

SIKSAY & FRASER are pleased to be acting on your behalf in respect of the above noted real estate transaction. We have prepared this letter in order to explain to you our fee structure, and in order to point out the steps you must take prior to closing.

### **OUR JOB - YOUR SERVICE OPTIONS**

One of the most important parts of our job is to make sure that you have good title to the property that you are buying. Good title ensures that you really own the property, that it is correctly described in official documents, and that no one else has a claim or a lien to it that you do not know about. Good title is essential for you to be able to sell your property in the future. If our various searches uncover problems that could affect title to your property, we will take steps (often together with the Vendor's lawyer) to correct the problems. If the problem cannot be corrected, we will explain to you the risks in taking title without resolving the problem, together with your options in the completion (or not, as the case may be) of the transaction.

**There are two different approaches that your lawyer can take to assure you of good title.** It's up to you, working with your lawyer, to decide which approach is most appropriate to your situation. Regardless of which approach option you choose, our legal fees will remain the same. However, disbursements will vary somewhat (but not usually significantly) from option to option.

The two approach options are as follows:

#### **OPTION 1 - TITLE INSURANCE**

Title insurance is an insurance policy that you can buy to protect your investment in your property if there is a problem with title. For example, you may have purchased without an up-to-date survey and find out after closing that your house is too close to the lot line, and therefore does not comply with the zoning bylaw. The title insurance policy protects you against the loss that you may suffer because of many title related problems and, in most cases, will also cover your legal costs if your title is challenged.

If you have a mortgage, you can buy title insurance just for the lender (this, however, gives you no protection) or for both you and the lender. Often, a mortgage lender will give you the option of buying title insurance for them in lieu of a new survey (surveys cost around \$550.00 and up). For most residential properties, the title insurance premium to insure both the lender and purchaser will be between \$200.00 and \$300.00 plus applicable taxes (possibly higher if specific policy endorsements are required - or for example, to insure over a known title defect). However, title insurance eliminates the need for certain off-title searches (such as building and zoning compliance searches, corporate escheat searches, and septic searches, if applicable). The resulting savings frequently outweigh the cost of the title insurance premium. For example, the cost of a building and zoning compliance search is around \$60.00 or more; and the cost of a septic search is around \$125.00 or more. (Prices vary according to the jurisdiction in which the subject property is located.) In addition, the \$65.00 levy applied by the Law Society for all Ontario real estate transactions is waived in situations where all parties to a transaction are title insured.

There are a variety of title insurers available to purchasers in Ontario, including, but not limited to, First Canadian Title, Stewart Title Guaranty Company, Chicago Title, and TitlePLUS. While each company extends comparable services to clients, our office will decide which insurer offers the best value for your particular transaction and to ensure closing is not delayed due to a title-related issue. The vast majority of our clients choose the title insurance option.

Title insurance is not a panacea of coverage for defects in the physical attributes of your property and does not, for example, replace the need or desirability of a home inspection performed by a qualified home inspector. For example, neither option - title insurance or lawyer's opinion on title (discussed below) - will cover you for construction defects (unless, where there is title insurance, such defects comprise part of a work order or deficiency notice on file with the municipality as of the date of closing).

#### **OPTION 2 - LAWYER'S OPINION ON TITLE**

If you select this option, we will supply you with a Letter of Opinion which states our view of whether or not you have good and marketable title to your property and we will provide you with a description of the

results from the various searches and inquiries conducted on your behalf. This Letter of Opinion will also inform you of any outstanding issues that may affect your title in the future, usually by reference to your acknowledgement signed prior to closing.

We have to tell you the following in order that you may properly compare the two service options: If you choose this option, and a problem affecting your title is identified after closing which was not disclosed to you prior to closing, you will only be able to seek compensation from us (on our errors and omissions insurance) if you can prove that we failed to do something that was legally required or that we did not meet the standards set by the legal profession. You may have to hire another lawyer, at your expense, in this process. This may be an expensive and time consuming process.

### **DUTY TO MORTGAGE COMPANY**

In most purchase transactions, we will act for both the purchaser and the mortgage lender, and we owe a duty of care to each of these parties. We therefore must report to any mortgage lender facts which are detrimental to their interest, or we cannot continue to act on a particular transaction for either party. You will sign documentation confirming the nature of this relationship when you execute your closing documents.

### **PURCHASE OF VACANT LAND**

If you are purchasing vacant land - or lands which are not vacant but which you intend to substantially improve - we cannot offer you an opinion that you will be able to use the lands for your intended future use or improvement. You must satisfy yourself on this by appropriate communications with the municipality or municipalities involved - including, without limitation, inquiries as to the amount of any lot, education, or development levies that you will be required to pay as a condition to development of the property. We would urge to hire or consult with appropriate other professionals - such as architects and planners - as you make these inquiries.

### **ABOUT OUR FEES AND DISBURSEMENTS**

#### ***Our Approach and Comment on "All-inclusive" Pricing***

We do not subscribe to the "all inclusive" legal fees model that some real estate law firms have adopted. "All-inclusive pricing" is where the law firm quotes one amount for fees and all disbursements - regardless of the actual disbursements required for an individual file.

Every real estate file - and most particularly, purchase files - require that the lawyer spend money on behalf of his or her client - for things like title and off-title searches, registrations, tax certificates, couriers, etcetera. The fact of the matter is that required disbursements vary - often widely - from property to property and file to file.

Generally, we believe that "all-inclusive" pricing requires the legal service provider to rely on volume of transactions to maintain an adequate livelihood and, in fact, gives rise to a potential conflict on each deal. A lawyer must always be careful not to increase the volume of deals over the number that can be properly handled by the lawyer and his or her staff. Our fee structure allows us to limit the number of deals to the number that we can effectively handle - we think that this leads to better client service. At Siksay & Fraser, the lawyer is actively involved in and reviews each file and the lawyer signs up each client. (Over our careers and thousands of real estate transactions, we can think of only two occasions where the lawyer did not complete the file sign up, due in one case to illness and in the other to an automobile accident and both in circumstances where the client could not re-schedule the appointment.)

The conflict arises when the lawyer is faced with deciding whether to do the additional search or provide the additional service that should be done to protect his clients in particular circumstances (for example, for a tax certificate, PPSA search, additional follow-up title searches, abutting land searches). At the "all-

inclusive” firm, the lawyer knows that, because of all-inclusive pricing, the cost of that additional search comes off the lawyer’s bottom line. Also, decisions that could streamline a closing (for example, where a courier is required to transfer funds on the closing day, using a two hour courier as opposed to a four hour courier) might be made to favour the lawyer’s bottom line and not the best interests of the client.

The fees we charge are fair compensation for the attentive work we do. Disbursements are in addition, and are the disbursements properly required to get the particular job done. When it comes to spending money on the disbursements required for a particular real estate file, we do not fetter our professional discretion by having to choose between what is in our financial interest and what is in the best interests of our clients. We do what we have to do to get the job done. The client pays for the required disbursements for their particular file. In our view, it is the proper and fair way to complete a real estate file.

### **Fees**

The fees we quote on residential real estate matters are block fees. We do not, for example, charge a percentage of the purchase price, nor are our fees based on the number of hours spent working on your file (with the exception of "aggravated title problems" which are discussed below). Fees are quoted separately depending on the services required. For example, in many purchase transactions we will represent a client both in respect of the purchase and in respect of placing one or more mortgage(s) on the property. Because some transactions do not involve the placing of a mortgage, the purchase and mortgage transactions are usually quoted separately in respect of fees. Likewise, if we are also acting on your behalf with respect to the sale of real property, we quote separately for the sale transaction and mortgage discharge transactions, and a separate fee may apply in respect of bridge financing arrangements if applicable.

In a real estate transaction, should a title problem develop, two hours of our time are allotted in the fee as quoted for dealing with such problems. Should the title problem remain unresolved after the two hours is applied to such problem, an additional fee will apply for each hour of time required to satisfactorily deal with such an "aggravated title problem". Our normal hourly fee of \$225.00 per hour will apply to time spent above and beyond the two hour allotment. It is relatively uncommon for the two hour allotment to be exhausted. If the problem becomes a matter which requires an application to court (which is very uncommon), then we will advise you, in advance, of the fees and estimated disbursements that will apply.

Of course, HST charges will apply in respect of our fees and many disbursements.

### **Disbursements**

When you are purchasing real estate, we are required on your behalf to investigate title to the property. For this purpose, SIKSAY & FRASER commissions a title search from a professional conveyancer employed for this purpose by our office. If your property is located within Durham Region or is located outside the Durham area but is of recent construction, it is most likely registered in the Land Titles System in Ontario. Usually, a land titles search will cost in the neighbourhood of \$100.00 to \$350.00. If your proposed purchase is located in another jurisdiction that has not been converted under the Ontario government’s electronic registration conversion, it may be registered in the Registry System. A title search in this system will normally cost between \$125.00 and \$500.00, but there is some potential, depending on the nature of the land and the number of owners over the last 40 years, that the search will be more expensive. For instance, the cost of searching executions with the Sheriff is \$11.00 per name per previous owner. The cost of the title search, because it varies so widely from property to property, is passed on directly to you as a disbursement made on your behalf. This cost includes the fees charged by the professional conveyancers employed by us to undertake the title search, and all disbursements required to complete the search.

Where the title insurance option is not selected, we are also required to undertake various other searches with levels of government in respect of zoning compliance, water and sewer hook-up and Regional work orders, municipal work orders, hydro easements, hydro arrears, gas arrears, water account arrears, among other required searches. Each level of government or utility may exact a fee for such searches. For example, the Town of Whitby charges \$60.00 for a zoning clearance search, \$150.00 if a rush response is required. The cost of these searches is charged to you as a disbursement. We do not charge any surcharge: the disbursement charged to you is exactly what we have been required to pay to the local applicable of government, utility or other authority. If you have chosen the title insurance option, the number of searches is vastly reduced - the savings offset the cost of title insurance (in many cases, fully).

Other disbursements in both a purchase and sale transaction include courier charges, long distance telephone charges, photocopying charges (\$0.25 per page), charges for facsimile transmissions (\$0.25 per page for receipt and transmissions plus long distance charges, if applicable), mileage charges (at \$0.275 per kilometre), postage charges, executions searches, title searches on the day of closing, report binding costs, electronic search system/technology charges of \$8.00 per file and other disbursements made on your behalf (all set amounts referred to herein are subject to change without notice). Each document registration costs \$71.30 under the HST regime (electronic) or \$60.00 (paper) at the Registry office. These other disbursements, (which do not include the title search fee referred to above) usually amount to around \$400.00 to \$600.00 (plus the costs of document registration) in the normal purchase and mortgage transaction.

Please remember that Land Transfer Tax is payable on all purchase transactions and is in addition to the disbursements otherwise noted herein. Land Transfer Tax is calculated as follows in most purchase transactions: 1% of the purchase price less \$275.00 = Land Transfer Tax payable. Provincial Sales Tax and HST may also apply to certain aspects of your purchase. (For residential purchases above \$250,000.00 in value, extra land transfer tax charges apply. For commercial transactions, please confirm the exact amount of the land transfer tax with our offices.)

As well, the Law Society of Upper Canada requires a \$65.00 charge per file, plus HST (unless, in the case of a purchase transaction, all parties to the transaction are title insured).

Our final statement of account to you will outline in detail all of the disbursement charges.

### **THINGS TO DO PRIOR TO CLOSING**

There can be no truly complete list of all the things that are required to be done prior to purchasing or selling residential real estate. However, from a legal point of view, we have enclosed a list with this letter of some of the items that you should take care of personally prior to the day of closing - including contacting the applicable utility companies.

### **ABOUT THE DAY OF CLOSING**

On the day of closing, we endeavour to have keys to your new property available for you as early as possible; however, you should not count on having keys to the property prior to about 5:00 p.m. Factors which might prevent an early closing of your purchase are the following:

1. The mortgage advance from your mortgage company was not received from your mortgagee until late in the day;
2. The vendor's solicitor was unable to close the transaction at an earlier time;
3. If we are also acting on your behalf in respect of the sale of your current home for closing on the same day, it could be that the purchaser of your current home is not in a position to purchase until later in the day.

There are, of course, other factors which might lead to a late closing. If your transaction is but one in a long series of purchase and sales each dependent on the other to close, it is possible that the transaction

may not close at all if one of the prior transactions does not close. We will endeavour to contact you the instant a problem develops so that you may make other arrangements. For this reason, it is important that you provide to us a telephone number at which you may be reached on the day of closing.

### **WHEN MAY YOU EXPECT OUR REPORT ON TITLE?**

Usually you can expect our report on title to be forwarded to you within four to six weeks after closing (sometimes earlier, sometimes later depending on the volume of closings and depending on the date on which your title insurance policy is received by us, if applicable). Should you have any questions about the transaction prior to receiving the final report, please do not hesitate to contact us. Included with the final report will be a copy of the deed, a copy of the mortgage(s) (if any), a copy of any survey of the property, and our statement of account and trust statement, along with copies of other pertinent closing documentation.

### **SURVEYS**

In a purchase transaction, a building location survey can be a very important legal document, particularly where the 'lawyers opinion on title' option is selected. If the survey which is available for your property is not an up-to-date building location survey, or if there is no survey, our title opinion to you will be subject to those discrepancies and defects that might be shown by a new and up-to-date survey, and will also be subject to any discrepancies and defects indicated on an existing survey. An up-to-date building location survey is:

- a) a survey that has been prepared within the last 12 months, **and**;
- b) a survey which has been prepared, signed, and dated by a qualified Ontario Land Surveyor, **and**;
- c) a survey which shows **all** buildings, improvements, fences, and other structures, and all registered easements and all encroachments as they presently exist on the subject property, including those on neighbouring properties which are close to or encroach onto the subject property **and**;
- d) a survey which is completely legible - that is, you must be able to clearly read each date, signature, word, and dimension.

If no survey is available, or if the survey is not an up-to-date survey, there is some risk that you may not be getting what you think you have bought, and if you do not intend to purchase title insurance (if you choose the 'lawyers opinion on title' option), then we would advise that you should immediately obtain a new survey. For example, if the existing survey does not show an addition to the house, it could be that the addition was built over the lot line (and therefore on someone else's property). In addition, since our office uses the survey to confirm compliance with zoning bylaws, it could also be that the addition does not conform to the bylaws of the local municipality, and is therefore an illegal structure. Without an up-to-date survey in this example, we would be unable to certify to you that the house is on the property that you are purchasing or that it complies with the zoning bylaws. We could also not confirm - and you could not be sure - that the buildings, fences or other structures belonging to the neighbouring owners and constructed after the date of the existing survey, are situated entirely on the neighbouring properties and not on the property you are purchasing. As long as any defects are unknown to you on closing, title insurance will insure over many of the defects that a new survey could potentially show without the requirement and expense of obtaining a new survey.

In choosing the 'lawyer's opinion on title' option and not obtaining an up-to-date survey, you would be taking a risk that any problems which are later revealed in respect of your property, whether by a new survey of the property in question or any neighbouring property, will be your sole responsibility. If you choose the 'lawyer's opinion on title' option and choose to close without obtaining an up-to-date survey, our title opinion will be made subject to any defects, encroachments, or other matters whatsoever that might be revealed by such an up-to-date survey.

A new survey may cost anywhere from \$500.00 to \$1,000.00 or more (usually, around \$550). **If you want to have a new survey prepared, it must be completed and in our possession well prior to last date for submission of requisitions to the vendor, as provided for in the agreement of purchase and sale.** We would be pleased to offer referrals to local surveyors, at your request. If you choose the 'lawyers opinion on title' option or the 'title insurance' option and wish to proceed with the purchase using the existing survey or no survey (in cases where your mortgage company consents), then you must sign and return to us, immediately, the "Confirmation Re: Survey Issues and Title Insurance" which is

contained in the attached questionnaire. In any event, where you have selected the 'lawyer's opinion on title' option and in instances where we do not receive a signed "Confirmation Re; Survey Issues and Title Insurance" or a new and up-to-date survey at least 20 days before the last date for submission of requisitions, we shall take the position that you have opted to proceed with the existing or no survey (as the case may be), and our title opinion will be subject to those defects and other matters that might be revealed by a new survey.

### **WHAT'S THE NEXT STEP?**

*We ask you to please FULLY complete the purchaser questionnaire and return it to our as soon as possible.* We will be in touch with you shortly before closing in order to arrange a time to meet and review and execute all required closing documentation. At this meeting, we are required (by our liability insurer, the title insurance company and your mortgage lender) to obtain from you copies of at least two pieces of current identification - including acceptable picture identification. Please be sure to bring an assortment of identification with you. We shall advise you at the time the meeting is scheduled of the balance of funds required to conclude the transaction, which must be provided by certified cheque or bank draft, payable to "Siksay & Fraser, in trust". We shall also contact you should any title problems come to our attention.

The purchaser questionnaire asks how you wish to take title to your new property. If there are two or more persons purchasing the following options are available: as joint tenants, as tenants in common, or in one name alone. For your information, the main difference between taking title as joint tenants and as tenants in common lies in the right of survivorship. When one joint tenant dies, that owner's interest passes automatically to the surviving joint tenant(s) (subject to rights under the Family Law Act). This is not so if title is taken as tenants in common. In that case, in the event that a tenant in common owner dies, that owner's portion becomes part of the deceased's estate. However, where title is held as tenants in common, different percentage ownership interests can and should be specified.

### **OTHER MATTERS**

The federal government has enacted the Personal Information Protection and Electronic Documents Act (PIPEDA). The purpose of this legislation is to regulate the private sector's collection, use and disclosure of personal information.

In providing services to you, we will be required to collect personal information from you which may include (but is not necessarily limited to) the information received from your realtor, your bank, in some cases your accountant, or requested directly from you in the attached questionnaire or in other communications from or with our office (which will include the collection and retention of a copy of photo-identification for each real estate client as now required by mortgage lenders and the law society). In the process of acting for you, we will need to communicate with the other party and their solicitor, with your home and title insurer, with your real estate agent and broker, potentially with your accountant or financial advisor, with your mortgage company and mortgage broker (if applicable), and with other entities such as, but not necessarily limited to, the registry office and Ontario Ministry of Finance (in respect of Land Transfer Tax issues), Canada Customs and Revenue Agency (for HST or other tax related issues) and as may be required by law or by court order (where applicable). In respect of each of these communications, we will be required to share certain of the personal information which we have collected from you.

We collect and disclose this personal information for one reason: to serve you better in the completion of the services for which you have retained us. From time to time we use our mailing list to prepare and send client newsletters (electronic and by mail) and greeting cards. Our mailing list is used only by our office.

Law firms also need to be concerned about how personal information is shared when a lawyer retires or dies, or firms amalgamate. In order to ensure seamless representation to you, the personal information which is collected from you will form part of the records that are passed to any amalgamated law firm or successor lawyer or firm. Except in these limited circumstances, your personal information will not be sold to other parties. Our current policy is to retain client records indefinitely, but we will likely change that policy as our record storage space is depleted to a policy to retain client records for only as long as the minimum time recommended by the law society.

Please note - if you are purchasing with a mortgage, then it is likely that we will be representing both you and your mortgage company in doing the mortgage work. This is usual in most residential mortgage transactions. **We cannot, however, keep any secrets as between you and your mortgage company regarding any issue salient to the mortgage transaction.** For example, we are obliged to advise your bank about any changes in the purchase price or your financial situation or in respect of any title, zoning, or other defects that come to our attention regarding the property, among other things.

PIPEDA requires that your knowledge and consent are required before we may collect, use, or disclose your personal information. Your receipt of this letter shall be deemed to be confirmation of your knowledge and consent, unless you advise us immediately, in writing, that you do not agree with the terms stated herein and that you wish to opt out of it. However, if you do wish to opt out of this policy, we will be unable to represent you and you will need to find other legal counsel.

Often, mortgage lenders will require that your void cheque for regular mortgage payments be provided to them, through our offices, on closing, in order to initiate pre-authorized debits of your mortgage payments. **“Counter cheques” - those that do not contain your pre-printed and accurate name and current address - are not acceptable for this purpose.** Please ensure that you have set up your bank account for mortgage payment purposes well before closing and that you have pre-printed and not “counter-cheques” for closing.

Sometimes, a party may wish to sign by Power of Attorney. If this circumstance applies to you, it will increase legal fees and disbursements - and we must be satisfied of the legitimacy of the Power of Attorney prior to its use. If this circumstance applies to you, please contact David Siksay as soon as possible in order to discuss the implications.

If you are purchasing a condominium unit, our review of the “Status Certificate” package will be limited to review of the legal aspects of the actual status certificate - such as the current status of common expense payments and any known breaches of rules and regulations. We are not accountants, and we cannot provide any comment on the financial status of the condominium corporation or budget or the adequacy of its reserve funds. We also cannot comment on the acceptability to you of any rules and regulations of the condominium corporation. In respect of all matters set out in the Status Certificate package, except for the strict legal aspects of the status certificate (as referred to herein), you should therefore be careful to satisfy yourself.

The purchase of real estate - whether for personal use or for investment - is an exciting event in your life and may well be the greatest outlay of cash that you will ever make. At Siksay & Fraser, we take the practise of real estate law seriously.

Please do not hesitate to call if you have any questions with respect to your real estate transaction. You may wish to discuss with us preparation of wills and powers of attorney in conjunction with your purchase.

We thank you for choosing Siksay & Fraser as your real estate lawyers and we look forward to being of service to you.

## **THINGS TO DO PRIOR TO CLOSING:**

There can be no truly complete list of all the things that are required to be done prior to purchasing or selling residential real estate. *However, from a legal point of view, the following is a list of some of the items that you should take care of personally prior to the day of closing:*

1. Contact the customer service department for the applicable utilities for the jurisdiction in which you are purchasing and request that a new account be established in your name. This may include, but is not limited to, hydro, water and gas services, depending on the area. Request that the meter is read on the date of closing and that a final bill be sent to the vendor for charges to the date of closing.

For your assistance, we have listed the telephone contact numbers for the utilities in Durham Region and the City of Kawartha Lakes. For areas outside of these regions, please consult the applicable telephone directory services.

**WATER AND SANITARY SEWER BILLING:**

The Regional Municipality of Durham .....905-666-6211 (1-800-465-6611)  
 City of Kawartha Lakes..... 705-878-1282

**HYDRO:**

Whitby Hydro/Scugog Hydro . . . . . 905-668-5878  
 Oshawa PUC Networks .....905-723-4623 (1-877-997-2899)  
 Hydro One (formerly Ontario Hydro) ..... 1-888-664-9376  
 Veridian (Ajax, Pickering) .....905-420-8440 (1-888-420-0070)

**GAS:**

Enbridge Consumers Gas ..... 1-877-362-7434

2. **TELEPHONE:** If you will be connecting a land-line, please contact the service provider of your choice and arrange to have telephone service installed at your new home. If you are also selling a home, arrange to have the telephone service disconnected at your old home and arrange to have the final bill for that service sent to your new home.
3. **TAXES:** On closing, adjustment will be made for realty taxes on the property. You will be responsible for all tax payments coming due after the day of closing with respect to the property you are purchasing, to the extent not paid on the date of closing. Depending on how adjustments were made on closing, you may also be responsible for some tax payments which were due prior to the date of closing but not paid as at closing. We will inform you of any tax payments which are immediately due and payable. Immediately after closing, you must contact the local municipality and inform them that you are the new owners of the property in question and make arrangements for future tax bills to be forwarded to you at your new address.

**CONTACT NUMBERS FOR LOCAL TAX DEPARTMENTS:**

Town of Whitby .....	905-668-5803
Town of Ajax.....	905-683-4550
City of Oshawa .....	905-436-5651
City of Pickering .....	905-420-4614
Municipality of Clarington.....	905-623-3379
City of Kawartha Lakes.....	705-324-9411
Township of Scugog.....	905-985-7346
Township of Uxbridge.....	905-852-9181
Township of Brock .....	705-432-2355

4. Attend at the post office and arrange to have your mail forwarded to your new address.
5. In the course of reviewing the closing documentation with you prior to closing, we will review the particulars of any mortgages which are being registered on title. You are to ensure that mortgage payments are provided to the mortgagee(s) on or before their due dates.
6. Place insurance coverage on the purchase property, effective on the date of closing, for both the structure and the contents. Your mortgage company will require insurance coverage for the structure in its **full insurable value**. We recommend **guaranteed replacement cost insurance coverage** for the structures on your property. **Please let us know of the insurance details well prior to the day of closing as we must confirm coverage on behalf of any mortgagee before funds can be advanced under any mortgage. Please give your insurance agent our facsimile number (905-666-3233) and ask him or her to fax us a copy of the insurance confirmation (known as the “insurance binder”).**
7. If the property you are purchasing is heated by fuel oil, please check with your real estate agent to find out the name of the supplier and contact the supplier directly to establish a new account in your name as of the date of closing.