trading Act* and the *Commission By-Law* and *Policies and Procedures*.

The Registrar investigates when there is reason to believe that an Industry Member has violated the rules that govern the profession. The Registrar has the authority to lay charges with the Commission's Complaint Review Committee if necessary.

Complaint Review Committee

The Complaint Review Committee has the authority to impose fines, require additional education, and, to suspend or cancel a violator's right to practice if they do not conform with current regulations. It cannot, however, compensate or indemnify victims.

Professional liability insurance

All Industry Members are required to carry errors and omissions insurance.

Recovery Fund

The Recovery Fund exists to compensate consumers in case of fraud or breach of trust where an Industry Member has caused a customer or client a financial loss.

Agency

An Industry Member may or may not have an agency relationship with you. If you are a client, you are in an agency relationship, if you are a customer, you are not in an agency relationship. As a client, the Industry Member and brokerage have a much higher level of responsibility to you than if you are a customer. The following sections explain agency and the obligations Industry Members have to both clients and customers.

Sellers or Buyers Agency - with you as a client

Most sellers and buyers have an agency relationship with the Industry Member they are using. When you are in an agency relationship with a brokerage, the Industry Member has the authority to represent you in dealings with others.



Brokerages and their representatives are legally obligated to protect and promote the interests of their principals (clients). Specifically, the Industry Member has the following duties:

- 1) **Undivided loyalty.** The Industry Member must protect the principal's negotiating position at all times, and disclose all known facts which may affect or influence the principal's decision.
- 2) **To obey all lawful instructions** of the principal.
- 3) An obligation to **keep the confidences** of the principal.
- 4) The exercise of **reasonable care and skill** in performing all assigned duties.
- 5) The **duty to account** for all money and property placed in an Industry Member's hands while acting for the principal.

You can expect competent service from your Industry Member, knowing that the brokerage is bound by ethics and the law to be honest and thorough in representing a buyer or representing a property listed for sale. Both the buyer and seller can be represented by their own Industry Member in a single transaction.

Transaction Brokerage - with both the buyer and seller as a client

Transaction Brokerage occurs when an Industry Member or one brokerage is representing both a buyer and seller in the same transaction. Because the Industry Member has promised a duty of confidentiality, loyalty and full disclosure to both parties simultaneously, it is necessary to limit these duties in this situation, if both parties consent.

If you find yourself involved in a transaction brokerage relationship, before making or receiving an offer, both you and the other party will be asked to consent in writing to this new agency relationship.

This relationship involves the following limitations:

- a) The Industry Member will deal with the seller **and** the buyer **impartially**;
- b) **The Industry Member will have a duty of disclosure to both the seller and the buyer except that,**
 - i) the Industry Member will not disclose that the buyer is willing to pay a price or agree to terms other than those contained in the offer, or that the seller is willing to accept a price or terms other than those contained in the listing;
 - ii) the Industry Member will not disclose the motivation of the buyer to buy or the seller to sell unless authorized by the buyer or seller;
 - iii) the Industry Member will not disclose personal information about either the buyer or the seller unless authorized in writing;

- c) The Industry Member will disclose to the buyer defects about the physical condition of the property known to the Industry Member;
- d) The Industry Member may disclose all comparable property information to the buyer and the seller at any time;
- e) The Industry Member will not be required to disclose to the buyer or the seller confidential information obtained through any other existing or former agency relationship.

No Agency - with you as a customer

You may also choose to use the services of an Industry Member without having any kind of agency relationship. This might occur, for example, when you are being shown a property by the seller's Industry Member.

The Industry Member you choose to work with in this manner has a legal and ethical duty to provide you with accurate, honest answers to your questions and can provide all these services:

- Explain real estate terms and practices
- Provide and explain forms used
- Assist you in screening and viewing properties
- Inform you of lenders and their policies
- Identify and estimate costs involved in a transaction
- Assist you in establishing your range of affordability
- Prepare offers or counter offers at your direction
- Present all offers promptly

An Industry Member who is not your agent cannot:

- Recommend or suggest a price
- Negotiate on your behalf
- Inform you of their principal's top/bottom line
- Disclose any confidential information about their principal unless otherwise authorized

You should not provide an Industry Member who is not your agent with any information that you would not provide directly to their principal.

All buyers and sellers, whether in an agency relationship with an Industry Member, will be given an agency brochure and asked to sign an acknowledgement that they have been provided this agency information and had an opportunity to review it.



How much can I *afford* to invest in a home?

Analyzing your financial capacity

Before you start looking for a new home, you should conduct an analysis of your needs and an accurate evaluation of your financial capacity. You must establish a realistic budget that accounts for your lifestyle and your goals. The purpose of this exercise is to **set a reasonable purchase price**. This way, you can narrow down your search and avoid being tempted by real estate that is above your means.

The key element in this exercise is accuracy. Remember that a budget is only useful if it accounts for your overall needs and personal or family situation.

Estimating your maximum mortgage

A simple way to estimate the maximum mortgage you can get is to multiply your gross annual salary by two (see Table 1). Note that most mortgage lenders calculate this by multiplying the gross annual income by 2.5. However, it is more reasonable to multiply it by two to avoid overextending yourself on mortgage payments. You should consult your banker or financial planner to get more accurate information as to what you can afford. This process is called mortgage pre-approval.

Table 1

ESTIMATING YOUR MAXIMUM MORTGAGE BASED ON YOUR GROSS INCOME *		
Gross annual income	2 =	Maximum mortgage
\$40,000	2 =	\$80,000
\$60,000	2 =	\$120,000
\$80,000	2 =	\$160,000
\$100,000	2 =	\$200,000

* This method is **approximate**. The Commission recommend that you prepare a detailed budget in order to evaluate a more realistic maximum mortgage.

Calculating your monthly housing budget

Your monthly housing budget is the amount you have to live, finance and heat your future home, after you have fulfilled all your other normal obligations. To do this, use current data that will not change when you are a new homeowner: your net household income, your debts (student loan, car loan, and so on) and your current living expenses (food, clothing, insurance, miscellaneous expenses, and so on). (See Table 2.)

The difference between your net household income and your total monthly expenses is your monthly housing budget. This amount must cover your mortgage payment (principal plus interest), taxes, heating costs and condominium fees, if applicable.

Remember that a budget is only useful if it reflects reality. **Your budget, more than the methods used to calculate your monthly payments, will help you determine your maximum mortgage loan.**



	A	B	Car
1	Food	House	324.23
2	297.62	796.81	311.56
3	265.81	796.81	354.89
4	190.93	796.81	

Table 2

CALCULATING YOUR MONTHLY HOUSING BUDGET	
Groceries, lunches and outside meals (including beer and wine):	\$ _____
Clothing and personal expenses:	\$ _____
Public transit:	\$ _____
Car loan:	\$ _____
Car expenses:	
- gas, oil:	\$ _____
- maintenance and repairs:	\$ _____
- insurance and licenses:	\$ _____
Electricity:	\$ _____
Water:	\$ _____
Maintenance and repairs:	\$ _____
Telephone:	\$ _____
Cable, video rental, Internet:	\$ _____
Leisure (outings, movies, theatre, sports, and so on):	\$ _____
Personal restaurant meals:	\$ _____
Books, newspapers and magazines:	\$ _____
DVDs and CDs:	\$ _____
Furniture and other consumer goods:	\$ _____
Savings (RRSP, Tax-free savings account, and so on):	\$ _____
Credit card charges:	\$ _____
Home insurance:	\$ _____
Life insurance:	\$ _____
Other:	\$ _____
Total monthly household expenses:	\$ _____
SUMMARY	
Net household income:	\$ _____
Less	
Monthly household expenses (above) :	\$ _____
Equals	
Monthly housing budget*:	\$ _____

* Most Canadian financial institutions use the **Gross Debt Service (GDS) ratio** to calculate their clients' maximum monthly payment. This method has the advantage of being easy to calculate, but the result is approximate. This is why we recommend that you take the time to prepare a detailed budget (see Table 2 above).

If you still wish to use the **Gross Debt Service (GDS) ratio**, calculate your gross monthly household income (family's total salaries before tax) and multiply by 0.32. The result will give you your maximum monthly housing allowance.



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THIS NOTE IS LEGAL TENDER
CE BILLET A COURS LEGAL

[Signature]
GOVERNOR OF THE BANK OF CANADA
DIX DOLLARS

20
DOLLARS - TWENTY

GNV1811033

GNV18110

20



How much **financing** do I *need*?

One of the main concerns of real estate buyers is mortgage financing. To determine the amount you will need to borrow, you have to know the purchase price of the property and the total expenses you will need to pay in cash. The summary of these calculations enables you to determine the amount of financing you need to purchase your home (see Table 4).

Cash expenses

You have to plan for several cash expenses when buying a home. These costs must be estimated to determine the amount you need to borrow to finance the purchase of your new home.

Deposit

When presenting an offer to purchase, you will need to make a deposit to prove your legitimacy as a buyer. For that, you have to plan on a cash outlay.

Down payment

The down payment is without a doubt your main expense when buying a home. A higher down payment means lower monthly mortgage payments. If your down payment is less than 25% of the purchase price, your mortgage loan must be insured by high-ratio mortgage insurance such as that provided by CMHC. There are administration fees involved for the application. You also have to plan on legal fees and an insurance premium, which is a percentage of the loan amount.



Related expenses

Several related expenses must be taken into consideration when buying a home, such as building inspection, property appraisal, loan application, legal fees and disbursements, property taxes, deed transfer tax, fuel adjustment, insurance, and so on. (see Table 3).

Table 3**CALCULATING RELATED EXPENSES**

Building inspection	\$ _____
Appraisal	\$ _____
Legal fees and disbursements	\$ _____
HST (new construction or vacant land)	\$ _____
Deed transfer tax	\$ _____
Adjustments and tax distribution:	
- mortgage interest	\$ _____
- property taxes	\$ _____
- utilities (oil or propane)	\$ _____
Condominium fees (if applicable)	\$ _____
Water quality and quantity certificate:	\$ _____
Mortgage brokerage fees	\$ _____
Mortgage loan insurance fees	\$ _____
Mortgage loan insurance premium	\$ _____
Moving expenses	\$ _____
Renovations and repairs	\$ _____
Furniture, appliances, window coverings, carpets, paint, and so on	\$ _____
Utility hookup	\$ _____
Home insurance	\$ _____
Other	\$ _____
Total	\$ _____








Summary of calculations

Now that you have an overview of the expenses involved in buying a home, you need to make your final calculations (see Table 4). First, indicate the purchase price of the property. Add the total amount of related expenses that you calculated in Table 3. You will get the acquisition cost of your new home.

From this amount subtract the deposit, down payment and the proceeds from the sale of your current home if you already own one (use an approximate amount if the house has not yet been sold). The total determines the amount of financing you need to acquire your new home.

You are now in a position to verify if the loan you need to purchase your home fits your budget. Do not hesitate to make any necessary adjustment and to redefine your goals if necessary.

Table 4

CALCULATING THE AMOUNT OF FINANCING REQUIRED		
	Purchase price of the real estate:	\$ _____
	Related expenses:	\$ _____
	Acquisition costs:	\$ _____
	Deposit:	\$ _____
	Down payment:	\$ _____
	Other funds (net value of previous property):	\$ _____
	Financing required:	\$ _____

Home Buyers' Plan

The Home Buyers' Plan (HBP) may offer assistance when you want to use the funds contained in your Registered Retirement Savings Plan (RRSP) to purchase a home. Each buyer may withdraw up to \$20,000 from their RRSP without having to pay taxes at the time of withdrawal. The funds must be in the RRSP for at least 90 days prior to the withdrawal.

The amount withdrawn must be paid back into the RRSP over a period of fifteen years at a rate of 1/15 of the amount per year. As an example, if you use \$15,000 from your RRSP to purchase a home, you must pay \$1,000 back into the RRSP each year (or one fifteenth of \$15,000) for 15 consecutive years. Should the program user be unable to pay the money back, the amount that isn't paid back is added to the user's gross annual income.

Note: This program is available to first-time home buyers only. The buyer cannot have owned a principal residence in the last five years. For more information, contact your real estate broker or Industry Member.

Table 5

MONTHLY PAYMENT PER \$1,000 BORROWED*

RATE	COST / \$1,000	RATE	COST / \$1,000	RATE	COST / \$1,000
2.0%	\$4.24	4.5%	\$5.53	7.0%	\$7.01
2.5%	\$4.48	5.0%	\$5.82	7.5%	\$7.32
3.0%	\$4.73	5.5%	\$6.10	8.0%	\$7.64
3.5%	\$5.00	6.0%	\$6.40	8.5%	\$7.95
4.0%	\$5.26	6.5%	\$6.70	9.0%	\$8.28

***Based on a 25-year amortization period and a 10% down payment.**

To use the above table, you must multiply the number of thousand dollar blocks in your mortgage loan by the cost per \$1,000 borrowed. The result should not exceed the amount of your housing budget (see Table 2 on page 13).

For instance, if your interest rate is 4.5% and the amount of your mortgage loan is \$100,000, it would cost you \$553 each month to pay back your mortgage (100 blocks of \$1,000 borrowed, multiplied by 5.53 equals \$553).

Note: The shorter the amortization period, the lower the total interest payable (supposing the interest rate remains constant throughout the amortization period). It is a good idea therefore to go for the shortest amortization period possible.

Increasing payment frequency also helps lower the interest significantly and reduces the number of years required to pay back your mortgage. For example, a \$100,000 mortgage at an interest rate of 5.0% and an amortization period of 25 years would be paid back in just over 21 years (instead of 25) with biweekly instead of monthly payments. This payment method would save you approximately \$12,000 in interest.



Choosing *your* home

Defining your needs

After you have an accurate picture of your financial capacity and have established your budget, the next step is to define your needs. This exercise will allow you to reflect on your priorities, which will help you in your search and will guide your Industry Member. Following are the main elements to consider when defining your expectations.

Type of property

Are you looking for a single-family dwelling, a semi-detached or a townhouse? Do you prefer a new or older house? Do you want to own the house and the land or would you prefer a condominium in which only one unit is yours?

Neighbourhood

Are you looking for a home downtown, in the suburbs or in a rural area? Do you prefer a new area? What is your tolerance to noise and pollution? Are you looking to avoid high-traffic areas? Is the state of development of the area where you will be living important to you? Do zoning regulations allow room for change?

Proximity of services

What are your needs in terms of public transit and public or commercial services? Is being close to work or to schools, and so on important to you? Will you feel safer living close to a hospital or a police or fire station?

Indoor Considerations

What are your needs in terms of space? How many bedrooms and bathrooms are necessary? What type of heating do you prefer? How much storage room do you need? Do you need a laundry room and a workshop?

Outdoor Considerations

What are your needs in terms of parking? Do you like gardening? If so, is the exposure of the house favourable? Do you want a patio, a balcony, a pool...?

Stigmas

Certain events may cause a property to be described as a “stigmatized property.” This term is sometimes applied to a property that has had some circumstance occur in or near it, like a death or a rumoured ghost, but which does not specifically affect the appearance or function of the property itself.



Nova Scotia legislation does not define stigmatized properties. It also does not require Industry Members to disclose events which some may consider as stigmas, unless asked about them.

Home buyers are advised to carefully consider the areas of concern they have, discuss them with their Industry Member and ensure the necessary inquiries are made to avoid purchasing a property they will not feel comfortable living in.

Need for renovations

Are you looking for a house that needs no improvements? If you are thinking of doing the work yourself, do you have the necessary skills? If not, have you evaluated the cost of repairs?

Organizing your search

Organizing the search for your home is not the simplest step, but it is the most important and often the longest. It is recommended to take all the time you need before buying a home.

The key to choosing the right home is to really know your needs. Talk to your Industry Member about your priorities and try to identify the features you are looking for but that could be subject to compromises. This way, you will avoid wasting time viewing houses that are too expensive, too big or that are simply not what you are looking for.

Choosing the area

Visit the areas that seem to fit your needs. Your Industry Member can help you make a list of houses that meet your expectations. They have access to detailed information on the properties being offered for sale in the areas that are attractive to you, and can save you valuable time.

Choosing well

When you have found the home you are looking for, make sure you see it at least twice, once during the day and once at night both during the week and on the weekend. This way, you can see for yourself the activity level in the neighbourhood at those hours when you will likely be at home. You can also assess the amount of traffic, ambient noise, street lighting, and so on. Check everything: carpets, drapes, light fixtures, and so on.



On the next page you will find a sample *Facts sheet* that you can use to take notes. Please note that the *Description sheet* provided by the seller's broker can also help you evaluate a property in which you are interested. This document contains a detailed description of the property in its current state and allows you to learn all the details which can help you form an enlightened opinion before you make a decision.

Review your list of priorities and take time to think without rushing. Losing a house to a quicker buyer carries much less consequences than buying a house that is not suited to your needs or which has a major flaw.

Facts sheet



If you are looking for a home, you may view several properties on the same day. When taking stock of your viewings, you should compare features of various prospective homes that caught your attention. Then you start wondering if the first house had the proper exposure, if the second was the one with the fireplace, if the one with the dormer windows had hardwood floors or if the small white one had a heat pump...

The Facts sheet was designed to allow you to note the features of a property or any other comment. It can be used as a reminder as well as a useful comparison tool when deciding between two properties, for instance (see Table 6 on the next page).

Elements to verify

Check the general state of the house: roof, gutters, siding, paint, and so on.

Is the house energy-efficient? Is it well insulated? Are heating costs high?

How is the air quality and circulation?

Is the house damp? Are there traces of mildew? If so, check for cracks or water infiltration.

Do you have any reason to believe there are structural problems? Stuck windows or uneven floors point to this sort of problem.

Flush the toilets and check faucets to make sure there is sufficient pressure.

***Be sure to ask for a home inspection by a qualified home inspector when you make an offer.**

Table 6

Facts sheet	
Address:	
Real estate brokerage:	
- salesperson's name:	
- telephone:	
Asking price:	
Occupancy date:	
Construction type:	
Rooms	Inside
- total number of rooms:	- walls:
- number of bedrooms:	- floors:
- number of bathrooms:	- lights:
- number of entrances:	- windows:
Surface area	- cupboards:
- lot:	- baths:
- house:	- showers:
Size	- storage space:
- lot:	Environment
- house:	- noise:
Outside	- safety:
- siding:	- air and water quality:
- roof:	- traffic:
- windows:	- industries:
- doors:	- commercial activities:
- garage:	- railroads:
- parking:	- flooding risks:

Annual fees

- property taxes:
- school taxes:
- garbage collection:

Fixtures

- heating:
- electrical system:
- plumbing:
- air exchanger

Included items

- floor-covering:
- drapes:
- electrical appliances
- shed
- central vacuum system:
- alarm system:
- other:

Outside arrangement

- landscaping:
- fence:
- patio and balcony:
- pool:
- fence:

Comments

Inside arrangement

- entrance:
- kitchen:
- living-room:
- family room:
- bedrooms
- bathrooms:
- basement:

Distance

- work:
- commercial services:
- schools:
- police station:
- hospital:
- medical clinic:
- dentist:
- public transit:

Condominium

- parking:
- storage space:
- recreational areas

Researching the fair market value of a property

If you are interested in a property, it is important to get an idea of its actual value on the market. With the help of your Industry Member, compare the house you like to other properties in the neighbourhood and try to identify the elements which could have a positive or a negative impact on the asking price: location, size, year of construction and state of preservation of the property, number and layout of rooms, materials used, landscaping, features specific to the area, and so on. This information will help you determine the price you will offer the seller.





The **Agreement of Purchase and Sale**

The Agreement of Purchase and Sale is a contract through which a person undertakes to purchase real estate. In return, the document also indicates that the seller undertakes to sell the real estate once the offer has been accepted.

It should be noted that the use of the Commission-approved Agreement of Purchase and Sale form is a compulsory form Industry Members are required to use for residential purchases.

Content of the offer to purchase

The Agreement of Purchase and Sale content is designed to protect both buyers and sellers. It is important to make sure that the information contained therein is in accordance with that of the listing contract.

Identification of the parties

The Agreement of Purchase and Sale must identify the parties bound by contract, (the buyer and the seller). It also indicates the names and addresses of the buyer and seller.

Object and term of the contract

As its name indicates, the object of the Agreement of Purchase and Sale is the *purchase* of real estate. The term sets a deadline after which the offer to purchase becomes null and void.

Description of the real estate

The Agreement of Purchase and Sale should contain a detailed description of the real estate, including street address and items to be included (fixtures vs. chattels) as well as conditions to be met.

If the real estate is a condominium, the contract must specify the number of parking and storage spaces and their identification numbers.

Price and deposit

The Agreement of Purchase and Sale must indicate clearly the purchase price offered by the buyer. The price statement usually indicates that payment will be made in full upon closing.



When presenting an Agreement of Purchase and Sale, the buyer gives the listing brokerage a deposit on the purchase. There is a section to record this on the agreement. The deposit must be placed in a brokerage trust account and will be deducted from the balance to be paid upon closing. Typically the deposit cheque is deposited into the brokerage's trust account when the offer to purchase or counter offer is accepted.

Declarations and obligations of the buyer

The Agreement of Purchase and Sale contains a clause stipulating that the buyer has examined the property and declares that the buyer is satisfied therewith. In the case of a condominium, the agreement specifies that the buyer will examine the declaration of the condominium, including the by-laws of the condominium and the reserve fund, and declares whether or not the buyer is satisfied therewith. It is, therefore, important to read this document.

Delivery of the real estate

The Agreement of Purchase and Sale contains a clause by which the seller promises to deliver the real estate in the condition in which it was when the buyer examined it.

Preclosing viewing

The Agreement of Purchase and Sale contains a clause that allows the buyer to view the property to ensure it is in the same condition as it was when the offer was made. This is not another inspection; it is a home viewing to confirm the condition of the property hasn't changed since you agreed to buy it.



Costs relating to repayment and cancellation of sellers mortgage

The costs relating to the repayment and cancellation of any debt secured by a mortgage and not assumed by the buyer must be borne by the seller. This includes mortgage penalties as well as leased equipment fees (furnace, hot water tank, and so on) that are not included on the Agreement of Purchase and Sale as costs to be assumed by the buyer.

Addendums and schedules

The Agreement of Purchase and Sale may contain a reference to addendums. The addendums are other documents that form part of the Agreement of Purchase and Sale. The addendum usually contains clauses that are not part of the standard Agreement of Purchase and Sale, such as water-test clauses.



Conditions of acceptance

The conditions of acceptance of the Agreement of Purchase and Sale sets a deadline for two specific parts of the Agreement of Purchase and Sale: **acceptance** and **notification**. The acceptance deadline of the offer sets a time and date that this offer is open for acceptance by the seller and by which the buyer must be notified the offer has been accepted. These deadlines are important: if not adhered to, the offer is null and void.

Signatures

The Agreement of Purchase and Sale must include the buyer's and seller's signatures as well as that of their respective spouses, if applicable. Each copy must bear the original signature of each of the parties. In addition, a witness's signature is recommended. Should there be any changes or additions to the wording of the agreement, they must be initialled by all parties.



Remember!

Conditions

Make sure all your conditions are included on the Agreement of Purchase and Sale: mortgage acceptance, home inspection, and so on. If the house you are interested in is located in a rural area, have a water test (quality and quantity) done as well as a septic tank inspection.

If your offer includes conditions, make sure to indicate an expiry date.



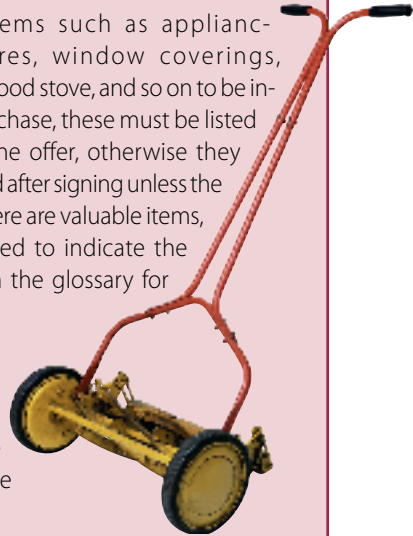
Items included in the Purchase

If you want items such as appliances, light fixtures, window coverings, tool shed, pool, wood stove, and so on to be included in the purchase, these must be listed individually on the offer, otherwise they cannot be claimed after signing unless the seller agrees. If there are valuable items, it is recommended to indicate the

serial number if possible. See the definitions in the glossary for fixtures and chattels.

Checking the dates

Make sure you check the dates indicated for occupancy, adjustments and closing. These dates are initially set by the seller, but can be modified on the Agreement of Purchase and Sale.



Deposit in trust

When presenting an offer, a deposit is required. This deposit is either applied to your down payment or returned to you if the transaction collapses within the terms of the agreement (you've met all the conditions). For the brokerage to release the deposit, the buyer must request its return in writing and the seller must agree to the release in writing. Once the offer is accepted, the broker will deposit the funds in a trust account. This way, your deposit will be protected by the Recovery Fund up to a maximum of \$25,000 per transaction. Should a buyer choose not to complete a purchase, but does not do so within the terms of the agreement, the deposit may be forfeited to the seller.

Location Certificate

It is important that you have a new one done by a surveyor. Using a location certificate provided by the seller does not protect you as the buyer. You should consult your lawyer.





The **counter offer**

The seller may accept or refuse any offer presented to them. The seller may also make a counter offer. The first purpose of the counter offer is to signify to the buyer that their offer has been rejected, but that the seller would be agreeable to the offer if specific changes or additions are made.

The counter offer form can also be used to include or exclude certain items, to change the selling price or simply to further clarify the offer. The buyer, in turn, may not accept the counter offer and wish to make a new offer.

Conditions of acceptance

The conditions of acceptance of the counter offer set a deadline for its **acceptance** and **notification**. Therefore, the deadline for accepting the counter offer is a date and time by which the seller cannot withdraw their counter offer, and by which the acceptance by the buyer is given to the seller in order to be valid.

Any counter offer should include a reasonable deadline (usually between 12 and 24 hours) by which the counter offer must be refused or accepted.



If the counter offer is accepted, subject to the conditions stipulated in the agreement, the property is considered sold, although the transaction only becomes official on closing. However, the transaction cannot be completed until all of the conditions of the contract are fulfilled. Therefore, a final deadline must be set for the conditions to be carried out so that the closing can be finalized.






Using **specialized services**

By dealing with duly qualified people, whose services are covered by professional liability insurance, you reduce the risk of unpleasant surprises.

Main services used when purchasing real estate

Home inspector



Not many real estate transactions proceed today without a home inspection. The Commission strongly recommends consumers have a thorough home inspection conducted before they make a purchase. It recommends, as well, that they specify, in the offer to purchase, that the sale of the real estate is conditional on this inspection; the inspector will provide a written report.

The Commission urges consumers to carefully select their home inspector and if possible, to verify the inspector's reputation with a number of sources. It also advises a potential buyer to retain the services of an inspector when they start the process of purchasing a home. The buyer should also ensure that this inspector has a professional liability insurance against faults, errors and omissions.

A home inspection is an assessment of the condition of property. It is not an inspection to determine whether or not the property meets the current building code.

The Industry Member may suggest several home inspectors to their client and, generally, this is what the client is expecting. If they do so, you, as the buyer, must decide which inspector you wish to use. Industry Members are not permitted to steer clients to a specific inspector.

Land surveyor

The land surveyor will carry out either a full survey or complete a location certificate. The surveyor will express, using a location certificate, an opinion on the location and the condition of the real estate compared to the titles and the legal description as well as any easements, laws or regulations governing the real estate. The alternative is to have a full survey done, which includes actually staking out the boundaries of the property. You should consult your lawyer to determine which is appropriate. Purchasing title insurance may be an alternative to having either type of survey completed.

Mortgage broker

A mortgage broker can help you identify the best loans available on the market, based on your needs and the type of loan you want.

Lawyer

The lawyer plays a pivotal role in the conclusion of a real estate transaction, including title examination. One of the lawyer's main responsibilities is to complete a title search to confirm that the buyer gets clear title to the property. Your lawyer, of course, will give you advice on any legal aspects of your property purchase.





The **mortgage**

Most people need to take out a mortgage to finance the purchase of a home. A mortgage is a loan in which the real estate serves as collateral for the debt repayment. As indicated previously, the amount borrowed varies depending on the amount of the deposit and the down payment. The higher these amounts, the lower your mortgage. To evaluate your financing needs, see *“How much financing do I need?”*

The amount borrowed is referred to as the **principal**, from which the **interest** is calculated at **interest rates** in effect in the lending market. Interest rates are influenced by multiple economic factors, and their fluctuations are difficult to predict. This is why we recommend that you choose your mortgage based on recent variation in the rates available on the market.

Your monthly payment is based on a spread of the debt and the principal to be repaid over the duration (**term**) of the loan, typically set between six months and five years.

The number of years required to repay the loan is called the **amortization period**, usually between 10 and 25 years. Some newer products go as long as 35 years.

The **net value** of the real estate is calculated by subtracting the unpaid portion of the loan from the purchase price.



Types of mortgages

Different types of mortgages are available on the market. Some may or may not include prepayment privileges (open or closed term). In others, the interest rate is frozen for the term of the loan (fixed rate) or follows market variations (variable rate).

Certain types of mortgages may suit your needs better than others. This is why we recommend that you shop around to negotiate the best possible terms.





The *property* transfer

Once the offer or the counter offer has been accepted, the next step is to make the transaction official. The two main components at this stage are the title search and the closing. The property transfer requires the services of a lawyer, but your Industry Member continues to play a central role at this step of the transaction. Among other things, they will make sure that all documents required are available and will bring assistance in case any problem arises.

Title search

Your lawyer performs the necessary research to guarantee marketable title of ownership. Your lawyer also verifies that the seller is indeed the owner of the property, whether they have the right and the ability to sell, if a spouse or other person must consent to the sale, and so on. All property sales in Nova Scotia are now registered through the new Land Registration Act requirements and the government certifies title.

Should you have any concerns regarding zoning, legal property usage, and so on, you should consult a lawyer. The Commission recommends that you, in conjunction with your lawyer, have a surveyor review the legal description of the property and provide either an up-to-date location certificate or a full survey to confirm the location, easements and other important information about the property.



Through the title search, your lawyer can detect the charges or real rights likely to affect, limit or devalue your right of ownership. You may wish to purchase title insurance to protect against unexpected title encroachment issues, and so on. The buyer should consult their lawyer regarding the need for title insurance.

The closing

The final step of the transaction is the closing which involves the completion of the necessary legal and mortgage documents. This is typically completed after the preclosing viewing.

Registration of rights of ownership

Once the closing is final, the lawyer will register the transaction with the Registry of Deeds. The lawyer may retain the funds until this step has been completed.



The **Nova Scotia Real Estate Commission**

Dealing with professionals to ensure first-rate service!

Created by the *Real Estate Trading Act*, The Nova Scotia Real Estate Commission is an independent, non-government agency, responsible for regulating the real estate industry in Nova Scotia. The Commission's mandate is to ensure consumer confidence in the real estate industry. Among other duties, it ensures that Industry Members carry out their activities in accordance with the Act and regulations currently in effect.

Among the bodies contributing to the protection of the public in the field of real estate brokerage, the Commission Registrar, whose role consists of overseeing the activities of the Industry Members, including auditing their records, accounts and actions. The Registrar may order an investigation and lay charges if an Industry Member refuses to follow the Act and Commission By-Law.

The Commission's Compliance Officer investigates if there is reason to believe that an Industry Member has acted improperly, and may recommend charges to the Registrar if necessary. Any Industry Member who does not act in accordance with the Act and the regulations governing the profession could be charged and required to appear before the Discipline Committee, which has the authority to impose fines, suspend violators or even revoke their right to practice.



The **Recovery Fund** exists to compensate consumers in case of fraud or breach of trust by an Industry Member that results in financial loss to a buyer or seller.

Higher Standards

The Commission is continually monitoring and upgrading the education of Industry Member through continuing professional education.





Do you have a problem?

Are you dealing with an Industry Member and are unhappy with the service you are getting?

The first thing to do is to discuss the problem with your Industry Member. If you are not satisfied with the outcome of the discussion, contact the broker or managing associate broker where your Industry Member is based. If this does not yield results or if you feel you haven't received information leading you to believe that everything is being handled properly, contact the **Commission's Compliance Officer**, who can get the information you need to clarify the situation and find out about your rights.

Nova Scotia Real Estate Commission

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Amortization

Period required to pay back a mortgage in full through regular payments. The amortization is usually based on fixed terms of 10, 15, 20, 25 or 35 years.

Appraisal

Process which consists in estimating the market value of real estate based on the general condition of its components and its specific features. The appraisal is often the result of a comparison with similar real estate up for sale or recently sold in the same area. It is done by a licensed appraiser.

Cancellation

Cancellation of an agreement or the registration of a right through which one is freed from certain obligations, under certain conditions.

Charge

Amount to be paid according to a preset deadline. Tax payable on the use of a public utility, for example.

Chattels

Personal property which is moveable and not attached, such as furniture and appliances.

Client

A client is any person that is in an agency relationship with an Industry Member. This relationship may be formalized, as in a Seller or Buyer Brokerage Agreement or it may be verbal or as a result of actions of the Industry Member. The client relationship ends once the purchase or lease negotiated closes or the expiration date of the contract. If the Industry Member does not provide disclosure, then it is assumed you are in a client relationship.

Common area/condo fees

Expenses related to the maintenance and management of the common areas of a condominium property. Monthly payment, usually fixed, used to set up a fund to pay for current and unforeseen expenses (repairs, equipment replacement, and so on).

Counter offer

A response from the seller presented in reply to an offer.

Note: The first purpose of the counter offer is to signify refusal by the seller of an offer by the buyer.

Customer

A person who has not engaged or employed the brokerage in an agency capacity or as the person's transaction broker.

Deed transfer tax

Tax imposed by a municipality on any transfer of right of ownership in its jurisdiction.

Deposit

A sum of money that accompanies an offer to purchase real estate to be applied against the purchase price if and when the sale is finalized. The deposit must be placed in a trust account and will be deducted from the balance payable at the closing, or will be returned to the buyer if the sale does not go through. It may also be claimed by the seller if the buyer refuses to complete the sale.

Description sheet/ listing cut

Document on which a brokerage has presented the features (construction year, taxes, measurements, and so on) of real estate listed for sale.

Down payment

Personal contribution of the buyer to the financing of real estate purchase. Cash portion deducted from the selling price, which determines the amount of financing required to complete the purchase.

Note: If the down payment for the purchase of the real estate is less than 25% of the purchase price, the loan must be insured by the Canada Mortgage and Housing Corporation (CMHC) or another mortgage insurer.

Easement

Restriction of the right of ownership for reasons of general interest or public use. Right of access or use of land by others, for a defined purpose (passage, parking, public utilities, and so on).

Financing

Means used by a buyer to acquire real estate. Financial resource, often in the form of a mortgage loan provided to the buyer by a financial institution for the purchase of real estate (see Mortgage).

Fixtures

Items attached to the property or a building and considered part of it, such as plumbing fixtures or a fence. If in doubt as to whether an item is a fixture or a chattel, include it in the Agreement of Purchase and Sale.

Gross Debt Service (GDS) ratio

Portion of the borrower's gross income used to pay monthly housing expenses (principal, interest, taxes, heating).

Inspection

General verification of the state of the main components of real estate (foundation, structure, roof, heating system, electrical system, and so on) to assess condition.

Interest rate

Percentage representing the amount of interest produced by an amount of one hundred dollars. A 5% interest rate will produce an interest amount of \$5 payable to the lender for every \$100 borrowed.

The interest rate is used to calculate the amount to be paid to the lender in exchange for financing to allow the buyer to purchase a real estate.

Licence

Operating permit issued by the Nova Scotia Real Estate Commission to any person or company, who meets the legal requirements to carry out real estate brokerage activities in Nova Scotia. The granting of a license is conditional to the successful completion of a specialized real estate brokerage course and an entrance examination.

Listing contract

Agreement under which a person authorizes a real estate brokerage to act on their behalf for a given period of time, as intermediary in the purchase, sale, rental or exchange of real estate. The listing contract (Seller Brokerage Agreement) details the obligations to which the broker and the seller agree by mutual consent.

In an **exclusive** listing contract the seller agrees, for the term of the contract, not to use the services of a brokerage other than the one with whom they signed the contract. Usually, the exclusive brokerage contract also states that the client who is party to the contract cannot sell the property themselves.

An **open** listing contract is one where the owner retains the right to sell the real estate through a person other than the broker with whom he signed the brokerage contract.

Location Certificate

Document containing a report, in which the land surveyor expresses their opinion on the location and condition of real estate compared to the titles and the legal description as well as laws and regulations governing the real estate. The location certificate indicates whether or not the buildings are on the property, but does not verify any dimensions.

Mortgage

Method of financing in which the real estate is used as collateral for debt repayment.

Mortgage insurance

Insurance purchased by a home buyer to guarantee the payment of the monthly instalments required to reimburse a mortgage in full.

Note: If the down payment for the purchase of the property is less than 25% of the purchase price, the loan must be insured by the Canada Mortgage and Housing Corporation (CMHC) or another mortgage insurer.

Nova Scotia Real Estate Commission

Regulatory body created under the *Real Estate Trading Act* whose mandate is to ensure consumer confidence in the real estate industry by regulating the activities of all real estate brokerages and Industry Members practicing in Nova Scotia.

Offer to purchase

Undertaking by a person to purchase real estate under certain conditions set by that person. Contract through which the seller agrees to sell the real estate once they have accepted the offer to purchase.

Principal

Amount of money borrowed through a mortgage.

Professional liability insurance (Errors and Omissions)

All Industry Members are required to have professional liability insurance. This insurance protects Industry Members against the financial consequences of any fault, error, negligence or omission, which their representatives or themselves could be responsible for in the course of their activities.

Real estate broker

A licensed broker is responsible for the supervision of a brokerage, its staff, and Industry Members. Supervision includes being actively engaged in the management of the business and must be physically available to oversee the business. A broker ensures the business is run competently and in accordance with the Act, By-Law, and Policies and Procedures. Brokers may also trade in real estate.

Real estate brokerage

The professional activity of Industry Members. Brokerage transactions and professional acts carried out by Industry Members concerning the purchase, sale, rental or exchange of real estate. Services which can only be practiced by individuals licensed by the Nova Scotia Real Estate Commission.

Industry Member

A person who holds a license issued by the Nova Scotia Real Estate Commission authorizing them to carry out brokerage transactions on behalf of others for the purchase, sale or rental of real estate.

An Industry Member is only authorized to act for and on behalf of a broker. They act as a representative of the brokerage.

Recovery fund

Fund created under the *Real Estate Trading Act*, to which all Industry Members in Nova Scotia contribute to compensate consumers who are victims of fraud or breach of trust by an Industry Member.

Related expenses

Additional expenses to be paid when buying an real estate, including building inspection, property appraisal, loan application, legal fees, taxes, insurance, and so on.

Right of ownership

Recognition that gives the owner of a property the right to use, enjoy and freely and fully dispose of the property, to the extent of the limits and conditions imposed by law.

Salesperson

A salesperson is a licensed to trade in real estate on behalf of a brokerage under the supervision of a broker

Selling expenses

Additional expenses to be paid when selling real estate, including mortgage loan balance, brokerage commission, legal fees, tax adjustments, and so on.

Title of ownership

Official proof of the right to own a lot and buildings erected thereon.

Trust account

Deposit account in a financial institution in which a real estate brokerage can deposit sums entrusted to it in the course of a real estate transaction.

When presenting an offer, the buyer often gives the listing broker a deposit on the purchase of the real estate. This deposit must be placed in a trust account once there is an accepted Agreement of Purchase and Sale.

*A more extensive glossary is available through the Commission's Web site at:

www.nsrec.ns.ca.

See Consumer Information > Real Estate Glossary.

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