

REAL ESTATE AND YOUR MONEY GUIDE

OVERVIEW

This guide is an introduction to real estate law and the terminology used in real estate markets. It invites an examination of the long-time debate between renting and buying a home, looking at the comparative advantages and disadvantages of each type of real estate transaction. The guide also introduces financial literacy in the context of real estate as it reviews budgeting concepts based on a variety of lifestyle choices to see which would be more affordable: renting or buying. This assists with understanding the financial planning required for real estate.

Real estate plays a significant role in our daily lives. For example it is very difficult to get a bank account if one does not have a residential address. Whether the roof is rented or purchased is a choice we have because we have property rights. The free economy is based on a good private property rights system, which permits individuals to create wealth and use it to create more. Investment is required to create something. The risk and reward system which property rights provide our society spurs individuals to create. Property rights are not limited to real estate and the same principles can be applied to buying a car, a boat, etc. That we have the choice to buy or rent stems from our property rights, in that someone determined that if they created a property or housing unit, they could rent it or sell it to make a profit. To do so, they most likely had to commit their own property rights and pledge their assets to borrow money to make their project a reality. The fundamentals of real estate found in residential real estate remain true, and are a good training exercise for commercial, industrial or other real estate where you simply add more zeros to the purchase price or size to the land or building. The age-old debate over whether buying or renting is better remains. There is no right answer, as it depends on the individuals and their circumstances. Buying creates forced savings and equity, and renting provides easier options to relocate for work or lifestyle decisions.

Comparative advantages of renting vs. buying

Renting	Buying
<p>Generally Cheaper</p> <ul style="list-style-type: none">• Rent payments are typically lower than mortgage payments/taxes/condo fees.• Avoidance of up front purchase costs like down payment, legal fees, and land transfer tax.• Avoidance of ongoing ownership costs like property taxes, repairs, condo fees and utilities, if included in the rent.• Although there is no requirement for home insurance, renters should get tenant insurance, but few do.• Money saved may be invested for higher rate of return than would be gained by buying and selling home.	<p>Increase Net Worth</p> <ul style="list-style-type: none">• Real estate typically appreciates in value over time, and hence an owner's net worth increases.• If the home is the principal residence and is later sold above the original purchase price, the net gain is tax exempt from (capital gains) tax.• Buying a home typically involves a mortgage, and is for most people a forced savings program (on money which would otherwise be misspent assuming it was not invested).

<p>Less Hassle</p> <ul style="list-style-type: none"> • Usually limited or no responsibility for maintaining and repairing home – e.g. grass cutting, snow removal. 	<p>More Control</p> <ul style="list-style-type: none"> • An owner can decorate or make changes to the home at will (subject to government restrictions like building codes). • Flexibility to have pets, a garden, make noise, etc. (subject to restrictions like condo rules).
<p>More Freedom</p> <ul style="list-style-type: none"> • Feeling of independence. • More discretionary income to spend on dining, travelling, consumer goods, and investing. • Ability to move easily to take a new job or pursue new experiences in different parts of the city, province or world. 	<p>More Security and Attachment</p> <ul style="list-style-type: none"> • Feeling of security and pride that comes with ownership and being an established part of a community. • Freedom from eviction and a land owner's choices about the future use of the property.

The relative financial benefit of renting versus buying depends on which assumptions a person makes about many elements, such as the annual appreciation of a home, the annual return on money invested (i.e., savings from not buying a house), rate of inflation, and a person's monetary discipline.

A lot of people participate in the real estate market, some more aggressively than others. Whether one rents or buys, it is advisable to draw up a budget in order to determine how much of a monthly mortgage payment or rent can be allocated to cover housing. Budgeting involves matching monthly take-home income, which is your income after taxes, and monthly expenses. Many suggest that 30% of the income is what should be spent for housing costs.

Term Definitions

The real estate industry uses many terms which you might not be familiar with. The following is a list of the most commonly used terms and their definition to assist you to better understand the transaction.

1. Agreement of Purchase and Sale (APS)

This is the contract which sets out the terms of the purchase and sale and binds the sellers and buyers. It starts as an offer to purchase and once accepted by the seller, becomes the APS. Some think of a counter-offer as a third step in concluding an APS, however, in law it is seen as simply a rejection of the offer and the presentation of a new offer, which can be accepted or rejected by the other party.

2. Appraisal / Appraiser

An appraisal is an assessment of the current market value of the property. An appraiser is an individual licensed to provide an opinion as to the market value of a property, although buyers and sellers often only rely on the real estate agent/broker for valuation information. The lenders typically will order an appraisal for financing purposes.

3. Appreciation

The increase of a property's value over time.

4. Balance Due on Closing

The amount of money that the buyer needs to pay the seller on closing, after the usual adjustments as determined on the Statement of Adjustments, prepared by the seller's lawyer for review by the buyer's lawyer.

5. Bidding War

Situation where more than one buyer wants the same property. The seller need not accept the first offer he/she gets and buyers will put in higher offers than other bidders to be the successful bidder. Although price is not the only variable which entices sellers to accept an offer, it often is the one item over which buyers will try to out-bid each other. This scenario is more common in large cities or other desirable areas. Many bidders will be encouraged to remove all conditions from their APS in order to make it more attractive to the seller over others. This can be a dangerous practice and should only be done with appropriate professional advice.

6. Bridge Financing

Money borrowed against a homeowner's equity in a property, usually for a short term, to help finance the purchase of another property or make improvements to a property being sold.

7. Buyer / Purchaser

The person who is buying a property. Although purchaser is the more common term, buyer is the term used in the APS.

8. Chattels

Personal belongings which do not become part of the property, although they might be temporarily affixed to property or safely enjoy them. The seller takes these with him/her when he/she moves, unless the APS provides otherwise. Examples are: window coverings, fireplace grates, furniture, appliances (unless built-in), pumps or other equipment.

9. Closing or Closing Date

The date on which the sale becomes final, the legal title is transferred, the seller delivers vacant possession to the buyer and the buyer takes possession and becomes responsible for the ongoing cost and maintenance of the property.

10. Commission

The money paid to a real estate agent/broker for their efforts to bring a buyer and seller together. The commission is paid at the time of the closing. The seller is contractually obligated to pay the commission but buyers pay it or contribute to it as part of the purchase price.

11. Common Area

In a condominium there are three types of property: the units which are individually owned; common area which is jointly owned by all owners and to which they generally equally have access to (e.g. a pool); and exclusive use common areas which are restricted for use by one owner (e.g. balcony attached to unit).

12. Conditions

An APS is binding on the parties subject to its terms and conditions. If one of the parties wants to provide an option to terminate the agreement, it must be stated in the agreement. We call these statements conditions. Examples might be a condition to obtain financing for the purchase; to obtain a building inspection satisfactory to the buyer; to sell the buyer's existing home; to confirm that the buyer will be permitted to add to, build or renovate the home as they intend. Failing any of these, the buyer can terminate the agreement. It is important to not only state the nature of the condition but also what must be done by whom and by when. For example, a sample condition would be: The Buyer has 10 business days to satisfy herself that she can obtain financing for the purchase and failing her providing written notice to the Seller within the time specified, the Agreement of Purchase and Sale shall be null and void.

13. Condominium

A type of ownership which permits individual ownership and the sharing of common resources. In a residential structure, apartments or townhouses (units) are individually owned as pieces of real estate whereas the land and common facilities are jointly owned.

14. Condominium Corporation

Company which operates the condominium and manages the land for all the owners.

15. Consideration

This is a legal concept that is based on the fact that only bargains are enforceable. Voluntary promises might not be enforced. For an APS to be binding there must be value exchanged, typically an exchange of money. The deposit in an APS is most often the value which makes the APS enforceable. In law, a document under seal is binding and so if you look closely at the APS form provided; it has a "seal". Although this originally was a wax seal impressed on the document, the modern version of the seal is a simple circle or the word "seal".

16. Deed of Land /Transfer

The document which is signed by the seller and registered by the lawyer in the Land Registry Office to transfer the title to the property from the seller to the buyer. In actual fact, today, the seller no longer signs the transfer, but rather an Acknowledgement and Direction to authorize and instruct his/her lawyer to record the transfer in the electronic registration system presently used in Ontario. Deed is the old terminology and Transfer is the new term.

17. Deposit

The amount of money the buyer gives to the seller, his lawyer or agent when he/she signs the APS. It is said to represent a good faith gesture to show the seriousness of the buyer. If the buyer fails to purchase the property he/she generally loses his/her deposit.

18. Down Payment

The amount of money the buyers contribute to the purchase of the property on closing. This may be as little as the deposit, but generally includes further monies paid on closing to be at least 5% of the value of the property.

19. Due Diligence

This is the process during which the buyer will seek to satisfy him/herself that what he/she thinks he/she is getting or bargained for, is actually what he/she will get. Part of the process may be done by the buyer personally but generally the lawyer undertakes it on behalf of his/her client. The lawyer will search the title of the property to ensure the buyer gets a good and marketable title, subject only to known and agreed upon exceptions or limitations. The buyer needs to confirm financing is available and that insurance will be available at a reasonable cost. Some issues will need to be discussed to decide who undertakes them, such as possible renovations or additions to the property. These might be for the buyer or the lawyer to investigate.

20. Easement / Right of Way

A right held by a third party to use or pass over another person's property. Typically we refer to a right of way for a temporary and intermittent passage (i.e. a road or driveway) and an easement for a permanent use of part of the land (i.e. a cable, pipe or building).

21. Encroachment

An intrusion onto an adjoining property – such as a neighbour's fence, storage shed or overhanging roof line that partially (or even fully) intrudes onto another property.

22. Equity

The amount of his/her own money a buyer has in the property but over the years becomes the difference between what the property could sell for and how much the owner has left to pay on his/her mortgage(s).

23. Exclusive Listing

A listing which is exclusive to the broker and advertised within its own network only and not exposed on the multiple listing system (MLS).

24. Fees and Disbursements

Fees are what the lawyer acting for the seller or buyer is paid to undertake work on their behalf. Disbursements are the out-of-pocket costs the lawyer incurs on the seller's or buyer's behalf and for which the lawyer gets reimbursed by his/her client (i.e. search and registration costs).

25. Fixtures

Things which are affixed to the land and become part of the property, such as the house, a furnace, air conditioner, fireplace, light fixtures, etc., unless specifically excluded in the APS.

26. Freehold

The legal terminology which indicates that a person owns the greatest interest possible in a property. Typically we simply call them an owner. Contrast this to a condominium where one simply owns one or more units and the freehold is owned by the condominium corporation.

27. FSBO

A term to represent an ever-growing trend of "For Sale by Owner" where there is no agent/broker and instead the owner tries to sell the property using their own resources (sign on the lawn or the internet – Kijiji).

28. Guarantor

A person who agrees to be legally responsible for paying another person's mortgage if the borrower defaults on the payments. A guarantor is only required by the lender in certain circumstances (e.g., the lender may need a guarantor for someone new to the workforce and does not have much money saved or has no credit history).

29. Home Insurance

This insures against the damage/destruction of the home because of something unexpected, like fire or other incidents such as burglary, and could be on an all-risks basis or a specified risks basis. Home insurance is required by all lenders as a condition of a mortgage.

30. Inspection / Inspector

The formal process to review and evaluate the state of the building on the property to estimate the amount and cost of any future work to maintain or repair. The government is presently setting up licensing requirements for inspectors and although a recommended step in the buying process, the results will depend on the quality and knowledge of the person doing the inspection and the report provided. Often the liability of the inspector is limited in the report to the amount paid for the report, when damages can be substantially more. Buyers often forgo an inspection or rely on family and friends to advise them, neither of which is recommended.

31. Insurance Broker

An individual or agency that a buyer consults to determine the amount and kind of protection a homeowner should acquire. Buyers should consult their broker soon after signing the APS to discuss options, cost and the availability of insurance.

32. Land Transfer Tax

A tax paid to the province on closing by the buyer, being a percentage of the purchase price. In the City of Toronto there is also an equivalent tax collected by the City. The rate depends on the value of the property. Google "Ontario Land Transfer Tax" for more information.

33. Land, Property, Home, House, Unit

Interchangeable terms to mean a property being purchased or rented. Land and property are generally more generic, home/house more specific to a dwelling, and unit to a condominium property.

34. Lawyer for the Buyer

The lawyer is responsible for assuring that his/her client receives good title. The lawyer searches title to the property, obtains information from the municipality and others, receives a survey of the property (if available), and advises the client as to the state of title before closing. The lawyer typically also acts for the mortgage lender. The mortgage lender is also interested in the state of title because it is advancing monies on the security of the land. The lawyer prepares various closing documents and registers the transfer/ deed of land and the mortgage.

35. Lawyer for the Seller

The lawyer deals with any problems that the buyer's lawyer finds on the title that have to be dealt with before the transaction closes and arranges to pay off the seller's existing mortgage, if applicable. The lawyer prepares various closing documents and delivers the keys and the transfer/deed of land on closing in return for the purchase money.

36. Leasehold

The legal terminology which describes the interest held by a person that is leasing/renting a property, typically from the freehold owner.

37. Lien

A legal claim filed against a property to ensure payment of a debt.

38. Listing

The agreement signed by the seller to authorise the agent/broker to sell the property. It will specify the period of time the property will be up for sale, the amount of the commission and any other terms. The agent/broker will add the details of the property for sale to MLS and the information summary is also called a listing.

39. Listing Agent

Real estate agent who acts for the seller and advertises the property for sale, exclusively or via the MLS. The Real Estate Council of Ontario (RECO) provides a Representation Agreement to be signed by the seller and buyer to confirm that the agent is working for either or both.

40. MLS

The multiple listing system (MLS) is set up by local real estate associations (e.g. Toronto Real Estate Board) to promote the availability of a property. It was formerly periodically printed in books of listings but today is simply part of an online resource. The property must be listed with an agent/broker to be advertised on MLS.

41. Mortgage Broker

An individual or agency which will match up a lender and a borrower. Buyers/borrowers can get a loan directly from a lender (i.e. bank, credit union, caisse populaire, mortgage company) or use this third party to find a loan with the most favourable terms. Although, brokers were once only used by borrowers who had difficulty obtaining a mortgage, today, they are used by many, often for the benefit of simplifying shopping for the best terms.

42. Mortgage Commitment

The agreement that a lender gives to a borrower to commit itself to providing a mortgage. It states the amount of the loan, interest rate, term, amortization period and other terms of the loan.

43. Mortgage/Charge

A loan registered on title providing the lender security for repayment with direct rights against the property in the event of non-payment, such that in the event of default the lender can sell the property to recover the money owed. Mortgage is the old terminology and Charge is the new term.

44. Mortgagee/Chargee

The person or entity lending the money and receiving the mortgage as security for its repayment. Mortgagee is the old terminology and Chargee the new term.

45. Mortgagor/Chargor

The person borrowing money and giving the mortgage. Mortgagor is the old terminology and Chargor the new term.

46. Ontario New Home Warranty Program

A statutory protection program administered by Tarion Warranty Corporation, a private corporation set up by the Ontario government. The *Ontario New Home Warranties Act* is designed to protect consumers buying new homes by ensuring that they get a quality home. All builders in Ontario must enroll every home in the program. The program provides protection for deposits, construction defects, closing dates and more. More information is available at www.Tarion.com

47. Real Estate Agent

An individual responsible for bringing together a buyer and a seller in a transaction and traditionally was the avenue to expose properties to the market. Licensed by the Real Estate Council of Ontario (RECO) and formally called salespersons.

48. Real Estate Broker

An individual or agency which is licensed to sell a home by bringing together a buyer and a seller for which the real estate agent works. Licensed by the Real Estate Council of Ontario (RECO) (e.g. ReMax).

49. Seller / Vendor

The person who is selling a property. Although vendor is the more common term, seller is the term used in the APS.

50. Selling Agent

Real estate agent who acts for the buyer and introduces buyers to properties for sale and generally drafts the offer to purchase. RECO provides a Representation Agreement to be signed by the seller and buyer to confirm that the agent is working for either or both.

51. Specific Performance

The process by which a seller is forced by the courts to complete the deal which he/she had agreed to. If a seller does not complete a transaction and the buyer is not satisfied that money will compensate him/her adequately, the buyer can ask the court to order the seller to respect his/her deal on the basis that the property is unique and money, as damages, is not a good substitute.

52. Statement of Adjustments

Document which sets out in two columns the credits to the seller and to the buyer. Once both are totalled, the difference is called the Balance Due on Closing, typically an amount the buyer pays to the seller. This document should be reviewed and understood by both the seller and buyer

before closing. Typically adjustments include the purchase price, the deposit, property taxes, rental income, if any, heating oil, if any. Water, gas and hydro are not typically adjusted as they are individually metered and billed to the party in occupation.

53. Survey

A plan produced by a surveyor that sets out the boundaries of the land and locates the structures and important features in relation to the boundaries. Without a survey it is impossible to know where or if a structure (i.e. house) is actually within the boundaries of the land being purchased or mortgaged. Every buyer should get an up-to-date survey when they purchase or undertake any improvements to the land in order to ensure its location is in compliance with all municipal zoning by-laws and within the boundaries. Often, because of cost, parties will use an existing survey or obtain title insurance instead.

54. Tax Roll Assessment

All municipalities in Ontario raise money by taxing properties in their jurisdiction. The municipality maintains a list (tax roll) and each property is given a number (tax roll number). In order to calculate property tax, each property is given a value by the province (tax roll assessment), which value is often not equal to market value. Taxes are calculated by multiplying the tax roll assessment by the property tax rate – a number the city determines in its annual budget exercise.

55. Title Insurance

An insurance policy that protects home owners and lenders against losses related to the property. It provides coverage for fraud, forgery, missing heirs, unregistered easements and other issues that can affect rights of ownership. Traditionally, a lawyer acting for the buyer would provide his/her opinion to the buyer that he/she was getting a good and marketable title, subject to known and accepted exceptions and limitations. Today, it is more likely that instead of the opinion, the lawyer will purchase a title insurance policy for the buyer and lender as it provides broader coverage and indemnification than a lawyer's opinion would, such as coverage for fraud. Title insurance also provides a direct recourse for the insured instead of having to prove the lawyer's negligence. The policy replaces the lawyer's opinion but not the lawyer's other work.

56. Utilities

Term for the services provided to the property, such as hydro, gas and water. Sellers typically close their account with the utility company and the buyers contact the utility company to create their own account.

57. Vendor Takeback Mortgage

When the seller loans the buyer money to complete the purchase. The seller receives a promise to pay instead of cash on closing. This provides the seller with the same security that a traditional lender would have for its loan.

58. Zoning Regulations

Strict guidelines set by municipal governments regulating how a property may or may not be used, such as use, setback, height, density, etc.

Budgeting

Whether you buy or rent, you need to know how much money you have available to spend on housing costs. Of course, the amount available will reflect your lifestyle choices. Buying a new car, taking frequent holidays, going out to dinner often are nice but will usually limit how much money is left over for housing. In order to better appreciate the available money and the impact of various lifestyle choices, here is a sample budget to use.

Sample Budget

Income		
Source	Monthly	Yearly
Take Home Pay		
Other Income		
Total Income		
Expenses		
Type	Monthly	Yearly
Housing		
- Rent		
- Mortgage		
Transportation		
- Public Transit		
- Car payment		
- Gas		
Food		
- Groceries		
- Eating out		
-		
Utilities		
- Electricity		
- Heating		
Services		
- Telephone		
- Internet		
Clothing		
- Summer		
- Winter		
Health Care		
- Medication & Dental		
- Glasses/Lenses		
Insurance		
- Medical premiums		
- Car insurance		
- Home		
- Rental		

Entertainment		
- Cable		
- Movies		
- Music purchases		
- Concerts/sports		
- Night out		
Recreation		
- Sports fees / equipment		
- Lessons		
- Health club		
- Travel		
Education		
- University		
- College		
- Other		
Personal		
- Hair cut		
- Makeup		
- Personal care		
- Dry cleaners		
- Laundry at laundromat		
Savings		
- Long term – retirement		
- Short term – vacation or purchase		
Other		
- Banking fees		
- Subscriptions		
- Books/magazines		
- Charity		
- Gifts		
- Pets		
- New furniture		
-		
-		
-		
Total Expenses		
Difference between Income and Expenses		

FOR MORE INFORMATION

If you have any questions arising from this guide or concerns which have not been addressed, please contact a lawyer in your area for consultation. You can locate a lawyer who deals with these matters by doing an internet search or by going to <https://lsrs.lsuc.on.ca/lsrs/> or www.titleplus.ca.