

YOUR WEALTH

NOVEMBER 2009
N° 3

**SECURITY AND
PEACE OF MIND IN
ACHIEVING YOUR DREAM**

QUEBECERS AND
HOME PURCHASES
**WHAT CAN HAPPEN
WHEN YOU'RE
NOT INFORMED**

**HOW MUCH MONEY
SHOULD I INVEST
IN BUYING A HOME?**

WHEN DEFECTS
ARE DISCOVERED

**BUYING WITHOUT AN AGENT:
THE NOTARY'S ROLE**

WHAT IF THE CONTRACTOR
GOES BANKRUPT?



IS IT MY HOUSE...
OR YOURS?



A NOTE FROM THE PUBLISHER

For most Quebecers, buying a property is one of the most important decisions in life. It is a decisive step involving financial, family and, of course, legal implications. For many people, buying a house is also a symbol of professional and social success. It is this combination of reason and emotion that makes purchasing property so tricky.

According to the results of a recent survey conducted by the Chambre des notaires du Québec, one out of ten homeowners regrets the purchase of his or her last residence and one out of four would hesitate to buy or would not purchase his or her current residence again. "If I had known...", these disappointed homeowners tend to admit.

Are you thinking about buying a house in the next few months? A piece of advice: above all, do not be hasty. Before signing any offer to purchase, be extremely careful. As the old saying goes, "an ounce of prevention is worth a pound of cure."

Are you wondering about your financial capacity to become a homeowner? The precautions to take before buying your dream house? Your obligations as a purchaser? Or still yet, what would happen to your little love nest in the event of separation or divorce? This third edition of *Your Wealth* magazine deals with all of these questions and suggests professional resources able to advise you and help make your plans a reality.

Enjoy your reading!

Maurice Piette, Notary
Vice-President and Acting President
Chambre des notaires du Québec

Writing: Agence Média Presse
Layout: Pénéga communication inc.
Printing: Imprimerie Transcontinental



SECURITY AND PEACE OF MIND IN

ACHIEVING YOUR DREAM

When you buy a property, you are investing your savings, but also your hopes and dreams in the project. You are willing to devote all your energy to what matters to you: the quality of life you hope to have by owning a house you will make into your own cozy little nest with renovation and decoration. But in making your dream a reality, the various steps leading to the purchase of a house can prove to be a real obstacle course.

At least this is what appears from a survey of recent purchasers, the results of which we will share in this edition of *Your Wealth* magazine. Signing a promise to purchase, having a pre-purchase inspection done, getting a mortgage, obtaining the deed of sale - so many steps that are often poorly understood, but that are essential to achieving your dream.

Among all the decisions you might make during your lifetime, the purchase of a property is undoubtedly one whose financial and legal implications are the most likely to affect your sense of security and peace of mind. The recent real estate crisis that shook the United States economy to the core, along with the lives of many of its citizens, provides a very concrete illustration of the issues involved in real estate transactions. It is important to leave nothing to chance and to be able to rely on a notary to inform,

advise, guide and reassure you during the process of buying a property.

Hasty decisions sometimes bring their share of unpleasant or unfortunate consequences. Consulting a notary before making an important decision, or even signing a document, can help you make informed choices. With their legal training and expertise in real estate law, which, by the way, the survey respondents acknowledged, notaries are the professionals best suited to ensure that your purchase goes as planned.

The sooner you involve your notary in your plans, the better he or she will be able to act as a resource person to make your life easier. Using the information you provide concerning your planned purchase, the notary will be able to analyse the impact of your decision on your personal, marital, financial and even tax situation. When

drafting the promise to purchase, he or she will inform you of your rights and obligations regarding this preliminary contract, and the consequences of signing it. When it comes time to look for a mortgage, the notary will be able to discuss sources of financing with you, as well as the advantages and disadvantages of the various options.

As the key person orchestrating a real estate transaction, notaries interact constantly with the other people involved. Notaries build a network of contacts with the aim of presenting you with the best solutions. This makes it easier for you to make decisions and ensures all the parties can reach an agreement.

For example, a notary's title search (a search of the chain of ownership of the property), other preliminary checks, and drafting of a deed of sale that reflects the intentions of the parties gives you accurate information on the status of the property you are about to buy, offers you reassurance and helps avoid problems.

When you've read this edition of *Your Wealth* magazine, you will realize that purchasing a property has financial and legal implications that should not be taken lightly. Fortunately, there are resources available to ensure the transaction proceeds as it should, to ease your worries and let you to concentrate fully on realizing your dream with complete peace of mind. ■

WITH THEIR LEGAL TRAINING AND EXPERTISE IN REAL ESTATE LAW, WHICH, BY THE WAY, THE SURVEY RESPONDENTS ACKNOWLEDGED, NOTARIES ARE THE PROFESSIONALS BEST SUITED TO ENSURE THAT YOUR PURCHASE GOES AS PLANNED.

WHAT CAN HAPPEN WHEN YOU'RE NOT INFORMED

Quebecers are not very knowledgeable about the process of purchasing a house. Worse yet, many regret their purchase. These findings emerged from a survey conducted by the firm Ipsos Descarie on behalf of the Chambre des notaires du Québec.

This survey, carried out in September 2009 for Protecting Your Wealth Week, indicates that 68% of potential first-time home buyers have little understanding of the steps involved in the process. Furthermore, one out of ten homeowners regrets the purchase of his or her last home and one out of four would hesitate or would not buy the current home again.

MYTHS DIE HARD

The survey shows that 37% of home buyers incorrectly believe that they have ten days to cancel their promise to purchase after signing it. Approximately a third of purchasers also think that the warranty provided by law covers all defects in the house. Moreover, nearly one out of two consumers (44%) does not know that there is no obligation to provide a deposit to the vendor when signing the promise to purchase. This misconception can be

costly, particularly since 38% of buyers are surprised to learn that they are responsible for paying municipal and school taxes once the deed of sale is signed, even if they are not yet occupying the home!

Apart from these enduring myths, the steps in the sale process itself are not well known, especially those relating to the notary's role. This is paradoxical, since survey respondents acknowledged that the notary is the most "essential" professional in the process! This lack of information is even more prevalent among those who have never purchased a home, particularly as regards the property title search, the transfer of the amount of the mortgage loan into the notary's trust account and the registration of the mortgage deed (also called a deed of hypothec) and the deed of sale in the land register.

A TRYING AND COMPLEX PROCESS

Not surprisingly, the survey shows that one out of five purchasers found the process surrounding the purchase of his or her last property difficult, and that 74% of potential buyers consider it a complicated process. These figures indicate that the quality of the building, hidden defects and the possibility of making a mistake concern buyers the most. "The problem is that purchasers tend to overlook the importance of other aspects that are as important when buying a property, such as the drafting of the promise to purchase and the mortgage loan," explains François Bibeau, a notary in Belœil.

Even when everything goes well, the purchase of a house brings its share of stress, expenses and delays. But what about lingering stress due to problems encountered after the purchase? After all, 12% of survey respondents admitted regretting the purchase of their most recent home! This figure doubles when the question is asked more directly: 14% of respondents claim that they would not



buy their current home again and 10% are unsure whether they would. For a purchase that has such a significant impact on the financial and family life of Quebecers, these figures are quite high. “Regrets around the purchase of a home can result in a quick resale of the property and have a significant negative financial impact, not to mention the stress from having to move again,” warns Maître Bibeau.

THE PROFESSIONALS INVOLVED: TEAMWORK AND PERCEPTIONS

Why is such an important purchase too often done with too little information? “The fact that people only buy a house once or twice during their lifetimes means they don’t retain essential information regarding the process. This is why it is important to continue raising awareness among Quebecers of the importance of obtaining the information and advice necessary to make an informed decision,” emphasizes François Bibeau. “To make a careful decision, purchasers of property should consult a notary from the outset to get guidance on their dealings with

the various people involved, and to avoid unpleasant surprises.”

Who are the professionals Quebecers turn to the most to help them purchase a home? According to the highest percentage of respondents (39%), notaries are at the top of the list, as they are considered to play an essential role. For their part, real estate brokers are perceived as those most likely to simplify the purchasing process (29%). Advisors at financial institutions are acknowledged to be useful in the process (20%). Finally, since regrets about the purchase of a home mainly result from

hidden defects or a poor evaluation of work needed to be done, respondents said they are grateful to those who know how to prevent these problems. The prize for the most “reassuring” professional therefore goes to the building inspector (37%)! ■

PROFILE OF PEOPLE SURVEYED:

- **1,061 RESPONDENTS BETWEEN 25 AND 64 YEARS OLD**
- **65% HOMEOWNERS FOR AN AVERAGE OF 11 YEARS**
- **AVERAGE VALUE OF HOME: \$223,000**
- **55% LIVE IN A SINGLE-FAMILY HOME**
- **12% INTEND TO BUY A HOME WITHIN THE NEXT FIVE YEARS**



A NOTARY CAN HELP YOU WORK OUT YOUR PURCHASING POWER BY SITTING DOWN WITH YOU TO LOOK AT YOUR NET WORTH. BY REVIEWING YOUR ASSETS AND DEBTS, YOU WILL HAVE A MORE COMPLETE PICTURE OF YOUR SITUATION, UNDERSTAND THE FINANCIAL IMPACT OF YOUR PURCHASE, AND MAKE A DECISION MORE COMFORTABLY.

HOW MUCH MONEY SHOULD I

INVEST IN BUYING A HOME?

You want to buy a house, and you have a very specific idea of it in your mind: a patio, heated garage, three bedrooms, in a popular neighbourhood... Do you have the means to match your goals, or should you be ready to compromise? Get out your calculator!

As a matter of fact, the question is not only the amount of money you have on hand to invest in your planned purchase, but also the amount you will be able to borrow. Actually, unless you have saved hundreds of thousands of dollars in cash, you will have to take out a mortgage to purchase a home.

The mortgage industry functions according to well-established rules. In the case of an uninsured mortgage, in which the purchaser makes a down payment of at least 20% of the purchase price, the rules require that not more than 32% of your gross income be allocated to covering housing costs. Therefore, once you subtract your main monthly expenses (heating, taxes, insurance and other housing-related expenses), you can easily calculate the maximum amount per month you can earmark for repaying your mortgage.

When calculating your monthly expenses, it is important to be more realistic than optimistic, so you are prepared for any unforeseen expenses. Moreover, if you plan to buy a home that is starting to show its years, remember to budget the necessary amounts to maintain and renovate it.

The website of the Canada Mortgage and Housing Corporation (www.cmhc-schl.gc.ca)

provides future homeowners with a very good calculation tool to clearly establish the monthly payments they will be able to make. In addition, a notary can help you work out your purchasing power by sitting down with you to look at your net worth. By reviewing your assets and debts, you will have a more complete picture of your situation, understand the financial impact of your purchase, and make a decision more comfortably.

In today's market, 20% of the value of a house is definitely a substantial amount of money. "If an individual cannot afford to make a down payment of 20%, a mortgage loan insurer has to get involved," explains Éric Ménégazzi, Account Manager at Desjardins Group.

Mortgage loan insurance was created so that purchasers without the cash assets to make a down payment of 20% can become homeowners. With insurance, the minimum down payment required is 5% of the property's purchase price. Among the many mortgage loan insurers, the best known is the Canada Mortgage and Housing Corporation (CMHC). Purchasers must be aware that if they choose this option, they will be charged an insurance premium by the mortgage lender, which is calculated on the basis of the amount loaned. ■



TAKING ADVANTAGE OF THE **HOME BUYERS' PLAN**

You cannot buy a house entirely on credit: making an initial down payment is essential. Obviously, the higher your down payment is, the lower your mortgage payments will be and the less you will pay in interest.

To help buyers put together the amount necessary for a down payment, the Canada Revenue Agency created the Home Buyers' Plan (HBP). "The idea behind the HBP is to use money from a buyer's RRSP for a down payment," explains Éric Ménégazzi, Account Manager at Desjardins Group. "The government therefore gives first-time home buyers the opportunity to withdraw up to \$25,000 from their RRSP (\$50,000 per couple) to invest in the purchase of a property, without having to pay tax on this withdrawal." In general, buyers have 15 years to repay the total amount withdrawn from the RRSP.

Do you tend to spend money rather than save it, and is your RRSP skimpy or even non-existent? "If people do not have an RRSP, they can still participate in the HBP by taking out an HBP loan at a financial

CERTAIN CONDITIONS APPLY, PARTICULARLY:

- **YOU HAVE NOT PARTICIPATED IN AN HBP DURING THE LAST FIVE YEARS**
- **YOU HAVE NOT BEEN A HOMEOWNER WITHIN THE LAST FOUR YEARS**
- **YOU HAVE FULLY REPAID PREVIOUS HBPs**
- **YOU MUST USE THE HOME AS YOUR PRINCIPAL RESIDENCE NO LATER THAN ONE YEAR AFTER IT IS PURCHASED OR BUILT**

institution. They borrow according to their needs and based on their unused RRSP contributions," points out Éric Ménégazzi. The borrowed amount is deposited in an RRSP for 90 days. Then, the buyer can withdraw this amount by participating in an HBP.

You can obtain complete information about this program and the rules relating to your particular situation by going to the Canada Revenue Agency's website (www.arc.gc.ca) and consulting the *Home Buyers' Plan* page. ■

SHOPPING AROUND FOR A **MORTGAGE**

You shop around for your car, your home, your cell phone... so why wouldn't you do the same for your mortgage? Open or closed loans, fixed or variable rates, amortization over 20 or 35 years, monthly or weekly payments, a multi-project option or revolving clause, so many options... that can be rather confusing!

The mortgage deed must be signed before a notary, so why not make use of his or her help and advice? The notary can provide you with information about the kinds of mortgages you might be offered so you can avoid unpleasant surprises when the time comes to sign. As impartial legal advisors, notaries take a preventive approach. They can help you make an informed decision by analyzing options in light of your needs and by assessing the legal and financial implications of your decisions before you make a commitment.

There are a number of mortgage brokerage firms on the market. Louis Tétreault, Laval-Rive Nord Regional Manager at Multi-prêts, explains the role of mortgage brokers. "Mortgage brokers, like insurance brokers, negotiate dozens of loans with various financial institutions at the same time. They

can therefore take advantage of attractive offers, in part because of volume," he explains. In his opinion, no single financial institution is competitive in all market niches. "Some of them offer attractive rates only to salaried workers, others to the self-employed, still others to buyers with a spotless credit history," he points out. Mortgage brokers can therefore look for the best deals for their clients and negotiate mortgage rates that fit their situations."

On a final note, Louis Tétreault points out that mortgage brokers are paid by the lending financial institution. ■



BUYING A HOME:

ENSURING YOUR DREAM DOESN'T BECOME A NIGHTMARE

A house is one of the most important purchases you will make during your lifetime. Spending so much money is already a bit disconcerting, so the last thing you need is for the roof, literally or figuratively, to fall in... Here are some pointers on how to avoid problems.

ZONING

Most people buy a house simply to live in. But perhaps you are considering selling your homemade jam on your front porch, or running a hair salon in your basement. Will the zoning regulations that set aside various areas of your municipality for certain uses allow this?

As urban planner Sylvain Royer explains, the key to avoiding any nasty surprises relating to zoning is to think carefully about how you plan to use your home. A property may be zoned industrial, commercial, agricultural, residential, forest, recreation and tourism, etc, "Do you want a hair salon, an apartment, an office for professionals, or all three? It is important to have a definite idea," he says.

Moreover, zoning regulations can disrupt your peace and quiet or restrict how you

can use your lot. As Me Royer asks, "Is the municipality planning on building a park, a bicycle path, a cemetery near your home?" This information will help you make an informed decision on whether to buy a particular house or not.

Once you have a good idea of what you want to do with your property, your notary can check with the urban planning department of the borough, municipality or regional county municipality (RCM) concerned to make sure your project fits within the rules. With the complexity and growing number of municipal government structures and by-laws, this task can be difficult for ordinary citizens. Experts in real estate law know the municipalities and regions where they work, the various municipal authorities and often even resource people. Notaries can formalize the process by documenting their



discussions and agreements. Furthermore, if you need an exemption from a by-law, a notary can draw up the request for exemption for the authorities concerned.

Failing to take zoning into account can cost you dearly. "A municipality has virtually full power to close a business in an area zoned residential," warns Sylvain Royer. Furthermore, heavy penalties can be imposed on guilty homeowners.

THE OFFER TO PURCHASE

When you have found your dream house, or at least the one that meets your needs and your budget, you must present a promise to purchase to the vendor. This is the starting point of any real estate purchase. The purpose of the promise to purchase is to protect the interests of both the vendor and the buyer. "Once it is accepted by the vendor, the individuals who have signed the promise to purchase must comply with its terms and conditions," explains notary Anne Philippe. "It is therefore very important that it is properly drafted and that any special

details are added in order to avoid problems later on." Once the promise to purchase is signed, it is difficult to get out of any contracted obligations by changing the document's terms and conditions.

As a general rule, the promise to purchase contains a number of components, including the names of the parties to the contract, a detailed description of the property, the purchase price and the method of payment, the movables (things that can be moved, such as appliances) included in the purchase price, the amount of the deposit and the date of the property transfer. For their part, vendors guarantee to the buyers that a house does not have hidden defects.

Should you choose a customized offer to purchase or an all-purpose model? The important thing is to call on an expert, such as a notary, to ensure that the offer to purchase is complete and, especially, appropriate to the situation. For example, if the sale is conditional on obtaining a mortgage from a financial institution, the number of

days available to the buyer to obtain the mortgage, the mortgage conditions and other considerations must be provided for.

Notaries are all too familiar with the problems that result from a poorly written, incomplete or even misunderstood offer to purchase. Nothing ensures peace of mind when planning to purchase a home like a well-drafted agreement that tells you exactly what you are committing yourself to.

THE INSPECTION

Purchasing property inevitably involves an inspection to avoid any unpleasant surprises once you have moved in. "In theory, the vendor is obliged to assure the buyer that the property does not have hidden defects, but an ounce of prevention is worth a pound of cure, so call on a specialist," advises notary Anne Philippe.

An inspection is often very useful... and educational! "The inspector's role is to inform you about the state of the property. He or she will advise you if something is not



working properly, must be replaced or is not safe,” points out Anne Philippe. Depending on their level of expertise, inspectors can even tell you where they think problems could have arisen in the past and how to solve some of them. This assessment of the condition of your future property can even save you money. “Based on the inspection, you might have to plan on doing certain

“YOU SHOULD CONSULT YOUR NETWORK OF PERSONAL CONTACTS, OR EVEN ASK A NOTARY OR REAL ESTATE AGENT FOR REFERENCES BEFORE HIRING A BUILDING INSPECTOR”

work. This might enable you to renegotiate the price of the property or simply cancel the transaction, if the offer to purchase allows it,” she explains.

Despite its importance, certain buyers choose not to have their future property inspected and instead rely on their own

assessments. “But there are others who will add a clause to the promise to purchase stipulating that the vendor must rectify any problems revealed by the inspector,” says the notary.

CHOOSING AN INSPECTOR

You would think that, given their responsibilities, building inspectors would have their own body to oversee the profession. In fact, this is not the case! There is no professional body governing building inspectors in Québec and nothing requires them to take professional development courses. “You should consult your network of personal contacts, or even ask a notary or real estate agent for references before hiring a building inspector,” recommends Anne Philippe.

You should also make sure the inspector you choose is a member of the Québec Association of Building Inspectors (AIBQ), which is recognized by industry professionals as the benchmark for building inspection in Québec.



According to Me Philippe, inspections should include a visual evaluation of the following elements: foundations, doors and windows, roofing and exterior walls, attics, plumbing, electricity, heating and air conditioning systems, ceilings, walls and floors, insulation, ventilation, septic tanks, wells, sewer lines, other buildings not adjoining the property, the lot and common portions, and more. In short, it should be as thorough as possible.

WHEN DEFECTS ARE DISCOVERED

Your home would be perfect if it wasn't for the faint sound of scratching at night in the walls and under the floor. After checking, your worries are confirmed: your little love nest is also occupied by a colony of mice. What should you do?

Advise your vendor in writing. "You should know that vendors are accountable to buyers for four things. They must allow the house to be occupied as of the date stipulated in the agreement, hand over all property titles in their possession, guarantee the right of

ownership of the house and, finally, certify its quality (that there are no hidden defects), says notary Anne Philippe. Obviously, if a vendor has informed the buyer about a problem, it is no longer considered a hidden defect. Otherwise, the vendor remains accountable to the buyer for hidden defects in the property existing at the time of sale." This applies even if the vendor is not aware of them! (The buyer has three years to take action against the vendor, starting from the date the problem was noticed or known.)

Therefore, if a buyer discovers a water leak, a colony of mice or any other problem, he or she must advise the vendor of the problem in writing within a "reasonable" period of time. In other words, the buyer must give the vendor the opportunity to fix the problem before it worsens. "If the vendor does nothing, the buyer has several options, the first of which is to request that the defect be fixed at the vendor's expense. The buyer can also ask for a reduction in the sale price. Finally, the buyer can ask to cancel the deed of sale, which implies handing the

property back to the vendor and recovering the amount paid," states Anne Philippe.

And what if the vendor tries to save money by sending an incompetent contractor to fix the defects? The buyer can bring legal action against the vendor for the faulty repairs. "For example, if a roof collapses, the buyer would sue the vendor, who in turn could sue the builder," she explains.

Then, there are those defects that are not just hidden, they are covered up. "If the vendor knows about the defect and fails to tell the buyer about it, the buyer can, in addition to cancelling the deed or having the sale price reduced, ask for compensation for any damage," says Anne Philippe.

Certain vendors might shirk their responsibility by using expressions such as "sold as is," "sold without warranty," "the vendor will not be responsible for a hidden defect," etc. In order to be valid, the exclusion of the legal warranty (the certification that there are no defects) must be clearly stated and



accepted by all parties from the start of the process. However, a warranty exclusion clause cannot be relied on by the vendor if there has been a “cover-up.”

WARRANTIES TO WARD OFF PROBLEMS

Are you dizzy thinking about all the dangers that could threaten your new home? Don't worry. There are ways of limiting the damage should a problem occur.

For example, buyers of new houses (or condos) are generally protected by the *Garantie des maisons neuves* (Guarantee Plan for New Residential Buildings, the GMN) from the Association provinciale des constructeurs d'habitations du Québec (Québec Provincial Home Builders Association, the APCHQ). The Association ensures that contractors fulfil certain legal and contractual obligations. For example, housing must be built in compliance with the

Building Code and meet quality standards. This warranty covers the labour and materials for a period of at least one year following the date of completion of construction.

The warranty also provides for the repair of construction defects for a period of five and even 10 years, when there is an extended warranty. To ensure that a contractor is enrolled in this program, notary Anne Philippe advises you to contact the Bureau du programme de garantie des maisons neuves before signing a contract to build a home.

TITLE DEFECTS: WHY A TITLE SEARCH IS SO IMPORTANT

In addition to the warranty against hidden defects (see the section “When Defects Are Discovered” above), vendors are also responsible for ensuring that the title for the property they are selling does not have any

defects, for example, an outstanding debt, or a problem, such as an encroachment, that has not been sorted out.

A defect in title is a problem or irregularity that affects the right of ownership of the house or lot and that might give rise to a dispute. For example, mortgages, arrears in municipal and school taxes or even a neighbour's fence that encroaches on the lot you are about to purchase.

This is where the notary's title search becomes indispensable. Just as a building inspector's work is important for detecting a technical problem likely to affect the value of the property, a title search is essential for detecting legal problems that can lead to problems that are just as serious.

The purpose of a proper title search by a notary is to ensure that you have a property title that cannot be contested. Among other things, this search includes verifying that the vendor is the true owner of the property and that he has the right to sell it. This ensures

**LOOKING FOR AN OFFICIAL
TO MARRY YOU?
HAVE YOU CONSIDERED A NOTARY?**



514-668-2473
LEGAL INFO-LINE

1800notaire.ca

that no one can claim or contest your right of ownership.

Moreover, using the certificate of location produced by a surveyor, the notary verifies the dimensions of the lot, if the house complies with municipal by-laws and zoning regulations, if there are servitudes, encroachments, unlawful views, etc.

As soon as the notary discovers any defect in title, he or she tells the vendor and suggests measures to correct the situation. These may include obtaining the discharge of any mortgage on the property or drafting a deed of servitude to sort out an encroachment with a neighbouring property. In certain cases, no corrective measure is possible or cannot be taken before the sale, for example, if the individual who must sign the discharge or deed of servitude is deceased, cannot be found or is abroad. To avoid jeopardizing the sale, it is possible to resort to title insurance.

With title insurance, a defect in title does not hinder the sale. The defect in title must be corrected eventually, but the transaction can still go ahead on time. Vendors then receive the money due to them and buyers can move into their new property. This allows everyone to breathe easily, including the mortgage lender!

If this type of insurance turns out to be necessary for your real estate transaction, a notary can advise you and deal with the insurer. ■

BUYING WITHOUT AN AGENT: THE NOTARY'S ROLE

Perhaps you are in a situation where you are purchasing directly from the vendor, without using a real estate agent. You are not alone.

"Today, vendors and buyers who choose not to do business with a real estate agent do so in the hope of saving on commissions, which can be as high as 7% of the property's sale price," reports notary Louise Archambault.

Selling without an agent is not new. According to Louise Archambault, there were only a few real estate agents before the 1970s. "All the steps in the transaction were left up to the notary, who acted as advisor for both the vendor and buyer, and carried out checks prior to the signing of the promise to purchase," she says. Given their knowledge of the market, notaries also acted as negotiators or mediators regarding the sale price.

It is still possible to proceed without an agent, and many people do this. Once the sale price has been agreed upon, the notary takes care of the promise to purchase. "The notary will discuss with the parties involved the importance of the certificate of location and the building inspection, the various vendor warranties, financing methods for the buyer, etc. In short, all the aspects of the transaction usually handled by a real estate agent will be handled by the notary, working directly with the buyer and the vendor," explains Louise Archambault.

However, the notary only intervenes between the two parties once a consensus is reached regarding the sale price. M^e Archambault offers a suggestion on the approach buyers negotiating on their own should adopt: "You need to be able to be firm about your price, while listening to the vendor." For their part, prior to putting a property on the market, vendors should make sure their sale price is reasonable by looking at comparable listings or, even better, by hiring a professional appraiser to help determine the lowest acceptable price and highest reasonable price.



THE PROPERTY OWNER'S TURN!

There are all sorts of properties. This is why it is a good idea to understand the ins and outs of each type of property before taking the plunge. Here is a brief guide.

BUYING A NEW HOUSE

You visit a construction site one Saturday morning and a vendor puts pressure on you to sign, because, as he says, “three other people have their eye on the corner lot”. Not so fast, advises notary François Bibeau. “You need to take the time to find out about the contractor, to meet other homeowners in the area and to ask them about their level of satisfaction,” he insists.

WHAT IF THE CONTRACTOR GOES BANKRUPT?

The purchase of a newly-built property generally includes a warranty provided by the Association provinciale des constructeurs d'habitations du Québec (Québec Provincial Home Builders Association, the APCHQ). “It guarantees that the work will be carried out if the contractor goes bankrupt. Moreover, if defects appear, the APCHQ would assume the cost of correcting them,” explains François Bibeau. “There is usually no problem when you do business with a good contractor.”

Furthermore, the Québec government has made the Guarantee Plan for New Residential Buildings compulsory for certain buildings, which automatically benefits any buyer. This warranty plan ensures contractor fulfills certain legal and contractual obligations. It differs from the private warranty

plans on the market because it is compulsory and because it falls under the authority of the Régie du bâtiment du Québec (RBQ). Therefore, a contractor who wants to construct and sell a building covered by the compulsory guarantee plan must be accredited by the RBQ and hold a general contractor's licence. It is important to check this before signing a contract to build your home. Your contractor must provide you with a signed copy of the contract of warranty that applies to your type of house. This contract contains all the details on the safeguards provided by the guarantee plan, the claim procedure and measures that can be taken in the event of a problem with the contractor.

There are good reasons for looking for a reputable, financially-solid contractor. In fact, it is, the contractor that is responsible for paying architects, carpenters, electricians, plumbers and so on. If the contractor neglects his responsibilities, employees at the construction site and suppliers of materials can demand what they are owed from you, using what is called a “legal hypothec”.

This protective measure for workers and suppliers of materials transfers the responsibility of payment to property owners, even if they have paid the builder or contractor. “The beneficiaries of this right have 30 days after the completion of work to register a



THERE ARE GOOD REASONS FOR LOOKING FOR A REPUTABLE, FINANCIALLY-SOLID CONTRACTOR. IN FACT, IT IS, THE CONTRACTOR THAT IS RESPONSIBLE FOR PAYING ARCHITECTS, CARPENTERS, ELECTRICIANS, PLUMBERS AND SO ON. IF THE CONTRACTOR NEGLECTS HIS RESPONSIBILITIES, EMPLOYEES AT THE CONSTRUCTION SITE AND SUPPLIERS OF MATERIALS CAN DEMAND WHAT THEY ARE OWED FROM YOU, USING WHAT IS CALLED A “LEGAL HYPOTHEC.”

legal hypothec. If they do so, the property owner has to defend himself, incur legal expenses, and could even be obliged to pay the workers and suppliers instead of the contractor,” explains M^e Bibeau.

Notaries can explain your rights and obligations regarding legal construction hypothecs. Since they are not on the construction site, they cannot control the payments made by your contractor. However, they can advise you on measures that can be taken to protect you against legal construction hypothecs.

For example, the deed of sale could provide that a portion of the sale price be retained by the notary up to 35 days after work is completed. This amount will only be paid after the completion of work is confirmed to your full satisfaction and you have verified that no legal hypothec is registered in the land register. A control mechanism for gradually paying amounts can also be put in place with the consent of the contractor

and your financial institution. “Lastly, in certain cases, it is possible to take out title insurance to safeguard against legal hypothecs,” adds the notary.

BUYING A CONDO

In addition to becoming a homeowner, you might also become... a co-owner? The condo (or divided co-ownership) is, among other things, an ideal type of ownership for those who do not want to be personally responsible for the maintenance of their property. Pushing around a lawn mower in 30°C weather (or worse yet, getting out a snow blower when it's -30°C), is not for everyone!

There are two types of co-ownership:

DIVIDED CO-OWNERSHIP

“Those who buy a divided co-ownership (commonly called a “condo”) have exclusive ownership of their apartment (the private portion), and an undivided right of ownership in the common portions of the property,” explains François Bibeau. Each apartment has its own

number in the land register, in other words, the condos are individually represented on a plan and identified by a lot number. Therefore, amounts for municipal and school taxes are assigned to each apartment.

Each divided co-ownership is governed by a declaration of co-ownership, which includes provision for the division of the property into private and common portions, as well as their relative value as regards the whole property. These values determine the contribution of each fraction to the common expenses (condo fees) and to the contingency fund, as well as the number of votes each co-owner will have in co-owners' meetings. The declaration of co-ownership also includes the by-laws of the co-ownership. The by-laws include rules relating to enjoyment and use of common and private portions, for example, the presence of pets, the setting up of clotheslines or the use of a barbecue.

The condo fees established by the declaration of co-ownership cover the general maintenance of common portions: the elevator, corridors, entrance hall, pool, parking area, the lot, and so on. “The law also makes provision for co-owners to invest in a contingency fund that will be used to pay for possible expenses, such as roof repair or the replacement of doors and windows,” specifies M^e Bibeau.

However, there is a slight problem. According to M^e Bibeau, most contingency funds are inadequate. For administrators, convincing co-owners to invest on a long-term basis



is sometimes problematic. “It is an important factor in the choice and price of a condo,” he says. “If the contingency fund is fairly substantial, the buyer will feel more comfortable about paying for the purchase of his condo. On the other hand, an insufficient contingency fund is likely to push the sale price lower, especially if major work must be done.”

Notaries are the ideal people for attending to all the details that come with purchasing a divided co-ownership. Smart buyers must always read declarations of co-ownership and ask their notary questions to understand all the implications of these declarations before making a commitment. The quality of management of the property is another issue notaries keep in mind. They speak to administrators of co-ownerships to obtain proof of payment of condo fees, to find out about the state of the contingency fund, to examine, if necessary, the budget of the co-ownership and the minutes of co-ownership meetings. They also verify whether there are legal proceedings against the co-owners or the administrators themselves.

UNDIVIDED CO-OWNERSHIP

“The buyers of an undivided co-ownership are co-owners of the entire property: none of the co-owners owns a private portion. Instead, they each own a fraction of the entire

property, and they share its maintenance expenses,” explains M^e Bibeau.

For example, if there are three apartments in a building and the occupants are equal co-owners, all the income and expenses of the building, including the total amount of municipal and school taxes, are shared amongst the three. “However, it would be best for the undivided co-owners to establish amongst themselves the operational rules and to formalize everything in a contract called an indivision agreement,” he adds.

A notary can give appropriate advice on the content of the indivision agreement and

can state that a certain co-owner will occupy a certain floor and that he will not have access to the garage, reducing his or her fraction in the property accordingly.

BUYING A INCOME PROPERTY

Are you worried about the fluctuations of the stock market and would like to invest your savings in real estate? According to notary François Bibeau, “buying an income property means taking on a long-term job, like starting your own business”.

Firstly, there are financial considerations: paying the right price in relation to rental incomes, checking each lease and who

NOTARIES ARE THE IDEAL PEOPLE FOR ATTENDING TO ALL THE DETAILS THAT COME WITH PURCHASING A DIVIDED CO-OWNERSHIP. SMART BUYERS MUST ALWAYS READ DECLARATIONS OF CO-OWNERSHIP AND ASK THEIR NOTARY QUESTIONS TO UNDERSTAND ALL THE IMPLICATIONS OF THESE DECLARATIONS BEFORE MAKING A COMMITMENT.

make sure it includes customized measures to determine the rights and obligations of the undivided co-owners regarding the use of the property, shared expenses, maintenance and renovation, restrictions regarding sale, the rules for managing the property, etc. For example, the agreement

is responsible for paying for electricity and natural gas, establishing a budget for maintenance and renovation expenses, etc. “You must also ensure that you are in a strong enough financial position in the event apartments are not rented,” adds M^e Bibeau.

Moreover, as in all business ventures, it's important to have a customer-oriented approach in your relationships with tenants, to be available and to have the skill to manage a lot of different kinds of situations. When you are called in the middle of the night because of a plugged toilet, it is your plumbing skills that will be required!

As is the case for any property purchase, precautionary steps relating to the inspection of the property, the drafting of the promise to purchase and the search for financing are all important, if not even more so, given the amount at stake. Once again, a notary can provide support during each step of the process in order to examine information, advise you, suggest solutions and formalize real estate transactions.

BUYING A SECONDARY RESIDENCE

Who hasn't dreamt of having a cottage by the lake? Making this dream a reality has its challenges, which notaries are well aware of and can help you to overcome. "First, you need to communicate with the municipality to get information on any restrictions affecting the plot of land," advises notary François Bibeau.

The protection of river banks, septic tanks and use of motor boats are just some of the issues that can have an impact on your decision to buy or... on the price you will pay. Me Bibeau also suggests that you obtain an updated certificate of location to verify the exact location and size of the property and whether there are any servitudes, such as a right-of-way, that could affect the

lot. Furthermore, waterfront lot or not, the notary can inform you of the possible tax consequences when a secondary residence is sold.

BUYING A TWO-GENERATION HOME

Your father has died. You toy with the idea of moving into a two-generation home and sharing your home with your mother. According to notary François Bibeau, two-generation properties must be seen as undivided properties. It is therefore appropriate to draft an indivision agreement (see the section on undivided co-ownership) to establish rules concerning the use of the premises and responsibility for shared expenses, maintenance and renovations. The agreement could provide that, based on the space occupied and the contribution of each undivided co-owner, the widow's portion of the ownership in the two-generation home is 25%, with the rest belonging to her son.

"You must also plan for what will happen when any of the co-owners becomes incapacitated, is unable to pay or passes away," adds Me Bibeau. In these situations, a mandate in case of incapacity and a notarized will become essential for setting up a two-generation home. ■

**THINKING
ABOUT
FAMILY
MEDIATION?

HAVE
QUESTIONS?**



514-668-2473
LEGAL INFO-LINE

1800notaire.ca



COUPLES LIVING IN A COMMON-LAW MARRIAGE DO NOT BENEFIT FROM THE SAME PROTECTION. THIS IS WHY IT IS IMPORTANT TO TAKE ALL THE NECESSARY PRECAUTIONS WITH A NOTARY BEFORE SIGNING A DEED OF PURCHASE.

IS IT MY HOUSE... OR YOURS?

A place of your own, your own bit of paradise, your home, your cozy little nest... There are a lot of ways to describe the joy of owning your own home. But something could happen to jeopardize your happiness. Separation, divorce and “intrusive” neighbours can all prevent you from remaining a homeowner. However, there are simple ways to protect your assets and ensure that they stay yours for a long time.

PROBLEMS BETWEEN COUPLES

For many couples, money issues are a touchy subject. However, they should be addressed all the same, because when a break-up occurs, it becomes harder to fix them!

“In this regard, married couples enjoy a certain advantage. In fact, the rules on family assets provide that, regardless of who owns the house, when the property is sold, each spouse shares in its value equally. There is only one exception to this rule: if they break up, each spouse keeps whatever they invested in the house before the marriage. Therefore, it is very important to make a written record of the value of the house on the wedding date, to avoid any subsequent dispute. The notary can include this information in an agreement for

the married couple to sign,” clarifies notary Louise Archambault.

Couples living in a common-law marriage do not benefit from the same protection. This is why it is important to take all the necessary precautions with a notary before signing a deed of purchase. Québec’s Civil Code does not grant common-law spouses any rights. It is therefore necessary to provide for all possibilities in the agreement between the spouses, similar to what business partners would do when purchasing a property,” explains Louise Archambault.

Therefore, the common-law spousal agreement or the agreement of undivided co-ownership will clearly establish the percentages to be paid out according to the respective

contributions. “The agreement will also outline the conditions for the resale of the property, how to share the property acquired together, etc.,” she explains.

It is also a good idea to include these provisions in a will. “A common-law spousal agreement includes certain provisions, but it is better to state them officially in a will, because without a will, a common-law spouse does not have any right to the property of a deceased spouse, even after 15 years of living together, and even if they had children together,” she warns. “Too many people still think otherwise.”

PROPERTY TITLE SEARCH

How do you ensure the property you wish to buy really belongs to the person who is selling it? By examining the property title of course! Or rather... by asking a notary to do so. This important step consists of verifying the land registry, checking former deeds to find out about rights affecting the property, and checking related documents, such as the certificate



NOTARIES ARE THE LEGAL ADVISORS WITH THE EXPERTISE IN REAL ESTATE LAW MOST RELEVANT TO RESOLVING THE PROBLEMS THAT CAN CROP UP FROM TIME TO TIME, PARTICULARLY WHEN RELATIONS BETWEEN NEIGHBOURS ARE STRAINED.

of location. The notary will examine the certificate of location in light of what was found during the title search. The purpose of these checks is to guarantee the buyer a property title that cannot be contested.

“In other words, the notary will ensure that the property you wish to buy really belongs to the vendor and that there are no defects in the title chain,” specifies Louise Archambault. The notary will also take care of myriad small details: Does the vendor have the power and the capacity to sell the property? Do other people, for example, a spouse, have to consent to the sale?

That’s not all! Using the certificate of location prepared by a land surveyor, the notary will verify if:

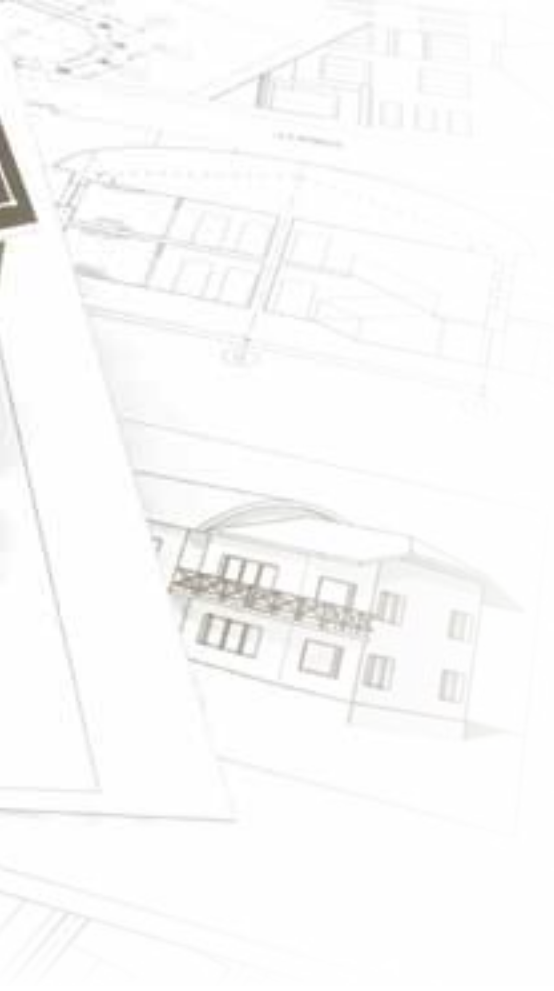
- the dimensions of the lot are correct;
- the buildings have been properly erected on the lot sold;
- the house was built in compliance with the appropriate by-laws and zoning regulations;
- the neighbouring lot or house encroaches on your lot;
- there are servitudes affecting the property;
- there are other environmental or cultural restrictions regarding the property.

“Lastly, through the title search, the notary can identify all the rights, such as hypothecs, seizures, judgments and servitudes, likely to affect, limit, or devalue your right of ownership,” concludes Louise Archambault.

SERVITUDES

Your future neighbour has to use a portion of your lot to get to the lake or drive out from his home. Is he therefore on his property on your lot? No, but it is crucial to record, in a notarized document, the rights and obligations of each user by creating a right-of-way. A servitude is a responsibility imposed on a property (the servient estate) on account of another property (the dominant estate) belonging to another owner.

“Deeds of servitude are used to formalize a de facto situation neighbours have gotten used to. Servitudes are in some ways the formal means of establishing good neighbourly relationships,” says M^e Louise Archambault. For example,



servitude makes it possible to leave a building, other structure or access way that slightly encroaches on a neighbour undisturbed.

The certificate of location prepared by a land surveyor indicates any irregularity likely to affect a property owner's rights. For example, Québec's *Civil Code* stipulates that a certain distance must separate your doors and windows from those of the neighbouring property, so that these "views" do not disturb your neighbours' privacy, and vice versa. If your house has illegal views, "you need to get

in touch with your neighbour to try to rectify the situation through a servitude of view," explains Me Archambault. Your neighbour must sign such a document, failing which the illegal views will be prohibited. Similarly, you will need your neighbour's permission to build or keep any facility that encroaches on his or her lot.

Furthermore, the law creates certain types of "compulsory" servitudes, particularly in enclosed areas of land. Therefore, a property owner whose lot has no exit to a

public road benefits from a right-of-way on a neighbouring lot. This right-of-way cannot be contested by the neighbouring property owner. Notary Louise Archambault says that questions sometimes arise about the type, scope and interpretation of servitudes in these kinds of situations.

She emphasizes that notaries are the legal advisors with the expertise in real estate law most relevant to resolving the problems that can crop up from time to time, particularly when relations between neighbours are strained. ■

**LIVING IN A CIVIL UNION RELATIONSHIP?
SHOULD YOUR SPOUSE PASS AWAY,
ARE YOU SURE YOU'LL INHERIT?**



514-668-2473
LEGAL INFO-LINE

1800notaire.ca

Some of life's events can put your wealth at risk: getting married, buying a house, having a child, launching a business, being involved in an accident, becoming ill, living through a break-up and, of course, losing a loved one.

Have questions? Notaries are just a phone call away with answers.

In a world where laws are increasingly complex and affect every aspect of our daily lives, 514-668-2473 informs you of your rights and obligations. This free legal information service is available Monday through Friday from 8:30 a.m. to 5:00 p.m.

Protecting your wealth is a notary's business!



514-668-2473
LEGAL INFO-LINE

1800notaire.ca