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After reading this chapter, you will understand:

• How the buyer prepares to complete a real estate transaction
• How the seller prepares to complete a real estate transaction
• How to determine and calculate the taxes payable on closing by a buyer of real property
• When harmonized sales tax is payable by a buyer of real property
• How a real estate transaction is finally completed
• How a closing is completed electronically
Introduction

After the closing documents have been prepared, you must turn your attention to preparation for the closing itself. It is at the closing that the buyer receives title to the property and the seller receives payment. The buyer’s lawyer wants to make sure that there are sufficient funds on hand to close the transaction and that the buyer gets exactly what was contracted for. The seller’s lawyer wants to make sure that the appropriate payment is received on behalf of the seller and that the seller can deliver title as promised.

The actual steps involved in closing the transaction will depend on whether the closing is completed electronically.

Organization from the Buyer’s Perspective

If the buyer’s lawyer and law clerk have been well organized, used checklists, and diarized as they’ve gone along, there should be very little left to do as the closing date approaches.

Monetary Issues

To prepare for closing, you must know how much the buyer has to pay to complete the transaction and to whom the money must be paid. You received this information from the statement of adjustments and the direction regarding funds, prepared by the seller’s lawyer. (Both of these documents are discussed in Chapter 21, Document Preparation.)

You must also calculate how much the buyer will have to pay for
- provincial land transfer tax;
- municipal land transfer tax (if the property is located in the City of Toronto and it contains at least one and not more than two single-family residences);
- harmonized sales tax (HST), if any;
- non-resident speculation tax (NRST), if any;
- registration fees;
- the title insurance premium, if any; and
- legal fees and disbursements.

Calculating the Provincial Land Transfer Tax

Provincial land transfer tax is calculated using the information in the land transfer tax affidavit or statement (discussed in Chapter 21; see Figure 21.3). Land transfer tax is payable on the amount shown in paragraph 2, line (f), “Value of land, building, fixtures and goodwill subject to Land Transfer Tax.”

The land transfer tax rates are
- \( \frac{1}{2} \) of 1 percent (0.005) on the first $55,000;
- 1 percent (0.01) on the amount from $55,000.01 to $250,000;
- 1\( \frac{1}{2} \) percent (0.015) on the amount from $250,000.01 to $400,000;
• 2 percent (0.02) on the amount from $400,000.01 to $2,000,000; and
• 2 ½ percent (0.025) on the amount over $2,000,000 if the property contains at least one and not more than two single-family residences. Otherwise, the rate remains at 2 percent (0.02).

<table>
<thead>
<tr>
<th>Value of Consideration</th>
<th>Provincial Land Transfer Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>The first $55,000</td>
<td>0.5% (0.005)</td>
</tr>
<tr>
<td>On the amount from $55,000.01 to $250,000</td>
<td>1% (0.01)</td>
</tr>
<tr>
<td>On the amount from $250,000.01 to $400,000</td>
<td>1.5% (0.015)</td>
</tr>
<tr>
<td>On the amount from $400,000.01 to $2,000,000</td>
<td>2% (0.02)</td>
</tr>
<tr>
<td>Over $2,000,000*</td>
<td>2.5% (0.025)</td>
</tr>
</tbody>
</table>

* If the property contains at least one and not more than two single-family residences. Otherwise, the rate remains at 2%.

As a shortcut, you may do the calculation based on the scale set out below:

• If the consideration is less than or equal to $55,000, simply multiply the amount of the consideration by 0.005.
• If the consideration is greater than $55,000 but is not greater than $250,000, multiply the amount of the consideration by 0.01 and then deduct $275.
• If the consideration is greater than $250,000 but is not greater than $400,000, multiply the amount of the consideration by 0.015 and then deduct $1,525.
• If the consideration is greater than $400,000 but is not greater than $2,000,000, or the consideration is greater than $2,000,000 but does not contain at least one and not more than two single family residences, multiply the amount of the consideration by 0.02 and then deduct $3,525.
• If the consideration is greater than $2,000,000, and the property contains at least one and not more than two single-family residences, multiply the amount of the consideration by 0.025 and then deduct $13,525.

<table>
<thead>
<tr>
<th>Value of Consideration (VC)</th>
<th>Shortcut Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than or equal to $55,000</td>
<td>VC × 0.005</td>
</tr>
<tr>
<td>Between $55,000.01 and $250,000</td>
<td>VC × 0.01 − $275</td>
</tr>
<tr>
<td>Between $250,000.01 and $400,000</td>
<td>VC × 0.015 − $1,525</td>
</tr>
<tr>
<td>Between $400,000.01 and $2,000,000</td>
<td>VC × 0.02 − $3,525</td>
</tr>
<tr>
<td>Greater than $2,000,000*</td>
<td>VC × 0.025 − $13,525</td>
</tr>
</tbody>
</table>

* If the property contains at least one and not more than two single-family residences. Otherwise, use the shortcut formula in row 4.
For example, if the consideration on the sale of a single-family residence is $650,000, the calculation can be done in either of the following two ways:

1. For the first $55,000: $55,000 \times 0.005 = $275
   For $55,000 to $250,000: $195,000 \times 0.01 = $1,950
   For $250,000 to $400,000: $150,000 \times 0.015 = $2,250
   For $400,000 to $650,000: $250,000 \times 0.02 = $5,000
   Total provincial land transfer tax: $9,475

or

2. ($650,000 \times 0.02) − $3,525 = $13,000 − $3,525 = $9,475

If the property contains three or more residential units, the rate does not increase again after $2,000,000.

It is important to advise first-time homebuyers that they are entitled to a rebate of up to $4,000 of the provincial land transfer tax. This rebate is available only to someone who is a Canadian citizen or permanent resident, and who has never owned property anywhere in the world. It is not available if the person's spouse has owned property while married to that person. The rebate is $4,000 or the total amount of the land transfer tax, whichever is lower.

**Calculating the Municipal Land Transfer Tax**

If the property is located in the City of Toronto and it contains at least one and not more than two single-family residences, municipal land transfer tax must also be paid. The rates are as follows:

- 1/2 of 1 percent (0.005) on the first $55,000;
- 1 percent (0.01) on the amount from $55,001 to $250,000;
- 1 ½ percent (0.015) on the amount from $250,001 to $400,000;
- 2 percent (0.02) on the amount from $400,001 to $2,000,000; and
- 2 ½ percent (0.025) on the amount over $2,000,000.

If the property contains more than two single-family residences, the rate applied to the amount over $2,000,000 is 2 percent (0.02) rather than 2.5 percent. (See the table at the top of page 345 for an example.)

As a shortcut, you may do the calculation based on the scale set out below:

- If the consideration is less than or equal to $55,000, multiply the amount of the consideration by 0.005.
- If the consideration is greater than $55,000 but is not greater than $250,000, multiply the amount of the consideration by 0.01, and subtract $275.
- If the consideration is greater than $250,000 but is not greater than $400,000, multiply the amount of the consideration by 0.015 and then subtract $1,525.
- If the consideration is greater than $400,000 but is not greater than $2,000,000, or the consideration is greater than $2,000,000 but does not con-
tain at least one and not more than two single family residences, multiply the amount of the consideration by 0.02 (or by 0.015 if the property contains more than two single-family residences) and subtract $3525.

- If the consideration is greater than $2,000,000, and the property contains at least one and not more than two single-family residences, multiply the amount of the consideration by 0.025 and then deduct $13,525.

See the table at the bottom of page 345 for an example.

For example, if the consideration on the sale of a single-family residence in the City of Toronto is $650,000, the calculation can be done in either of the following two ways:

1. For the first $55,000: $55,000 × 0.005 = $275
   For $55,000 to $250,000: $195,000 × 0.01 = $1,950
   For $250,000 to $400,000: $150,000 × 0.015 = $2,250
   For over $400,000: $250,000 × .02 = $5,000
   Total municipal land transfer tax: $9,475

or

2. ($650,000 × 0.02) − $3,525 = $13,000 − $3,525 = $9,475

First-time homebuyers are exempt from municipal land transfer tax on purchase prices up to $400,000 and are therefore entitled to a rebate of up to $4,475. For example, if the purchase price of the property is $350,000, no municipal land transfer tax is payable. If the purchase price of the property is $480,000, the buyer will pay $6075 ($480,000 × .02 − $3,525) less the rebate of $4,475 for a total of $1,600.

This rebate is available only to a Canadian citizen or permanent resident who has never owned real property anywhere in the world. It is not available if the person’s spouse has owned property while married to that person. The rebate is $4,475 or the total amount of the land transfer tax, whichever is lower.

**Calculating the Harmonized Sales Tax**

Harmonized sales tax is payable on the value of the chattels included in the transaction. The calculation of this tax is based on the information contained in the land transfer tax affidavit. To calculate the amount of harmonized sales tax payable, multiply the amount shown in paragraph 2, line (g), “Value of all chattels,” by 13 percent. For example, if the value of chattels is $2,000, the HST payable is $2,000 × 0.13 = $260.

If the home being purchased is newly built or substantially renovated, harmonized sales tax is also payable at the same rate on the value of the land, building, fixtures, and goodwill. Buyers of new or substantially renovated homes may be eligible for a refund of up to $24,000 of the provincial portion (8 percent) of this tax, but only if the buyer warrants that he or she or an immediate family member will be using the property as his or her residence. Since HST is usually included in the price for new
homes, this rebate goes to the builder, not the buyer. If the property is a resale home, HST is not payable on the value of the land, building, and fixtures.

**Calculating the Non-Resident Speculation Tax**

Non–Resident Speculation Tax (NRST) was introduced in April 2017 and is payable in addition to land transfer tax. It applies only to transfers or acquisitions made by a foreign individual or corporation, and the tax rate is 15 percent.

NRST applies only to real property situated in Greater Golden Horseshoe Region. As a result, a non-resident buying property in Toronto is required to pay provincial land transfer tax, municipal land transfer tax and non-resident speculation tax. However, a non-resident buying property outside of the Greater Golden Horseshoe Region is required to pay provincial land transfer tax only.

**Registration Fees Payable on Closing**

The buyer pays to register the transfer and any mortgages other than a vendor-take-back mortgage. The seller pays to register any mortgage back and any discharges of mortgage or other documents required to clear the title of encumbrances. At the time of publication, the registration fee for electronic registrations was $71.30 (including a Teraview fee of $11.30) for each instrument of any kind; however, registration fees increase regularly. If the document is being registered in the paper system, there is no Teraview fee and the registration fee is $60.

**Obtaining Funds from the Client**

You must obtain sufficient funds from the buyer to cover the balance due on closing, the provincial land transfer tax, the municipal land transfer tax (if any), the harmonized sales tax (if any), and the registration fees. In addition, most law firms will want the client to give the firm enough money to cover the legal fees and disbursements for the transaction.

The lawyer will set the amount to be charged for fees. You will need to calculate the total amount of disbursements. Disbursements are the out-of-pocket expenses that your firm has paid or will pay with respect to the transaction, such as the costs of a title search, an execution certificate, a tax certificate, registration fees, postage, and courier charges. Sometimes the title insurance premium will be included as a disbursement as well, and other times it will be calculated as a separate item.

**Mortgage Proceeds**

If the client is financing part of the purchase by way of a mortgage, you will need to know exactly how much the mortgagee will be providing on the closing date. The amount may well be less than the principal amount of the mortgage. For example, if the interest adjustment date is different from the closing date, an amount for interest is deducted from the amount advanced under the mortgage. If the mortgage is a high ratio mortgage (a mortgage for more than 80 percent of the value of the property), an amount may be deducted for insurance. The money received from the mortgagee will be applied to the purchase price and will reduce the amount of money to be provided directly by the buyer.
One Week Before Closing

Start your final preparation for closing at least one week before the closing date.

Review the File

- Make sure that all preliminary letters, the requisition letter, and any follow-up letters sent by the law firm have been answered and that the answers are satisfactory.
- Update public utility account and tax information in the case of a long closing or if the original responses revealed arrears that the seller’s solicitor indicated would be paid before closing. If title insurance is being obtained for the transaction, this step will likely not be necessary.

Contact the Client

- You must advise the client of the amount of money to be provided.
- Set up an appointment for the client to deliver the funds and to sign all documents.
- Remind the client to arrange insurance coverage for the property as of the closing date. If the buyer is arranging new mortgage financing, the client will have to provide to the mortgagee particulars of the insurance coverage, and the lawyer will require a binder letter in order to confirm that the mortgagee is named on the policy.
- Check that the client has taken all steps necessary for any mortgage approvals, whether there are new mortgages or mortgages being assumed.

Prepare the Statutory Declaration Regarding Executions

If there are any executions outstanding against a name similar to that of the buyer, prepare a statutory declaration regarding executions to be sworn by the client. In the declaration, deal specifically with any executions outstanding at the time the declaration is drafted. The buyer will swear that he or she is not one and the same as the person in each execution. If the execution is over $50,000, a statutory declaration must be sworn by the buyer’s lawyer that the buyer and the debtor are not the same person. The buyer’s lawyer will want confirmation from the creditor before signing such a declaration.

Confirm Arrangements for a Conveyancer

If the closing is taking place at the registry office, rather than electronically, your firm may be using an outside conveyancer to attend at the closing. In that case, re-confirm the conveyancer’s availability and time preferences, and make arrangements for the pickup and delivery of the file.

Prepare the Closing Memo or Closing Checklist

The closing memo is a document that sets out all steps to be taken, documents and other things to be exchanged on closing, and registration instructions. In the un-
likely event that the closing is at the registry office, you will need to prepare a closing memo for the conveyancer or other person actually attending at the registry office. If the closing is electronic, you should prepare a closing memo for yourself in the form of a checklist.

The preparation of the closing memo or closing checklist is discussed below.

**The Day Before Closing/Morning of Closing**

Make sure you know how the closing cheques are to be payable, requisition or prepare the cheques, and have them signed and certified, as necessary. If the closing is electronic, your firm may instead make an arrangement to deposit the balance due on closing directly into the trust account of the seller’s lawyer.

If the closing is taking place at the registry office, arrange the specific time for the closing, and exchange the names of the persons attending for the buyer and seller.

**Buyer’s Closing Memo or Closing Checklist**

The contents of the closing memo or closing checklist will depend on whether the closing is taking place at the registry office or is electronic because the steps in each type of closing are different. In both cases, refer to the requisition letter. If it was drafted properly, it will list all items required on closing.

**Registry Closing**

The closing memo for a registry office closing has four main parts:

1. preliminary steps to take;
2. documents and items to get;
3. documents and items to give; and
4. registration instructions.

**Preliminary Steps**

These steps will be the same in every registry office closing.

**UPDATE SEARCH OF TITLE**

The closing memo should instruct the conveyancer to subsearch from the last instrument shown in the search.

If a particular instrument was to be registered prior to closing, specify it in the closing memo, with instructions to ensure that it has been registered. Examples include a discharge of mortgage, a mortgage, a mortgage amending agreement, or a release.

Attach the search of title to the closing memo so that it is available, if necessary, to cross-check a recent registration. The search notes also provide the conveyancer with the last instrument number registered in the abstract at the time of the search. This indicates to the conveyancer where to start the subsearch.
UPDATE EXECUTION SEARCH

Set out the details of any executions you are aware of and for which satisfactory arrangements, such as delivery of an affidavit, have been made. If an execution was to be discharged by closing, give particulars in the memo so that the conveyancer can confirm that the execution has, in fact, been discharged.

Documents and Items to Get

Under this heading, list all documents and other items to be obtained from the seller on closing. This list will be based on the requisition letter. The memo should provide sufficient explanation and copies of draft documents to be obtained.

TRANSFER/DEED OF LAND

The transfer provided on closing must be in the same form as the draft transfer previously submitted by the seller and approved by the buyer’s lawyer. The memo should instruct the conveyancer to compare the documents, and the draft should be attached.

MORTGAGES TO BE ASSUMED

If a mortgage is being assumed, the conveyancer must obtain

- a mortgage statement for assumption purposes showing a balance outstanding in the same amount as that shown on the statement of adjustments (which should be attached)—the memo should specify what the outstanding principal and interest should be;
- a copy of the mortgage, if not already provided by the title searcher; and
- particulars of the mortgage number and address for payment.

MORTGAGES TO BE DISCHARGED

If a mortgage is to be discharged on or before closing, instruct the conveyancer to make certain either that the discharge has already been registered or that a discharge will be registered before registration of the transfer. The memo must provide full registration particulars of the mortgage to be discharged so that the conveyancer can check the validity of the discharge.

UNDERTAKINGS TO DISCHARGE MORTGAGES

If, by the terms of the agreement of purchase and sale, or otherwise, the buyer has agreed to accept an undertaking to discharge a mortgage, the memo must instruct the conveyancer to obtain

- a mortgage statement for discharge purposes;
- the seller’s signed direction, and a redirection that the appropriate amount of funds is to be made payable to the mortgagee; and
- the seller’s lawyer’s personal undertaking to discharge the mortgage under the terms set out in the agreement of purchase and sale—the memo should set out the precise wording that is acceptable.
EXECUTED COPIES OF DOCUMENTS FORWARDED TO THE SELLER FOR SIGNATURE

The memo should advise the conveyancer to obtain executed copies of the documents previously prepared by your law firm and forwarded (usually with the requisition letter) to the seller for execution. These documents include undertakings, warranties, and declarations of possession. Copies of the draft documents should be attached so that the conveyancer can verify that the executed documents are in the proper form. These documents are discussed in detail in Chapter 21.

DOCUMENTS REQUIRED TO ANSWER REQUISITIONS

The closing memo should specify any documents that are required to answer requisitions. These documents may be ascertained by reading the requisition letter, the answers to requisitions, and any follow-up correspondence. If, as an answer to a requisition, the seller agreed to provide something, it should be listed so that the conveyancer will obtain it from the seller on closing.

KEYS

Unless alternative arrangements were made for the delivery of keys to the buyer, at least one key must be obtained on closing.

DIRECTION REGARDING FUNDS

Before closing, the seller’s lawyer will have advised the buyer’s lawyer of the manner in which closing funds are to be paid and the closing cheques will have been prepared accordingly. The conveyancer should be told to obtain a direction regarding funds in accordance with the cheques provided.

This part of the memo should conclude by instructing the conveyancer to conduct a careful subsearch of the property and to insert the land transfer tax affidavit in the transfer (three copies should be attached).

Documents and Items to Give

Under this heading, list all the documents and other items to be given to the seller on closing.

MORTGAGE BACK

If this is applicable, the buyer’s lawyer provides the vendor-take-back mortgage.

CERTIFIED CHEQUES

A certified cheque or cheques made payable as instructed by the seller should be attached to the memo and particulars of the cheques provided. The conveyancer should be reminded (if instructions have not already been provided) to ensure that the appropriate direction regarding funds is provided by the seller.

DIRECTION REGARDING TITLE

See Chapter 21, Document Preparation, for a discussion of this document.
UNDEBTAKING TO READJUST
See Chapter 21, Document Preparation, for a discussion of this document.

ADDITIONAL ITEMS
The memo should also specify the additional items delivered with the memo, such as the file and cheques for registration, land transfer tax, and other fees.

Registration Instructions
You must specify what documents the conveyancer should register and the required order of registration. If the seller is to register a discharge, it should be registered before your conveyancer registers anything. If the seller is registering a vendor-take-back mortgage, make sure it is registered in the correct sequence with your conveyancer's documents. (If it is a second mortgage, it must be registered after the first mortgage.)

Electronic Closing Checklist
If the transaction is closing electronically, as is most likely the case, the parties do not meet at the registry office to exchange documents and funds, and register. Instead, the parties exchange the documents to be registered on title, such as transfers and charges, electronically. The closing funds and documents that are not registered on title are delivered by courier. In some cases it may be possible to wire or transfer funds between branches of financial institutions. You will then update the search and register the documents electronically. The buyer’s checklist on an electronic closing reflects these steps.

Documents to Get
With the exception of the transfer, you will receive most of the same documents as you would in a registry office closing. Instead of receiving them on closing, however, you will receive them by courier in advance of the closing. Your checklist should list all of the documents you will receive and will contain the same information as a registry office closing memo.

Documents to Give
You will give the same documents as you would in a registry office closing. Instead of delivering them on closing, however, you will deliver them by courier in advance of the closing. Your checklist should list all of the documents you will give and will contain the same information as a registry office closing memo.

Subsearch/Executions
It is necessary to conduct a subsearch before registering the transfer, to make sure that title has not changed since the title search was done, except for required registrations such as a discharge of mortgage, a mortgage, a mortgage amending agreement, or a release. If a particular instrument was to be registered, specify it in the checklist. Teraview will automatically search executions against the seller, unless the seller is an estate. If the seller is an estate, you will have to search executions against
the deceased. If the buyer has arranged a mortgage and you are also acting for a mortgagee, you will have to search executions against the buyer. If title insurance is being obtained for the transaction, however, it may not be necessary to re-search executions against the buyer. That’s because the title insurance policy will protect the lender against any new executions as long as the original execution search was completed within a short period of time before the closing, usually one to two weeks.

**Day of Closing**

Courier all non-registerable documents and certified cheques to the seller’s lawyer.

**Closing the Transaction**

A registry office closing will almost certainly be handled by an outside conveyancer, so we discuss the procedure on an electronic closing only.

If the closing memo or closing checklist has been properly prepared, the closing should go smoothly.

In an electronic transaction both the seller’s lawyer and the buyer’s lawyer enter into a document registration agreement (DRA) prior to the closing date. The DRA sets out the escrow closing procedure to be followed in closing the transaction.

The seller’s lawyer sends off-title documents (documents that are not registered) and a key by courier to the buyer’s lawyer. The buyer’s lawyer sends off-title documents and closing funds by courier to the seller’s lawyer. The seller’s lawyer checks the buyer’s documents, and when satisfied that they are acceptable and that the closing proceeds have been received, he or she accesses Teraview, releases the transfer for registration, and advises the buyer’s lawyer that this has been done. Then the registering party (usually the buyer’s lawyer) logs onto Teraview and conducts a subsearch to verify that title to the property has not changed since the title search was done (or that any required documents have been registered). The registering party then searches executions (which will be done automatically against the seller) and registers the transfer and any other registerable documents, such as mortgages, released for registration.

When a law firm obtains the Teraview licence and user access, arrangements are made regarding payment of land transfer tax and registration fees. Usually they are debited from the firm’s general account. When a document is registered electronically, the registration fees and land transfer tax, if applicable, will be debited at the end of the day.
CHAPTER 22  Closing the Transaction

KEY TERMS

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REVIEW QUESTIONS

1. Tom Cruiser is buying a single-family residence in Oakville, Ontario, for $805,000. According to the land transfer tax affidavit, the value of the land, building, fixtures, and goodwill subject to land transfer tax is $800,000 and the value of chattels included in the transaction is $5,000. Calculate the land transfer tax and the harmonized sales tax (HST) payable on the transaction.

2. Assume that Tom Cruiser (from question 1) has never owned a home before, anywhere in the world. What is the amount of the provincial land transfer tax rebate he is entitled to?

3. Saraya Jones recently purchased a home in downtown Toronto. What taxes will Saraya be required to pay on closing?

4. Guillermo recently bought a home from Sanjaya and arranged a mortgage to finance the purchase. Sanjaya agreed to discharge the mortgage currently registered on title. The closing is taking place next week. Who will pay the registration fees on closing?

5. What is the purpose of a closing memo or closing checklist for a registry office closing?

6. What searches must be updated during a registry office closing?

7. Your firm’s client is the buyer in a real estate transaction and the firm’s conveyancer is attending the closing. The buyer has arranged a first and second mortgage to finance the purchase. What documents must the conveyancer register, and in what order must he or she register them?

8. How are documents exchanged between the parties when the closing takes place electronically?

9. How is land transfer tax paid in an electronic closing?