

# Agreement of Purchase and Sale explained - part three



## Jacques Robert REAL ESTATE LAW

This is the final instalment in a series of articles in which we are explaining some of the clauses usually found in a standard residential Agreement of Purchase and Sale. In part one we looked at the clauses relating to Irrevocability, Completion Date, HST, and Title Search. In part two we discussed UFFI, Chattels Included / Fixtures Excluded, Rental Items, and Spousal Consent. In today's article we will be looking at Inspection, Planning Act, and Tender.

### Inspection

Buyer acknowledges having had the opportunity to inspect the property and understands

that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the property.

This clause is fairly straightforward, but it is very significant to the rights of the Buyer. Note that the Buyer is stating they have already had the opportunity to inspect the

property, and acknowledging that acceptance of the Offer by the Seller creates a binding Agreement of Purchase and Sale. Unless a specific condition for a professional home inspection is added to the Agreement of Purchase and Sale by the use of a Schedule to the Agreement, the Buyer will be giving up their right to have the property inspected further by a professional. The home inspection condition should also include wording that the Buyer must be satisfied with the results of the inspection or report, failing which the offer will become null and void. A requirement for the Buyer to inform the Seller of their satisfaction with the inspection within a certain time period is usually included in this condition.

### Planning Act

This Agreement shall be effective to create an interest

in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.

Section 50 of the Planning Act, R.S.O. 1990, controls how land in Ontario can be divided and used. Any type of transaction for land in Ontario that is prohibited by this section will not create or convey a legal interest. If an Agreement of Purchase and Sale violates s.50, but in such a way that is possibly correctable prior to closing, the Agreement will remain valid and enforceable during the resolution of the Planning Act violation, as long as this clause is included. If this clause is not present and an unexpected violation of s. 50 is found in the transaction, the Agreement will not convey any interest in the land. One example in which a vio-

lation could occur is the situation where the Seller wishes to retain an interest in a parcel of land that abuts, or shares a common boundary with, the parcel of land being sold. The requirement of obtaining any consent or severance that is needed to fix the Planning Act violation in order to transfer the property to the Buyer is clearly an obligation of the Seller as the current owner of the property.

### Tender

Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.

If either the Buyer or the Seller is not prepared to close

the transaction on the completion date, the party that is prepared must demonstrate to the other party's lawyer that they are ready, willing and able to close as per the Agreement of Purchase and Sale. Tendering is necessary in order to preserve the non-defaulting party's legal rights. Through the tender process, the non-defaulting party provides evidence that they have met all of the requirements to complete the transaction. For the Seller this will generally mean production of closing documents and keys; for the Buyer this will mean having the money ready for the purchase. Imperfect tender can result in a loss of legal rights.

*co-authored with Mark Armitage, associate lawyer.*

**Jacques Robert is an Ottawa real estate lawyer. For more information, visit [www.jacquesrobert.com](http://www.jacquesrobert.com)**

## Potential indicators of roof trouble

With regard to home repairs, homeowners may be able to delay some projects until the weather permits or they find room in their budgets. But other areas, including the roof, may demand immediate action.

Few homeowners give the roofs of their homes much thought until a problem arises. But learning to recognize potential indicators of roof trouble can help homeowners prevent potentially drastic situations down the road.

### Light

Homeowners with attics in their homes can inspect the ceilings inside the attic for signs of holes or leaks. Light peering through the top of the house indicates a hole or leak, as does stains or streaks on the ceiling.

### Worn shingles

Shingles should lie flat against the roof, so any that appear to be buckling or turning up are damaged and in need of repair. A single damaged shingle does not require a full roof replacement, but inspect all the shingles nonetheless. Another indicator of shingle problems can be found when cleaning downspouts or gutters. If the gutters and downspouts contain lots of shingle granules, the roof may soon need to be replaced.

### Moss

Moss on a rooftop may give a home character, but that added character is costly. Shady areas of a roof can be susceptible to the growth of moss and fungi because moisture can be trapped in such areas. If possible,

remove moss or fungi from a roof with a stiff brush or hire a professional to do the

job instead. Moss may come back even after brushing it off, so homeowners should

keep an eye on areas of their roofs that get little sunlight. In addition, trapped moisture

can be very harmful to a roof, so it may be wise to exercise caution and have roofs with mold or fungi growths inspected.

### Age

Another indicator of roof trouble may be the age of the roof. Even if there are no visible signs of damage, homeowners whose roofs have some years under their belt may want to consider replacing them. Asphalt shingle roofs typically have life expectancies of 20 to 25 years, while roofs installed over existing layers of shingles may need to be replaced after 20 years.

Recognizing minor roof damage before it escalates into a larger problem can save homeowners substantial amounts of money.

