

Refinancing explained



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Over time an owner may need to refinance for various reasons. For example, homeowners may refinance to get a better interest rate or to obtain more capital to fund a renovation project, or possibly to pay out consumer debt. When a homeowner is refinancing with the same bank, the bank can often handle the refinance internally without a lawyer becoming involved. However, if there is a change in the names on title simultaneous with the refinance or the homeowner is refinancing with a different financial institution, the homeowner will have to hire lawyer to handle the paperwork and registration of title and/or the mortgage. When the bank requires the homeowner to obtain a lawyer, there are a few considerations to keep in mind.

First, if the bank requires a

lawyer to coordinate the refinance, contact a lawyer in advance to make them aware that the bank will be sending refinance documents. A refinance typically will take a lawyer about five business days to complete from the day the lawyer receives the documents from the bank. However, you should call the lawyer to find out what their timeline is at that time as your lawyer may be able to complete it quicker or it may take a bit longer depending on the time of year and the number of other files the lawyer is working on.

Second, if the homeowner is refinancing and adding a second private mortgage to title, meaning that the loan is coming from individuals with terms and conditions like a typical mortgage, then the private lender might need their own lawyer as well. If the amount of



the private mortgage is over \$50,000, the private lender is required to hire their own lawyer to represent them. Even for amounts less than \$50,000, the lawyer representing the homeowner may require the private lender to obtain independent legal advice before completing the transaction.

Finally, if the homeowner is married, but the homeowner's spouse is not named on title, the homeowner's

spouse will still have to consent to any refinance or adding additional mortgages or lines of credit on a matrimonial home. If the property being refinanced is an investment property that has never been occupied by the owner and spouse as a matrimonial home, the owner's spouse will not have to sign consenting to the refinance. Matrimonial properties have their own set of laws that protect them which

require consent from the spouses. Often, the lawyer coordinating the refinance or the bank will require the spouse to obtain independent legal advice before the transaction can occur. This is to ensure the spouse fully understands and appreciates the consequences associated with adding a mortgage on title or refinancing.

These are some considerations when refinancing a property. Related to refinances are transfers of ownership on the property. The main consideration on a transfer is land transfer tax.

If there is a transfer of ownership on the property, the transfer can trigger land transfer tax to be paid to the Ontario government. If there is a parent, sibling, friend or business partner coming on or off the title of the property, land transfer tax will be paid on the percentage of the owner has on title on the value of the outstanding mortgage on the property. Contact your lawyer to assist you with the land transfer tax calculation, as the calculation differs from that used on a purchase of a home. No

land transfer tax is paid when spouses are transferring title between them or when a refinance is occurring at the same time as the transfer. It is common for parents to be added to title in order for their children to qualify for a mortgage. To avoid paying land transfer tax on the portion that the parents own when the title is transferred, the child could transfer the title at the same time as a refinance.

Regardless of whether the homeowner is looking to refinance or transfer the property, the homeowner has an obligation to contact the bank. Under the terms of a loan, the homeowner has agreed to inform the bank of any material change. Therefore, always speak with the bank first when looking to refinance or transfer title of the property.

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RENTAL GUIDE

Apartment repairs require notice of entry much of the time

BY DICKIE & LYMAN LLP
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Q: My landlord tells me they do not have to give me any notice (let alone 24 hours' notice) to come into my home to carry out repairs. In other places that I have rented, the landlord always provided 24 hours' notice for a repair or maintenance. Is this not correct? Also, I have no way of knowing if a repair person has been in to my apartment or not. They do not leave a note to say that they have been in, and if the item or area has been repaired.

A: The Ontario Residential Tenancies Act deals differently with two types of repairs. For emergencies, a landlord can enter without giving notice beforehand. Emergencies would include such things as water coming through a tenant's ceiling, a furnace that has gone off during cold weather or other matters that need to be attended to immediately.

However, to enter a tenant's apartment for non-emergency repairs, landlords need to provide 24-hour written notice that specifies the time of entry (within a few hours), and states the rea-

son for entry (namely to do the particular repair). Alternately, a landlord or their staff people can enter without written notice if the tenant consents to the entry. Allowing a repair person or a superintendent in when they ask to come in can get your repair done faster, and some tenants will agree for that reason.

Your landlord should not tell you they have the right to enter without notice for all repairs. Even if you agreed, the consent would be tainted by the misinformation.

You would like a note that a particular repair has been

done. Sometimes it is obvious, such as if a leaking tap has stopped leaking or a running toilet has stopped running. Other times it is not obvious that a particular repair has been done. Some landlords do leave a note behind. That can be helpful since it lets a tenant know the situation and alerts the tenant to call in again if the repair has not been successful. However, leaving a note is not required.

It is also worth noting that some tenants want to be present when the landlord will enter to perform repairs. Sometimes that is not a good

idea, such as if an apartment is to be fumigated with chemicals to kill bugs, or while electrical work is being done. For most repairs, if a tenant wants to and can arrange to be at the apartment, they are allowed to do that. But the landlord does not have to delay or reschedule a repair to accommodate a tenant's wish to be present.

Once a tenant receives a proper written notice of entry, the tenant is obliged to permit entry during the time block the landlord has specified. A tenant also needs to remove any animals that would interfere with the

work or cause the repair person a problem. This could be a dog who might threaten to bite the repair person. Or for bedbug or other pest control work, it could be any animal since the animal might be hurt by the chemicals used.

Provided a tenant is cooperative in other ways, some landlords try to work with their tenants to agree on a time for entry, however they are not obliged to do that. They have their own constraints such as the time block a repair person has given them, or the timing and location of other work they need to do each day.