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405-1610 Ste Catherine O.
Montreal, Quebec
H3H-2S2

Phone: (514) 931 7174
Fax: (514) 938 9079

E-mail: lauren.tatner@notarius.net

Q & A WITH M^E LAUREN TATNER (NOTARY)

The Role of a Notary When Buying or Selling Real Estate in Quebec

*M^e Lauren Tatner, Notary, LL.B., D.E.S.S. Common Law, D.D.N., LL.M.

Q: What is the role of a Notary in Quebec?

A: A Notary in Quebec is an attorney who can specialize in any area of law, except litigation. Notaries are usually required to be impartial, to give legal advice to all parties involved, to draft legal documents on their behalf, to authenticate those documents, and to keep record of the transactions.

Q: Why should I see a Notary when I'm buying real estate?

A: The purchase of real estate is a serious act with many consequences. Real estate transactions constitute a large part of notarial services, and in Quebec, hypothecs ("mortgages" in common law) must be drafted by Notaries. It is usually the buyer who chooses the Notary.

Q: What is the Notary's role before the signing of the Deed of Sale ("closing")?

A: Most people aren't aware that a large portion of the Notary's work is completed before the signing of the sale. The work that must be done varies from file to file. The following is a non-exhaustive summary of the Notary's main responsibilities before the sale:

- Receive and review the promise to purchase and all other relevant documents in the vendor's possession;
- Perform a title exam, in order to guarantee that title or ownership to the property you wish to buy will not be contested.
- Obtain and examine a valid up-to-date certificate of location (prepared by a Quebec Land Surveyor), in order to ascertain the dimensions of the lot; that the buildings have been properly erected on the lot to be sold; that the dwelling has been built in accordance with municipal by-laws and zoning regulations; whether the neighbor's property encroaches on the lot; that the windows and doors do not create illegal views.
- Communicate with your financial institution (if you are taking a loan), receive and review the loan instructions, draft the deed, request the funds, etc...



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Q: What is the Notary's role before the signing of the Deed of Sale ("closing")? (continued)

A:

- Communicate with the vendor to ensure that he has the legal capacity and power to sell his property, with or without a spouse's intervention;
- Verify that the municipal and school taxes have been paid and calculate the adjustments between the buyer and vendor.
- Ensure that you have obtained adequate home insurance and that your mortgage creditor is designated as a beneficiary of your policy;
- Communicate with an administrator from the condo association (if you are purchasing a condo unit) to verify the amount of the condo fees, that all condominium fees are paid in full, that no special fees or an increase of the condominium fees are pending, that the condo association is not involved in any legal procedures, that no major reparation projects are pending, that the property is covered by an insurance policy, and that the said policy protects the interests of any mortgage creditors;
- Draft the Deed of Sale with the care and attention to detail that characterize all his/her work, putting into this document all the clauses essential for the protection of your rights.

Q: What is the Notary's role at the signing of the Deed of Sale?

A:

- Verify the IDs of all the parties;
- Explain the adjustments and disbursements;
- Explain the parties' rights and obligations;
- Hold the certified funds for the purchase in his/her Trust account and only remit the funds to the vendor once the Deeds have been registered at the Registry Office, the necessary verifications have been completed, and all parties are fully protected.



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Q: What is the Notary's role after the signing of the Deed of Sale?

A:

- Verify that the sale and loan have been registered and that there are no conflicting entries;
- Proceed with the relevant disbursements from the sale price (which includes the cheque to the vendor for the balance);
- Take the appropriate steps to have the pre-existing mortgage/rights on the property removed;
- Communicate with your financial institution to send them the appropriate documentation and final report on the property;
- Issue certified copies of the Deeds to the interested parties.

Q: What happens to the original Notarial Deeds after the signing of the Sale?

A:

- The original document obeys strict rules of formalism, is dated and recorded with a serial number ("minute" number), and a record of it is kept in his register.
- The Notary must keep the document in a fire-proof safe or vault because it is an authentic document that must never be lost, altered or destroyed. This allows the Notary to guarantee that the transaction instrument will always be available to all interested parties and certified copies (that have the same legal evidential force as the original) can always be issued. It also ensures a record of the transaction date.
- When a Notary no longer practices, the originals in his/her possession are transferred to another Notary in practice or to the clerk of the Superior Court of the Notary's judicial district.

*For more information contact Notary Lauren Tatner at
514-931-7174 or Lauren.tatner@notarius.net