

Buying a Home in Canada



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The author has taken care to ensure the accuracy and completeness of the information in this manual. Nevertheless, he assumes no responsibility for errors, inaccuracies, omissions or inconsistency herein. He will gladly accept any information that will enable him to rectify any error, missing reference, omission or inaccuracy in subsequent editions.

This material does not constitute the rendering of legal advice. The author expressly suggests that you seek the advice of a lawyer in the purchase or sale of real estate and in all matters involving legally enforceable obligations.

PREFACE

Something big happened in Canadian real estate in 1995.

In the early years, when a company sold a house, half* the commission usually went to the agent on the sign; and the other, to the member of the firm that had found the purchaser.

In the 1950s, this deal was fine-tuned. The agent on the sign kept his share, but to attract more purchasers, the rest of the money got offered to agents from all companies. They called this the Multiple Listing Service®. And transactions involving two different real estate firms were born.

But their MLS® System was flawed. Because it didn't allow for the commission to be shared with a buyer agent. Buyer agents are real estate professionals who instead of selling houses, point out property flaws and defects and help purchasers negotiate prices down.

The rules were clear. The two firms had to work together at trying to get the highest price for the seller. Siding with the buyer – regardless of his identity – and claiming the money, was strictly prohibited. But it was happening anyway.

By the mid 90s, the practice was so common – especially when the buyer was a relative or a friend – that the industry had to make it legal. And fighting for purchasers was “officially” born.

But allowing buyer representation on MLS® transactions was dangerous.

What if purchasers started asking for companies that did it exclusively? Firms with no listings and no sellers, whose job would be to save homebuyers headaches, time, and money. Companies that offered to treat all purchasers like family and try to get them the best homes at the best price. To make things worse for traditional firms, these companies wouldn't have to charge buyers anything for their service since the other half of the commission could now serve as their fee.

Allowing buyer representation on MLS® transactions should have led to the arrival of these firms. But it did not. Because people can't ask for something unless they know it exists. When the new rules came into effect, everyone got told that it was business as usual. And so it remained.

There were no companies dedicated to fighting for the little guy back in 1995. And although they can be found in all 50 states south of the border, only two of them are currently in existence in Canada. All because of a lack of knowledge.

But what if someone wrote a book about them, created a website, and made the info on it available for free? Would the public invest the time to learn and spread the word so all Canadians can one day benefit from this great service? We'll soon find out.

Because this is the book. BuyingaHomeinCanada.ca is the site. And you are the public.

* Real estate commissions are negotiable by law and although 50-50 splits between firms are still common, these percentages can and do vary.

A WORD FROM THE AUTHOR

Dear readers,

What would you say if I told you that buying a house through the agent on the “For Sale” sign is the single biggest mistake a purchaser could make? And that buying that same house through a colleague of that agent, is probably the second biggest?

For years, real estate companies have been offering agency services to sellers; more recently they have started offering agency services to buyers; but no firm has ever offered a real estate education service to the public... that is until now.

My name is Alain Savard and although I don't go around calling myself a home-buying expert, I don't think I could make a good argument to deny the fact. You see, I bought my first investment property in 1990, got my real estate license in 1993, became a broker in 1995, opened the first real estate company for *purchasers only* in Canada in 1996, and represented more than 300 homebuyers on their purchases since I have been licensed. So, whether I like it or not, life has made me a home-buying expert in my local market. And it is as such, that I am coming to you today.

I have been a buyer; I have been a seller; I have been a seller agent; but I have mostly been a buyer agent. Buying a house is the subject I am most knowledgeable about; and it is this knowledge that I will share with you in this manuscript.

A house purchase is probably the single biggest investment you will make in your lifetime. But how much do you honestly know about the buying and selling of houses? Wouldn't it help, if you could quickly get a good, solid grip on what is going on before you even get your feet wet? Of course, it would. For having taught close to 100 live home-buying seminars over the years, I know that real estate is a mystery to a lot of people. And I consider that a big problem.

This is why, in 2007, I decided to create “Buying a Home in Canada”, a specialized website where everything a purchaser would ever want to know about real estate can be found. I built the site for those who, like me, believe in educating themselves before starting out on any project. You people are in for a treat, because I have put everything that I know in here, and that, not only on paper but on video too. That's right. I took this manual and went over it section by section in front of a camera, to give you a different version of the material.

Knowledge truly is power. Knowing how things work will allow you to minimize your risks and maximize your chances of success. What you are about to discover is extremely powerful and yet so simple. It is all common sense. The concepts I explain are not complicated; they are just numerous. That's why I have tried to introduce them in an order that I believe logical and organized. I am curious by nature, but I also like to keep things simple. So I have divided my text in seven distinct sections; and at the end of each, I cut to the chase and tell you what I think is important to remember.

As you can probably imagine, some of the issues I tackle in this manual are highly sensitive, and controversial within the industry. The opinions expressed in here are my own and I apologize in

advance, to those I may offend with my comments. My intent is not to infuriate anybody; it is only to provide you, my readers, with information that I believe ought to be considered before buying a home.

It is also important for me to warn you that since I am not a lawyer, home inspector, or mortgage specialist, **you are not to consider my opinions the rendering of professional advice** – even when it comes to real estate matters – because rules and regulations vary from province to province and sometimes from municipality to municipality. That’s why you must always run things by a local expert – someone that works in your area and is familiar with your local customs.

With this said, most of the differences are small. That’s why the fact that I am coming to you from Nova Scotia and will be using Halifax as my city of reference, does not really affect the relevance of my comments. I would go as far as saying that even residents of the United States can benefit from this knowledge. So, if you are new to Canada, new to home buying, or if it has been a while since you have purchased or sold real estate, reading this guide before you do anything else is, without a doubt, a great step in the right direction.

This manual is packed with information. It took me over 20 years to acquire this knowledge and I think I can realistically pass it all on to you within a week. So please don’t rush anything; take your time. To make your reading more enjoyable, I wrote the book as if I were talking to you directly. I know some subjects will seem a little dry, but don’t give up. In order to get a clear picture of the Canadian real estate landscape, you need every piece of the puzzle.

You should also know, that in order to provide you with the most accurate information, this manual is being updated on a regular basis. So before you start this long read – and especially if you have a paper copy of the manuscript in your hands – take a minute and check the date printed on page two to ensure that you are referring to a fairly recent version.

I have two main goals with this project: the first one is to provide buyers and sellers with a complete, reliable, and up-to-date source of Canadian real estate information. And the second one, is to eventually create a nationwide network of professionals who, like me, believe that the public should know who is who, who does what, and why, when it comes to the buying and selling of houses.

In case you are wondering, I don’t want your money, name, phone number, or email address. This material is available for free; but with one big string attached: *that you tell everyone you know how you managed to become so smart about real estate in such a short period of time.* And that, only if you believe the information contained in this book is worth spreading.

Good reading!

Alain Savard

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Part One:

Financial Considerations

1.1 Buying a Home in 2012-2013

Since you are reading this, then you must be considering a home purchase. You probably have a good job, and your finances are most likely in order. And that is great. But as you know, buying a house is a major financial investment and making a mistake could ruin everything. This is why, I feel it is appropriate for me to begin this presentation by sharing with you three concerns I have about the state of real estate in our country.

The first one, is that our prices are at an all-time high. Recent statistics reveal that, on average, we Canadians, are currently paying over \$350,000 for our houses. It is the highest this number has ever been. Unfortunately, the story is not the same in the United States where this average is still below \$200,000. I know; they have been hit very hard by the financial meltdown of 2008. But seriously, should our homes be selling for almost twice as much as theirs? Our dollar is at par; and we are certainly not earning double what they make. So why such a huge difference?

I don't think we have to worry about a crisis similar to the one that hit them because our mortgage systems are different. But what worries me, is the fact that we may have a real estate bubble on our hands. House prices have gone through the roof in the last several years and there is no way they can keep this pace up. Some people actually believe that we may have swung too high and that a market correction is just around the corner. Is that what is in the cards for us? Your guess is as good as mine. So that, is concern number one.

Concern number two, is the fact that we, Canadians, are now carrying a level of debt that is higher than what the Americans were carrying before trouble hit. Even our government is worried about this; which is the reason it recently made it more difficult for people to qualify for a mortgage.

Concern number three, is the fact that because of the recent financial problems, countries around the world have had no other choice but to reduce interest rates to try to protect their economies. But when world markets eventually recover, rates will have to go back up. Our government is very concerned about this one too, because it knows that a lot of people are already struggling financially. What is going to happen to them when they are faced with renewing their mortgage at a significantly higher rate? Some will be forced to sell. And if too many people try to unload their real estate at the same time, the market could flood and then crash.

I know it is a very pessimistic way to start, but I can't ignore these facts. Buying a home in 2012-2013 is far from a guaranteed investment. I personally think there will eventually be a price adjustment. Hopefully, it will be in the form of no, or very little appreciation, over a period of several years. This way, nothing dramatic would happen and we wouldn't find ourselves owing more money on our mortgages than our houses are worth – like it is currently the case for millions of Americans. Are we going to be this lucky?

We have a combination of record-high prices and record-low mortgage rates. Your timing is therefore less than ideal. And this is why I think you should proceed with caution. Take your time; don't rush into anything. There will always be homes for sale. Gathering information is probably the best thing for any buyer to do right now.

1.2 Owning versus Renting

Did you know, that there is no way you can own and maintain a house for the same amount that you spent on rent every month? To prove it, I am going to compare the cost of owning a modest home worth \$185,000, with that of renting a 2-bedroom apartment. I'll assume that we are carrying a rounded-up mortgage of \$180,000 at a rate of 5.5% repaid over a period of 20 or 25 years.

Figure 1. Rental Costs versus Owning Costs

	<u>Rental</u>	<u>25-year</u>	<u>20-year</u>
Mortgage/Rent	\$1,000.00	\$1,100.00	\$1,230.00
Taxes	\$ 0.00	\$ 175.00	\$ 175.00
Heat	\$ 0.00	\$ 200.00	\$ 200.00
Power	\$ 50.00	\$ 100.00	\$ 100.00
Insurance	\$ 25.00	\$ 50.00	\$ 50.00
Extras	\$ 25.00	\$ 100.00	\$ 100.00
	-----	-----	-----
Total	\$1,100.00	\$1,725.00	\$1,855.00

Since rental costs vary across the country, I picked numbers that are somewhat realistic in my area.

The rental figures are easy to understand: our rent includes heat and I added \$100 for power, tenant insurance, coin laundry, underground parking, etc., for a grand total of \$1,100 per month.

My yearly house-costs are also very straight-forward: \$2,100 for taxes; \$2,400 for heat; \$1,200 for power; \$600 for insurance and \$1,200 (a bare minimum) for repairs, maintenance, etc. I'll refer back to these numbers in the next few sections, but as you can already see; it is not even close.

Nobody can buy a house with that size of a mortgage and maintain it for the same amount that they spend on an apartment. It is impossible.

I also want you to note, that even if we had bought this \$185,000 house for cash and were living in it mortgage-free, it would still cost us \$625 per month to carry, because we'd still have to pay taxes; heat; power; insurance; maintenance and repairs. And that is only \$475 less than the apartment!

So even without a mortgage, homeownership is no free lunch.

1.3 Money “Wasted” on Rent

There is no denying it: rent money is gone forever. But do you realize that so is most of the money supposedly “invested” in a home?

Looking at our monthly house costs, notice that the \$625 spent on taxes; heat; power; insurance and maintenance is, in a way, just like rent, because we will never see those dollars again. And if that wasn’t already bad enough, we homeowners waste an even bigger amount of money every month: the interest portion of our mortgage payment.

In the early years of a mortgage, the better part of each payment we make is paid in interest to financial institutions and only whatever is left, is used to repay our debt. Since we slowly reimburse our loan with every payment, a slightly lower amount of interest is owed the following month and a little more money goes to reduce the balance on the mortgage.

Using the amortization schedules in Figure 2, in the first 5 years of the 25-year mortgage at exactly \$1,098.70 per month, we would spend a total of \$65,922, with \$46,459.82 of it lost to interest and only \$19,462.18 used to repay our debt. This means that on average, over that 60-month period, \$774.33 out of each monthly payment is wasted on interest and only \$324.37 is used to reduce the mortgage. Similarly with the 20-year mortgage, \$754.86 out of every \$1,231.90 payment is lost to interest and \$477.04 is put against the debt.

We’ve already established that the \$625 spent on utilities; taxes; and maintenance is like rent; and now we need to add to it the interest portion of the mortgage payment to finally realize that **in the first five years of a 25-year mortgage, over 80% of the money we supposedly invest in a house is no different than rent money. Because, it too, is gone forever!!!!**

So:

1. With owning at \$1,725 per month, \$1,401 is “wasted” and \$324 goes to work.
2. With owning at \$1,855 per month, \$1,378 is “wasted” and \$477 goes to work.
3. With renting at \$1,100 per month, \$1,100 is “wasted” and nothing goes to work.

Owning a house is expensive, but its value appreciates over time. Unfortunately, this appreciation is unpredictable. Real estate can go 10 years with very little change and then explode. People who owned homes between 2000 and 2012 were in for a great ride. But market conditions have changed and several leaner years may lie ahead of us.

For your information, amortization schedules like the ones on the next page are readily available over the internet; just make sure you use a calculator provided by a Canadian lender since American financial institutions are allowed to calculate interest in a way that is slightly more beneficial to them.

Figure 2. Amortization Schedules

Mortgage 1				Mortgage 2		
Mortgage Amount		180,000.00		Mortgage Amount		180,000.00
Amortization/Rate		25 years/5.50%		Amortization/Rate		20 years/5.50%
Monthly Payment		1,098.70		Monthly Payment		1,231.90
Payment	Interest	Principal	Mtg Balance	Interest	Principal	Mtg Balance
1.	815.70	283.00	179,717.00	815.70	416.20	179,583.80
2.	814.42	284.28	179,432.72	813.82	418.08	179,165.72
3.	813.13	285.57	179,147.15	811.92	419.98	178,745.74
4.	811.84	286.86	178,860.29	810.02	421.88	178,323.86
5.	810.54	288.16	178,572.13	808.11	423.79	177,900.07
6.	809.23	289.47	178,282.66	806.19	425.71	177,474.36
7.	807.92	290.78	177,991.88	804.26	427.64	177,046.72
8.	806.60	292.10	177,699.78	802.32	429.58	176,617.14
9.	805.28	293.42	177,406.36	800.37	431.53	176,185.61
10.	803.95	294.75	177,111.61	798.42	433.48	175,752.13
11.	802.61	296.09	176,815.52	796.45	435.45	175,316.68
12.	801.27	297.43	176,518.09	794.48	437.42	174,879.26
13.	799.92	298.78	176,219.31	792.50	439.40	174,439.86
14.	798.57	300.13	175,919.18	790.51	441.39	173,998.47
15.	797.21	301.49	175,617.69	788.51	443.39	173,555.08
16.	795.84	302.86	175,314.83	786.50	445.40	173,109.68
17.	794.47	304.23	175,010.60	784.48	447.42	172,662.26
18.	793.09	305.61	174,704.99	782.45	449.45	172,212.81
19.	791.71	306.99	174,398.00	780.41	451.49	171,761.32
20.	790.32	308.38	174,089.62	778.37	453.53	171,307.79
21.	788.92	309.78	173,779.84	776.31	455.59	170,852.20
22.	787.51	311.19	173,468.65	774.25	457.65	170,394.55
23.	786.10	312.60	173,156.05	772.17	459.73	169,934.82
24.	784.69	314.01	172,842.04	770.09	461.81	169,473.01
25.	783.27	315.43	172,526.61	768.00	463.90	169,009.11
26.	781.84	316.86	172,209.75	765.90	466.00	168,543.11
27.	780.40	318.30	171,891.45	763.78	468.12	168,074.99
28.	778.96	319.74	171,571.71	761.66	470.24	167,604.75
29.	777.51	321.19	171,250.52	759.53	472.37	167,132.38
30.	776.05	322.65	170,927.87	757.39	474.51	166,657.87
31.	774.59	324.11	170,603.76	755.24	476.66	166,181.21
32.	773.12	325.58	170,278.18	753.08	478.82	165,702.39
33.	771.65	327.05	169,951.13	750.91	480.99	165,221.40
34.	770.16	328.54	169,622.59	748.73	483.17	164,738.23
35.	768.68	330.02	169,292.57	746.54	485.36	164,252.87
36.	767.18	331.52	168,961.05	744.34	487.56	163,765.31
37.	765.68	333.02	168,628.03	742.13	489.77	163,275.54
38.	764.17	334.53	168,293.50	739.91	491.99	162,783.55
39.	762.65	336.05	167,957.45	737.68	494.22	162,289.33
40.	761.13	337.57	167,619.88	735.44	496.46	161,792.87
41.	759.60	339.10	167,280.78	733.19	498.71	161,294.16
42.	758.08	340.64	166,940.14	730.93	500.97	160,793.19
43.	756.52	342.18	166,597.96	728.66	503.24	160,289.95
44.	754.97	343.73	166,254.23	726.38	505.52	159,784.43
45.	753.41	345.29	165,908.94	724.09	507.81	159,276.62
46.	751.85	346.85	165,562.09	721.79	510.11	158,766.51
47.	750.27	348.43	165,213.66	719.48	512.42	158,254.09
48.	748.70	350.00	164,863.66	717.16	514.74	157,739.35
49.	747.11	351.59	164,512.07	714.82	517.08	157,222.27
50.	745.52	353.18	164,158.89	712.48	519.42	156,702.85
51.	743.92	354.78	163,804.11	710.13	521.77	156,181.08
52.	742.31	356.39	163,447.72	707.76	524.14	155,656.94
53.	740.69	358.01	163,089.71	705.39	526.51	155,130.43
54.	739.07	359.63	162,730.08	703.00	528.90	154,601.53
55.	737.44	361.26	162,368.82	700.60	531.30	154,070.23
56.	735.80	362.90	162,005.92	698.20	533.70	153,536.53
57.	734.16	364.54	161,641.38	695.78	536.12	153,000.41
58.	732.51	366.19	161,275.19	693.35	538.55	152,461.86
59.	730.85	367.86	160,907.34	690.91	540.99	151,920.87
60.	729.18	369.52	160,537.82	688.46	543.44	151,377.43
Total:	46,459.82	19,462.18		45,291.43	28,622.57	

1.4 Mortgage Basics

A mortgage is a registered claim against a property. Mortgages are huge loans repaid over several years. The total number of years it would take to fully repay a mortgage is referred to as its **amortization period**. Common amortization periods are 10; 15; 20; and 25 years.

In a mortgage transaction, a lender loans us money in exchange for the legal right to take our house over and sell it, if we default on our payments. The mortgage contract specifies all the details of the agreement and as long as we respect them, we get to maintain possession of our home.

The details of a mortgage contract are usually renegotiated several times over the life of the mortgage. The amount of time between renegotiations is referred to as the **term** of the mortgage. Common terms are 6 months, 1; 2; 3; 4; 5; 7 and 10 years. It is up to the borrower to decide on the length of the term, but the longer the amount of time between renewals, the higher the interest rate on the loan.

A **conventional mortgage**, refers to a loan that doesn't exceed 80% of the value of a home. Anything above 80% and up to a maximum of 95% of the total value is called a **high-ratio mortgage** and **mortgage loan insurance** (MLI) sold by companies like the Canada Mortgage and Housing Corporation (CMHC) must be purchased. It is not up to us to decide if we want MLI insurance or not; it is the law.

The size of the MLI premium normally depends on the insurer and the percentage of the loan. A 95% mortgage amortized over 25 years (lowered from 30 years in July 2012), the maximum in both categories, is the most expensive with a CMHC premium of 2.75% of the amount borrowed.

This means that on a \$200,000 purchase, the maximum mortgage available is \$190,000 (95% of the value of the home); and the **one-time** CMHC premium would be \$5,225 (2.75% of \$190,000).

Fortunately, borrowers are **not required** to pay the MLI premium in cash up-front if they don't have that extra money available; and are legally allowed to add the amount to their mortgage. So, in this example, our total mortgage debt would stand at \$195,225 (\$190,000 + the \$5,225 premium).

For your information, if you live in Ontario or Quebec, be aware that MLI premiums are subject to your provincial sales tax. That tax must be paid at closing and cannot be added to your mortgage.

1.5 25 Years versus 20 Years

Mortgage details get renegotiated in their entirety at the end of each term. At that time, three options are available to borrowers. The first one is to repay the balance of the mortgage in its entirety with cash; the second is to stay with the same lender and renegotiate the paperwork; and the third is to pay off the old mortgage and start a brand new one with another financial institution.

Unless you have won the lottery and are able to pay the whole thing off, chances are you'll end up with a mortgage with a new interest rate, new term, and new amortization period. That's right, even the amortization period. This means that you could decide, at that time, to turn what initially started out as a 20-year mortgage into a 10-year plan; or go the opposite way and make it a 25-year project!!!

In 2006, CMHC introduced longer amortization periods of 30; 35; and 40 years. In section 1.1, we saw that choosing to repay a \$180,000 mortgage at 5.5% over 25 years instead of 20 results in monthly savings of \$133 or almost \$1,600 annually. Just like credit cards, longer amortizations are great financial tools, **but only in the hands of people with good money-management skills.**

What most people don't realize is that, in the end, it doesn't matter what amortization period they choose, because a 25-year mortgage is only going to be a 25-year mortgage if they don't throw money at it. Most mortgages come with pre-payment options that make it possible to repay the loan in less than 10 years without penalty.

How fast you pay your mortgage off is therefore, totally up to you; regardless of the amortization period you choose.

My favourite pre-payment option is the annual lump sum. Every year, borrowers are allowed to repay up to 20% (depending on the institution) of the original amount of their mortgage without penalty. With a \$180,000 mortgage and a maximum set at, say 15%, we would therefore be able to reduce it by as much as \$27,000 (15% of \$180,000) once a year, every year, until there is nothing left.

So, why commit to a 20-year mortgage and its higher payment, when you can pay less throughout the year and make it all up in one big shot in the end?

The amortization period only serves to set the size of our mandatory payment. We are not obligated to make that small payment – we can pay more. There are other ways to do this if the lump sum payment option doesn't work for you; like doubling-up on a payment every now and then, paying on a weekly or bi-weekly schedule instead of once a month, etc. Just ask your lender.

With our **40-year mortgage** (product that does not require MLI and is available to those who borrow less than 80% of the value of a home), my wife and I save hundreds every month. **We keep this money** and when our reserve fund gets big enough, we decide on what to do with it. Some of the options we always consider are, of course, lowering the balance of our mortgage, but also making RRSP contributions, financing a home renovation, getting rid of any bad debt, and so on. Our decision is always based on what makes the most financial sense for us at the time.

People often mistakenly believe, that because a \$180,000 mortgage at 5.5% is so much bigger than a \$10,000 car loan at 7%; a \$7,000 line of credit at 8.5%; or a \$3,000 credit card balance at 19%; that it is the debt they must try to pay off first. **Nothing could be further from the truth.**

In reality, a \$180,000 mortgage is 180,000 small \$1 loans and so are all of our other debts: just a bunch of \$1 loans at various rates of interest.

If you add these four amounts, they total \$200,000 and should therefore, be considered 200,000 small \$1 debts that need to be paid off one-by-one; **starting with the ones that carry the highest rate of interest** – of course. It therefore, becomes obvious that we would pay a lot less in interest every month if instead of those 4 debts at various rates, we only had a \$200,000 mortgage at 5.5%.

Let's do some quick math to get a feel for the size of that difference. At 5.5% per year, the annual interest on a \$200,000 mortgage is \$11,000 or **\$916.67** per month (\$11,000 divided by 12).

I will now repeat this process with the 4 debts to see what we get in the end. At 5.5% per year, the annual interest on a \$180,000 mortgage is \$9,900 or \$825 per month; the annual total on the \$10,000 car loan at 7% is \$700 or \$58.33 per month; the total on the \$7,000 line of credit at 8.5% is \$595 or \$49.58 per month; and finally the annual charge on the \$3,000 credit card balance at 19% is \$570 or \$47.50 per month for a total of **\$980.41** (\$825 + \$58.33 + \$49.58 + \$47.50).

And that is \$63.74 more (\$980.41 - \$916.67) than with the \$200,000 mortgage at 5.5% alone.

(Please note, that the formula used by Canadian financial institutions to calculate monthly interest is more complicated than mine; but the good thing is that it yields numbers that are slightly lower.)

It would therefore be a good money-management strategy in this example, to make the minimum payment on the mortgage, car loan, and line of credit (to avoid penalties) and throw every penny available at the \$3,000 credit-card balance at 19% until it has been paid off in full; and to then repeat the process with the \$7,000 line of credit at 8.5%; and finally with the \$10,000 car loan at 7%. Only after those three have been paid off in full, should anyone **consider** making more than the minimum payment on the mortgage. It makes perfect sense; at 5.5%, these small \$1 loans are the least expensive to carry and should therefore be the ones that get repaid last.

I bolded the word “consider” in the above paragraph, because there comes a time when we must all ask ourselves if paying off a cheap debt makes more financial sense than say, making an RRSP contribution. And what about doing both? That is, making a contribution and then putting the income tax return against the mortgage. Would that be a good move? The answer depends on a lot of things, which vary for everyone. And that's when a financial expert needs to be brought in.

As you can see, opting for a longer amortization period can help you better your financial picture by allowing you to select where the money you save can be best used. Having a smaller mortgage commitment could also come in handy during a financial crisis and hopefully buy you enough time to get back on your feet in the event of an injury or a period of unemployment.

Unfortunately, there are down-sides to longer amortization periods. One of them, is the risk that people may spend the savings instead of using them to pay off high-interest debts. Another one, is

that they give access to homeownership to people who couldn't afford it without them. And it was to prevent these higher-risk purchasers from entering the market, that new rules were recently introduced. As a result, 30, 35 and 40-year mortgages are now only available to people with a 20% or greater down payment and 100% financing was eliminated altogether.

1.6 The Cost of Buying

In this section, I will talk about the costs associated with buying a house and provide you with an example, where I will break them all down.

The purchase price of a property is, of course, a buyer's biggest expense; but other costs and financial adjustments are necessary to complete a real estate transaction.

Land Transfer Tax (LTT): A tax on home buying in place in British Columbia; Manitoba; Ontario; Quebec; New Brunswick; PEI and some municipalities in Nova Scotia. It is sarcastically called the "Welcome Tax" in the Province of Quebec, because of Jean Bienvenue – the man who was blamed for its introduction – since his last name ironically translates to "welcome" in English. And "Bienvenue's Tax", almost immediately became the "Welcome Tax".

The formula to calculate the LTT uses percentages and the purchase price of the property with a net result that usually varies between 0 and 2% of what buyers pay for the house. You should also know, that those buying in the city of Toronto pay not one, but 2 LTTs: the Ontario Land Transfer Tax **and** the Toronto Land Transfer Tax. **For your information, first-time homebuyers are entitled to some kind of break on the LTT in certain jurisdictions; but unfortunately not in mine.**

Total Legal Expenses: Cost of hiring a real estate lawyer/solicitor/notary/attorney (whatever they are called in your area) to handle the legal side of the transaction. **Included in my total legal expenses are: the lawyer's basic fee; the cost of certificates; recording fees; title insurance; disbursements; taxes; etc.** It is important to ensure that you compare apples with apples when shopping around. A low quote may only represent the lawyer's basic fee and could cause you to fall off your chair when all of the other costs are factored in. That's why it is important to know what the figure you are given includes and to also remember that going with the cheapest real estate lawyer in town, may not be in your best interest.

Location Certificate/Survey/Title Insurance: Depending on the situation, there may be a need to get a surveyor to produce a Location Certificate (drawing of the property boundaries showing foundation, driveway, fence, etc.) and/or put survey pins at each corner of the property. The buyer pays for it in Nova Scotia, but it was the opposite the last time I bought in Quebec. In Halifax, a new certificate costs upwards of \$600 and a full survey with pins can easily reach \$1,000. But this expense may be avoided with the purchase of title insurance. Lawyers don't all seem to agree when it comes to title insurance as a substitute; so, I recommend you discuss this issue with your lawyer before making a decision.

Home Inspection and other tests: Cost of getting the house checked by a professional and that of conducting various other tests (as required) including radon gas; well water; sewer line scan; etc.

Tax Adjustment: Because parts of Property and School Taxes are sometimes paid in advance, it is customary for buyers to reimburse sellers for anything that was pre-paid.

Fuel Adjustment: Whenever oil and/or propane are involved, it is common practice in my area for sellers to get reservoirs filled up and for buyers to pay for full tanks on closing.

In the first section, I talked about owning a \$185,000 house with a \$180,000 mortgage. To keep things simple, I will stick with it and provide you with a breakdown of all closing costs, if the purchase took place in Halifax.

Figure 3. Buying Costs for a \$185,000 Home in Halifax

Purchase Price:	\$185,000	
Land Transfer Tax:	\$ 2,775	(called Deed Transfer Tax: 1.5% of the purchase price)
Total Legal Fees:	\$ 1,350	(all in including title insurance)
Location Certificate:	\$ 600	(if needed)
Home Inspection:	\$ 450	
Radon Test:	\$ 150	
Sewer Line Scan:	\$ 200	
Tax Adjustment:	\$ 1,050	(worst case scenario, 6 months of taxes)
Fuel Adjustment:	\$ 1,000	(full tank of heating oil)
Water Test:	\$ 150	(for a good thorough well water test)
Tax on MLI	\$ 0	(Ontario and Quebec residents only)

Total:	\$ 192,725	

Since \$175,750 is the largest mortgage available (95% of \$185,000), there is \$16,975 missing (\$192,725 - \$175,750). And that amount is the minimum you would need available, in order to buy that home in Halifax.

Buyers need to save money to purchase a house; as we just saw, financing everything in the mortgage is not an option. Some of that money can be borrowed or put on a credit card, but ideally it should all be cash that you have saved up. Again, costs vary from province to province and city to city. But these estimates should be in the right range nationally.

Unfortunately, the financial bleeding is not over. In the first two years of homeownership you will incur a bunch of other expenses that I call **set-up costs**. They include: moving expenses; hook-up fees for telephone; cable; internet; etc., cost of paint; cost of fixing the small things that came up during the home inspection; cost of curtains; blinds; furniture; appliances; lawn mower; garden hose; outdoor BBQ; patio furniture; backyard shed; wheelbarrow... the list is endless.

This is why it is practically impossible to correctly estimate how much will be needed: some deals include a few of the items above; and some include absolutely nothing (often the case with brand-new homes); some buyers are already well-equipped; and others need everything.

The money needed to buy a home can therefore, be broken down in 4 different categories:

- 1. Five percent or more for the Down Payment
- 2. Two to four percent on fees (LTT, Legal, LC/Survey/TI, Inspection, Tests, etc.)
- 3. One percent on adjustments of monthly living expenses (Property Taxes + Fuel)
- 4. One to five percent or more on Set-up Costs

And out of those 4, only the fees are true buying costs. I hope you noticed that the MLI is missing from the above list. Because they are allowed to bury this expense in their mortgage, a lot of people forget about it. But that's a mistake, because this thing is huge at over \$5,000 for those with only a 5% down payment. Buying is therefore, a lot cheaper for those who put 20% down.

I tell the buyers that I represent that they should, at the very least, have a 5% down payment plus another 4% to cover the fees and adjustments for a total of 9% of the purchase price in cash; although 11% would be a better figure when considering set-up costs.

For the sake of this example, I am going to round up the money needed to buy this \$185,000 house at \$16,975 to close, plus another \$3,025 in set-up costs, for a grand total of \$20,000 or 10.8% of the purchase price.

1.7 Owning is not for Everyone

The most important condition that has to be met before considering a home purchase is to be able to afford homeownership. If you can't afford to buy and properly maintain a house, then it should not matter how badly you may want or need one. It is that simple.

1.7.1 How Much can you Afford?

Financial institutions use various calculations to determine if we qualify for a mortgage or not; and if so, for how much.

Gross Debt Service ratio (GDS): This first formula is a rule-of-thumb that states that our monthly housing expenses should not exceed 39% of our gross monthly income (last modified in July of 2012). What is considered a housing expense varies between lenders, but they all include the mortgage payment (principal and interest) plus property taxes. Some add heating costs to the equation; others include the cost of fire insurance and/or electricity.

Total Debt Service ratio (TDS): The second formula takes a more global approach to personal finances by considering all of our other debts. And to stay within the guidelines, those total monthly obligations including housing expenses should be less than 44% (July 2012) of our gross monthly income. These other debts include: credit cards; lines of credit; student loans; car loans; etc.

Example: Let's plug in some numbers to see what this would mean for a couple with a combined gross annual income of say, \$72,000 or \$6,000 per month. At 32%, their GDS ratio requires their

monthly housing expenses to be less than \$2,340 (39% of \$6,000). So if the lender includes principal, interest, taxes, and heat or PITH in this calculation, then those four need to add up to less than \$2,340 and their TDS ratio has to be below \$2,640 per month (44% of \$6,000).

But if these people had absolutely no debts, then a lender would most likely allow them to spend more than \$2,340 per month on housing since they would still be within their total limit of \$2,640. Conversely, if they were already making \$600 per month in payments on various other loans, then the lender would be forced to lower the amount they can spend on housing to \$2,040 in order to stay below their \$2,640 total limit.

If you have never done this exercise before, I suggest you do, to see how you rate and how much a financial institution is likely to lend you given your situation. The lower your total debt service ratio; the better your chances of being offered a good mortgage rate – **because lenders love safe loans.**

It is by playing with these numbers that a lot of first-time buyers with no debts but also no cash manage to get into homeownership. Knowing that up to 44% of their gross monthly income can be used to service housing expenses and other debts, they are in a position to borrow the money they need for their down payment and closing costs.

Despite the common belief that it is everyone's dream to own their own house, I just don't buy it. We all know people who can afford to buy, but seem perfectly happy with renting and having no responsibility or property maintenance to do. Unfortunately, these folks are often harassed by well-meaning friends and family members urging them to stop "wasting" their rent money.

In my opinion, buying a home for investment reasons only is a mistake. There are better investments out there. The investment side of homeownership is not good enough by itself to justify the extra monthly cost and the maintenance, shoveling, and mowing that come with it. Buyers need better reasons.

Some of them could be personal like being tired of your noisy neighbours; wanting more space; a garden; basement; garage; backyard; and so on. Owning your own home could also be a sign of personal accomplishment. There also are circumstantial reasons that make buying an option worth investigating like having small children and wanting them to have more space to play; owning an active pet that makes living in an apartment a nightmare; or it could also be the caring for an elderly or handicapped relative where apartment living just doesn't work.

For getting into homeownership to make sense to me, buyers must first be able to comfortably afford it and second, either badly want a house or badly need one. When I sense that those two components are not there; I strongly suggest to potential clients that they reconsider.

1.8 Making Money with Owning a Home

In this section, I want to bring to your attention what needs to happen for a house purchase to truly qualify as an investment.

Deducting the purchase price from the amount obtained upon resale is too simplistic. As we have already seen, there are thousands of dollars in various fees and expenses involved with buying and selling real estate and those have to be factored in. They are just too substantial to ignore.

Since we have already examined the costs associated with the purchase of a \$185,000 home in the Halifax area, I will stick with it and see how much we would have to resell the place for, in order to break even. For the sake of this example, I am going to assume that we choose a 25-year mortgage at 5.5% for 5 years and will use realistic estimates for all other costs.

Scenario 1: We come into this purchase with \$16,975 but for some reason, things don't work out (job loss, relationship problems, etc.) and we are forced to resell the house within a month for the same \$185,000, to go back to renting.

Your initial gut feeling may be that we got our money back and didn't lose a whole lot. But this was a total disaster. Look at all the money that was wasted:

Buying Costs:	- Mortgage Loan Insurance:	\$ 5,185	
	- Deed Transfer Tax:	\$ 2,775	
	- Legal Fees:	\$ 1,350	
	- Inspection + Tests:	\$ 750	

	- Total:	\$10,060	
Selling Costs:	- Real Estate Fees:	\$10,640	(5% of \$185,000 + 15% HST)
	- Legal Fees:	\$ 750	
	- Mortgage Penalty:	\$ 2,450	(3 months of interest)

	- Total:	\$13,840	

We came in with \$16,975 and after spending \$23,900 on various buying and selling costs – or 13% of the purchase price – one month later we come out of it with a \$6,925 debt.

1.8.1 Closed Mortgage versus Open Mortgage

In order to limit the amount of information I gave you in the section on mortgage basics, I chose not to tell you about the difference between an open mortgage and a closed mortgage and that between a variable-rate mortgage and a fixed-rate mortgage. I will save the variable versus fixed discussion for later, but will settle the open versus closed right now.

Closed mortgages are the most popular, because they come with a lower rate. The only thing, is that you will be charged a penalty if you ever repay a closed-mortgage before the end of its term. So if you pick a 5-year term, the bank is expecting 5 years of payment from you. If you repay early, the penalty you will incur is normally 3 months of interest or sometimes it is the amount the bank will lose by taking your money early and loaning it back at a lower rate if rates have gone down. The highest of the two, is the penalty you will be charged.

Open mortgages don't have this penalty feature and can be paid off at any time. That's why they come with a higher rate. Borrowers get charged for the privilege.

So, the \$2,450 mortgage penalty shown in Scenario 1 is three times the amount of interest charged on the very first mortgage payment ($3 \times \$815.70$) as per the amortization schedule in section 1.2.

As you can see, we would have saved ourselves \$5,185 if we had put 20% down and had avoided MLI altogether. We would have also saved \$10,640 by selling the house privately – but that's a lot easier said than done. So, the very best outcome given this unfortunate turn of events, would have been a loss of \$8,075. I exclude the possibility of having picked an open mortgage to avoid the penalty in anticipation of what was to come since nobody goes into a purchase thinking that they may be out of it a month later.

Scenario 2: We resell the home for \$195,000 exactly 5 years later.

After adding the MLI to our mortgage upon purchase, let's assume that our total debt is \$180,000. The real amount is \$180,935 (95% of \$185,000 or \$175,750 + \$5,185 MLI) but \$180,000 is close enough and it gets reduced to \$160,540 after 5 years of payment (see amortization schedule).

Selling Costs:	- Real Estate Fees:	\$ 11,200	(5% + 15% Nova Scotia HST)
	- Legal Fees:	\$ 750	
	- Mortgage Penalty:	\$ 0	(the term was over, no penalty)

	- Total:	\$ 11,950	
Net outcome:	- Sale Price:	\$195,000	
	- Selling Costs	- \$ 11,950	
	- Mortgage Balance	- \$160,540	

	- Total:	\$ 22,510	

So, after 5 years of payments and low real estate appreciation (only 1.1% per year), we barely made any headway since we got into this with \$16,975 and are now coming out of it with \$22,510.

The idea behind Scenario 1, was to show that **on the day they take possession of their home, those with a 5% down payment start off approximately 13% in the hole** and their venture into real estate will only become an investment when they finally manage to climb out of it.

The idea behind Scenario 2, was to show that even over a significant period of time, the success of any real estate investment hinges on market appreciation. And a 1.1% increase in value every year is clearly not good enough.

1.9 Making Money with Renting an Apartment

Now that we've looked into what it takes to make money with real estate, I'd like to show you how renting an apartment can turn life-long tenants into millionaires.

1.9.1 Market Impact on a Diversified Portfolio

But before I begin, I must tell you about an amazing article I read in the Fall 2008 edition of *The Advisor*, a publication by Altamira Financial Investments (now National Bank Financial Group).

This piece was written to show that it pays to diversify and stick to an investment plan. For this, the authors went back 30 years and looked at what would have happened to a portfolio with money invested the following way: 25% in Canadian Equities with annual returns matching the S&P/TSX Index; 30% in Global Equities with rates matching the MSCI World Index; and 45% in Bonds appreciating at the same rate as the DEX Universe Bond Index.

This may seem very complicated, but such a mix of assets is typical of any diversified mutual fund.

Although they never said which 30-year period was considered, I am guessing that it was probably from January 1, 1978 to December 31, 2007. Regardless, the results was impressive.

Using their 30 years of data and starting with a different month every time, they studied all 349 different one-year periods, all 325 three-year periods, all 301 five-year periods, all 241 ten-year periods, and all possible 61 25-year periods.

The very best one-year stretch among the 349 considered, generated a 51.9% yield. The average return was 11.5% per year, and the very worst 12-month result saw the portfolio decrease by 13.1%.

Out of 325, the best 36-month span during those 30 years generated 27.8% per year; the average was 11.3% per year and the very worst was negative 4.9% per year for three straight years.

Out of all the five-year periods considered: best return 26.0% per year; average return 11.4% per year; and the very worst only 1.3% per year. But note that a positive return was achieved in each and every one of the 301 60-month periods they studied.

Out of the 241 10-year periods: the best return was 15.9% per year; the average return was 11.4% per year; and the worst return 5.4% per year.

The most revealing part for me, was when they looked at the 61 possible 25-year periods (each separated by at least one month) in that 30-year span. The very best such stretch generated 12.1% per year; the overall average was 11.3% per year, and the very worst 10.2% per year.

So, if you had invested \$10,000 in a fund with such a mix on January 1, 1978, and left it there, growing untouched; it would have been worth a whopping \$248,230 thirty years later on December 31, 2007, if we use the average 11.3% per year return for each of those 30 years.

This 11.3% per year may look great; but it would have been a roller coaster of a ride. At one point, our balance would have shrunk by the equivalent of 4.9% per year for three straight years and grown by only 1.3% per year over one 5-year stretch.

The message they were sending with this article, was that boom periods as well as crash times usually cancel themselves out in the long run and those who stay invested the whole time, get sound average returns in the end. If you are like me, I'd take that 11.3% per year for the next 30 years in a heart beat, if I could sign up for it right now.

With this said, here's what I would do if renting worked for me: Instead of buying a house for real, I would only pretend that I did. And for the next 25 years, I would spend \$1,725 per month just like the homeowner with the 25-year mortgage with \$1,100 on rent and \$625 invested in my RRSP.

I will now run some realistic estimates to try to determine which strategy would work best: buying a \$185,000 house at \$1,725 per month and paying off its mortgage or renting at \$1,100 and investing the \$625 difference in an RRSP.

First, what will that \$185,000 house be worth 25 years from now? Nobody can accurately predict this, but let's plug in some realistic numbers to see what comes out. I forget who published this study, but I remember reading somewhere that houses in Canada had apparently appreciated by 5.3% annually between the years 1981 and 2006.

Using the same 5.3% annual rate of increase, **that \$185,000 home should be worth \$672,800 twenty-five years from now** – doubling in value every 13 or 14 years which sounds about right. So, at that point, I would have a house worth \$672,800 that is all paid for.

Let's now do the same thing with my RRSP. Since I don't buy the house, it means that I get to keep the \$16,975 I would have needed to go through with the purchase. Starting with \$16,975, I add the \$625 that is left after paying for my apartment every month for the next 25 years. This represents an annual contribution of \$7,500 (12 x \$625) which would generate an income tax return of say, \$2,500 that I also invest in my RRSP for a total contribution of \$10,000 per year.

Assuming that I religiously invest this money in a balanced mutual fund with a mix similar to the one in the article, then it would be reasonable to expect the same average return of 11.3% per year.

So I start with \$16,975 and add \$625 every month for 300 months. Using a compound interest calculator and plugging in the 11.3% yearly return, this portion of my investment would now be worth \$1,199,053. On top of that, I must add my 24 income tax returns of \$2,500, which, if invested at the same rate, would now be worth \$296,920. **For a grand total of \$1,495,973 or \$800,000 more than the value of my house if I had bought instead!!!**

Of course, nobody knows for sure how much a house will be worth 25 years from now or what kind of return a diversified portfolio is going to generate over the years. But the numbers I used were realistic and so should my results be.

This therefore, clearly demonstrates that if you are going to spend \$1,725 each month on housing, you are probably going to come out ahead financially by renting at \$1,100 and investing the other \$625 than putting all of your eggs into a house.

So, if you are happy with renting, consider yourself lucky. You can now start putting money away in your RRSP and will have between 20 to 30 years to come to grips with the fact that one day you will be a millionaire.

Starting with \$16,975 and by adding \$625 per month and your annual \$2,500 income tax return, at 12% per year, you would become a millionaire in your 21st year; at 10% per year, it would happen in your 23rd year; at 8% per year, you'd have to wait until your 27th year of investing, and at only 6%, it would take until the 31st year.

But as you can see, no matter how you cut it, if you stick with the plan, never touch the money, and keep making your monthly investment regardless of what the market is doing, it would only be a matter of time before you reach the milestone.

Not bad for someone who is supposedly wasting his or her money on rent wouldn't you say?

So, if renting works for you; don't let friends, relatives, or real estate salespeople talk you out of it. Yes, owning a home is killing two birds with one stone. You get a place to live and an investment. With renting, you get a maintenance-free shelter but no investment. **So start one.** And building a huge RRSP is your very best option because the money invested in it can grow without any taxes paid until it is withdrawn.

By the way, I used National Bank Financial Group as an example, because I stumbled upon an article that they published. All you really need to remember is that a well-diversified portfolio should generate sound returns over the long term, regardless of the company that is managing it.

1.10 Buying a Condo versus Renting

I know a lot of you may not be interested in buying a home because of the maintenance and upkeep that is associated with it. And this is why a condo seems to make sense.

Before I tell you what I think of this option, I must start by explaining that the term condominium refers to a form of ownership where each member owns a specific unit of a project, as well as a share of all its common elements such as hallways; elevators; parking lots; the exterior of the buildings; landscaped areas, etc.

So, when someone says that they own a condo, they mean that they are one of the many owners of a real estate project and have the exclusive use of some part of it. In most cases, they are referring to an apartment in a high-rise complex, but a condominium unit could also be in the form of a detached or semi-detached home or a townhouse.

The most common kind of condo is by far the apartment in a high-rise complex. And because condos are usually a lot smaller than houses, their price makes them an interesting alternative to renting an apartment. But is it a good move?

There are several things to consider before committing to a condo purchase.

First, it is important to understand that it is a business venture. You become part-owner in a large project and could reap some benefits, but also suffer painful setbacks.

Second, condominium projects come with a series of rules and regulations that every owner must respect. It is therefore, important to always read them very thoroughly before committing.

Third, the condo market is a market by itself that moves independently of the regular housing market. Although they usually move in tandem, it is possible for condos to struggle, while the rest of the market is doing extremely well or vice versa.

Finally, a fourth thing to consider is the high cost associated with solving problems, especially in large buildings. New projects are especially vulnerable, since they have yet to be tested by the elements. British Colombia was hit very hard in the late 1990s and early 2000s when over 50,000 units were identified as “leaky condos”.

Whenever a condo project is in need of money, special assessments are levied and every owner is obligated to pay. In British Colombia, the majority of the special assessments for those “leaky condos” were in the range of \$25,000 to \$60,000 per owner, but a few of them were in the \$150,000 and \$200,000 range.

To make matters worse, whenever a condo project experiences problems, reselling its units becomes practically impossible. Owners are trapped until the problem is fixed and even when that finally happens, re-establishing the trust of potential buyers can take time. Luckily, only an extremely small percentage of condominium projects are affected by such large-scale disasters.

So if you like living in an apartment, wouldn't it be better for you if you owned the unit? The answer is financial; but it also has to do with everyone's tolerance for risk.

I must say, that I am amazed by the public's willingness to take part in multi-million dollar projects; often without an ounce of concern for what could go wrong. People seem to take comfort in the fact, that they are just one out of tens, if not hundreds, of other part-owners. But that doesn't change the fact that they will be on the hook if anything ever goes wrong.

A nightmarish scenario for any homeowner, would be to wake up one day to realize that there is a \$25,000 problem with their home. Fortunately for them, having the money available or being able to borrow it, makes the issue go away. But the same cannot be said for condo owners. Having the \$25,000 is not sufficient, because every single owner also needs to be able to come up with the funds. And in huge projects, this almost guarantees that some of them won't be able to.

So, what happens if 10 or 15 percent of the owners can't come up with the cash? Are lawyers going to be needed to sort through the whole thing? How much time and money is that going to cost? And forget about selling your condo while this is happening. Who would buy into such a mess?

I find it ironic, that a risk-taker like me, worries about things that a lot of retirees never sweat. Yes, I probably make too much of this, but I think that too many people just don't make enough. Luckily, such nightmares are extremely rare.

As far as the financial side of a condominium purchase is concerned, condo owners have all the same expenses as home owners (mortgage, taxes, etc.) except for the condo fee; which I would say is higher than the cost to maintain a home, because it includes things like shoveling and lawn care that most homeowners usually take care of themselves. But on the other hand, heating an apartment-style condo, is a lot less expensive than heating a house.

So, the maintenance costs of a condo are higher than those of a house but its heating costs are less. In the end, I think that the owner of a \$200,000 condo probably pays a little more on average than the owner of a \$200,000 house every month for the privilege of having absolutely no maintenance or upkeep to do.

The price of an apartment-style condo will depend on the size of the unit, where it is situated in the building, the age of the building; the perks it offers; and the neighbourhood in which it is located. By playing with these five parameters, combinations that will fit a wide range of budgets can be created.

Once a potential match has been made, you need to determine your total monthly cost by paying very close attention to what is included or not, in the condo fee. Once you have estimated all monthly condo obligations; all that is left to do is to compare them to the cost of renting a similar apartment in the same area, to see where you stand.

At this point, I probably don't need to tell you that I am not a fan of condominium living. To me, high-rise condo units are glorified apartments and the possibility of making some money over the long-term would not be enough to justify the risks involved. I have owned two condos in the past and even though nothing bad happened, I don't think I'll ever own one again. When I can no longer maintain my house, I'll sell it, move into an apartment and, of course, invest the proceeds.

But that's just me; hundreds of thousands of Canadians own condominiums and are perfectly happy with them. Condo living works for them and it could work for you too.

1.11 Buying a Starter Home versus Renting

In this section, I will continue to explore the various options that are available to potential homebuyers. I know that a lot of people can't afford to buy the home that they want right away and often buy a starter home that they resell 5 years later to move up.

But is this a good move? Would renting an apartment for those 5 years and saving the difference put them in a better position? Let's run some numbers.

1.11.1 The Starter Home Option

Once again, I will assume that we start with \$16,975 for down payment and closing costs and buy the same \$185,000 home with a mortgage of roughly \$180,000 at 5.5% amortized over 25 years at a cost of approximately \$1,725 per month. If we use the same 5.3% yearly appreciation from section 1.8, our \$185,000 home will be worth \$239,500 when we sell it 5 years later – a big difference with the mere \$195,000 when a rate of only 1.1% per year was used earlier.

Figure 4. The Starter Home Option at 5.3% per Year

The numbers:

- Sale Price		\$239,500	
- Mortgage Balance	-	\$160,540	(see amortization schedule)
- Real Estate Fees	-	\$ 13,775	(5% + 15% Nova Scotia HST)
- Legal Fees	-	\$ 750	

- Total		\$ 64,435	

So, \$64,435 is what we would have, if our home were to appreciate at 5.3% per year for the next 5 years. But since we don't know what kind of appreciation we are going to get, here's how much we would have available to buy our next home using different appreciation rates:

Figure 5. Starter Home Option at Various Rates of Appreciation

<u>Rate</u>	<u>Cash Available</u>
12.0%	\$146,000
10.0%	\$119,600
8.0%	\$ 94,900
6.0%	\$ 72,800

4.0%	\$ 50,800
2.0%	\$ 31,200
0.0%	\$ 13,100

As you can see, we would end up with \$146,000 available in cash to purchase our next home if our small house were to appreciate by 12% per year during those 5 years. Similarly, we would only have \$13,100 and be worse off than we were 5 years before, if the market were to remain flat during that same period.

1.11.2 The Renting and Saving Option

So, we keep our \$16,975 and invest it, along with the \$625 that we save every month by accepting to live in an apartment for 5 more years.

The bottom line with this option, is the interest rate our investment will generate; so, I will try different values to see where we end up and how it compares:

Figure 6. Amount Available at Various Rates

<u>Rate</u>	<u>Cash Available</u>
12.0%	\$80,600
10.0%	\$75,600
8.0%	\$70,800
6.0%	\$66,400
4.0%	\$62,200
2.0%	\$58,200
0.0%	\$54,500

As you can tell by these numbers, the renting option is a lot safer. The starter home option only generates better results, when real estate appreciates by more than 6% or so per year. Renting until you can afford the home you really want is therefore the better strategy, when appreciation is low. And buying a starter home makes sense when prices are likely to significantly increase. **So, all you need is a good crystal ball.**

By renting and saving the difference, you guarantee yourself the ability to purchase a home regardless of what the market does. Even if your savings were to generate absolutely nothing for you, the \$54,500 you would have, would be enough to cover a 5% down payment and closing costs on a home worth more than \$600,000.

Unfortunately, for some, renting an apartment for 5 years is often not an option and taking a chance with a starter home is the only way to go.

1.12 Buying with Cash versus Renting

From a purely financial standpoint, would someone with the money, be better off buying that \$185,000 cash (+ \$20,000 in closing and setup costs) or would it be better to invest that same \$205,000 and rent at \$1,100 per month?

Let's assume that we are already renting at \$1,100 per month and inherit \$205,000. By buying and living in the \$185,000 house mortgage-free, we'd only have to spend \$625 per month to maintain the property and could invest the \$475 we'd be saving. Is this better than staying put and investing our inheritance? Let's find out.

Once again, I'll use a 25-year period to see which option makes more sense financially.

At 11.3% per year, \$205,000 invested in a diversified portfolio like the one we discussed, would grow to \$2,979,400 over 25 years.

A monthly \$475 investment at that same rate would grow to \$723,800 over 25 years. If we add the value of the home – now worth \$672,800 – to it, we get a grand total of \$1,396,600; which is not even close.

After running a bunch of numbers and assuming a 5.3% appreciation rate for the house, I discovered that both options equal one another, when any money invested earns approximately 6.6% per year. This therefore means that if the portfolio generates more than 6.6% annually, renting and investing the \$205,000 would be more profitable; conversely, below that rate of return, buying the house and investing the \$475 difference every month would be better. And that, as long as the house appreciates by 5.3% every year, which is far from guaranteed.

Of course, all of these calculations were done for example purposes only. Supposing that the cost of renting an apartment would remain the same over 25 years is ridiculous and so is the assumption that the cost of maintaining a house would also stay the same. There would also be tax implications when money is taken out of a RRSP, compared to the tax-free status of the money in the house (our principal residence) upon its sale.

With this said, the power of investing over the long term can't be denied. **So, in the end, if owning a home is not going to make you any happier, then don't do it.** I get upset every time I see or hear publicity saying: "Why rent, when you can buy" or stating that if you spend so much on rent, you can afford a mortgage. That part may be true, but they never mention that there is a whole lot more to homeownership, than a mortgage payment. They never talk about taxes; heat; power; insurance; maintenance and repairs. I feel this kind of publicity is misleading and I really hope that you won't fall for that sort of stuff, now that we have gone through all of this financial gymnastics.

1.13 Decision Time

At the end of this first set of topics, you are left with making a decision: are you going to keep renting and start saving the difference? Or are you going to get into homeownership?

On the plus side with renting, is the fact that it is usually a lot more affordable and there is absolutely no responsibility other than making your payments. If something breaks down, you call your landlord. If you don't like the building or your neighbours, you give your notice and leave at the end of your lease. If you like to travel, you just lock your door and go.

On the negative side, is the fact that you don't have as much space; you can't improve your apartment; you live in very close proximity with your neighbours and noise can be a problem. You may not benefit from having a backyard or a green area where you can sit in the sun and may find yourself confined to a balcony. Although you have very little control over your rent, the same can also be said for owners with the cost of power, fuel and taxes; so, they cancel out. And finally, there is no investment side to renting.

On the plus side with homeownership, is that you usually have a lot more space. You are in control over your environment and can improve, landscape, and decorate as you wish. You have a backyard, a basement and the number of neighbours is a lot smaller and they are a lot further away. You also get to build equity over the long term. To come home to your own place after a hard day's work, brings a peace of mind that is not there if you rent. But most importantly, you achieve what some folks can only dream of, and that is: the pride of owning your own home, and the sense of independence and stability that comes with it; the feeling that you are a part of your community. And for a lot of people, this is priceless.

The negative side of ownership, includes the high cost of getting into it; the higher monthly payments; the responsibility for maintenance (mowing/shoveling) and repairs; the high cost of selling; the lack of liquidity since the money you have in your home cannot be taken out easily in the event of a crisis; and the always-present risk of losing everything if you hit a rough financial patch and fall behind on your payments.

Warning! If you search the internet or read books about home ownership, you will eventually read somewhere, that one of the big advantages to owning your own house is the fact that the interest you pay on your mortgage is tax deductible. **That is true in the U.S., but not here in Canada.**

If you decide that renting (and hopefully investing the difference) is what's best for you, then this is probably the end of the road for us. But, if you can afford to buy and maintain a home and you either badly want one or badly need one, then our journey continues.

1.14 Part One Summary

In this first block, I have discussed financial issues that I think everyone should know about before considering a purchase. There are two key things that I believe are important for you to remember from this first segment:

- 1) The first one, is that buying and selling real estate is extremely expensive. Tens of thousands of dollars are spent on various fees and costs every time a house changes hands. And that's why real estate is a poor short-term investment.
- 2) The second thing, is that there is absolutely nothing wrong with renting an apartment – especially if it works for you. Those who say that you are wasting your money are wrong. We all need shelter and this is the cheapest way to put a roof over your head. And because renting is a lot less expensive than owning, it gives those disciplined enough to stick to an investment plan, the opportunity to maximize their RRSPs and potentially become millionaires much faster than any homeowner.

In the next block, I will introduce the real estate industry and its people, as well as the well-known MLS® System.

Part Two:

Basic Industry Information

In the first block, I have looked at the financial and investment side of a real estate purchase. In this one, my focus will shift to the industry. I will talk about real estate agents: the relationships they have with the public; how they get paid; the famous Multiple Listing Service® and much more.

2.1 Buyers are Underdogs

It hopefully won't come as a surprise, if I tell you that purchasers are huge underdogs, when it comes to real estate.

The reason for this is very simple. Sellers only have one home to dispose of and they know what's wrong with it; they know why they are selling; and have a very good idea of how much it is worth. The selling price is often the only thing that they really have to worry about.

We, buyers, on the other hand, have hundreds of shiny homes that we know absolutely nothing about, to choose from. And that's what makes us underdogs. Overpaying or buying into a nightmare are very real possibilities, even if we are careful.

Paying too much, may initially seem like our biggest risk; but buying a house with huge problems is a lot worse. Consider the following estimates:

- Cost to clean up a property contaminated by heating oil: \$100,000 +
- Cost to fix a home with structural failure of the foundation: \$50,000 +
- Cost to replace an old or faulty septic system: \$15,000 +
- Cost to rewire a house: \$10,000 +
- Cost to replace shingles **and** roof sheeting: \$8,000 +

Any home could have these issues and several other problems that at times, even the sellers are not aware of. And that's not all. Sometimes, the issues are not with the house, but with the location. How would you like to live next door to someone who is not very good with keeping his big dog on a leash? Or to live down-wind from a sewer treatment plant or a grocery store's dumpster? On a street where teenagers hang out and cause trouble?

These problems are anything but obvious and listing agents are in no way obligated to reveal what they know about neighbouring properties – even if the guy living next door happened to be a convicted pedophile. As far as I know, there is nothing in the law forcing sellers and their agent to reveal that information to potential purchasers. Believe me, we, homebuyers are underdogs and the saying “Buyer Beware”, couldn't apply to any other situation more perfectly.

2.2 Residential Real Estate in Canada

I think it is important before we get started, for me to identify and clearly explain who is who, who does what, and why in the industry. This basic knowledge is essential to your understanding of some of the issues we will later discuss.

Real estate companies (called brokerages), are the most important players in the industry. Without a crystal-clear understanding of what a brokerage is and how it is perceived by the Canadian legal system, things can quickly get confusing. This is why it is imperative for me to provide you with the right mental image from the very start.

So, from here on, every time I make reference to a brokerage, I want you to immediately think of a team – a tight group of people working together to achieve a goal. Think of your favourite sports team if that helps, because it is exactly what a real estate company is legally considered to be – one solid and unbreakable unit.

Because brokerages can't speak for themselves, they get a voice through one and only one, specially-trained and licensed individual called a **broker**. Think of the broker as the team leader. So, a brokerage is a team; and that team is lead by a broker.

In order to work in real estate, individuals must possess one of two main licenses: a **salesperson's** license or a **broker's** license.

The broker's license is the top license. Brokers must possess industry experience and satisfy higher training standards before receiving accreditation. This need for industry experience, is the reason why newcomers almost always begin their real estate careers with a salesperson's license.

Brokerages have a unique structure that encompasses 4 main entities: the first one, is the ownership of the brokerage, which is usually comprised of one or several individuals. The second entity, is the brokerage itself or the shell; and inside that shell we find the other two: the broker and the brokerage's workforce.

Anybody can open a brokerage. Firm owners don't need industry experience, but creating a company is not enough, someone needs to be designated as the firm's official representative. And all that someone needs, to qualify for the job, is a broker's license. Once designated, this individual inherits the powers of the brokerage and all of its legal duties and obligations.

Once a brokerage is properly registered and a "broker of record" has been named, the firm is legally allowed to operate. And everything that happens after that, is totally up to the broker and the firm's owner or owners. For your information, the size of a brokerage does not matter in the eyes of the law, because **everything done on behalf of the firm is considered to be its broker's own doing**.

There are both advantages and disadvantages to operating a one-person brokerage, where the owner and the broker are the same individual (called a broker/owner) or a 500-licensee operation.

Tiny firms are limited by the amount of money they can generate since there is only so much one person can do; but on the other hand, they are extremely easy to manage and broker/owners have excellent control over the quality of the service their firm provides since they do everything themselves. I happen to own such a one-man brokerage and wear both the broker and the owner's hats. I am therefore, both in charge and responsible for everything.

The sky is the limit when it comes to the amount of money large firms can generate for their owners; **but as I have just said, everything these humongous teams do is legally considered to be the doing of their broker and as we will soon see, that can lead to problems.**

For your information, there may be several individuals with brokers' licenses within a firm, but only one of them is broker of record.

In real estate literature, salespeople are always said to be employees of the brokerage they work for. But because legal responsibilities and obligations rest on the shoulders of the firm's broker, licensees are technically employees of the broker. **Everything they do is always on their broker's behalf. And if one of them makes a mistake, the broker wears it.**

Just like the broker of record, members of a brokerage's workforce who possess a broker's license can play active roles in the running or management of brokerages with several different branches and often inherit titles like **associate broker** or **managing associate broker**.

2.2.1 The Industry is Well-Structured

When you think about it, the real estate industry has done a very good job at protecting the best interests of the public with its own internal structure, by ensuring that all real estate agents belong to a brokerage and work under a broker. There is no way around it; it is the law.

And everyone one must be licensed. All newcomers have to take and successfully pass a complex entry-level course in order to be granted a salesperson's license. But that is only the first step. They must then find a broker that is willing to take them under his or her wing and make them a member of their team. Only then, can they start dealing one-on-one with buyers and sellers.

Every real estate agreement that real estate agents fill out, is always done in the name of their brokerage and on behalf of their broker. Legally, salespeople are considered to be the representatives of their broker on the transaction.

It is a common misconception among buyers and sellers, to believe that they hire a specific individual when they sign real estate papers. They are in fact, hiring the team that person is a part of – big difference. The contract is always with the brokerage and binding on the broker. Even though you may never see anybody else, be aware that it is the entire team that you are doing business with.

This fact is somewhat reassuring. Unknown to you, the salesperson you are dealing with may be working on his or her very first real estate transaction. But he or she is not alone. His or her team has been made aware of your situation and the service you are receiving is in fact, a reflection of what the entire group thinks is the best way to proceed – given your circumstances.

It is important for you to realize, that there are no secrets within a brokerage; agents work as a team and constantly help one another on client files. And since there is no way to know for sure what gets shared and what doesn't, the legal system assumes that everything that is known by one member of the team, is known by all members of that team, regardless of whether it is the case or not.

2.3 Organized Real Estate

In the following paragraphs, I will give you an overview of the three different levels of real estate organizations in existence in Canada.

At the lowest level, we find **Real Estate Boards**. A real estate board is a non-profit organization operating in a specific district for the benefit of its members. Simply put, the map of each province is divided into separate areas, each of which usually having its own real estate board.

Next, we find **Provincial or Territorial Associations**. These trade associations are also non-profit groups representing the interests of their members. The following functions can either be handled at the board or provincial/territory level: the running of a Multiple Listing Service®; licensing; real estate education; handling of disputes between members; political lobbying; and more.

Finally, at the top level we find **The Canadian Real Estate Association (CREA)**. It is one of the largest trade associations in the country, representing over 100,000 members through roughly 100 or so real estate boards and associations. CREA's mission is to represent the industry at the national level in terms of federal legislation affecting real estate, housing, mortgage financing, and consumer-related interests with real estate in general. Through its Code of Ethics and Standards of Business Practice, the association sets a high standard of conduct within the industry.

CREA also owns the MLS® and REALTOR® certification marks.

In Canada, the word REALTOR® means member of The Canadian Real Estate Association. **It does not mean real estate agent.** You see, not all real estate agents are members of CREA and that's why not all real estate agents are REALTORS®.

You should also know that there is a wide range of real estate designations available to salespeople and brokers offered by various institutions and groups. But they are not required. Real estate people only need a license. They are under no obligation to pursue any specific designation and do so on a purely voluntary basis.

2.4 Two Kinds of Relationships

Very few people realize that there are only two kinds of relationships between members of the public and licensed real estate people.

2.4.1 The Client Relationship

In this relationship, the buyer or seller, is a client of the brokerage and every single licensed member of that team is an agent of that client – **even if they never get to meet**. Real estate people owe all of their brokerage's clients several legal duties, which obligate them to protect those clients' best interests and place them ahead of everyone else's – except the law – at all times. This relationship provides the highest amount of legal protection to members of the public and places the highest

amount of legal obligations on licensees. The terms and details of client relationships are usually set in writing through the use of various real estate agreements, but they don't have to be. Verbal agreements are also common.

2.4.2 The Customer Relationship

This is the default relationship; if you are not the client of a brokerage; than you will be treated as its customer. In their daily dealings with customers, licensees explain terms and forms; they estimate costs and present offers. But they do not recommend or suggest prices, negotiate on a customer's behalf or give confidential advice. Their job is to always treat customers with **neutrality**.

This obligation to remain neutral means that licensees have to carefully watch what they say to customers. And one way to do that, is for them to **always pretend that the other party to the transaction is listening in on the conversation**.

Customers must be treated fairly and in good faith; they can't knowingly or negligently be provided with misleading information; and licensees can only provide them with services that do not require exercising discretion or judgment, giving confidential advice, or advocating on their behalf.

The reason why licensees have to treat customers with neutrality, is to ensure that they do not compromise the interests of their brokerage's clients. Customers should therefore know, that it is not the job of a licensee to protect them or to prevent them from making mistakes – like paying too much for a house – because they are very much on their own, when it comes to these things.

For your information, sellers are almost always in a client relationship with the brokerage they have hired to sell their house. But the same cannot be said of buyers, who often find themselves the customers of the team that is assisting them on the purchase.

It is extremely important to understand the difference between the two, and also to know which treatment is being provided at all times, because it could change along the way. That's right, some people start as clients of the team they hire and finish as customers of that same team. I won't say any more about this for now, because it is a topic that will be covered in detail very shortly.

2.5 The Multiple Listing Service® (MLS® System)

The most effective way for a brokerage to promote a property for sale, is to make it available on the local MLS® System.

The MLS® System is a means of exposing listed properties to the maximum number of potential buyers by giving hundreds if not thousands of local licensees knowledge of their availability and permission to bring potential buyers through.

With the seller's permission, a brokerage places a house on the MLS® System and in doing so, offers a share of the commission it stands to receive to the first company that brings an offer that is acceptable to that seller.

In a way, one could argue that the basic idea behind the MLS® System is for listing firms to attract offers by offering a finder's fee (called a commission split) to the first brokerage that brings one that is acceptable to their client.

It's like if I wanted to sell my car and told everyone I knew that I am going to give them \$500 cash if they found a buyer for my vehicle. But instead of a flat fee, the most common form of remuneration is usually a percentage of the selling price.

It is important to note, that a very significant part of the commission charged for MLS® Service is usually offered out to other brokerages – often half and sometimes even more. And in my opinion, that is the key behind the success of the system. The amount is so substantial, that no licensee can afford to ignore MLS® properties and as a result, these homes sell faster and for top dollar.

The way the money flows is as follows: the seller pays the listing brokerage the agreed commission; that firm then turns around and pays the advertised split to the brokerage that brought in the offer (called the co-operating brokerage) and keeps whatever is left for itself.

2.5.1 Real Estate Commissions

You should also know that by law, real estate commissions are negotiable. They are also taxable, and vary by jurisdiction – just like the price of gas.

In the Halifax area, 5% (plus our 15% HST) is a popular commission charged for the use of the MLS® System. And a share of 2.5% of the selling price is a common split offered to co-operating brokerages.

Even though they usually are, commissions don't necessarily have to be a percentage of the selling price. They can be in the form of a flat fee (i.e. \$10,000 + tax), fee for service (seller chooses between different packages) or a combination of the above. But commissions can't be the difference between what a house is listed for and what it sells for or whatever a licensee can get above a pre-agreed price – that is illegal.

For your information, commission splits are usually indicated on listing cuts, so licensees know how much they stand to receive if a deal is worked out **and if it is enough to justify getting involved.**

The MLS® System is extremely powerful, since it gives salespeople access to thousands of homes at the same time. Licensees are therefore not limited to their brokerage's inventory; they can put their hands on anything that is on the system, regardless of the firm that has listed the house.

In a way, the MLS® System is like a huge virtual warehouse full of houses, that offers very good money to real estate agents for finding buyers.

2.5.2 A Useful Example

In this sub-section, I will give you the details of a fictitious real estate transaction and create a few different characters. This little scenario will help me illustrate some of the various situations we will discuss later on.

Since licensed salespeople are involved in approximately 90% of all real estate deals in Canada, both my fictitious buyer and seller will be working with a licensee. I'll be using a \$185,000 purchase price (way below the national average which currently stands at over \$350,000) and a 5% commission for the use of the MLS® System which should be in the right ballpark nationally. I'll also create three brokerages, one small, one medium and one quite large in size. So, here we go:

Brokerage 1: Andrew is a one-man show. He is broker/owner of Independent Realty.

Brokerage 2: Jackie is a broker/owner who purchased a franchise from the Sell-Me Corporation. She named it Sell-Me Metro Realty and it employs 9 salespeople.

Brokerage 3: Mike is a businessman with no real estate experience. He too, purchased a franchise from the Sell-Me Corporation and named it: Sell-Me Mike Realty. He hired a broker named Max to run his brokerage. Sell-Me Mike Realty employs 99 salespeople for a total of 100 licensees when you include Max, its broker of record.

The transaction:

A licensee named Melanie working with Sell-Me Mike Realty is invited to make a listing presentation. After a two-hour meeting, Melanie leaves the seller's house with a signed listing agreement in hand and a 5% commission (+ taxes) if her firm manages to bring in an offer that the seller is willing to accept. The following day, a for-sale sign is placed in front of the seller's property, and information and pictures of the home are put on the local MLS® System with half the commission (2.5%) offered to co-operating brokerages. A purchaser working with John, a salesperson with Sell-Me Metro Realty shows interest in the home and eventually buys it for \$185,000 with a possession date 8 weeks down the road.

Please note, that two out of the three brokerages I created, are owned by their broker. It is a very common thing in the industry for brokers to also be owners or part-owners of the firm they run.

2.6 How Real Estate Agents get Paid

Every client that a brokerage represents, usually communicates and works with the team through one (or maybe two) of its members. That licensee is often the reason why the client chose the brokerage instead of any other firm. And for bringing the business and assisting the client on the transaction, that licensee will receive the lion's share of any money the brokerage makes.

As we saw in the previous section, on behalf of their brokerage and broker, licensees make listing presentations; negotiate commissions; get listing agreements signed and usually place properties on their local MLS® System to maximize their exposure.

When a house sells, sellers have to wait until possession day before getting their money. It is also at that time, that real estate commissions are paid. Using the example in the previous section, both Sell-Me Mike Realty and Sell-Me Metro Realty would receive a \$4,625 share of the \$9,250 commission (5% of the \$185,000 selling price). They would then take their cut and give the rest to the licensees that worked on the deal on their behalf.

In our example, real estate agents Melanie and John would already have pre-arranged agreements with their respective brokerages dictating how much they stand to receive.

There are various arrangements in the industry. Some people start each year 50-50 with their brokerage and receive better percentages as they gradually increase the amount of revenue they generate for the firm. Others pay a substantial flat fee to their brokerage every month and in exchange get to keep 100% of the money they bring in.

It is therefore impossible to know exactly how much individual licensees receive out of every commission cheque they bring in; but a 70/30 split with the brokerage is probably a good guess. That is 70% to the salesperson and 30% to the brokerage.

Since the fee for the use of the MLS® System is being split 50-50 between the two brokerages in this example, we can therefore guess that approximately:

1. 15% of the money would go to the listing brokerage Sell-Me Mike Realty;
2. 35% of the money would go to the listing agent Melanie;
3. 15% of the money would go to the co-operating brokerage Sell-Me Metro Realty;
4. 35% of the money would go to the co-operating agent John.

It is also understood that a percentage of whatever monies are kept by the brokerage will most likely end up compensating the firm's broker in some way. Once again, all kinds of arrangements can exist: a small percentage to supplement a base salary or a larger amount on every deal which could constitute the broker's only form of remuneration.

Although industry insiders don't agree on the exact percentages, it remains a fact that in real estate, a majority of the money is made by a minority of the people (my own personal guess is that 25% of the people make 75% of the money). This means that a minority of licensees make a very good living while the majority is not making anything worth bragging about. For your information, several of Canada's top real estate producers generate well over \$1 million in gross commissions every year.

2.7 Double-Enders

As we have already discussed, listing brokerages place homes on the local MLS® System to increase their exposure and their chances of selling. In a majority of cases, the buyer is accompanied by the member of a co-operating brokerage. That firm receives the advertised commission split and the listing brokerage keeps the rest – with the money often being shared 50-50.

But whenever the listing brokerage manages to find a buyer itself; that is without the assistance of another firm, it gets to keep all of the commission money in what is known in the industry as a **“double-ender”**.

The term double-ender comes from the name given to each share of the commission. The part that stays with the listing brokerage is called the **listing end**; and the one that goes to the co-operating brokerage the **buying end**.

There are two kinds of double-enders:

A **salesperson double-ender** happens when a licensee lists a property and finds a buyer himself or herself. That fortunate individual therefore receives a share of the listing end and a share of the buying end. So, both the licensee and his or her brokerage are rewarded twice in this scenario.

A **brokerage double-ender** occurs when one member of the team lists a property and a different member of the same team finds a buyer. In this case, only the brokerage gets a cut of both the buying and selling ends.

Double-enders are financially profitable; they are like two paycheques in one, since the money ends up being split two ways as opposed to four ways, as it is the case on most MLS® transactions. But as we will soon discuss, they **have become a sensitive issue in the industry**.

2.8 Referral Fees and Reward Programs

Since we are discussing sensitive issues, this is probably a good time to tell you about a few practices that I am somewhat uncomfortable with. The first one, is the referring of clients from one brokerage to another in exchange for a fee. And the second one, is the collecting of points for sending clients to mortgage people.

Even though they don't have to, most referrals occur when a client is moving to a different city. So let's assume that you are moving from Ottawa to Winnipeg. Upon learning of your upcoming move to Manitoba, the licensee who is helping you sell your house in Ottawa, could offer to put you in contact with a licensee who works in Winnipeg to help you with your purchase over there. And for this referral, your Ottawa brokerage would normally receive 25% of the commission earned by the Winnipeg brokerage for assisting on your purchase.

So, if you spend \$300,000 on your new house and the buyer's side of the commission is 2.5% of the purchase price, your Winnipeg brokerage would be paid \$7,500 (2.5% of \$300,000) plus any applicable taxes and would immediately turn around and cut a cheque in the amount of \$1,875 (25% of \$7,500) plus tax to your Ottawa brokerage – a pretty good chunk of money for one phone call, don't you think?

In real estate, the referral business is big and legal, if the people whose business is being referred authorize the practice. Some licensees make their living almost entirely off of referrals. Most large real estate franchises have referral networks that cover all of North America.

Unfortunately, there is always a risk that the call is made for the money, more than as a courtesy to the client. That risk is reinforced by the fact that some licensees offer more than the common 25% fee to attract referrals – fees as high as 50% are sometimes available. And that is the problem; the size of the referral fee could end up being the deciding factor in the end.

You could not refer one of your friends or relatives to a salesperson for a fee. One has to possess a real estate license and be employed by a brokerage to collect. Brokerages often get their clients to sign a written referral authorization before sending their business. This way the client knows what is happening and realizes that a fee will be received.

Reward programs are the mortgage industry's version of referral fees. And although not all industry members participate, some do collect points that can be used to purchase all kinds of things including: vacations; big screen TVs; smart phones; etc. And just like referral fees, if the clients are aware and authorize the practice, then there is absolutely nothing wrong with it. But are they always? Your guess is just as good as mine.

2.9 Listings on the Internet

Several years ago, CREA created www.mls.ca, a specialized website where members of the public could access thousands of homes for sale across Canada.

Unfortunately, the name chosen for the site led some people to believe that they were getting access to the MLS® System. And that was incorrect. The site at www.mls.ca was only a showcase of homes for sale on that system. Big difference! It was an advertising site – just like a huge real estate section in any local newspaper.

Only members of CREA have access to the MLS® System.

In the summer of 2008, the problem was finally corrected when the content of mls.ca was transferred to a new home at www.Realtor.ca. Just like its predecessor, this new location in cyberspace is for advertising and doesn't give the public access to the MLS® System.

2.10 Exclusive Listing or MLS® Listing?

When listing a home with a brokerage, sellers have two different levels of service to choose from: MLS® or Exclusive. As you now know, by selecting the MLS® service, they allow the listing brokerage to make their property available to all the licensed members of their local board.

Exclusive service is more restrictive, as access to the sellers' property is limited to the representatives of the listing brokerage only. Even though exclusive service is normally cheaper, the difference in exposure is enormous. I am not a fan of exclusive listings, since they greatly reduce a seller's chances of receiving multiple offers and a higher selling price – which is why most sellers decide to go with the MLS® System.

Part Two Summary

In this second block, I have introduced the real estate industry and its best-known service, the MLS® System. Among other things, I have explained the different kinds of licenses, the various real estate organizations and have given you an insight into how REALTORS® get paid and how commission money flows.

There are three things that I believe you must remember from Part II:

- 1) The first one, is that **licensees should never tell customers anything that they would not repeat in front of their clients.**
- 2) The second one, is that the MLS® System works well because it pays lucratively. **The money is the secret to its success.** Without a sizable split, agents from other firms would not pay much attention to its properties and spend the bulk of their time trying to sell their own listings instead.
- 3) The third one, is that double-enders are like two sales in one. They are very profitable and therefore worth protecting from a business standpoint. But they require for both buyers and sellers to deal through the same brokerage on the transaction. Some people see an ethical problem with that and that's why they have become a sensitive issue.

In the next block, I will look at the legal side of helping buyers and sellers and how tricky it sometimes is to play by the rules.

Part Three: Legal Realities

In the last block, I have introduced the real estate industry and have explained the MLS® System. In this one, I will look at the legal obligations placed on real estate people; discuss the impact the arrival of the Multiple Listing Service® has had on the industry; and talk about the challenges traditional brokerages face when they assist buyer and seller clients, at the same time, on the same transaction.

3.1 Real Estate and the Law

Every year, approximately half a million homes sell through the MLS® System in our country and hundreds of thousands of families do business with licensees. But very few buyers and sellers know what to expect from real estate agents and what legal obligations these professionals operate under.

Unlike speed-limit enforcement on our highways, there are no real estate police driving around, making sure that real estate rules are being followed. The system in place is complaint-based. And when nobody complains; things are assumed to be fine.

But because buyers and sellers don't know how things work and what to expect, it makes it difficult for them to realize when rules are being broken and therefore, can't complain. This, in turn, allows mistakes to get repeated over and over before a red flag is finally raised. It truly is a vicious circle.

The purpose of this third part, is to shed a little bit of light on some basic legal concepts that apply to real estate, so you can get a feel for what is going on and why.

As you know, Canada and the United States are two former British colonies. When early settlers arrived and began to get organized in the new world, they brought over their English traditions which included the legal system that was in place in the Old Country, called the Common Law.

The Common Law is a legal system that is developed through court and tribunal decisions. When a judge rules on a case, this ruling becomes a part of what is called "Case Law" and will be considered by other judges on future decisions. The Common Law, is therefore, in constant evolution because new legal judgments are constantly being rendered.

In Canada, federal and provincial laws are based on the Common Law, except for the Province of Quebec which operates under a Civil Code, because of its French ancestry. It is the same story in the United States where federal and state laws are also based on the Common Law with the exception of the state of Louisiana which, just like the Province of Quebec and for the same reason, also uses a Civil Code.

Even though I will constantly refer to the Common Law in the rest of this text, the general idea behind the concepts I will discuss applies everywhere in Canada, including in the Province of Quebec. So, if you happen to be a Quebecer, don't let this bother you, just consider it a technicality and please don't make the mistake of assuming that this stuff doesn't apply to you, because it does.

With this said, let's begin our journey into real estate rules and obligations.

The Common Law is divided into many specialty areas including Family Law; Criminal Law; Tax Law, etc. The one that governs relationships between real estate people and members of the public, is called Agency Law.

Agency is a well-defined legal concept in which one party (the Agent) represents another (the Principal or Client) in some form of transaction. **In real estate, the brokerage is the Agent and buyers and seller are the clients.**

In a typical real estate relationship, the brokerage is hired by a buyer or seller to provide professional service. The details of this relationship are usually in writing; but as I have said before, they don't have to be, since such arrangements can also be verbal.

3.2 Duties and Obligations

In their daily dealings with buyers and sellers, licensees must conduct themselves in accordance with the standard of care that is expected of a professional. This duty is called "The Duty of Care".

On top of the duty of care, brokerages also carry a number of legal duties and obligations that vary depending on whether they are providing client or customer service to the member of the public they are assisting.

3.2.1 Legal Duties and Obligations Owed to a Client

When dealing with clients, brokerages are responsible for duties contained in any agency agreement signed between the parties plus 19 general; fiduciary; and regulatory obligations along with the customary duty of care. So, as you can already appreciate, real estate people are far from free to do whatever they want.

I'll expand on some of these 19 legal duties later; but for now, I am just going to list them:

8 General Obligations: #1 Exercise Care and Skills; #2 Negotiate Favourable Terms; #3 Maintain Confidentiality; #4 Disclose Information; #5 Ensure Honesty; #6 Act in Person; #7 Obey Instructions; #8 Perform Mandate.

5 Fiduciary Obligations: #1 Maintain Utmost Loyalty; #2 Avoid Conflicts of Interests; #3 Disclose Conflicts; #4 Not Make Secret Profit; #5 Not Misuse Confidential Information.

6 Regulatory Obligations: #1 To Account; #2 Remuneration Provisions; #3 Not to Induce, Breach or Make Certain Promises; #4 To Deliver Agreements, Offers and Statements; #5 Agency Relationships/Forms; #6 Disclosure: Representative Capacity.

(Source: Agency Fundamentals – The National Perspective, Alliance for Canadian Real Estate Education (Acre), 2006, P.13)

3.2.2 Legal Duties and Obligations Owed to a Customer

In contrast, when dealing with customers, brokerages have:

2 General Obligations: #1 Exercise Care and Skills; #2 Ensure Honesty.

0 Fiduciary Obligations.

6 Regulatory Obligations: #1 To Account; #2 Remuneration Provisions; #3 Not to Induce, Breach or Make Certain Promises; #4 To Deliver Agreements, Offers and Statements; #5 Agency Relationships/Forms; #6 Disclosure: Representative Capacity.

(Source: Agency Fundamentals – The National Perspective, Alliance for Canadian Real Estate Education (Acre), 2006, P.13)

The duty of care is also limited to providing information, answering questions, and performing any function the licensees have agreed to perform for their customers.

As you can easily see, brokerages and their members carry a significantly larger amount of legal duties and obligations when they are dealing with clients, than they do when dealing with customers.

3.3 The Early Years

In order for you to understand why the industry operates the way it does today, I need to take you back to its early beginnings and explain how it evolved over the years.

The Canadian real estate industry first became organized in the 1880s (same time in the United States) and until the 1950s, brokerages and all their employees were middlemen and usually had no clients to protect. Buyers and sellers were customers and real estate people mere facilitators. Their job was to bring the parties together and make deals happen in exchange for a fee. That's it. They were not representing anybody; they were just facilitating transactions.

But the arrival of the MLS® System in the 1950s changed everything. This system was so beneficial to sellers, that by making them aware of its existence and explaining how it could speed up their transaction and potentially increase their selling price, listing brokerages began to be considered as promoting the best interests of sellers.

Listing brokerages were providing sellers with what became known as “Seller Agency” and because of this, they could no longer be considered facilitators. Listing brokerages were now helping sellers and this is how the first client relationships were formed.

The MLS® System was a revolutionary service – offering a substantial share of the listing commission to the first brokerage that brings an acceptable offer, was a brilliant idea.

I am sure it didn't look that way back in the 1950s, but one critical decision needed to be made before the MLS® System was introduced. And that was to determine whose side the second firm was legally going to be on. The buyers? The sellers? Or nobody's?

Since the idea behind the service was to get other brokerages to help with the selling of houses, and since the sellers were the ones paying the commission, it was decided that co-operating brokerages would be joining listing firms on the sellers' side of the transaction.

So, it was agreed within the industry, that whenever two brokerages would combine their efforts to sell a house through the MLS® System, they would both legally be working for the sellers on the deal: **the listing brokerage and all of its licensees in the capacity of sellers' agents and the co-operating brokerage and all of its licensees as sellers' sub-agents.**

This kind of brokerage co-operation became known as the **Sub-Agency System** and it remained in existence until the mid 1990s, here, in Canada.

3.4 Problems with Sub-Agency

Since it was decided that both brokerages would legally be working the sellers' side in a sub-agency transaction; that also meant that both firms would owe those seller-clients the exact same 19 legal duties and obligations I just talked about.

Using the example I introduced previously, if Sell-Me Mike Realty (and its 100 licensees) was to be the listing brokerage and Sell-Me Metro Realty (and its 10 licensees) the co-operating brokerage, legally, the sellers would find themselves clients of 110 licensees.

Under the rules of common law agency, these 110 licensees would have to place the sellers' best interests ahead of their own and everyone else's, except the law. They would also have the obligation of staying away from conflicts of interest (Fiduciary Obligation #2).

The client relationship is the one that carries the highest standard of care in the industry and the Common Law expects real estate people to be extremely loyal to their firm's clients.

This is why a brokerage can't represent two clients at the same time, **on the same transaction** – because nobody can provide this kind of loyalty to two opposing masters simultaneously. So, if one party is going to be the client of the two brokerages involved on the transaction, then the other must absolutely be their customer. There is just no other choice.

It is for those reasons, that during the 40 years of the sub-agency era, sellers were always said to be clients and buyers always customers. But as industry leaders eventually discovered, assuming that all buyers could be considered customers was wrong and way too simplistic. Legally, things were a lot more complicated.

The real estate industry learned that in order for a brokerage like Sell-Me Mike Realty to safely represent a seller as client and for a brokerage like Sell-Me Metro Realty to assist a buyer as a customer on the same transaction; the purchaser should **ideally** meet three specific criteria:

Ideally, that purchaser should be a total stranger with no personal connection with any of the 110 members of the two firms.

Ideally, he or she should be somewhat familiar with the buying and selling process.

Ideally, he or she should have been a customer of the two brokerages for a short period of time.

The reason for the first requirement, is that the two brokerages must be perceived as being free of conflicts of interests, in order to provide even-handed and absolutely neutral service to the buyer. Any personal connection between the buyer and any of the 110 members of those two brokerages, could cast a shadow on the perceived ability of the brokerages to treat that customer with total neutrality. And any such tie with a customer could be enough ground for an unhappy seller who understands these legal obligations to sue. Would that client succeed with such a lawsuit is another story. But legally, the door was open.

The reason for the second requirement, is that maintaining total neutrality with a customer is extremely difficult when the individual is in need of a lot of assistance. It is once again the perception of neutrality that comes into play. Can a licensee remain 100% neutral with a buyer that shows an extreme lack of knowledge? An upset seller could question the level of service the brokerage provided to such a customer and once again decide to sue over that matter.

The reason for requirement number three, also involves the perception of neutrality. A long relationship between a customer and a licensee could lead to the creation of a friendship which could cast a doubt on the likelihood of that licensee having remained 100% neutral with his or her new best friend. And – you guessed it – be enough reason for a displeased seller-client to sue.

I don't believe real estate people knew about the legal restrictions that working under a sub-agency arrangement imposed upon them. And as a result, for almost 40 years, rules were potentially misinterpreted and brokerages were potentially left vulnerable to lawsuits.

The most obvious example of this, is when agents and sub-agents assisted family and friends on a purchase. Because they had been told that sellers were always clients and purchasers always customers, licensees were conflicted. They knew they were supposed to protect the sellers' best interests; but how could they do that when the buyer was family?

This was an impossible situation. Not only did the rules of the system require agents and sub-agents to remain totally neutral with their own family members, they were still expected to be looking out for the sellers' best interests on the transaction!!!

I wonder how many judges would have believed a speech like this: "Your honour, I knew I had to protect the sellers' best interests on this transaction, and I did. I never helped mom and dad one bit on their purchase; I told the listing agent everything I knew about them in order to help the sellers. I didn't withhold any information and don't understand why the vendors are unhappy with me."

As long as real estate people are going to be of the human kind, there will always be certain people that they will never be able to treat as customers. These folks legally have to be considered clients,

and it doesn't matter if they are buyers or sellers. I call these people **the members of a licensee's inner circle**.

The list of individuals that a brokerage should never consider customers, are all those who are members of each and everyone of its licensee's inner circles which include: the mother; father; brother; sister; or children of any employee/member of the team plus: a builder with whom an ongoing business relationship is established (a business partner); anyone with whom a team member is involved in some kind of investment (a financial partner); anyone with a close connection with any team member; anyone whose personal circumstances puts a challenge on a brokerage's ability to treat him or her with neutrality (a first-time homebuyer for example). I call all of these people the **members of a brokerage's inner circle**.

To continue to provide client service to sellers when any member of its inner circle is on the buyer side of the transaction is dangerous for a brokerage, because it is probably dealing with two sets of clients on the deal. Things will work out as long as the seller-clients don't complain; but if they ever do, the firm could find itself in a heap of legal trouble and financially suffer as a result.

Unfortunately, this fact was either lost or ignored by many licensees who routinely entered their brokerage into such transactions without even thinking about it. And every time they did, they put their employer at risk of a lawsuit – or threat of a lawsuit – by an upset seller-client.

Sub-agency didn't only open the door to complaints by sellers; buyers also had their reasons to be unhappy with the system. They were dealing with licensees who knew they were legally required to work the seller's side of every single MLS® transaction, but they were not being told about it. How were purchasers supposed to know that everything they said in front of these real estate agents had to be passed on to the sellers? Shouldn't they have been warned about it?

This same argument was successfully used by Ernesto Miranda and his legal team in a 1966 landmark U.S. Supreme Court case *Miranda vs. Arizona*. And since then, police officers in the United States have been telling suspects: "You have the right to remain silent, **anything you say can and will be used against you in a court of law...**"

How fair is that? Criminal suspects are warned about talking too much, but homebuyers are not.

I believe purchasers had the right to know who licensees worked for during the sub-agency years and what that meant to them. If I am right with this assumption, then it probably means that the industry would have been blamed for failing to properly warn purchasers. And since nobody had ever been warned before, this means that any buyer could have sued over this issue with a realistic hope of winning some sort of compensation. Can you imagine?

After 40 years, the legal news wasn't very good for the industry. Some of its common every-day practices were apparently legally dangerous; and the risk of seeing more and more buyers and sellers turning to the courts for financial retribution was mounting.

In my opinion, the most obvious problems were:

1. That the rules of sub-agency were too simplistic. “Sellers should always be treated as clients and buyers should always be treated as customers” was a blanket statement easy for licensees to remember but legally incorrect.
2. That a complaint-based policing system is very inefficient when those who have the power to raise red flags (buyers and sellers) don’t know the rules that must be followed.
3. That sub-agency rules didn’t allow commission money to be shared with a brokerage that was representing a buyer-client (instead of a buyer-customer) on an MLS® transaction.

The industry eventually got rid of sub-agency and I honestly don’t think that it had any other choice.

3.5 The End of an Era

I officially joined the industry in April 1993 and wasn’t around when most of the things I have talked about so far occurred; but, I can provide a much more detailed version of what has happened since I became licensed – especially in the Province of Nova Scotia.

From what I understand, it seems that by choosing a sub-agency system for MLS® transactions, the industry and its legal counsel had unwillingly created a huge problem for its members. And in my opinion, the biggest mistake they made, was to fail to recognize that they had a duty to disclose to buyers the fact that all industry members had a contractual obligation to the sellers – even those working for co-operating brokerages.

It took a very long time before something was done to fix this problem. And it all happened when CREA decided that – starting January 1, 1995 – its members would finally start disclosing to buyers their legal obligations to sellers, when acting as sub-agents.

In Nova Scotia, this was done through the handing out of a brochure called “The Responsibilities of REALTORS® to Purchasers” (which I kept a copy of). Under the headline “Notice to Perspective Real Estate Purchasers” buyers could read:

“If you are planning to buy a home, you should be aware that: In most instances, the real estate agent who has listed the property and the salesperson who show you the property are in fact both agents of the seller. They have entered into a contract which obligates them to represent the sellers and to give them the benefit of their professional advice.”

As you can imagine, learning that things said in front of agents and sub-agents had to be passed on to the sellers, didn’t sit well with some buyers. And that was the straw that broke the camel’s back. The industry had a crisis on its hands. An emergency plan had to be drawn up quickly. And it was.

Within only a few months, sub-agency was gone, having been replaced by a new system called “Assumed Buyer Agency” – a model that legally allowed buyers to be represented as clients on MLS® transactions.

Licensees in Nova Scotia were told that with this new system, everything would stay the same; except that members of co-operating brokerages would no longer have to work for the listing

brokerage and the seller in order to receive a share of the MLS® commission. Assumed buyer agency actually allowed them to work for the buyers, if that's what they wanted.

Sellers were told that just like it was before, all the members of the listing brokerage would still be representing them on any transaction; but that from then on, unless they heard otherwise, they were to always assume that all licensees from co-operating brokerages were representing the buyers they were bringing to their house.

Although co-operating brokerages didn't have to take the buyer's side on MLS® transactions, they all immediately did. And almost overnight, 40-year old MLS® rules were significantly altered.

I don't know how this all came down in other provinces and it doesn't really matter. What matters is that – starting in early 1995 – sub-agency slowly began to be replaced by assumed buyer agency in common law jurisdictions across the country.

3.6 Three Types of Brokerages

The arrival of buyer agency on MLS® transactions, made it a lot easier for the real estate landscape to diversify with the potential creation of **Specialty Brokerages**.

Because of the sub-agency system, brokerages had mostly only had sellers as clients up to that point. And technically one could say that they were **Sellers-Only Brokerages**: companies with sellers as their only clients and seller agency as the only agency service they offered.

But now that buyers could also be clients, the door was wide open for people to open **Buyers-Only Brokerages**: companies with buyers as their only clients and buyer agency as the only agency service they offered. It is interesting to note that without sellers, such brokerages would carry no listings and technically have no homes to sell.

Following the same reasoning, it would also make sense to expect people to also start opening **Full-Service Brokerages**: companies with both buyers and sellers as clients and both buyer agency and seller agency as available agency services.

And that's what everyone did. When buyer agency arrived, all traditional sellers-only brokerages became full-service brokerages. The reason behind this was that brokerages were used to dealing directly with both buyers and sellers and for buyers to keep coming, they had no choice but to start offering their kind of agency service.

I believe it is important to mention, that although buyer agency only officially arrived in the mid 90s, in a way, it had always been there.

The service offered to purchasers naturally evolved over the years and I would go as far as saying that when the new system was introduced, most buyers were already receiving far more help on their purchases than what the mere customers they were supposed to be should have been provided with.

And that's why sub-agency had to go. For a very long time, the legal system had been warning real estate people that the way they were dealing with buyers and sellers on the street didn't match the rules of the system they were supposedly operating under. And doing nothing about this discrepancy was becoming increasingly more dangerous. The industry had no other choice; it had to either change its ways; or change its rules... and in the end, the rules were changed.

The arrival of buyer agency on MLS® transactions was extremely significant for purchasers, because it was an official acknowledgement by the industry that from then on, its members would be bound by the exact same 19 legal duties and obligations whenever they would agree to represent either buyers or sellers as clients. Up to that point, any bit of agency service buyers had been provided with, almost had to be considered a gift, because they weren't technically supposed to receive anything. Talk about an amazing leveling of the field!

During the sub-agency era, going the extra mile for a buyer was like offering to mow your elderly neighbour's lawn. It was something that licensees did because they felt like it. It was like going over the speed limit on the highway. You know you're not supposed to do it; but as long as you keep it within reason, there should be no trouble. So, it had become common for licensees to provide the buyers that they liked, with a little extra service that they weren't really entitled to receive.

But when the new system arrived, going on record as saying that you offer buyer agency service was like officially agreeing to take care of that neighbour's lawn. It was no longer something you did only when you felt like it; licensees were now obligated. And they could no longer do it their way and stop whenever they felt they had done enough. Representing buyers comes with obligations; and cutting corners or not doing enough to protect a purchaser, could get them in trouble.

3.7 Conflicts of Interest

As I have already mentioned, a full-service brokerage is a real estate firm that offers buyer agency and seller agency services under one roof. In large brokerages, the broker and his or her team are therefore, constantly under contract to protect the best interests of hundreds of seller-clients and hundreds of buyer-clients at the same time.

And this is not a problem... until one of their buyer-clients decides that he or she wants to buy one of their seller-client's home.

This scenario is, without any doubt, the biggest legal nightmare a full-service brokerage can be faced with. As you now know, this puts the team in a conflict of interest in the eyes of the Common Law, since it is legally expected to protect and promote the best interests of two opposing sets of clients at the same time, on the same transaction.

Whenever this happens, the brokerage is said to be in a **dual agency** (or multiple representation) situation. Dual agency is like playing both sides in a chess match or pulling on both ends of the rope in a tug-of-war. It is an obvious legal issue and that's why the law requires for everything to stop whenever these situations arise; so buyers and sellers can be made aware of the problem and offered a few options to resolve it.

These options are:

- 1- One party gets released to hire another team and the two parties proceed as clients of independent teams;
- 2- One party agrees to become a customer; the other keeps its client status; and the two parties proceed as client and customer of the same team;
- 3- The two parties give up their client status and both of them agree to proceed with the transaction as customers of the same team.

Dual agency situations are common within full-service brokerages and their frequency is directly proportional to the size of the firm. A brokerage like Sell-Me Mike Realty, with 100 licensed employees, would theoretically find itself dealing with these issues 10 times more often than a brokerage like Sell-Me Metro Realty, with a total of only 10 licensees; and 100 times more often than our one-man operation at Independent Realty.

This situation is problematic and upsetting for buyers, sellers, and real estate agents. Up until that point, buyers and sellers were clients of their team receiving the highest level of service and protection under the law. But the brokerage is legally stuck, since it can't fight to keep the price high for the seller, while at the same time try to bring it down for the buyer.

If we assumed that every licensee working for a full-service brokerage carried exactly 5 listings; there would therefore be 500 houses on the MLS® System where such a problem could arise for any buyer that is a client of Sell-Me Mike Realty; this number would drop to 50 for any buyer that is a client of Sell-Me Metro Realty; and be reduced to only 5 for any buyer-client of Independent Realty.

But there would be no such house on the MLS® System for any buyer who instead of hiring a full-service brokerage, decided to go with a buyers-only brokerage that carries no listings and never represents sellers.

Having to represent both buyers and sellers on the same transaction, is the most common form of conflict of interest in real estate, but it is not the only one; other kinds exist.

As a purchaser, the identity of the seller and to a lesser extent the identity of the seller's agent is what's going to determine if the team that is representing you is faced with a conflict of interest or not – even if that firm is a buyers-only brokerage that takes no listings and never represents sellers.

Such a brokerage would be faced with a conflict of interest if, for example, you wanted to buy a home owned by a relative of one of its members – and that even if the house is listed with a different brokerage. **The fact that the seller (or his/her agent) is a member of the inner circle of the brokerage that is representing you, is the issue;** and can the firm still properly represent you as a client under those circumstances, is the question.

The first thing that should **always, always, always** happen in such cases, is for the brokerage to make you aware of the situation (Fiduciary Obligation #3: Disclose Conflicts).

Then, it would be up to the broker to decide if it is appropriate to proceed with the purchase with you as a client; if it would be better to get you to become a customer; or if it would be best to release you, so you can become the client of another firm.

But you would also have to agree to proceed with the transaction given the circumstances. And even if you were fine with the situation, I believe it would still remain legally dangerous for the firm to keep you in client shoes in a case like this (Fiduciary Obligation #2: Avoid Conflicts of Interest).

There are a lot of grey areas for brokers. The seller being a direct relative of a team member is kind of obvious; but what if the seller were just a very good friend of a team member? Is that individual also a member of the licensee's inner circle? It would be up to the broker to evaluate the risks and ultimately decide on the way to proceed – without ever forgetting that clients who may initially seem to be fine with everything, could suddenly change their mind and come after them.

These examples may seem far-fetched, but they are not. Ultimately, it is always the broker's responsibility to ensure that the brokerage that he or she is running, is free of conflicts of interest on every single transaction it is providing agency service on. And if a client ever challenges one of those decisions, it will also be the broker's responsibility to explain to a judge why the decision was made and hope for a favourable outcome in the end.

Remember the list of people that form a brokerage's inner circle? Mother; father; brother; sister... How many people do you think this all adds up to in large brokerages? We could be talking about hundreds or even thousands of people that big firms shouldn't treat as customers.

That is why the only way for buyers to totally eliminate the possibility of ending up being caught in a dual agency situation, is to do business with a brokerage that carries no listings.

And since it can't be eliminated, the best way for buyers to minimize the risk of seeing the brokerage that is representing them be caught in a conflict of interest situation, because the seller (or his/her agent) is a member of its inner circle, is to do business with either a one-person company or a very small company, because tiny brokerages have tiny inner circles.

3.8 Dealing with Dual Agency

As we have just seen, there are three fairly common ways out of dual agency situations and both buyers and sellers should be made aware of them and ideally left to decide which one they like best.

3.8.1 Hiring Another Brokerage

This is an option that I think is better suited for purchasers. Canceling the listing and getting the house relisted with another firm is a lot of work. I can't imagine the circumstances that would compel a seller to go through all of this. Although switching brokerages is much simpler for purchasers, it is not very practical. Who are buyers supposed to turn to? Hiring a new advisor takes time. And time is often an enemy in these situations. When people fall in love with a property, their excitement is usually accompanied by the fear that someone else may buy the house, if they take too long to make up their mind. Making sure that they are properly represented on the transaction is important; but the prospect of losing the home while in the midst of switching to another brokerage is, for a lot of buyers, too much of a risk. And that's why this option is very seldom picked.

3.8.2 One Party Becomes a Customer and the Other Stays on as a Client

Getting one party to become a customer while the other remains a client of the same team, is no easy task either – even if the brokerage already has an existing policy stating that the party which has been a client the longest remains, while the other is offered customer status. I can imagine the party on the wrong end of that stick feeling that it is not a fair process. I don't think anybody should have to give up their client status – especially over an arbitrary time rule. There has to be a better way.

3.8.3 Both Parties Agree to Become Customers

This is why option #3, called Limited Dual Agency (Dual Agency with Limitations, Multiple Representation, or Transaction Brokerage) is the one most often picked. Both clients agree to become customers **and the broker promises to treat them both with neutrality**. It is fast, buyers and sellers receive the same kind of service and no third party needs to be brought in. Just a quick signature on a special piece of paper and the transaction is legally allowed to proceed.

It is unfortunate; but every year, tens of thousands of Canadian homebuyers accept the terms of limited dual agency, only because it seems to be the best of three less-than-ideal options. **And although it may, at first glance, look like choosing this third option negatively affects both parties the same way; it doesn't. As I will explain later, such neutrality agreements clearly favour sellers.**

3.9 New System, New Problems

Assumed buyer agency was very-well received by purchasers. Being able to hire their own real estate team and having these people legally work for them instead of the seller was an easy sell – especially since the service came at absolutely no extra cost – and that, on almost all MLS® transactions.

Buyer agency was an immediate hit. And because of it, sellers-only brokerages had almost no other choice but to all become full-service brokerages in order to stay competitive. But as we have already discussed, having both buyers and sellers as clients at the same time, isn't without its complications.

If you recall, one of the issues that I had with sub-agency, is that its rules technically didn't allow commission money to be shared with a brokerage that was representing a buyer as a client on an MLS® transaction. Well, that problem was definitively resolved, because there is no such restriction with assumed buyer agency.

Ever since its arrival in the mid 1990s, real estate agents in common law jurisdictions have been free to openly represent family and friends on MLS® purchases and receive a split of the commission for their troubles. And buyers and sellers have been at liberty to both hire their own independent representation and both be fully represented as clients of their respective firms on their transaction.

What an amazing turn of events for buyers. They went from being considered customers on all transactions, all of the time, to being allowed to be clients on all MLS® deals – and that without ever having asked for it!!!

But the introduction of limited dual agency as an option for a brokerage faced with having to represent a buyer-client on the purchase of a seller-client's home, has created a trap that brokers need to be very careful about.

As discussed, limited dual agency requires the brokerage to turn its two clients into customers **and treat them both even-handedly and with total neutrality**. But, as it was learned during the sub-agency years, the legal system considers that every brokerage has its own list of people, to whom it should never promise neutrality.

And that is the trap. Brokers need to ensure that their licensees do not enter the brokerage into a dual agency agreement whenever any of those folks are involved on a deal. To promise that the brokerage will treat any of these people with neutrality could be a mistake. But what should licensees do instead?

3.9.1 Representing a Relative on the Purchase of an In-House Listing

In this example, I will pretend that I am a salesperson that is assisting his sister on a purchase. One day, my sister requests to view one of my co-workers' listings. I immediately recognize the potential dual agency situation and proceed in this way: I set up the viewing and inform my co-worker of the potential conflict; I remain very quiet and neutral during the visit to ensure that I don't help or hurt any of my firm's two sets of clients with my comments.

If my sister doesn't like the house, then we can move on and that's the end of it; but unfortunately, the place is great and she falls in love. And it is at this point, that this transaction gets complicated. There are two hurdles in my way: first, my team is in a dual agency situation and second, I am related by blood to the buyer.

Let's now consider the usual options for dual agency situations and see how I can make the deal happen, while at the same time upholding the law and keeping myself, my brokerage, and my broker out of trouble:

1. The most popular option would be to offer limited dual agency to the two parties. But before I do, I should ensure that it is a possibility, because it requires that the two opposing clients be turned into customers and then be treated even-handedly and with total neutrality. My personal relationship with the buyer is a big problem. The bond that I have with my sister is so strong that it legally prevents my team from representing anybody else as clients on the transaction. No matter how hard I try, no courtroom would ever believe that I would treat my own sister with neutrality. Again, I am not a lawyer; but as far as I know, family and friends of all licensees should always be assumed to receive preferential treatment by the brokerage that employs them. Turning the two parties into customers seems impossible in this case; my sister needs to be considered a client of my firm and there is nothing I can do about it. Limited dual agency should therefore be out.
2. Since my sister should be considered a client by of the brokerage I work for, the only way the team I belong to could assist both parties on the deal, is if the seller agreed to become a customer. Turning the seller into a customer would work as long as the two following requirements are met: first, the seller must agree to give up his client status and become a customer – which is far from guaranteed and may not be in his best interests; and second he should also be free of the kind of close connection that my sister has with the brokerage. If he too were to be related to his agent or have a business or financial tie with our team, then he couldn't become a customer either. Turning the seller into a customer, should therefore, be a possible solution if a few conditions are met.
3. If it were discovered that both my sister and the seller shouldn't legally be considered customers by our team; then it seems to me that the only way for them to do business would require my brokerage to totally remove itself from the transaction. Both my sister and the seller would get released from their contractual obligations with the brokerage; they would then hire independent firms and proceed with the transaction as clients of those other two companies. This would mean that my colleague and I would lose our clients and the only way for us to make any money on the deal, would be if a referral fee could be negotiated with the brokerages that will inherit the two parties' business.
4. Say the seller can be turned into a customer, but simply refuses to give up his client status if my sister is going to keep hers. One way out of this, would be for my broker to refer my sister to another firm in exchange for the seller to agree to become a customer of our brokerage. My colleague would have to explain to his client that because my sister is related by blood to me, our team can't treat him as a client. Our brokerage is in a conflict of interest because I am related to one of the parties and that legally prevents it from representing anybody else as a client on the transaction. The only status our team can offer the seller on any deal involving my sister, is that of customer. The brokerage is not doing it by choice; it is obligated by law.
5. Another option if the seller can become a customer but simply doesn't want to give up his client status, would be for my broker to release him from his contract with our firm so he could become the client of another team. If this worked out, my sister would remain a client of our brokerage but my colleague would lose his client.

6. Finally, if nobody agreed on anything and things started to heat up, I could see my broker releasing the two parties to avoid getting sued by either or both of them, for allegedly letting our natural desire to make a living supersede the best interests of our clients.

To sum it up:

1. Limited dual agency should not be an option; but the next five could:
2. The seller becomes a customer (if he can) and my sister stays on as a client;
3. Both my sister and the seller are sent to other firms, because both have to be considered clients;
4. My sister hires another brokerage and the seller becomes a customer of our firm;
5. The seller hires another brokerage and my sister stays on as a client of our firm;
6. No solution can be worked out and my boss – the broker – releases everyone.

Financially, the best scenario for me and my colleague would be for the seller to agree to become a customer of our team while my sister stays on as client. This way, we would both get paid on a brokerage double-end. If the full MLS® commission is say, \$10,000 with \$5,000 for working on the seller's side and \$5,000 for working on the buyer's side, the brokerage would share the \$5,000 listing side with my colleague and the \$5,000 buying side with me.

If both parties are released and sent to other brokerages, the best that can happen to my colleague and I, would be to share a referral fee of say 25% with our brokerage. In this case, our firm would receive \$1,250 (25% of \$5,000) for referring the seller out and \$1,250 for referring my sister out and it would share those monies with us.

I am not sure, but I do not believe that collecting a referral fee would be a good idea if our team is going to be involved on either side of the transaction. I think it could collect from both sides if it removed itself from the deal altogether, but not if it stayed on with either party. If this is correct, it would then mean that either my colleague or I could lose our client and get nothing in the end.

As you can see, avoiding all forms of conflicts of interest (Fiduciary Obligation #2) requires a thorough analysis of all options and potentially some financial sacrifices, when the clients' best interests must take precedence over those of the brokerage and its employees.

Can you imagine working for months with clients and seeing your broker forced to refer them out because of some kind of conflict of interest and you getting nothing? That would be a tough pill for anyone to swallow.

3.9.2 The Only Three Ways to Buy an MLS® Property

My intent with the sister example, was to show you how difficult and complicated it can be to follow the rules 100% by the book. Conflict of interest situations are tricky and can become legally and financially dangerous if handled incorrectly.

Because this is probably the most complicated part of my entire presentation, I believe it is important for me to simplify things right away. Although I explored several customer and client combinations in the sister example, most MLS® transactions fall into three basic categories:

1. Buyer and seller are clients of two different brokerages;
2. Buyer is customer and seller is client of the same brokerage;
3. Buyer and seller are both customers of the same brokerage.

It is so extremely rare for an MLS® transaction to have the buyer as client and the seller as customer of the same brokerage, that I am not even going to bother with it. So, I will now look at all three possibilities and tell you about the service the buyer would be in his/her right to expect.

Scenario #1: Buyer and seller are both clients of two different brokerages

This scenario is by far the best for the buyer. The two parties are accompanied by licensees from different brokerages, legally obligated to protect their client's best interests and try to influence the outcome of the transaction in their respective favours. It is simple and very straight-forward.

Scenario #2: Buyer is customer and seller is client of the same brokerage

This scenario is very bad for the buyer for two reasons:

Problem 1: The brokerage and its members must assist the buyer with neutrality, without ever telling him/her anything that they wouldn't repeat in front of the sellers.

Problem 2: Things that the buyer may unwillingly reveal in front of those licensees, will have to be passed on to the seller. Because, legally, anything said in front of the agent of a seller, has to be considered something said directly in front of that seller.

This is by far the worst of the three options for buyers, since they are dealing through a brokerage that is fully dedicated to their adversary; they are receiving a neutral treatment; and any piece of information that they mistakenly reveal about themselves must be passed on to the seller.

Scenario #3: Buyer and seller are both customers of the same brokerage

In this scenario, the brokerage and its licensees are treating both buyer and seller with neutrality. It must act with impartiality and licensees cannot tell either party anything that they would not repeat in front of the other – and as I'll explain next, this is a lot worst for buyers, than it is for sellers.

So, since these are only ways to buy an MLS® property, buyers have the following options:

1. They can buy with a brokerage fully dedicated to them;
2. They can buy with a brokerage fully dedicated to their adversary and neutral with them or;
3. They can buy with a brokerage fully dedicated to nobody and neutral with everyone.

It is because purchasers don't know about these three options, that they do not take the necessary precautions to avoid two and three: **which is to purchase either through a buyers-only brokerage or the smallest of small full-service brokerages.** It is as simple as that. It doesn't cost anything extra and it eliminates 99.9% of all conflicts of interest.

3.9.3 How to Legally Turn Dual Agency into an Advantage for Sellers

It is now time for me to tell you why entering into a neutrality agreement gives an advantage to sellers. Here's how I would do it, if I were the seller's agent:

Knowing that at any time I could get caught in a dual agency situation and that it would most likely result in me no longer being able to provide advice to my clients, I would not wait for the unfortunate event to happen before doing my job. Immediately after being hired, I would put my thoughts on paper and provide them with advice on how to proceed, if I ever get silenced.

For example: "I really like our asking price, if we receive an offer in the next few weeks, I think this can be interpreted as a sign that we are priced right and as a result, I would not budge much during negotiations. On the other hand, if after 6 or 7 weeks of viewings nothing has materialized, I would start to consider a small price reduction..." I would provide my clients with feedback by email and make a point of keeping them informed of how I feel about the transaction as we progress.

Unfortunately, I couldn't do the same for buyer-clients, because the value of the service I provide purchasers only becomes obvious after they have found their dream home. Up to that point, I can only provide them with basic market and financial information. I can't tell them how I would approach a purchase without knowing what property is being considered. Every house is different; every neighbourhood is different; every situation is different. Shutting me up just as I am about to truly take control of the purchase and make my suggestions, would be terrible for my buyer-clients.

This is why limited dual agency agreements clearly benefit sellers. They can be provided with professional advice in writing ahead of time by their agent, with instructions to refer to it in the event all professionals get muzzled – and buyers just can't. **So, it looks like the two parties are making a similar sacrifice on the surface, when in fact it is not – if those on the sellers' side are smart and in all legality, rig the whole thing in their clients' favour ahead of time.**

3.10 How Dual Agency Situations are Handled Today

In the sister example, I looked at the possibility of getting the parties to sign a dual agency agreement first, because it is the easiest and most common way out of those situations. But as we saw, sometimes it should not be an option.

Unfortunately, it is not uncommon today for licensees to mistakenly enter their firm into such agreements when members of their brokerage's inner circle are involved. And every time they do, they are exposing themselves, their brokerage, and broker to potential liability.

I believe that things are the way they are, because of how the switch to assumed buyer agency occurred. CREA came out with a mandatory disclosure of the rules of sub-agency in early 1995 and I don't believe it was ready for the response that it received from buyers – which was strong and for the most part, negative. This crisis was unexpected and something had to be done fast, before things got out of control and permanently damaged the relationship licensees had with the public.

The industry had limited options and decided to quickly get rid of the problematic sub-agency system and to replace it with buyer-friendly assumed buyer agency. It wasn't a perfect solution, but it was probably the best it could do under the circumstances. If you recall, this switch happened within only a few months in Nova Scotia (and possibly in a similar fashion across the country).

Before the switch, it was common practice for licensees to receive a share of the MLS® commission for helping any buyer (including members of their own inner circle) on any MLS® purchase and it didn't seem to matter if the brokerage they worked for was assisting the two parties or not.

After the switch, it remained common practice for licensees to receive a share of the MLS® commission for helping any buyer (including inner circle people) on any MLS® purchase; but the difference was that it now mattered if the brokerage they worked for was assisting the two parties.

But it was not a big deal. All they had to do, was to get those parties to sign a dual agency agreement and from this point on, treat everyone with neutrality. That's it.

I can only speak for myself here; but I, for one, can confirm, that nobody told me, at the time, that entering into a dual agency agreement was not always suitable. The industry was on fire; something had to be done quickly; and there was **no time to train anybody**. I get that part. But I think I should have been warned about the legal risks involved with promising neutrality to friends and family after the fire was put out; but I was not (and I doubt that anybody else was either).

Why wasn't I told that dual agency agreements are not always suitable? Since I am not a lawyer, I have no choice but to trust that these things will be clearly explained to me ahead of time. Because I believe I have the right to know when I am gambling.

The first time I read about this was in the spring of 2008 – some 13 years after dual agency agreements had come out. This caught my eye, because I had already discovered the problem while working on this book and didn't understand why the issue had never been brought up before.

In most, if not in all, provinces and territories, real estate people are obligated to take yearly courses – some of them mandatory – to keep their license. I clearly remember talking about 9 different kinds of buyers that had been flagged by the legal system as potentially unsuitable for customer shoes. **But that was during the sub-agency years.**

After assumed buyer agency arrived, most of the training was about how to properly deal with dual agency situations and never once do I recall hearing of unsuitable people. **Don't you think, brokers like me, would have liked to know what to do with them? Especially, since most of the troublemakers are our friends and family members.**

Is this a case of don't fix it, if it isn't broken?

I have to admit, promising neutrality to the two parties, has worked amazingly well and has proved to be relatively safe over the years. But isn't this a repeat of what had happened during the sub-agency era – things being done on the street in a way that may not be in complete accordance with the rules?

Yes, some buyers and sellers do get referred to other brokerages every now and then, but in my opinion, it is almost always because they refuse to go along with the terms of dual agency. I doubt very much, that many releases are a result of the broker feeling uncomfortable with the situation; the client's refusal to sign on the dotted line, is the real reason.

When you think about the sister example, it makes sense to conclude that a brokerage can't be assumed to be neutral with the blood relatives of any of its members – the connection is way too strong. Using the same logic, it also makes sense to assume that a brokerage **can** treat a stranger without ties with any member of the firm with neutrality – why couldn't it? And that to me, is the other end of the spectrum.

So, brokerages cannot be considered neutral with family, but can with total strangers; so, what about the people in between? Could a brokerage be neutral with the best friend of one of its members? What about that best friend's brother? At what point does it become okay to enter into a limited dual agency agreement? What kind of connection is negligible enough? Does anybody know?

Although I am not too sure where that line should be drawn, I know for a fact that brokerages have the legal obligation to disclose the full details of these connections to the clients involved. Buyers and sellers have the right to know who is on the other side of their transaction and what tie – if any – these people have with the members of the firm that is representing them.

Real estate agents represent family and friends on a regular basis and like everyone else, these people unwillingly get caught in a non-negligible number of dual agency situations. The biggest danger for brokers today, is not to promise neutral treatment to potentially ineligible people, because doing what's right is not always obvious. No, their biggest danger is for their employees to fail to disclose the fact that such people are involved in a transaction to the party on the other side of it.

And in my opinion, that is a cancer that is growing on the real estate industry.

Brokers having a hard time handling transactions where relationships between their employees and the parties exist is understandable; **but failing to let their clients know about the full nature of the dilemma would clearly be inexcusable (Fiduciary Duty #3: Disclose Conflicts).**

3.11 Connecting the Dots

Believe it or not, you now know enough about the industry for me to show you the best way to navigate a purchase and avoid agency trouble. I will number every piece of information and show you one of the safest roads to homeownership.

1. Because it is the better of the only two kinds of treatment available to the public, it is in the buyers' best interests to ensure they are the clients of the brokerage with which they do business.
2. Because dual agency situations require that one or both parties to the transaction be considered a customer by the conflicted brokerage, those with customer shoes on their feet are receiving the least

desirable of the two kinds of treatments offered to the public by the industry. For that reason, it is in the buyers' best interests to avoid dual agency situations.

3. Because dual agency situations only affect full-service brokerages, it is in the buyers' best interest to do business with a different kind of brokerage.

4. Because dual agency situations do not affect buyers-only brokerages, it is in the buyers' best interests to do business with such brokerages instead.

5. Because buyers-only brokerages are currently extremely hard to find, it is in the buyers' best interests to tell local real estate agents to open such companies in their region.

6. Because of time restraints and lacks of availability, buyers could find themselves forced to deal with a full-service brokerage; in which case, it is in the buyers' best interests to choose one that carries as few listings as possible to minimize the risks of getting caught in a dual agency situation.

7. Because the more employees a brokerage has, the higher the number of people who have a connection with the firm, it is in the buyers' best interests to choose as small a brokerage as possible to minimize the risk of the firm getting caught in a conflict of interest, because one of its members has some kind of tie or relationship with the seller.

8. Because choosing a one-person brokerage means dealing with an individual that possesses a broker's license – the top license in the industry – as well as dealing with the owner of the firm – the individual that should care most about the service it offers to the public – it is in the buyers' best interests to favour such one-person brokerages over any other size of real estate company.

3.12 How Common are Double-Enders Today?

So, getting buyers to agree to proceed with the single biggest investment they are likely to make in their lifetime, with a neutral agent by their side, as opposed to an agent that is legally obligated to protect their best interests is financially profitable for brokerages, but far from ideal for purchasers. I know this may sound like a harsh thing to say, but it is true. Working with a neutral licensee is not as bad for sellers, because their risks are limited; but I think it is absolutely terrible for buyers.

I know a lot of you are hearing this story for the first time and may be wondering how often brokerages assist buyers and sellers at the same time, on the same transaction.

Well, I've got recent Nova Scotia numbers that will give you a pretty good idea.

These figures come from 6 of the 7 regions of the province (the other wasn't available to me); 5 of them that I would qualify as rural and the other as a mid-size Canadian city. They represent the MLS® activity generated by 1,563 licensees, with 1,160 of them working our big city – the Halifax-Dartmouth region – between January 1st and December 31st, 2011.

These 1,563 REALTORS® were involved on a total of 10,065 MLS® transactions in 2011; 6,445 or 64.0% from Halifax-Dartmouth and the other 3,620 or 36.0% from the 5 rural areas combined.

Out of those 10,065 transactions, 3,990 were brokerage double-enders or 39.6%.

Out of the 6,445 from Halifax-Dartmouth, 1,834 or 28.5% were brokerage double-enders.

And out of the 3,620 from the more rural communities, a staggering 2,156 or 59.6% were brokerage double-enders.

So, there you have it. In 2011, 40% of all MLS® transactions in Nova Scotia involved only one brokerage assisting both buyers and sellers, at the same time. This means that all these people bought their home through a firm, either fully dedicated to their adversary, or fully dedicated to nobody!!! And in case you are wondering, this is not a fluke. I have these same statistics for 2009 and 2010; and the results are exactly the same within less than one percentage point.

To tell you the truth, I was surprised by the results the first time I looked into this. I knew double-enders were more common in smaller communities; but not 6 out of 10 deals. Same thing with Halifax-Dartmouth; I knew the figure would be down because of the larger number of agents working the area, but I didn't expect 28.5% of transactions to involve only one brokerage.

What does that mean to you in other provinces? First, I don't think Nova Scotians are different than the people in the rest of the country; so, I think that something similar is most likely happening in your neck of the woods, as well.

With this said, these numbers have to be adjusted down for larger cities. The 28.5% from the Halifax-Dartmouth region with a population of 400,000, is probably a good number to use for cities of similar size. But the percentage of double-enders is most likely in the single digit range for larger urban areas like Toronto, Vancouver and Montreal where thousands and thousands of agents work.

As you can clearly see, double-enders represent a huge chunk of all real estate transactions.

3.13 The Death of the Double-ENDER

I never liked dual agency agreements. It is not my style to be quiet and remain neutral. **What good can I do, if I can't talk?** I like to teach and explain. I like to get involved and help. That's why as soon as the new system came out; I signed up to write my broker's exam.

My goal was to open a buyers-only brokerage. Helping purchasers was perfect for me. I was only a few months shy of my 28th birthday at the time and people my age were buying houses; they weren't selling. I had an age connection with first-time buyers and I also happened to like an underdog.

Owning and operating a buyers-only brokerage was therefore perfect for me. It took almost two years before I felt that I could make a living without taking listings or ever representing a seller again. And I did.

I must admit, that I naïvely believed that it would only be a matter of a few years before others would join me on the buyers' side and open their own buyers-only brokerage. But I was wrong.

Information is what was missing. The content of this manual is what the public would have needed back then, but it wasn't available. And this is why – as of this writing – my firm is one of only two buyers-only brokerage that I know of in Canada. A few others have tried; but they were not able to survive.

But, I think that this is all about to change. Even if some people may be okay with buying through a brokerage fully dedicated to their adversary or fully dedicated to nobody, I know that others won't and will start to look for alternatives.

That's why I predict that the real estate industry is about to experience a significant makeover. I see absolutely no way around it; it is only a matter of time. And allowing buyer agency on MLS® transactions, will one day be recognized as the one decision that slowly set the wheels in motion.

This move opened the door to what will soon be an invasion of specialty brokerages. The rest of the world has already specialized and the real estate industry is next.

Just look at the television industry with its Golf Channel; Biography Channel™; NHL Network; and Food Network; or the retail industry with its toys stores; sports stores; and computer stores. The same thing happened in the medical world a long time ago and there is now a doctor for every part of our body.

So, why should real estate be any different? In a not-so-distant future, the industry will split and most licensees will have to choose if they want to be a buyer agent or a seller agent. Working both sides of the street will eventually fall out of favour with you – members of the public – and buyers-only and sellers-only brokerages, will be the rage.

There are so many reasons for this to be the only possible future for the profession. The most obvious, is that representing buyer-clients and seller-clients at the same time, on the same deal, is a legal can of worms.

Large full-service brokerages are struggling to find a way to preserve the financially profitable double-ender, but I believe it will soon be a thing of the past. I don't think it will ever totally disappear, but it is going to become increasingly rare. Buyers are about to realize that there are better ways to approach the purchase of an MLS® listing than by dealing directly with the brokerage hired to sell it for as much as it can.

Soon, knowledgeable purchasers will stay away from any brokerage that advertises homes for sale. Instead, they will seek the assistance of buyers-only brokerages. They will know that such firms have no listings; that they never represent sellers and are always 100% on the buyer's side; that their members are totally free to criticize the homes they visit and point out their negative features to ensure that their buyer-clients know what they are getting.

Without homes to sell, buyers will also have the peace of mind of knowing that these brokerages just cannot get caught in a dual agency situation.

Knowledgeable sellers will do the same thing and start seeking the assistance of sellers-only brokerages – specialty companies that don't take buyers on as clients and always protect the sellers' best interests and client status on all transactions.

The public will embrace this leveling of the playing field and will see no problem with most transactions involving buyers fully represented by buying specialists, squaring off against sellers fully represented by selling specialists.

Isn't that the way it should have always been?

Another reason why this reform of the industry will happen, is that real estate agents are currently all doing the same thing: they fight for listings. Unfortunately, it is not a fair battle. Industry heavyweights have money, experience, and the backing of several assistants. How can a newcomer win in this fight for market share?

Statistics have shown, that an estimated 50% of the roughly 100,000 people who are currently licensed, will have left the industry in two to three years, only to be replaced by another bunch of hopefuls who will try to wrestle a little bit of business away from well-established powerhouses.

As you are reading these lines, thousands of Canadian real estate agents are contemplating quitting the industry, unable to make a name for themselves. But a lot of them will be interested by the prospect of starting their own specialty brokerage. All they need is a broker's license – which some already possess. This means that, technically, dissatisfied licensees could within a few weeks, open their own micro enterprise in the basement of their home.

They have already spent thousands of dollars on courses, licensing fees, dues and advertising to make their real estate dream come true. Why not become a buying specialist and offer the best in buyer service, free from the legal restrictions placed on those working both sides of the street?

But the most likely candidates to open buyers-only brokerages, are small full-service firms that are struggling to stay afloat. These companies often become discount brokerages to try to gain an advantage over their competition. So, when purchasers start looking for buyers-only brokerages, a lot of these small guys will jump at the opportunity. It makes so much sense. Isn't there a buyer in every real estate transaction? That's 500,000 MLS® purchasers every year, in Canada. And yet licensees are all courting sellers, while the buyer's side of the industry remains wide open.

Just like all sellers-only brokerages became full-service brokerages almost overnight in the mid 90s, a bunch of small full-service brokerages will soon jump the fence and become buyers-only brokerages. I expect it will take several years before these brokerages reach every corner of the country, but I am confident that they eventually will.

Think of all the major Canadian cities that are currently without such specialists. Can you imagine the advantage these brokerages will have over full-service firms when they start advertising that they are 100% on the buyer's side and fight to bring the price of real estate down?

I predict that the arrival of specialty brokerages will lead to the slow death of the double-enders. But until then, limited dual agency, dual agency with limitations, transaction brokerage, or whatever this

neutrality service is called in your area, will continue to be the most common way out of dual agency situations.

3.14 Part Three Summary

In this block, I have introduced you to the duties and obligations the Common Law places on real estate agents; have explained sub-agency and the arrival of assumed buyer agency; have discussed dual agency; and have explained that, in my opinion, a lot of sticky situations may still be handled wrongly by brokers and their employees.

What you need to remember from Part Three is that it is in the buyers' best interests to:

1. Purchase through a company fully dedicated to them;
2. Be the clients of the brokerage they buy through;
3. Stay away from dual agency;
4. Avoid full-service brokerages;
5. Purchase through a buyers-only brokerage;
6. Favour small brokerages, ideally of only one person.

In Part Four, I will finish the agency saga and introduce a new real estate system introduced in our country in 2008 that is likely to spread across the country in the near future.

Part Four:

Agency Services in Canada Today

In the previous block, I have explained the industry's legal reality and took you through the first five decades that followed the arrival of the MLS® System. In this one, our last on agency issues, I will finish this evolution and bring you up to date; I will then explain how buyer agency was born in the United States; the issues it created; what I believe would have been a good way to solve those new problems; and compare my solution to the American fix recently introduced in our country.

4.1 A New Set of Rules

Since the relationship real estate agents have with buyers and sellers is somewhat similar to the one lawyers have with their clients, the same – or very similar – agency rules apply to the two professions. But is that fair? Should the rules that apply to lawyers, also apply to real estate agents? Or should a new set of rules be created for the real estate industry?

There are two areas where the differences between the professions could potentially justify the need to create new guidelines for REALTORS®.

The first one, is that whenever lawyers first meet with members of the public, they know at the time what the case is about and who is on the other side of the issue. This knowledge allows them to determine on the spot if a conflict of interest exists and if it is a case they wish to take on. If they don't like what they hear, they can politely decline, without investing any more time or money.

But real estate agents can't do that. They don't know in advance who is going to be on the other side of the transaction, when they meet with potential clients. The identity of that party is revealed at the eleventh hour – often after a lot of time and effort have been invested – and sometimes it creates a problem.

The second difference I see, is that lawyers are normally paid by the hour and very often charge upfront retainers before investing any of their time. Real estate agents traditionally work for free and only get paid if their clients end up buying or selling something. This is why letting go of a client – and most, if not all, of a paycheck – to comply with the conflict of interest rules of the Common Law, is so difficult.

I find that these rules don't mesh very well with the traditional way real estate services are being provided – especially within the walls of large full-service brokerages – and that, to the point of threatening the survival of large firms in the decades to come, if nothing is done to fix the problem.

And this is why a new agency model called “Designated Agency”, was created.

Designated agency is a modified version of the Common Law specifically designed to address the dual agency problems that plague full-service brokerages.

This new model first came out in the United States in the early to mid-1990s and can now be found in approximately two thirds of all states. It reached us in Canada on January 1, 2008, when my home province of Nova Scotia introduced it as a legal alternative to operating under common law rules. This move was quickly followed by Alberta and other provinces may eventually join in as well.

Designated agency is an option for brokerages. Up until its arrival, common law regulations applied to all. But brokerages in Nova Scotia and Alberta can now operate under this modified set of rules.

4.2 The Birth of Buyer Agency

In order to properly explain designated agency, I must take a few steps back and first tell you about the arrival of buyer agency in the United States; because it is that arrival that forced industry leaders south of the border to commission lawyers to create designated agency.

From 1997 to 2007, I was an international member of NAEBA – National Association of Exclusive Buyer Agents (EBAs) – a purchaser-friendly American real estate association. My membership into this organization gave me access to multiple internet forums where EBAs constantly exchanged information and stories. It is the reading of those discussions that has allowed me to get a better idea as to how the American industry evolved over the last several decades. Although I am not 100% sure that this is exactly how things ultimately unfolded, I find the following story quite believable.

So, it is my understanding, that in the late 70s or early 80s – in the middle of the sub-agency era – American brokers began receiving requests for representation on home purchases on a more regular basis. Providing agency service to buyers, as opposed to traditional purchase facilitation service, was rather unusual and brokers quickly realized that it created a problem on MLS® transactions.

The issue was financial and had to do with the sharing of the commission. Because buyers were paying the brokerage that was representing them, collecting the commission split and joining the seller's side was not an option for the firm.

To alert the sellers that something out of the ordinary was happening, buyer agents were inserting special clauses in their offers where they were officially rejecting the commission split and making everyone aware that they were protecting the buyers' best interests on the deal.

Through the offer, the sellers were being told that since they would only have to pay a fraction of the original commission (often only half) they were being asked to sell their house at a price reduced by the amount of money they were thereby saving.

In plain English, this meant that instead of a \$200,000 purchase and the sellers paying \$5,000 to the listing brokerage and \$5,000 to the co-operating brokerage, the buyers wanted it to be a \$195,000 transaction with each party responsible to pay \$5,000 to its own representative.

After being explained, that buyers were doing this to ensure that the firm they had hired was legally working their side of the transaction, most sellers were usually okay with the twist. The financial outcome was the same for them in the end and it only seemed fair for the purchasers to also be able to receive independent professional assistance on the transaction.

But since amending the original paperwork and reducing the commission had to be a nuisance for listing brokerages, I assume that as these situations became more common, it ended up being easier to change the MLS® rules and make the commission split available to any brokerage with an

interested buyer **without that firm having to join the seller's side of the deal, as it had always traditionally been.**

The transition to this system took a little while and that delay allowed American industry leaders and franchise sellers time to look into the effect the introduction of buyer agency would have on their business models. Being the savvy business people that they were, they too, must have quickly realized that with buyer agency available, it would be in the best interests of all purchasers to:

1. Always be clients of the firm they buy through;
2. Stay away from Dual Agency;
3. Avoid full-service brokerages; especially large ones;
4. Always purchase through a buyers-only brokerage;
5. Always favour small brokerages, ideally of only one person.

And all of this would be anything but positive for them if it ever happened.

4.3 Why the Need for Designated Agency

During the sub-agency years, belonging to a large brokerage was an advantage for any real estate agent competing for a listing. Being able to tell sellers that 100 or so colleagues at the office will assist on the sale and tell all of their buyers about the property, must have won members of large firms several listing competitions over agents working for smaller shops. Back in those days, it was the bigger the brokerage you work for, the better your chances of getting the listing.

But there was a risk that this could change, after the introduction of buyer representation. And that's because co-workers would no longer be working with buyer-**customers** but with buyer-**clients**. And bringing another set of clients to the negotiation table would create a legal nightmare.

I see this fact being lost on the public and on most licensees; but not on those who owned large firms and those selling real estate franchises. These people must have quickly realized that offering buyer agency as well as seller agency within a large full-service brokerage, would create a lot more dual agency situations than it would within a smaller office.

Things were getting complicated for large firms. They had no choice but to offer buyer agency; this new service was popular and there to stay. And doing nothing about this whole thing could potentially lead to the death of their kind of brokerage. So, that too, was probably not an option.

I am sure these people knew that if buyers and sellers found out that dual agency problems affect large firms more than they do small ones, they could begin to favour smaller outfits. And if that ever happened, licensees could start leaving traditional giants to either open a microenterprise or simply join one.

The arrival of buyer agency was a threat and to a small extent, the survival of the large traditional brokerage was potentially at stake. Time was therefore, of the essence. They had to figure a way out of this problem, before the public and the rest of the industry found out about it.

Today we know that they had all kinds of time. Their looking into a solution must have started in the late 80s and today – over 20 years later – the knowledge necessary to understand these issues still has yet to reach most buyers and sellers.

Regardless of how this evolution exactly unfolded, in the end, designated agency got introduced. And by the mid-90s, some states had already approved it as an alternative to the common law model.

So while we, Canadians, were busy with the introduction of assumed buyer agency, our neighbours to the south were years ahead of us, already selling the solution to the dual agency problem our real estate industry was about to create for itself.

4.4 A Better Solution?

Before I explain how designated agency works, I will introduce you to what, I believe, would have been a better solution for large, full-service brokerages. I will then compare my fix to theirs and highlight the differences.

I raised this question already and I am going to raise it again: what good is a neutral agent? This is one of the biggest problems I have with the way dual agency situations have been handled since day one. **How does turning licensees into salt statues benefit buyers and sellers?** Wouldn't they be better off if the conflicted brokerage released one or both of them, so they could work with another firm and be fully represented on the transaction? Of course, they would.

Dual agency situations result from the fact, that under common law rules **only brokerages can provide agency service** to buyers and sellers. If you recall, it is the brokerage that is the agent – its employees just do the physical work on the firm's behalf. And it is because of the legal obligation to protect their clients' best interest, that brokerages find themselves with a conflict on their hands every time two of them land on opposite sides of the same transaction.

Brokers running large, full-service brokerages represent so many buyers and sellers, that they constantly find themselves in dual agency situations. The problem stems from the fact that under common law rules, a brokerage is considered to be one big team, an unbreakable unit comprised of one broker with numerous assistants.

Since small is obviously the way to go, why don't we allow large brokerages to subdivide and go from being considered say, one unit of 50 people, to 50 independent units of one? It would be up to the owners of the firm to decide on the kind of company they want: a traditional one-unit brokerage or a new-style multi-unit brokerage. They would have an option.

The key to my proposal, is that I would limit the number of independent units large brokerages could sub-divide into, to the number of licensed brokers they have on their staff. The more brokers; the more independent units they could have.

Agents with the required number of years of industry experience would therefore be encouraged to get their broker's license, so they could independently own and operate a small piece of the formerly large one-unit brokerage – just like a little franchise, if you wish.

Multi-unit brokerages would become neutral entities without clients. Buyers and sellers knocking on their doors would be sent to one of the several brokers running the firm's small independent units. And agents **without** the required experience to get their broker's license and run a unit by themselves, would have to work under the supervision of one of the firm's several brokers.

This idea is based on how several medical clinics operate, where a group of doctors share office space and the cost of a front desk staff, but each run their own totally independent practices. In this case, we would have a group of brokers doing exactly the same thing.

These brokers would pay the owners of the new-style multi-unit brokerage, some form of monthly financial compensation and, in exchange, would be provided with their own private office and allowed to operate independently from all the other brokers within the firm – including the brokerage's old broker of record.

Subdividing into very small independent units – each run by their own independent broker – would basically eliminate dual agency situations since they would only occur whenever one of the brokers would be faced with having to represent two of his or her own clients at the same time, on the same deal – and common law rules would apply. There would be no need for new rules with my proposal.

Upon being granted a broker's license, the brokerage's employees would have to decide if they would rather leave and start their own brokerage or stay with the new-style firm and benefit from its established reputation and receive a share of the walk-in business it attracts.

The former single-unit brokerage would no longer make its money by taking a cut out of every commission cheque that comes in; but instead, by collecting monthly “rent” cheques from all of the brokers in exchange for their use of the facilities and a piece of its walk-in business.

So, when walking into or calling the new Sell-Me Mike Realty, buyers and sellers would be asked if there is a particular individual they would rather deal with; and if not, they would be directed to the next broker on the firm's internal referral list. They would then become the client of that one broker and have absolutely no business dealings with anybody else at the new-style multi-unit Sell-Me Mike Realty. It would be exactly as if they had called Andrew of Independent Realty. They would be the clients of that one broker only – instead of being the clients of 100 licensees if the firm had remained a single-unit brokerage.

Both my doctor and dentist operate out of such clinics. Why can't real estate brokers do the same?

4.5 Understanding Designated Agency

Now that I have explained what I think would be a workable solution, I am going to introduce what the industry came up with instead. As you will see, the two are very similar except for some key differences.

Under the rules of designated agency, large brokerages sort of subdivide the way I described. Agency service is not being provided by the entire brokerage; but instead, by a small fraction of the brokerage (that I call a unit). Unfortunately, the number of units that designated agency brokerages can create is not limited to the number of licensed brokers they have on their staff as I suggest; they can subdivide into as many units as they have salespeople. And because these units are not run by a qualified broker, the old broker of record remains in the picture, responsible to provide what I consider to be a difficult kind of supervision.

The idea behind designated agency, is to take a large full-service firm and try to make it small by isolating its licensees and totally eliminating teamwork and the sharing of client information between co-workers. Buyers and sellers are assigned one and only one member of the brokerage. This **“designated agent”** is the only one responsible to provide them with agency service – and that, without the help of the broker, unless necessary. Everybody else at the firm is told to stay away and treat them as customers, if contact is ever made.

A lot of physical and procedural changes are usually required for traditional common law brokerages to become designated agency brokerages. The objective of this makeover is to isolate designated agents from one another and provide them with as much privacy as possible. This is done by installing and/or creating various physical, electronic, and social information barriers such as: providing them with a small private office; a separate phone line; password-protected emails and faxes; locked filing cabinets; strict confidentiality rules for meetings; no shop-talk about clients; etc. all of this explained in a detailed Policies and Procedures manual.

It is up to the ownership and leadership of the brokerage, to decide what they believe needs to be done, to maximize privacy and protect the public’s confidential information.

Because designated agents operate independently from one another, it is not considered a conflict of interest when two members of the same brokerage represent buyer and seller at the same time, on the same transaction.

In an overwhelming majority of cases, designated agents are perfectly able to handle everything that comes their way, but if they ever encounter a difficult situation, the broker of record is there to help.

First, the broker provides neutral advice without getting involved with the confidential details of the transaction and this is often enough. But when it is not sufficient, the broker can jump in and then team up with the designated agent to assist on the deal.

Just like my multi-unit brokerages, designated agency brokerages are neutral and are forbidden from providing agency service to anybody.

The broker of record's job is: to ensure buyers and sellers are all assigned a "designated agent" and provided with copies of the agreements they sign; to ensure designated agents respect the brokerage's policies and procedures; to ensure that the brokerage treats all buyers and sellers even-handedly and in a totally objective and neutral manner; to supervise designate agents and support staff to ensure that they fulfill their mandates.

If you recall, I have stated earlier, that under common law rules, only a brokerage can provide agency service. But as I have just described, it is not the case with designated agency and **this is a major departure from the principles of the Common Law.**

It is for that reason, that two mandatory requirements are needed for the buying and selling of homes to take place under designated agency rules.

The first one, is for this model to have been legally accepted as an alternative to the common law model by your province. And again, as of this writing, it has so far only happened in Nova Scotia and Alberta.

The second requirement, is for all buyers and sellers who are going to do business with designated agency brokerages to provide these firms with their **informed** written consent **prior** to any agency service being provided.

Without the client's signature authorizing it; designated agency is not allowed.

4.6 My Concerns with Designated Agency

The following are a few of the concerns I have with the way designated agency brokerages operate:

1. Agency duties and obligations rest on the shoulders of licensees without a broker's license – contrary to what happens under common law rules where everything is always done on the broker's behalf. In this case, the broker of record is not involved in the process. His or her job is to ensure that rules are being followed and to provide supervision from a distance without getting personally involved in the private details of transactions, unless asked to or deemed necessary. The reason for this, is that the fewer people that provide agency service to one client, the lower the risk of a conflict of interest developing down the road.
2. Designated agents are entitled to a lot more freedom than licensees working for traditional common law brokerages. Although, some traditional brokers provide their more experienced salespeople with the same kind of autonomy designated agents enjoy, they do so knowing that their head will be on the chopping block if anything ever goes wrong – because everything is still officially getting done on their behalf. Agency service is not being provided on the broker of record's behalf at a designated agency brokerage. The designated agent is the sole individual legally responsible to provide that service to the client.
3. Designated agency is built on the principle, that designated agents are perfectly capable to handle most of the situations that they will encounter and puts the onus on them to ask their broker for assistance if they ever need it – and that even though they do not possess a

broker's license. Unfortunately, pride could get in the way and result in clients suffering unnecessary harm or hardship, if that assistance is requested when it is already too late or even worse, if it is not requested at all.

4. The public's informed consent is a mandatory requirement for designated agency to take place. And it is made clear to designated agents that **getting a signature is not enough**. They must ensure that what is being explained is being understood. Unfortunately, the rules of this model are somewhat confusing and a bit complicated. I am trying my best to explain them to you in a way that will allow you to understand what this thing is all about. Could someone that has been in the industry for only a few months do a better job? Do buyers and sellers truly understand what is going on when they sign on the dotted line? Your guess is as good as mine.

Under common law rules, only a brokerage can provide the public with agency service. This, therefore, ensures that the legal duties and obligations associated with representing buyers and sellers as clients always rest on the shoulders of someone with a broker's license.

Under designated agency rules, brokerages do not assume the legal duties and obligations associated with providing the public with agency service. They are legally obligated to remain neutral at all times and must place these duties and obligations on the shoulders' of one of their licensed employees instead.

Unfortunately, designated agents inherit power and obligations, but can't be blindly trusted with them because of their lack of a broker's license; so, they must be supervised by a broker who, as the firm's official representative, is trying to oversee everything, while at the same time trying to remain neutral and even-handed.

In my opinion, Canadian buyers and sellers would be much better served if all designated agents were brokers; free to represent the public as they see fit; but also 100% responsible for the service that they provide. These would be very simple changes to implement; there would be no need for another set of rules and traditional Common Law would continue to apply.

This arrangement works for doctors and dentists; I am sure it would work for real estate brokers as well. Allowing large brokerages to become a group of small independent firms under one big roof would make their dual agency problems go away. It would be very easy to explain to the public and within a few years, a majority of real estate agents would possess the top license in the industry.

And I think this would be better for everyone.

4.7 Part Four Summary

In this block, I have finished the evolution of real estate services since the arrival of the MLS® System in the 1950s; have taken you to the United States, to explain how buyer agency was born; what happened soon thereafter; and how all of this has affected us here, in Canada.

What I believe is important for you to remember from Part Four, is that the solution the industry introduced to save large, full-service brokerages from drowning in dual agency situations, is to give these large firms the look and feel of small ones. Designated agency is therefore a model that turns large firms into small ones. **Because being small, is the best way to avoid dual agency.**

But, if like me, you still believe that it is in the buyers' best interest to:

1. Purchase through a company fully dedicated to them;
2. Be the clients of the brokerage they buy through;
3. Stay away from dual agency;
4. Avoid full-service brokerages;
5. Purchase through a buyers-only brokerage;
6. Favour small brokerages, ideally of only one person.

Then, you don't need to remember anything about dual agency; neutrality agreements; designated agency; and all that complicated legal stuff; because small buyers-only brokerages are not affected by these things. **Having only one kind of client and few employees, saves them from all of it.**

In the next block, I will introduce the basics of home buying; tell you how I would personally go about buying and selling a house; and explain why.

Part Five:

Home-Buying Basics

In the last block, I have finished my discussion on the topic of agency and have shared my feelings on Designated Agency – the American model introduced in Canada in 2008. In this one, I will change my focus and discuss basic home-buying concepts; talk about the first steps towards a purchase; tell you how I would go about selling a house; what procedure I would want followed if I were on the market to buy a house; and especially why.

5.1 Hodgepodge

This first section, is just a mixture of small little things concerning houses in general, as well as various items that can be issues with insurance companies.

5.1.1 Types of Properties

In residential real estate, the most common type of home is what is called a single-detached property. That is just a home on a parcel of land. There is also a side-by-side set-up called a semi-detached property (or duplex), and finally there are townhouses: homes attached together in rows of three; four; five; or even ten. Other types include: condominiums; cottages; farms; mobile homes; multi-unit buildings; commercial properties; businesses; etc. So, if you know what you are looking for, there is an organized way to find it on the MLS® System.

5.1.2 Taxes on New Homes

Depending on your province and the way it taxes goods and services, you should know that new homes and vacant lots sold by developers – that are already taxable with at least the GST – could instead be subject to a higher Harmonized Sales Tax (HST), like it is the case in Nova Scotia. This is another area where a local professional can explain what is taxable and what is not, as well as what rebates (if any) are available to ease the pain. By the way, there is usually no tax on resale properties and the price you negotiate is the price you pay.

5.1.3 Zoning and Covenants

Zoning is a control technique used to regulate land use. For example, in a neighbourhood of residential, single-detached properties, the zoning will often allow only one family to live on a particular parcel of land and prohibit multi-family or commercial usage of the land. Zoning classifications vary across the country, but often include residential; commercial; industrial; and so on. In a zone classified as residential, you must be very careful with “in-law suites” or basement apartments, because they are often illegal. So, if you are in the market for a property with income, you have to make sure that what you are buying into is legal. And that includes zoning but also any fire regulations that may apply. Same warning if you plan on using your home for business purposes; don’t take the seller’s word that everything is fine; call your local zoning and fire departments to confirm. You should also ask if the property is subject to any restrictive or protective covenants.

Such covenants are limitations placed on the use of a property. They could prevent you from running a business in your basement or opening a day-care centre.

5.1.4 Layout

Another important issue, is the layout of the home. As you can imagine, some layouts are more popular than others. You are in a good financial position today and are considering a home purchase. But should your situation change because of employment or any other personal reasons, it would be nice to have a home with good resale potential. You want a property that will appeal to as many people as possible. The number of bedrooms and where they are located, is something to consider. In my opinion, a home with three bedrooms on the same floor would probably appeal to the highest number of buyers. Some smaller homes offer three bedrooms, but with two of them on one floor and the third one on another or in the basement. Such a layout may not appeal to families with young children. I used to be concerned about the resale of such homes, but with the increasing amount of retirees looking to downsize, I am not as worried anymore. They used to be harder to resell, but it is no longer the case today – at least in my area.

5.1.5 Square Footage

Square footage is another important issue. Even though it is not the only consideration affecting pricing, the amount of finished space in a home can't be overlooked. You, therefore, need to know what is included in the square footage that is found on most listing cuts. Calculating square footage can be tricky. Should a finished attic be included? And if so, what minimum ceiling height (if any) should it have? I remember a house with such a finished attic that was only 5-feet high, being included in the square footage calculations. And that was wrong, as far as I am concerned. That's why is it important to understand how square footage is calculated and what is included.

5.1.6 Equipment Leases

You should also know that some houses come with equipment that is either leased or rented. And very often, buyers are asked to assume these payments for the remainder of their term. Furnaces and hot water heaters are the most common pieces of equipment affected by such agreements. You need to know upfront, if the seller expects you to assume leases or rental agreements, because they can make a huge difference in your monthly payments. Your agent would normally look into these things for you on an MLS® transaction; but it would be your responsibility to inquire about them on a private sale.

5.1.7 Assessments versus Appraisals

This one is a clarification more than anything else, since a lot of people confuse the terms “Assessed Value” and “Appraised Value”. These are two completely different things.

An **assessment**, is a figure used for tax purposes only. I like to say, that it is a guess, as to the value of a home done at some government level (municipal, provincial/territorial) because it is conducted with very little information, as to the real condition of a property. Assessments seldom reflect actual market value; they are normally below it, sometimes way, way below. Once again, your local agent should be able to explain how the assessment and taxation process are handled in your area.

To get the real market value of a home, an **appraisal** has to be conducted. It requires hiring a qualified appraiser at a fee of about \$400 per property. Research has to be done to determine the home's possible selling price under current market conditions, which are always subject to change. Appraisers have to go through years of study, before being accredited with a license.

Government authorities don't have the manpower, the time, or the money to conduct an appraisal of each property. They do the best they can with limited resources, and the results are therefore unreliable.

The assessed value should be a reflection of the fair-market value, but often it is not.

If it is low, compared to the true value of the home you are looking to purchase, you usually don't have to worry. It could only mean, that until the problem is corrected, you will pay lower property taxes, since they are based on the assessed value. On the other hand, if the assessment is above the value of your home, then you may have to appeal it.

Unfortunately for buyers, homes with high assessments are sometimes advertised as "selling below assessment" and some people may mistakenly consider them hot properties. Those who buy into these deals sometimes find that they must appeal for a reassessment. And until they get it, they have no other choice, but to pay higher property taxes.

5.1.8 Electrical System

The next item of interest, is definitely one of the most important. It deals with the size of the electrical entry to the house. You will normally encounter one of the following options: 60, 100, 125 or 200 amperes. If you have a service that offers 100 or more amps, you usually don't have to worry. It is, in most cases, more than sufficient for average consumption.

The problem comes from the out-dated 60-amp service found in some older homes. These systems often contain original wiring, which could become, if it's not already, a serious fire hazard. Insurance companies are reluctant to accept new clients whose homes have 60-amp service. In Halifax, most insurance brokers simply refuse to insure homes with such a dated electrical system. In order to get property insurance, the new owner has no other choice, but to upgrade. Unfortunately, rewiring to today's safety code is not cheap. The cost may reach \$2,000 to \$3,000 for an average home and can climb a lot higher in more complicated cases. Keep an eye on these 60-amp services. If your dream home happens to contain one, negotiate the upgrade with the seller at the time of purchase. You may want to ask for an allowance from the proceeds of the sale to be set aside on closing, for you to upgrade the electrical system.

I do not recommend you ask the seller to upgrade before closing. You want to control the quality of the job to be done and make sure that no corners are cut. Insurance companies normally offer coverage for a few weeks or months to give you time to bring the electrical system up to code. Electrical issues must be addressed at the time of purchase. Safety has to come first.

5.1.9 Woodstoves and Fireplaces

Another safety issue that is creating insurance problems, is the presence of a woodstove or a fireplace. Improperly installed stoves have often been blamed for home fires. Installers, building inspectors, and insurance adjusters were recently brought up to speed with improved safety requirements through the Wood Energy Technology Transfer (WETT) certification process. Some insurance companies require that woodstoves and fireplaces be checked to insure they are safe to use. Stoves without an approved tag affixed, may not get accepted, and could have to be replaced or removed. So, if the home you are looking to buy comes with a woodstove or fireplace, ask your **WETT-certified** home inspector about it – addressing this issue at the time of purchase can save you headaches and money.

5.1.10 Old Oil Tanks

Old oil tanks are also an insurance issue. It is now extremely hard to get coverage for a property with an oil tank that is older than 15 years of age. Insurance companies often simply refuse to take the risk, unless a new tank is installed. Again, I am not a big fan of asking sellers to do any work on their home before we take it over, but getting them to replace their oil tank before the closing is something that I am a little more comfortable with – as long as a professional does the job.

I usually settle this issue by including a little paragraph like this one in the Agreement of Purchase and Sale: “The sellers, at their expense, agree to get their old oil tank professionally replaced with a tank of the same size and thickness, installed in the same location (or another if we want it moved) on or before the closing”. The cost of this replacement varies depending on where the tank is located and its ease of access; but \$1,200 for a straight-forward job is probably a good estimate.

5.1.11 Fixtures and Chattels

The next item on my list, is the topic of exclusions. You should know that some of the items you see in a home will not remain with the property. During the negotiations, you may hear the terms **fixtures** and **chattels**. A fixture is something that is physically attached to the property and is included in the purchase price. A chattel, on the other hand, is something that is not physically attached and that can be removed from the property: such as furniture; appliances; or curtains. Chattels are normally not included in the sale, but this is not as clear-cut as it may seem. Major problems can arise on closing day if items are removed or replaced by the seller. To avoid misunderstandings, it is best to list all of the things you want included directly in your offer. It is very common to negotiate for fridge; stove; dishwasher; washer; dryer; all blinds; mini-blinds; curtains and rods; window coverings; screens; central vacuum and accessories; garage door opener and so on.

Some buyers have no choice, but to ask that some of these be included with the home, if they do not have the money to purchase them. Use common sense when making your list. Don't ask for the seller's first born, and leave the dog and the goldfish out as well. And if you ever get worried, taking pictures of what is to remain or even better, writing down make; model; and serial numbers; is a sure way to prove that what you ended up getting, is not what was in the house at the time of purchase.

5.1.12 Original Listing Price

The original listing price, is the price the sellers were asking for, when their home was first listed. That gives you an idea of their original expectations of value. Sometimes, the original listing price and the current asking price are miles apart. Other times, they are still exactly the same. Salespeople sometimes have access to the original figure and the date of all subsequent price reductions. This knowledge is very useful during negotiations, but only available to licensees (if available at all).

5.1.13 Market Time

Market time, is another piece of information licensees can usually access. It is the number of days a particular property has been on the market. You should ideally, never make an offer without this information. There is a big difference between offering on a home that has been on the market for three days and one that has been on for 300. You do not approach the two homes in the same manner. Never try to tell new sellers that your offer is the best they will ever get, unless you can back your statement with very strong evidence. They just won't buy it. On the other hand, that argument could definitely be true for a home that has been sitting on the MLS® System for ten months. The number of days a home has been on the market will help you determine your bargaining position. In general, if the home is new to the market, you will need to come in closer to the asking price, unless you have evidence to support a lower offer.

5.2 First Things First

As I have said in the beginning, the first step all potential homebuyers should take, is one that involves education. **It would be a mistake, in my opinion, to rush into a purchase without first doing some research to learn how things work; who is who; who does what; and why.** And only once you have acquired this knowledge, do I believe the buying process should begin.

5.2.1 Cash for Down Payment and Closing Costs

The cost of buying and maintaining a home is the first thing people should look into. What would be the point of even viewing a house if you can't afford its purchase? As we already have seen, you should have 5% of the purchase price for the down payment, plus another 4% for closing costs – the bare minimum needed. Depending on how much you are planning to spend, you also need to confirm that you will be able to comfortably handle the associated monthly expenses.

5.2.2 Mortgage Pre-Approval

Unless you are buying with cash – which very few people are – the next step is for you to confirm that you can finance a purchase. For this, I recommend you get together with a mortgage representative at your current financial institution. You can forget about the rate at this time. The only thing that matters, is how much your bank is willing to lend you on a mortgage. That's it.

Financial institutions are particular about certain things. That's why you should tell them absolutely everything including: student loans; car loans; credit card balances; past financial problems; and also everything about your employment; **like any new job; contract job; self-employment; recent work in a foreign country; and citizenship status.** It is imperative to ensure that nothing about your personal circumstances is going to negatively affect your financing and/or limit your purchasing ability.

If your bank confirms that everything is in order and that you do qualify for a mortgage, then you are done. You now know that financing a purchase will not be a problem. But that meeting may have accomplished something else. If getting pre-approved looked like a formality, it probably means that any financial institution would love to have you as a client. And this knowledge will come in handy when it is time to negotiate a rate.

I suggest you stop shopping for a pre-approval, as soon as one institution has given you its blessing. The reason for this, is to limit the number of credit checks that are run on you. By starting with an institution that already knows you, you may receive the pre-approval you are looking for, without the need for any digging. **Credit checks are recorded and too many of them can negatively affect your rating.**

5.2.3 Getting out of a Rental Agreement

The third thing that all buyers should do, is to confirm that getting out of their current residence will not be a problem. I have learned at my own expense several years ago, that yearly rental agreements **renew automatically** in the Halifax area; **and that, without the tenant having to sign anything.** The agreement was very clear, I had to advise my landlord at least three months before the anniversary date of my yearly lease, in order to modify or terminate it. I didn't know that, and was forced to offer a free month to whoever would agree to assume it. So check with your landlord.

In my opinion, a month-to-month rental agreement is the ideal set-up for any tenant looking to buy a house, because it only requires that you give one full month of notice to terminate it. This way, you can take your time and wait for the right place to make it on the market.

5.3 Moving from One House to Another

If you are not renting and do currently own a home, moving from that house into another can be complicated. The big question, is always whether to sell your current home first and then look for another one; or to buy your next home first and then sell your current place.

Both scenarios come with potential difficulties. If you sell first, then you may feel the pressure to rush the purchase of your next home to avoid having no place to go. But if you buy first, you may find yourself carrying two properties if your current home fails to sell, before you have to take over the next one.

Selling first, is a sure way to avoid being stuck with two homes and two mortgages. But, if you can't find what you are looking for quickly enough, you may end up having to buy something that is not what you initially had in mind or you may be forced to find temporary accommodations until the right place is found. That, of course, would mean putting extra furniture in storage and moving twice over a short period of time.

If your bank determines that carrying two properties is financially not an option, then you will have no other choice but to sell first.

I know some of you are wondering why you couldn't start looking now and make an offer that is conditional on the sale of your current home (called Sale of Purchaser's Property or "SOPP" in Nova Scotia).

I am not a big fan of such offers. One reason for it is that, in a good market, a lot of sellers won't even talk to a buyer that has a home to sell. People making these offers are often considered second-class buyers and I personally couldn't stand such discrimination.

Another reason for not liking SOPPs, is that even if the sellers go along with one, there is no guarantee you are going to get the house, because they keep offering it to other purchasers.

It makes sense; the sellers have no guarantee that your home will sell and can't afford to stall their sale for you. So, their house remains available, and if they find another buyer, you will have a pre-determined number of hours to provide them with an official letter from a mortgage provider stating that you have the means to purchase their home without selling yours first. If you can't provide them with that piece of paper, you automatically get bumped off the transaction to make room for the other purchaser.

The odds of losing a property that way are high in a good market. And there is no limit on how many times it could happen. To make things worse, every time such an offer gets accepted, buyers are usually expected to proceed with their conditions, as if they had nothing to sell. This means spending hundreds of dollars to inspect and test a house that you could lose at any time.

I, personally, don't need such a roller coaster of emotions. These offers are a heartbreak waiting to happen. The buyers' negotiating position is affected by the fact that they have something to unload and that could translate into a higher purchase price.

Buying with such a condition, would not be an option for me. But, if you are okay with the risks and potential expenses, maybe it could work for you.

If I were moving from one home to another, and if my financial situation were solid enough, I would buy first and then sell my current place.

The biggest advantage of doing it this way, is that I could afford to be picky and wait for the perfect home. By buying first, I would never be forced to move unless I had already found something that meets my criteria. This scenario would put me in control and give me all the time in the world to ensure that my next home is going to be as close to perfect as is possible.

The obvious risk with this option, is to end up having to carry two properties for awhile. In a way, this would be as if the price of my new home kept rising, until my current property finally sold.

Buying first, is the option preferred by a lot of people with money or with a paid-for home. They are like tenants on a month-to-month lease; they wait until the right place comes up and just jump on it.

If my financial situation forced me to sell first, I would not start looking for my next home until the first one is gone. I would proceed with one transaction at a time and wouldn't commit to any purchase before knowing how much money I have to spend.

I would try to maximize my profits and get as long a closing as I could – 3 to 6 months. I would explain to potential buyers, that my family has no place to go and this is why we need the extra time. I would also promise to shorten the delay, if we were to find quickly.

The reason I wouldn't start looking until my house is gone, is because I wouldn't want to fall in love with another property and find myself taking less money for my current house; so, I can get the other one or find myself heart-broken, if that perfect property sells before I get a bite.

By not looking, I'd never know what I may have missed and that would be better for me. I'd also be ready to move into temporary accommodations, if necessary. It would be far from ideal, but I'd rather do that than compromise on the purchase.

5.3.1 Mortgages and Mortgage Loan Insurance Premiums are Portable

A quick note, before we move on, to say that you don't have to pay the full mortgage insurance premium all over again, if you move from one house to another and don't have a 20% down payment. Mortgages and mortgage loan insurance premiums are portable. This means that you can transfer the amount and terms to the new property, without cost or penalty. You will most likely incur cost if you need to increase or decrease the amount of your mortgage; but the charges normally only apply to the portion being added or taken out and not the entire loan.

You could also benefit from the portability of your mortgage loan insurance premium, even if you sell and totally pay off your mortgage, as long as you buy again shortly thereafter. This scenario is quite common for people moving from one province to another. Certain conditions apply; but this could potentially save you thousands if you qualify.

5.4 How I would go about Selling my Own House

Since we have touched on the subject, I believe this is as good a time as any, to tell you how I would personally go about selling my own house, knowing what I know about the industry.

Yes, I could get a few real estate agents in to add their opinion of value to mine and then use that knowledge to sell privately and save the commission. But, I am at a point in my life, where I would rather pay someone to do this for me. Another reason for not wanting to sell privately, is that since I am obligated by law to reveal that I am a real estate broker, purchasers would be a lot more careful dealing directly with me, than they would if they were buying from a regular seller. This could potentially force me to accept less than top dollar for my place and negate the only benefit there is to a private sale. The risks of seeing my buyers turn around and accuse me of taking advantage of them, would also have to be considered. I have already said that I like to keep things simple; and getting my house listed on my local MLS® System, would be the easiest thing for me.

I hope this will not come as a shock, but I would obviously be looking for a sellers-only brokerage to handle my sale. But since these firms literally disappeared in the 1990s, there is a good chance I would have to deal with a full-service brokerage.

In that case, I would probably begin my search with discount brokerages. Although it would be nice to pay a lower commission to sell my house, I know that hiring a discounter comes with inherent risks. Brokerages who work for less, are not always popular within their real estate community. The same thing happens whenever a giant retailer opens a new store; competing businesses are very seldom pleased with the arrival and those who know they can't compete, immediately start worrying about their survival.

I know some insiders could argue that this is not true and I respect their opinion. But this doesn't change a thing for me. I doubt very much that I would hire a discounter for the simple fact, that I would not want agents from other brokerages to snob my house for supporting a firm that they may consider a threat to their bottom line.

So I would talk to discounters; but only to find out how much they charge for MLS® service and especially how much of that money they would offer out to attract an offer.

As I have already stated, in my opinion, one of the keys to a successful sale on the MLS® System is the size of the commission split. And since every market is different, it would be imperative for me to find out what the most popular splits are in my area – assuming I have been out-of-touch for a while and no longer possess this information.

Say, I discover that 80% of the listings in my area pay 2.5%; that another 15% pay 2.25%; and the other 5% either pay less than 2.25% or more than 2.5% to the co-operating brokerage. Armed with this knowledge, I would ensure that my house pays 2.5%.

My reasoning is the following: since an overwhelming majority of homes pay 2.5%, it is therefore safe to assume to all licensees will show my house if it pays that much. **There is, therefore, no need to offer more.** My goal is to blend in. I do not want the split to stand out and raise suspicion. A large split could be interpreted as a sign of desperation and attract low-ball offers **or a sign that**

there is something wrong with the immediate neighbourhood and that I want to get out fast before the problem becomes common knowledge. A lower split, on the other hand, could upset some licensees and cause them to quietly steer their clients away from my property or simply refuse to assist on its purchase, unless the buyer makes up the difference; and I wouldn't want that either.

My goal would be for all agents to show my house and hopefully receive several offers at the same time. Having a bidding war for my property, would be the ideal scenario for me as a seller. It could end up generating several thousands more on the sale and I wouldn't want the size of the split to prevent that from happening.

To me, if it ever came down to choosing between two very popular commission splits, I would always go with the higher one – **just to make sure that how much my home pays is not the reason the property is not selling.**

The last part of that sentence is crucial. When a home doesn't sell and little things like decluttering; painting; fixing what's broken; etc. have all been done, reducing the asking price is often all that is left to do. And how much do prices usually come down by? \$5,000; \$10,000; and sometimes more.

What's 0.25% to me? Not a whole lot. It's \$1,000 on a \$400,000 sale. Am I going to risk seeing my house sit on the market, because of a few hundred bucks? It makes absolutely no sense.

I see lower commission splits on a regular basis and every single time, I can't help myself from wondering if the sellers know what they are doing. Offering less can only be a negative thing. At best, it will make no difference. I, for one, have never heard of a lower paycheck generating an improved service or better results. Have you?

If the negative impact of a lower split has been explained to sellers and they still choose to go along with it, then it is an informed decision on their part. And I have no problem with that. Canada is a free country. Maybe they don't need to pay that little extra to get their house sold. Maybe a lower split will do just as good of a job.

But, I would literally be beside myself, if I ever discovered, that the size of the commission split offered to other brokerages through the MLS® System, was a potential reason why my house sat on the market for months – especially, if in the end, I had to significantly reduce my asking price to get the job done.

Offering a commission split that is large enough to get everyone interested – but not too large to raise suspicion, would therefore be extremely important to me as a seller.

Again, if I could find a sellers-only brokerage, I would most likely support these people because I believe in specialty brokerages – **even if it meant paying a little more.** But if I couldn't, I would choose a small full-service brokerage to minimize the risks of conflicts of interest. I would insist on paying the highest of the most popular commission splits on the market, while at the same time, trying to keep the total commission in the lower end of the range.

Say, I was able to find a discounter willing to split a total MLS® commission of 4% + tax in this way: 2.5% to the co-operating broker and 1.5% to itself. My goal would then be to find a licensee

that works for a small full-service brokerage that is not a discounter, to match that offer to get my business. In this way, I would have the best of both worlds: my house would pay an attractive split to co-operating agents and unknown to them, my overall bill would be the same as if I had gone with a discounter – and that without any of the potential risks.

I would even consider giving up on all forms of advertising to convince an agent to match. Agents run newspaper ads to make sellers feel good, but an MLS® listing that is priced right doesn't require additional advertising – so I'd have no problem with giving up on it in order to get what I want.

5.5 Hiring a Real Estate Agent

In the next several sections, I will tell you how I would go about buying a house: starting with the hiring of a real estate agent.

Call me crazy, but I tend to get a little paranoid every time I am about to spend hundreds of thousands of dollars. I become extremely careful and very suspicious of everybody.

A good example of this, is that since there is no way for me to know the kind of relationship sellers have with their agent, I assume the worst and consider that they are either related or very best friends. As a result, I always take any information that comes from a listing agent with a grain of salt. After all, that individual has been hired to sell the house and that guarantees that he or she will try to portray the property in the very best, possible way.

But, that is no good to me. I don't want the best-case scenario. I want reality and I feel that the only way to get it, is by dealing with a professional who doesn't care about the sellers; someone who is free to talk and give me an unbiased opinion; and the first place I would look to find such an individual is at a buyers-only brokerage.

Since I can hire any REALTOR® I want to help me on the purchase of pretty much any MLS® listing, why settle for anything but the best?

It is this exact thought, that made me open my buyers-only brokerage in December of 1996, after first hearing of these EBAs that strictly worked and fought for homebuyers. These guys were making a living providing the American public with the ultimate in home-buying representation – a service that I would jump on as a purchaser. So, why not bring this fantastic concept to my neck of the woods? I knew from the beginning, that I would have to educate the public in order for this to happen; but, I was up for the challenge; and it worked.

The only difference between me and any other homebuyer, is that I understand how the industry works. I know what is out there and I can therefore look for it. Once again, knowledge is power. Those in the know, can take advantage of what is available to them. And in this case, it is at absolutely no extra cost. It truly doesn't get any better than this.

Unfortunately, because nobody knows about this, there is no demand for the service. And when there is no demand for a service, that service becomes hard to find. Americans have it easier than we do, with EBAs now established in most major US cities. With this said, it is no piece-of-cake for

them either. The name they chose for themselves – Exclusive Buyer Agent – ended up being used by traditional full-service REALTORS® and the resulting confusion has prevented them from exploding on the American real estate scene the way they should have. That's why I often refer to myself as a *Professional Buyer Agent* instead of an *Exclusive Buyer Agent*. But the two are the same.

So, locating a buyers-only brokerage, would be the first challenge for me. And in a perfect world, that firm would be a one-person operation; an independent broker with no employees; qualified to run a brokerage; and free to call his or her own shots without having to answer to anyone.

I realize, that until the industry knowledge that I am sharing with you here reaches the masses, finding companies that offer this exclusive service may prove difficult. I would therefore, need a plan B. And that would be to find a small, independent full-service broker/owner with no employees and convince that individual to treat me like an EBA would.

My goal would be to get that independent broker to agree to protect my best interest on the purchase, in exchange for the commission split. Such a partnership would increase my chances of ending up with a solid house, in a great neighbourhood, at a good price; and my representative would earn thousands of dollars for his or her trouble.

This makes so much sense to me, that I designed my brokerage in a way to appeal to buyers who understand the system and would love to partner up with an independent professional in that way.

Here's the basic offer I make to buyers in my area:

“In exchange for the commission split, I will put my negotiations skills and experience to your service. I've been a REALTOR® since 1993; I've been a broker since 1995; I own and operate my own brokerage; I run a one-man operation; I have no employees; you will be dealing with me directly at all times; my firm is a buyers-only brokerage; I never work for sellers and I am never caught in dual agency situations; I will put all my commitment to you in writing and I will sign off on them; you will never owe me any money if you decide not to buy; I will give you the right to fire me at any time, for any reasons, and that without any penalty or financial compensation; I don't need your signature on any contract; I am okay with taking a chance on you; I will explain everything; I will answer all of your questions; I will let you pick the homes you want to see and my job will be to point out their defects and negative features; I will never pressure you into a decision; I will always tell you what your options are and what I would do if I were in your shoes; I will let you have the final say on everything; I will coach you through everything and treat your purchase as if it were my own. Does that sound like a fair deal to you?”

I honestly think that every single homebuyer in the country should have such a “coach” by their side on their purchase – especially since it doesn't cost them anything extra.

I truly don't know what else a buyer could ask for: the broker's license is the best in the industry; a buyers-only brokerage is never faced with dual agency; its employees are buying-specialists; they owe nothing to sellers and can speak their minds; dealing directly with a firm's owner increases the odds of getting good service; not having to sign a contract guarantees freedom; and having written promises provides undeniable proof in case of a problem.

Since I've been providing purchasers with this kind of service for years, I hope it would not be too difficult to convince someone to do the same thing for me, if I were the one buying.

Of course, I would rather do business with a buyers-only brokerage than a full-service firm, but on the positive side, if I ever failed to find one, I know that there are thousands of one-man and one-woman shows to choose from across the country, even in rural areas.

The size of the firm would be important to me regardless of the type of brokerage; but it wouldn't be as critical when dealing with a buyers-only brokerage. Hitting it off with one individual, is really what would matter most to me. I wouldn't be overly concerned if my representative belonged to a 5-person buyers-only brokerage, as opposed to a one-person operation. As long as the brokerage doesn't deal with sellers or carry listings, I would be satisfied.

I would want my agent to treat me like a member of his or her own family or like an old friend. I would want someone who is going to put himself or herself in my shoes and tell me everything that he or she knows and sees. By his or her action, I would want this individual to convince me that he or she is just as concerned about my purchase as I am.

And for the record, I do not believe that this is too much to ask.

5.6 Face-to-Face Meeting

In my opinion, an initial face-to-face meeting is mandatory for any licensee that is seriously trying to help a homebuyer. How could any professional provide assistance without first sitting down to learn more about me and my family, our needs; what we have done so far (if anything); how much we want to spend; if we have anything to sell first; and so on?

Just so that you know, I would never do business with anyone who immediately offered to drive me around to look at houses. Such an individual would obviously only be interested in selling me a house and I would have no time for that. So, if an agent failed to suggest that we first sit down, he or she would have absolutely no chance of ever counting me and my family as clients.

So, when conducting these meetings, licensees should come in knowing that I am going to interview other people and I would expect them to try to educate me as much as they can about the industry; the home-buying process; the costs involved with a purchase; etc. I'd be impressed by someone who would rush and try to cover everything that is in this manual. These licensees are applying for the job to represent me and I'd expect them to make sure that I understand what makes them and their brokerage different from everybody else and how that benefits me.

The fact that their firm doesn't carry any listings or very few; that they try to provide me with as much information as possible during our first meeting; and that they answer any question I have would make a good first impression on me. I'd want to feel that my purchase is their purchase and that they will make sure that my best interests are protected at all times.

So, their goal during this initial meeting, should be to ask enough questions to get to know what I am looking for, but to also ensure that I know what I am getting into. I'd expect them to talk about:

my current living arrangement to see if I am renting or if I will need to sell a house; mortgage pre-approval; closing and monthly costs; their brokerage's philosophy; common law agency versus designated agency, if it is an issue in that province; basic industry info including the MLS® System; how their firm gets paid; the buying process; offers and counter-offers; closing; and so on.

5.6.1 Real Estate Agents Fight Terrorism

This next subject could potentially also be addressed during the initial meeting. It is about a piece of legislation called "Canada's Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)".

In the summer of 2008, this new act came out and it is forcing real estate agents (and others) to ask their clients to identify themselves when buying and selling real estate. So buyers and sellers now have to produce a valid driver's license, birth certificate, health card, passport or any other approved official document to confirm their identity.

The idea behind this new requirement, is that forcing buyers and sellers to produce these documents will hopefully make it more difficult for them to launder money and finance terrorist activities.

As a side note, the timing of this legislation is quite ironic, because it came out the same year the Canadian real estate industry introduced designated agency – a model that, in my opinion, makes it easier for licensees to take part in such activities.

Think about it. If a salesperson were to be involved in anything of this sort, he or she would naturally be quite secretive about it. And such secrecy would seem out of place within the walls of a common law brokerage where client information flows freely; but it would be considered normal within a designated agency brokerage. What makes it almost laughable, is that this individual could potentially be considered a model of privacy for making sure that nobody ever overhears his or her cell phone conversations and for being so particular about keeping his or her clients' personal information private – that is, of course, until the real reasons behind the behaviour are discovered.

So, don't be surprised when you are asked to produce identification documents; this thing is very serious (the potential penalty to a licensee that doesn't comply, is up to 5 years in prison and a fine of up to \$2 million for each offence).

5.6.2 Government Programs

Several programs are available to help Canadians become homeowners and this is another subject that could also be discussed during the initial meeting.

5.6.2.1 Home Buyer's Plan (HBP)

In Canada, first-time homebuyers qualify for the Home Buyers' Plan, where each spouse can withdraw up to \$25,000 (increased from \$20,000 in early 2009) from his/her RRSPs, for a total of \$50,000, in order to purchase or build a qualifying home. This money will not be taxed upon withdrawal, but it will have to be paid back into the RRSP over 15 years. The repayment period starts the second year following the year buyers make their withdrawals.

For example, if you were to withdraw \$15,000 in 2012; starting in 2014, you would have to reimburse your RRSP \$1,000 every year, for the following 15 years. Only in this way, would you avoid paying income tax on the withdrawal. Should you, one year, neglect to make that \$1,000 repayment, you would have to add this amount to your taxable income for that year.

It is a good program for those who really want a home of their own, but cashing in a fully-sheltered investment may not be a wise decision for everyone. So, once again, contacting a financial adviser to discuss the details of this program before doing anything, is a good idea.

For your information, buyers who have owned a home in the past may also qualify.

5.6.2.2 First-Time Home Buyers' Tax Credit

This is a non-refundable tax credit of up to \$750. Those who qualify, only have to make the claim on the designated line of their personal income tax return. No supporting documents have to be filed with the return, but the paperwork must be available, if it is ever requested. If the property was jointly purchased by multiple qualifying buyers, all of them can claim a portion of the credit, and the total of all claims must equal \$750.

5.6.2.3 GST/HST New Housing Rebate

Unlike the first two programs, which are only available to first-time buyers, all purchasers qualify for the rebate on the federal part of taxes paid on the construction or purchase of a newly-constructed house that is going to be used as a primary residence.

I am not going to get into the details of the calculations, but this rebate is significant, since it reduces the 5% GST to approximately 3.5% on a **qualifying house** worth \$350,000 or less.

I suggest you contact the Canada Revenue Agency, if you have questions on any of those programs.

5.6.2.4 Provincial/Territorial Programs

You should also know that some provinces/territories also have their own real estate programs; so, make sure you check with the appropriate authorities.

5.7 Contract or No Contract?

As I have said, the first meeting is an opportunity for a licensee to outshine his or her competition – so REALTORS® should come with an organized game plan, prepared to impress. It is because of this need to impress, that you must keep up your guard. It would be easy for someone to promise the moon just to get your business and then simply forget to deliver once they have your signed commitment.

So, should you sign a buyer-agency agreement with a licensee?

Until recently, my answer to this question would have been a big yes – **but not just any agreement**. As a buyer, I'd want a contract that is purchaser-friendly, as opposed to licensee-friendly. And that's why I used to have my own little agreement – purposely made extremely buyer-friendly, to encourage people to give my unusual service a try. Unfortunately, contracts such as mine became illegal in my province in 2007. In an effort to standardize forms and industry terminologies across the country, a new buyer-agency agreement became mandatory. And I had no other choice, but to use that contract – which I could modify – or no contract at all.

There are two things that I would be concerned about if I were asked to sign a buyer-agency contract with a real estate agent. The first one, is the expiry date. I wouldn't want to commit to working with someone for an extended period of time, only to realize after a few days, that that person is useless to me or that we just don't work well together. So, I would insist on inserting a clause that says that both parties have the right to terminate the contract at any time, for any reason, and with no financial compensation or penalty owed to the other party. This way, I would know that if this relationship is not working out, I am free to move on to somebody else.

5.7.1 Hold-Over Clause

The second thing I would look for in a contract is **the absence of a hold-over clause**. Such a clause is usually used to prevent sellers from taking advantage of their agent. You see, some sellers secretly tell buyers to come back at the end of their listing agreement, so they can work out a private deal and save the commission. Hold-over clauses protect listing brokerages from this sort of abuse for several months – often 180 days – after the expiry of their listings.

As a buyer, I would want to be able to get rid of my advisor at will. And I wouldn't want such a clause to restrict my ability to purchase houses that were considered or viewed with that first individual. Hold-over clauses, often become null and void if another brokerage is hired; but remain in force if the former client gets involved in a private deal. So I would carefully read the clause first.

I know I may sound a little paranoid when I talk about this, but I hate restrictions. I would want to be able to flee, if I ever smelled a rat. As I have said, I don't spend hundreds of thousands of dollars easily and I certainly wouldn't do it with handcuffs on my wrists. I am okay with contracts, as long as they are buyer-friendly.

What I'd personally really like to find, is a licensee that is willing to take a chance on me; not the other way around.

It was with someone like me in mind, that I designed my buyer agency agreement when I started coaching purchasers. My contract was very simple and only one-page long. The one that became mandatory in Nova Scotia a few years ago, is three times as long and way too complicated for my liking. I tried to work with it for a while by crossing out everything I didn't like and replacing it with much simpler stuff. But it was a nightmare. So I no longer work with contracts.

Instead, I give my clients a signed Promise of Service (more about it later).

This piece of paper is not a contract, since I am the only one signing it; but it provides the kind of protection I'd be looking for if I were buying. I basically put all of my promises down in writing and confirm that I provide buyers with client-level services every step of the way; that I will protect their best interests; that I do not list houses and never represent sellers; that they are free to stop using my services at any time, for any reason, and that they will never owe me or my brokerage anything for taking a chance on us; and so on.

As you can see, I give buyers everything that I would want a stranger to provide me with, if I were buying and put absolutely nothing in there to protect me against them. Since they don't have to sign anything, they remain free to get rid of me at their leisure if I don't perform to the level of their expectations or for any other reason – valid or not.

It may look like I am taking a big chance, but in reality I am not. Buyers don't fire someone who brings something of value to their table. So I treat purchasers the way I would like to be treated, and I don't worry about the rest.

The reason why a promise of service instead of a formal contract is something that I can do, is because I only work on MLS® transactions. I do not get involved with private sales. And since the fee that my firm is to collect is guaranteed through the MLS® System, I don't need a signature from my clients to confirm that I am going to get paid in the end.

I don't work private sales because I do not want to be stuck between the two parties and have to worry about dual agency or fear that my clients may feel that I may swing a secret deal with the seller behind their back. I have one client to represent and that is enough for me. I don't want to see the seller, I don't want to talk to the seller, and I won't get involved if the seller doesn't have an agent.

It is one of the advantages of being your own boss, you choose the kind of work you want to do. I have tried private sales and I don't like them. So, why get involved? I tell my clients not to bother offering to pay me directly to assist them on such deals, because they are wasting their time. But, I also let them know, that they are 100% free to pursue private sales on their own without me or with the assistance of another licensee. It's not because I stay away from them, that they should too. All I

ask of them, is that they let me know if they ever buy privately, so I can remove them from my list of clients. That's it. No penalty. No compensation. No hard feelings.

I've averaged a little less than 20 purchases per year since I have started as an EBA and I'd say that I lose one or two sets of clients per year to private sales. It's not a big loss and it saves me from some less-than-friendly encounters with unrealistic sellers. Private sales are a reality and every now and then, a client goes there, and that's okay with me.

So, a promise of service like the one I use, would be ideal for me, if I were buying; but a contract could also work, as long as I could get out of it at will, without penalty or restrictions.

5.8 The Buyer's Job

Having a good game plan is important for the success of any project. A game plan is a series of steps towards an objective. And one of these steps is for all players to know what their role is on the team.

On a home-buying project, purchasers are in charge. They are the CEOs of their own purchase and the decisions they make will ultimately determine the odds of the project being a success or a failure.

Since nobody is ever going to buy enough homes in their lifetime to become good at it, surrounding oneself with a good group of advisors makes sense. And if buyers are CEOs, their coach is General Manager – the one that brings experience and knowledge to the team. But it is important to notice that this is an employer-employee relationship. The buyer is the boss.

In my opinion, it is the General Manager's job to suggest a game plan and the CEO's job to accept, modify, or reject it.

I have been coaching buyers for a long time, and there are two main aspects of the buying process that I believe purchasers should be almost exclusively entrusted with: the first one, is the picking of homes to view; and the second, the deciding on the one house (if any) to go after.

When you think about it, viewing homes is very much like speed dating. If I were unattached and about to meet 4 or 5 single ladies in one outing, I would love for the possibility to choose who they are going to be beforehand, by being provided with their personal profile and picture. I wouldn't want somebody else to do it for me. That would be like letting my mother set me up on blind dates. Can you imagine? It is the same thing with real estate. So unless the buyers are from out-of-town; pressed for time; and/or totally unfamiliar with the area; I think that they should be calling the shots on which homes to visit.

When agents pick homes to show their clients, they always work from a list. Well, buyers should be provided with that list and left free to pick whatever catches their eye. This way, they would never waste their time looking at houses that do not appeal to them. And it would be their taste that determines what gets considered; not that of a stranger who may happen to like totally different things. So buyers should show their agent what it is that they like – not the other way around.

The buyers' second job, is a little more complex because it involves a lot of introspection. Purchasers often come to the table with unrealistic expectations only to discover that what they had in mind is either not available or outside of their price range. A lot of their time, should therefore, be spent considering their options; evaluating pros and cons; and fine-tuning their search. For some, this often means buying a place that is very different then what they were after in the beginning. For others, it sometimes means giving up on the project altogether.

5.9 The Agent's Job

Because every real estate agent is unique, the service that is provided to buyers varies from one licensee to the next. Although there are probably as many different styles as there are agents, they can usually be narrowed down to three basic approaches:

5.9.1 The “Sales” Approach

Those who favour this approach bring an enthusiastic attitude to almost every home-viewing and try to sell buyers on positive features. They spend very little time talking about potential defects, unless the issues are brought up by the touring buyer. Agents who like the sales approach tend to seize control of viewings – and most of the time spent in the homes is used to discuss their qualities.

5.9.2 The “Quiet” Approach

Real estate agents who use this approach tend to be silent and let purchasers view properties without interfering too much. They gladly answer questions and any selling that they do is always extremely soft. They open doors and follow buyers around with very little interaction. They make themselves helpful without being in the way and are very careful not to sound pushy.

5.9.3 The “House-Critic” Approach

Agents who like the house-critic approach, are very vocal and take control of viewings, just like those using the sales approach; but this is where the similarities end, because instead of bragging a home's positive features, they look for flaws and point out its defects. These professionals believe that buyers benefit more, when their knowledge is used to point out potential problems that could be missed, instead of obvious positive features and benefits.

The type of treatment buyers receive, is often dictated by whom they are dealing with and the circumstances surrounding the viewing. Buyers who routinely call listing agents, should therefore expect to be greeted by someone using the sales approach. It makes sense. Listing agents have a contractual obligation to the sellers and must promote and present the property in the very best way.

Buyers who retain the services of just one real estate agent and always deal through that individual, are more likely to see different approaches.

I totally understand buyers who are unhappy with agents in “sales mode”; I’d be unhappy too. Dealing with someone who adopts a more neutral approach, is a step in the right direction; but it would not be enough for me. The true value of a real estate agent to me, requires this individual to be in house-critic mode, at all times.

But, because most homebuyers don’t know enough about buying, very few of them ever specify what role their agent is to play in the process. **Without a clear, written mandate from their clients to point out negative features/defects/flaws and to suggest ways to negotiate prices down, many licensees assume that their job is simply to find those buyers a house.** So they take control; choose the homes to view; make appointments; and chauffeur people around. And this is the mistake: to me, asking a licensee to find me a house, is like asking a master carpenter to paint, or a goalie to play defense. They can all do it; but it is the wrong job for them.

Finding buyers a house can be frustrating. Licensees often spend hours upon hours driving purchasers around, looking at a ton of properties, with the risk of ending up secretly wishing that these folk pick something, so their nightmare can finally come to an end. The result of such a wishy-washy game plan is that licensees – individuals who could be such great assets on any buyer’s team – traditionally assume a role that a lot of purchasers have never liked. And that is a real shame.

As you can imagine, I would never approach a purchase that way. I would make sure that my advisor clearly understands what I expect of him or her on the transaction. I would, of course, be in charge of choosing the homes, but **it would be my coach’s job to rip into my picks.**

As my partner on this project, I would ask my agent to pretend that he or she is the one buying and to think out loud as we are proceeding. I would remain silent for the most part and my coach would be the one doing the talking. His or her job would be to make me aware of anything good and bad about the property – **including the obvious** – but with a huge emphasis on negative features.

Real estate agents are not home inspectors; so, I would not expect my advisor to come to any definite conclusion on the condition of any of the home’s systems. But since getting a home inspected by a professional is expensive, I would want my coach to help me look for obvious problems. What a waste it would be to spend \$400+ and have the inspector find something I could have spotted myself.

Real estate agents who specialize in helping buyers greatly benefit from inspections conducted on their clients’ purchases. They are free opportunities for them to increase their knowledge. I know it makes me feel pretty smart, when an inspector repeats word-for-word the warning I had provided my clients during our initial viewing.

5.10 Comparative Market Analysis (CMA)

In real estate, there is something called a Comparative Market Analysis or CMA that is used to try to determine the price of a property by comparing it with other homes that recently sold **in the same area**. CMAs are almost always provided by potential listing agents when they first meet with sellers to discuss the sale of their house.

Since no two homes are identical, CMAs are only guidelines licensees use to come up with an educated guess. The process involves using the recent selling price of similar neighbouring houses and adjusting it up or down to reflect the differences between the two properties.

CMAs work on the concept that if you know what a house just sold for; adjusting that figure for differences will help you determine what a similar property in the same general area may be worth. So, if a certain house just sold for say, \$300,000, it would make sense to assume that a very similar property located on a better parcel of land should sell for more. Conversely, a slightly smaller home could then be expected to sell for less.

Repeating this exercise using a few different transactions enables licensees and their clients to gain extra knowledge as to how much a home may be worth. It is important to point out that the results of CMAs are far from scientific. They are cheap alternatives to professional appraisals, their results depend on the comparables used and can therefore be manipulated.

If 15 or 20 recent sales qualify as comparables for a CMA, common sense tells me that if I select the three transactions that yielded the highest prices for their owners, I will end up with a fairly high estimate of value. Similarly, using the three least expensive transactions would yield a lower figure.

So an agent working for a seller could have a CMA that suggests a price on the higher end of the scale and an agent working for a buyer could potentially produce another perfectly valid CMA that is several thousand dollars lower. Somewhere between the two, would probably be the best estimate.

Over the years, I have developed my own version of a CMA. I always start by doing a search on the history of the property of interest. So I ask the MLS® computer for every piece of data that relates to it, hoping to get some insight on: how many times it has been listed; how many days the current listing has been on the market; what the sellers paid when they bought it years ago (if available), etc.

The amounts of information I get from that search vary. Some homes have a long history of resale, while others are completely new on the system.

When the search on the home is exhausted, I search the street. I want to know the prices adjacent homes sold for and whether their values have been increasing or decreasing. An unusually-high turnover rate on a street could signal a problem.

Finally, I search for the most recent selling prices for similar homes in the area. Historical data is great, but the latest figures are what really count. I absolutely need to know what homes similar to the one we are considering have been selling for lately. This is the most important piece of information.

5.11 Part Five Summary

In this block, I have introduced a mixture of various pieces of home-buying information; steps to take before getting started; have talked about how I would sell my own house; and have finished with the procedure I would want a real estate agent to follow, if I were buying.

There are two thoughts from this section that sort of stand out for me. The first one, is the importance of having a high enough commission split when selling a house on the MLS® System to ensure that all agents will consider the property. Lower splits can backfire; they are like offering \$12 per hour to people used to make \$15 for the same job. How can that generate better results?

The second piece of information that I think is worth remembering, is that buyers would be better off hiring a professional who will coach them through their purchase, as opposed to one who will try to sell them a house. Buying a house is a stressful process and partnering up with someone who will prepare you for what is to come, can make the world of a difference.

In Part VI, I will discuss the contents of an offer.

Part Six:
At the Offer Stage

In the previous block, I have focused on basic home-buying concepts and have told you how I would want a real estate agent to handle my purchase, if I were a buyer. In this one, I will discuss making an offer and what conditions to include.

So, after patiently waiting, you have finally found a home you are thoroughly excited about and have decided to make an offer. Again, the format; wording; and name of the contracts used for this purpose vary from province to province. In some jurisdictions, there are laws making certain forms mandatory, and not in others. Although they are all different, these “Agreements of Purchase and Sale”; “Contracts of Purchase and Sale”; “Offers to Purchase”; or whatever their name, all cover the same basic elements.

6.1 Standard Clauses

In this section, I will identify and briefly discuss the most common items usually found in these contracts and various additional clauses that you should consider including. I will also discuss several other subjects that all buyers need to know about, before signing on any dotted line.

6.1.1 Identifying the Parties

The very first item usually encountered on pre-printed offer forms, is a section where all the parties are identified. This is the place where your full legal name gets entered along with the seller’s full legal name, the legal name of the brokerage that is representing you, as well as that of the brokerage representing the seller along with the full address of the property on which you are making an offer.

6.1.2 Offering Price

Soon thereafter, there should be an area where the amount being offered is entered. Since this is a subject I discuss in great length in Part VII, I will leave it alone for now.

6.1.3 Deposit

In some jurisdictions (check with your agent), it is customary for buyers to place a refundable deposit on a home after reaching an agreement with the sellers.

This deposit is not mandatory, but it is a sign of good faith. It is like saying “Here Mr. and Mrs. Seller, we are serious buyers. Take \$2,500 of our money upfront for the purchase of your home”.

In Halifax, this money is **held in a trust account by the listing brokerage** and it is the only thing that ties buyers to the home. If they illegally default on the purchase, they basically forfeit their deposit, and additional legal costs and lawsuits could follow.

The size of the deposit usually varies with the amount spent on the home. I once again recommend you ask your representative about common practices in your area and the size of the deposit (if any) that buyers are normally expected to make.

If a deposit is needed, the money has to be available at the time of the offer, because the listing brokerage is usually obligated to deposit it in its trust account within a specific amount of time after reception.

The deposit monies are part of the down payment and represent an advance on the purchase price; the rest of it gets paid at the time of closing, unless specified otherwise in the agreement.

6.1.4 Closing Date

Another item that will be covered in the offer is the closing date. This is the date the balance of the purchase price is to be delivered to the seller. That is usually the day buyers sign all the final papers with their lawyer, receive their keys, and take possession of their home.

If I could, I would most likely try to overlap the move out of my current location with the move in my newly-purchased home. I would also do everything in my power to avoid having to take possession of a home on the same day I have to vacate my current place. Overlapping by 7 to 10 days would probably be enough, unless the place needs a lot of work before I can move in. For example, taking possession on the 20th and having until the 31st to get out of my current residence. Yes, it means paying for two places for a few days, but it would give me time to paint, clean, and repair the newly purchased home before my furniture arrives.

I would also try to avoid closing on June 15, June 30th or July 15 – it seems as though everyone in Canada is on the go on those dates, and moving companies and lawyers are swamped.

I would also insist for a note to be put in the contract specifying a time on closing day at which the seller is expected to be out of the house. This way, there should be no confusion, since some sellers could assume that they have until midnight on the day of closing before vacating the premises, if a specific time is not mentioned.

6.1.5 Deed

You should also expect one paragraph to deal with the kind of deed that you are to receive. A deed is a written document, duly executed and delivered that conveys title or an interest in real property. It is the proof of ownership buyers receive when they purchase real estate.

There are different types of deed, and the most common is the **General Warranty Deed**, or just Warranty Deed from the seller to the buyer on what is being conveyed through the agreement. You may encounter other sorts of deeds. Two other types are also fairly common, especially when buying a property in “as is” condition, where what you see is what you get. The first one is called a **Trustee**

Deed; it is the kind often received when purchasing the estate of a deceased owner. The other one is the **Quit Claim Deed**, often received in the purchase of a bank repossession.

In Halifax, the deed is drawn up at the seller's expense. The buyer initially pays for it, and gets a credit on closing. Your lawyer is the real expert on these issues; so you may want to check with him or her, to find out who pays for the deed in your area. When an offer is prepared, the type of deed that shall be received is often the only thing that needs to be entered.

6.1.6 Responsibility for the Home until Closing

There should also be a clause that clarifies the fact that all lands, buildings, fixtures, and all other properties being purchased will remain the responsibility of the seller until closing. Buyers assume no liability before this date. Should the house burn down or be damaged before the closing, you would not be responsible. If something like this ever happened, you would be provided with various options including taking the insurance money and proceeding with the purchase or maybe even canceling the whole agreement.

6.1.7 Adjustments

As we saw earlier, a number of expenses need to be adjusted upon closing. These include: municipal taxes; fuel; rentals; power; water; etc. On closing day, the municipal tax bill gets adjusted, and buyers are responsible to reimburse the sellers for their share of any pre-paid taxes based on their ownership for the period in question. The same goes for the fuel supply. A few days before closing, the sellers get tanks filled and on closing the buyers repay them based on the size of the tank.

6.1.8 Tax on the Price of the Home

Your contract should also include a paragraph or two that deal with taxes. And if taxes are applicable – like on the purchase of a brand new home – there may be a few boxes to check to confirm if taxes are already included in the price or extra. As a rough rule, it would be reasonable to expect that only new homes and vacant lots sold by developers would be subject to taxes (either GST or HST depending on your province) and that resale properties would be exempt. As mentioned before, there is a GST rebate available to anyone who is buying taxable real estate. Provincial rebates may also be available if your province or territory is also taxing your purchase.

6.1.9 Agency Relationships

There may also be a paragraph in the contract that talks about agency relationships between the parties and the brokerages assisting them on the purchase. Such a clause would serve to ensure that everyone is aware of who works for whom on the transaction and under what type of relationship – client or customer.

6.1.10 Fixtures/Chattels/Leased Equipment

Another standard paragraph should discuss fixtures, chattels, and leased equipment. It is extremely important to clarify what will remain with the home and what is to be removed by the sellers at closing, as well as any leased equipment that the buyer will need to either take over or have removed and replaced. As a rule-of-thumb, anything that is attached to the property usually gets to stay. And that includes light fixtures; chandeliers; and ceiling fans. But it is not always that simple. Little shelves; mirrors; frames; and antennas can be tricky to manage.

Again, here is my list of chattels commonly negotiated for at the time of the offer: fridge; stove; dishwasher; washer; dryer; all blinds; mini-blinds; curtains and rods; all other window coverings; screens; security system; central vac and accessories; automatic garage door opener and remote; etc.

Remember, if there is anything special that you really want to have included with the property, add it to the list. That is the only way to be 100% safe.

If the furnace and/or the hot water tank are under lease, then their disposition has to be addressed. You can either assume the lease; ask the seller to buy out the lease; or ask for the equipment to be removed from the property. If no leases are to be assumed, then it would recommend you ensure a note to that effect is included in your contract.

6.1.11 Title Search versus Title Insurance

It used to be a standard procedure in the Halifax area for the buyer's lawyer to do a title search to confirm that the property title was clear of any liens against it at the time of closing. But, in the last several years, getting the buyer to purchase title insurance on the transaction instead of paying for a title search and location certificate has become an option. Not everyone shares the same opinion on this subject; some lawyers prefer the old, traditional way of doing things and others find title insurance to be a good substitute. Since I am not qualified to debate on the pros and cons of each option, I once again encourage you to ask your lawyer.

6.1.12 Pre-Closing Inspection

Before releasing the money to buy the home, buyers perform a pre-closing inspection and a clause to this effect should be found somewhere in your contract.

This inspection is done to make sure that the home you agreed to purchase several weeks before, is still in the same shape it was in when you last viewed it. I strongly recommend that you wait until the seller is 100% out of the home before doing this final walk-through, as it will better allow you to spot defects that were absent or hidden under furniture or area rugs. If the home has been damaged, or if you discover something that you were not aware of before, it is not too late.

For example: Let's say the seller accidentally burns the hardwood floors and does not tell you about it. Upon making such a discovery, you immediately call your lawyer for advice. You could either

refuse to close or withhold some money to fix the problem. If you decide to withhold money, you will have to determine how much will be sufficient. This is all part of the final closing procedure. You must be happy with the home before any money is released.

I have no problem with doing pre-closing inspections the night before the closing, but it is my duty to make my clients aware that if anything happened to the empty house overnight, they would most likely find out after having released their money and taken possession of the property. I would personally wait until the last minute; but, as usual, I let my clients call the shots.

In most cases, pre-closing inspections are uneventful. Sellers know that we will be returning to check the place out and that is why they take good care of it until closing. They don't want any problems – and neither do we.

6.1.13 Urea Formaldehyde Foam Insulation (UFFI)

In case you are old enough to remember the big scare caused by UFFI, you should know that it is no longer a concern. And that's why most Agreements of Purchase and Sale no longer talk about it.

If you have never heard the acronym, UFFI is a low-density foam with insulating qualities. It was usually pumped in the exterior walls of a home through a tube to fill the cavities in the walls. It was first approved for installation in Canadian homes by the federal government in 1977. Three years later, following complaints that its fumes could be responsible for health problems, it was banned... and some homeowners panicked.

Under political pressure, the government initiated an assistance program that paid for the removal of the foam. A lot of homeowners had the UFFI removed, but some did not. And for the longest time, these homes were haunted by the ghost of the foam that filled their walls.

Even with air tests that proved them safe, the resale of these properties was extremely difficult. It actually took until the late 1990s for the stigma to disappear. The media jumped on this story some 30-plus years ago and probably made it worse than it really was. But this is all history today.

6.1.14 Fire Insurance

I would also expect to see a paragraph giving buyers a chance to obtain satisfactory insurance for the property. Recent difficulties with obtaining insurance have made the insertion of such a clause a good thing for purchasers. As mentioned, electrical wiring, woodstoves and oil tanks are common sources of problems. I can't emphasize enough, the importance of shopping around for insurance since premiums vary greatly among companies.

6.1.15 Deadline, Signatures and Initials

Every offer to purchase should have a deadline by which the sellers have to respond and after which it becomes null and void. And since no contract is binding unless all the parties have signed it, you should expect to have to autograph or at the very least, initial each and every page of the agreement – often in several different spots. The sellers should also be provided with a few options; including an area for them to be able to accept the offer as produced; another area to confirm having received the offer and having produced a counter-offer; and maybe another paragraph where they can simply reject the offer and terminate negotiations.

6.1.16 Miscellaneous Clauses

The focus of this section is to discuss the most common clauses found in standard pre-printed offer forms; so I am intentionally leaving out a number of smaller issues like: a clause to remind the parties that they have to respect deadlines; a clause saying that the contract needs to be read with the appropriate change of gender; a clause dealing with what happens to the contract if one of the parties dies prior to the closing; and so on.

A good Agreement of Purchase and Sale will also include several conditions that must first be met before the home is officially sold. Failure to meet any of the conditions will normally result in the agreement becoming null and void and the purchaser's deposit being returned in full, without interest or penalty.

I can think of at least 9 such conditions to include in an offer:

1. Financing
2. Lawyer's Review
3. Property Disclosure Statement
4. Radon Gas Test
5. Location Certificate
6. Sewer Line Scan
7. Water Tests
8. Pumping of the Septic Tank
9. Home Inspection

Not all of them are applicable on every deal and some additional conditions could also be necessary depending on the circumstances.

6.2 Financing

One of the most important conditions to include in any offer, is for the buyer to obtain satisfactory financing. This clause usually specifies: the amount of financing required, either as a set figure or as a percentage of the purchase price; the maximum interest rate that would be acceptable; and finally, a

date by which this financing must be in place, normally a week or so. Specifying a time-frame in which to arrange financing is done to avoid tying up the property forever.

A maximum interest rate is cited, in case you fail to qualify for a standard mortgage. Without the indication of such a maximum rate, you would legally be obligated to accept any mortgage terms available, including those from loan sharks. So if you can't get the rate you want, you do not buy the home and your deposit gets refunded in full.

6.2.1 Who Pays for the Appraisal?

Being pre-approved for the size of mortgage that you need does not guarantee your financing; the financial institution has to approve of the home you have picked, at the price you have agreed to pay for it. This is very often a formality, but if the price is a little high or if your down payment is greater than 20% – which means that there will be no mortgage loan insurance – the bank may ask for an appraisal to be done on the property. And that is perfectly fine, **as long as it pays for it.**

As I have told you before, hiring the services of a qualified appraiser costs approximately \$400. So, if your bank insists on getting one done before approving your financing, I recommend you make it clear with your mortgage representative, that this is to be done at the bank's own expense.

If you fail to clarify this point upfront, you will most likely find a bill for you to pay sitting at your lawyer's on the day of closing. And it will be too late for you to argue at that time.

6.2.2 Shopping for the Best Rate

Even though you can save the shopping for a rate until after you have found your dream home, I would probably do it while I am looking for the property. So I would get pre-approved first; hire an agent second; start my search next; and then begin to approach financial institutions until I find one that is willing to match or even beat the very best rate I can find on the internet.

Not every mortgage lender is able or willing to match the best available deals. So you have to be ready to break some mortgage peoples' hearts if the best they can do for you, is not close enough to the best that is out there. It is unfortunate, but that's the way it goes.

When you have found what you are looking for, the next step is to ask for the rate to be locked-in for as long as possible – 120 days is probably the best you can get. From then on, I would keep checking rates out on a weekly basis and contact my mortgage provider every time a better deal becomes available. If you are not diligent enough and fail to personally call and ask to drop the old best deal and save the new one for another 120 days, you may lose out. Don't assume your mortgage representative is doing it automatically for you, email and keep a paper trail.

Mortgage brokers deal with more institutions and should definitely be considered, but that doesn't mean that your local bank can't match or even do better. So you have to be ready to shop. Your representative may also be able to assist by providing you with the name of people who are known for providing good rates and good service.

The financial institution wouldn't really matter to me, as long as it is big enough; but ideally, I'd like for one of the 6 big Canadian banks to match the best deal I was able to find. Don't forget to also ask about pre-payment options and penalties. It is imperative for you to compare apples with apples and oranges with oranges, before making your final selection.

6.2.3 Fixed Rate versus Variable Rate

As I have explained in the beginning, buyers can customize their mortgage by choosing the options that suit them best. We have already defined and discussed the terms "amortization" and "term" and it is now time to talk about the difference between a fixed-rate mortgage and a variable-rate mortgage (VRM).

Fixed-rate mortgages are set based on the yield of the bond market. Because the bond market is somewhat unpredictable, it is usually difficult to know if fixed-rate mortgages are about to get more or less expensive. The big advantage of choosing a fixed-rate mortgage, is that you get the peace-of-mind of knowing what your payment will be for the duration of your term. And the disadvantage of choosing such a product, is that if rates were ever to fall during that time, you wouldn't be able to take advantage of them.

With VRMs, it is the exact opposite: you don't know what rate of interest you will be charged from one month to the next, but when they go down, you benefit from each reduction. VRMs have a rate that follows the Bank of Canada's rate. The Bank of Canada uses its rate to try to keep inflation under control. Chartered banks base their own preferential rate called "prime rate" a certain number of percentage points higher than the Bank of Canada's prime rate.

In May of 2010, the Bank of Canada's prime rate was at an historic low of 0.25% and the 6 big Canadian banks were all adding a 2% premium to it; so their own prime were all sitting at 2.25%. During the summer of 2010, the Bank increased its prime by 0.25% three times. And in the fall of 2010, it was at 1% and the big banks' prime was at 3%. Say you had taken out a 5-year VRM in the summer of 2008 at prime – 0.75%. You would have therefore, started the summer of 2010 paying 1.50% (2.25% - 0.75%) and by the fall, your rate would have climbed to 2.25% (3% - 0.75%).

The Bank of Canada hasn't moved its prime rate since. But it is expected to slowly start increasing it in the next few years. How high and how fast? Nobody knows. VRMs are for people with a higher tolerance for risk. Rates will go up and down during a 5-year term and you have to be able to handle that roller-coaster. But should things get out of control, people with a VRM can usually opt out and switch to a fixed-rate product at any time. It is therefore extremely important for you to choose a product that is in line with your own personal threshold for risk. So talk to a professional.

You should also know, that **since April of 2010, borrowers with less than a 20% down payment applying for a fixed or variable mortgage with a term of less than 5 years must qualify using a higher rate published every week by the Bank of Canada.** So if a short-term mortgage is of interest to you, be aware that qualifying standards have recently been raised.

6.2.4 Mortgage Life Insurance

Another thing you should be aware of, is the fact that a lot of financial institutions also sell a product called “mortgage life insurance”. Mortgage life insurance is an insurance policy that will pay off your mortgage in the case of your death. But is it a good thing?

The products that financial institutions offer are usually more expensive than those you could get if you dealt with an insurance company directly. Since everyone’s situation is different, it is possible that for some, this may be a good option; but for most, it probably isn’t.

There is a very good chance you would be much better off by taking out a term life insurance policy that will properly cover all of your family’s needs, instead of just taking care of the mortgage.

This is obviously another area that is outside of my specialty; so I recommend that you sit down with an insurance professional before you close on your house, to analyse your needs and look into the various options that are available to you. This way, you will know what to answer when your financial institution tries to talk you into a policy.

6.2.5 Financing a Renovation through the Mortgage

In the event you fall in love with a home that needs renovations; you should know that there is a way to get the cost of doing the work included in your mortgage.

Here’s how it works: say, you find a house selling for \$200,000 that would need to be improved immediately in order for you to be happy with it. First, you need to figure out how much the renovation is going to cost. If the amount is small, compared to the value of the home, say 10% or \$20,000, your bank can probably approve the project almost immediately; if the amount is more substantial, an appraiser will most likely have to get involved and the financing may get a little more complicated.

Assuming that \$20,000 is enough, the first step is to provide your financial institution with a written estimate of the costs to do the work. Once approved, your transaction gets treated as a \$220,000 purchase instead of a \$200,000 purchase. And you end up making a down payment based on the full \$220,000 and pay mortgage loan insurance on that same amount.

Upon closing, your financial institution will keep the extra \$20,000 until the work is completed and would most likely provide you with a line of credit to finance it. When the renovation is completed, you’ll have to sign a declaration confirming that the work was done and also provide your financial institution with a copy of all of your receipts. Your lawyer will then be sent the \$20,000 that was withheld and with it, you’ll be able to pay off your line of credit.

This is a great way to finance improvements; but the longer you take to complete the work, the more interest you will pay on your line of credit.

6.3 Lawyer's Review

Some of the 9 conditions I have mentioned above are very common; so much so, that there is a good chance they may already be included in the pre-printed offer forms used in your area.

Making any offer contingent upon your lawyer's approval of the deal just signed, is a very good idea. This clause protects you and your buyer-agent, in case something was missed. By having your lawyer review and approve of everything you have done, you get an opportunity to fix or get out of any bad situation. The purpose of this condition is to give you the option to better your contract. Was anything overlooked or left out? Should a clause be rewritten to avoid confusion? Are your best interests fully protected with the current paperwork?

6.3.1 Lawyer's Obligation to the Lender

You should also be aware, that in most cases, the lawyer acting for the buyer on the purchase is also acting for the financial institution that is lending the mortgage money. This dual representation is normally a non-issue, since the buyer's interests and those of the lender are aligned; but things would get tricky if, for example, the lawyer ever suspected the purchaser of lying, in order to commit mortgage fraud.

6.4 Property Disclosure Statement

The next condition to include in any offer is for the sellers to provide you with a completed property disclosure statement.

As I have mentioned before, the name given to the form varies from province to province; but, they are all essentially the same: a number of questions about the property covering different areas of concern including: Water Supply; Sewage Disposal; Electrical System; Plumbing System; Heating System; Structural Condition (foundation, roof, walls); Mechanical Condition (pumps, purifiers, air conditioners); Zoning and Permits; Environmental Condition; and so on.

Sellers are asked to answer those questions to the best of their knowledge, and that's why the information that is received is sometimes inaccurate. The owners may not have peeked into their attic for years and as far as they know, things are okay up there, when in fact they may not be.

You should therefore, never rely on the information contained in a disclosure statement.

There is also legal controversy surrounding disclosure statements. In many parts of the country, listing agents are required to ask sellers to complete the forms. But by doing so, they are asking the clients – whose best interests they must protect – to answer questions that may increase their liability.

If sellers are not extremely careful with the way they answer the property disclosure statement's questions, they could open the door to a lawsuit for having carelessly represented their property. As

a result, some lawyers advise their seller-clients against filling out these disclosure forms. But the problem this creates, is that buyers may believe that the sellers are hiding something.

Property disclosure statements can be a great source of free information for buyers; and that's why I would always ask the sellers to provide me with one. But since having lived in the house is required to properly answer most of these questions, there is usually no disclosure statement provided whenever buying the estate of someone who has passed away or a bank repossession – at least here, in Halifax.

The clause requesting a disclosure statement should state that the seller warrants it to be complete and current, as of the date you receive it; since the form is often completed at the time of the listing and may look out-dated when an offer is received months later. The wording of this paragraph should also make it clear, that the seller is to inform you of any changes that may occur in the condition of the property prior to the closing.

6.5 Radon Gas Test

Radon is a radioactive gas that causes lung cancer. You cannot see it, smell it, or taste it, but it could be a problem in your home. It results from the natural breakdown of uranium sometimes found in soils, rocks, and water and is one of the leading causes of lung cancer in Canada.

Radon is everywhere. It is in the air we breathe, but in concentrations small enough not to be a concern. But, it can build up in confined and poorly ventilated spaces like a basement. It enters a building through cracks and other small holes in the foundation and there is absolutely no way to know how much of it is there, unless you measure.

As far as I am concerned, every basement in the country should be tested.

For more accurate results, Health Canada recommends that a test be conducted over a period of at least three months, because the concentration of the gas inside a home fluctuates. But this is not practical in a home-buying context, and that's why using devices for short-term measurements makes more sense. The cost of such a test is in the \$150 to \$200 range.

This is the kind of test I have been recommending to my clients since 1997. The machine is left in the house for a few days and the average result from that spot check is used to determine the likelihood of the home having a radon issue. It is not full-proof, but it is better than nothing.

In June 2007, Health Canada drastically reduced its guideline for safe radon levels from 800 becquerels per cubic meter to 200. In comparison, the U.S. Environmental Protection Agency's guideline stands at 4 Pico Curies per litre or approximately 150 becquerels per cubic meter when you convert the units.

I have heard all kinds of stories from listing agents over the years, going from: there is no radon in Nova Scotia to there is no radon in the city. As if radon were a country guy, who likes open space and stays away from busy places.

The fact that your neighbour tested his home and had a very low reading is totally irrelevant. His house may be protected by a thick layer of clay and yours may not. I am speculating here, but I wouldn't be surprised if 1 out of 10 homes in Canada have basement radon levels above the safe limit.

Even if you don't care about the health risks associated with radon, you have to think about resale. Very few buyers currently test their home for radon problems; but I am going to do everything I can for this to change. There is therefore a chance, when you sell your house 10 or 15 years from now, that testing will have become a standard procedure done on every purchase – and your home will get checked at that time.

Fortunately, high radon levels can – in most cases – be remedied. Even the most expensive of fixes at approximately \$3,000 +/- is still within most people's means. And if you are lucky enough to discover the problem at the time of your purchase, the sellers may have no other choice but to pay for the fix, in order to be able to move on with their lives.

Radon is therefore a health and a resale issue.

6.6 Location Certificate

As I already said, a location certificate or plot plan, is a document drawn up by a surveyor that shows the boundaries of the property to scale and the position of the home on the land.

This certificate is important, because it could save you a lot of headaches. Imagine the problems that could arise, if six inches worth of your house were on the neighbour's land. In order to settle the matter, you might have to buy the part of the neighbour's land on which you are built. Would he/she agree to sell it to you? How much would it cost? It is to avoid these complications that location certificates are done.

But before spending the \$600+ they cost, it may not be a bad idea to ask the sellers for a copy of their certificate, if they have one. Depending on when that drawing was done and what has changed with the property since, you could decide that you don't want to spend for a new one.

This may sound like a good alternative, but unfortunately, it does not come without risks. Using the seller's location certificate can work if that piece of paper is reliable; but if the certificate proved inaccurate, you would have no legal recourse.

As a rule, if you want to be 100% safe, you should always have a new one drawn up. If there is an error, you can turn to the surveyor for compensation. But in the real world, especially since title insurance has come out, a lot of buyers do save themselves the money and use the seller's certificate, or go without one altogether, and rely on title insurance instead. Again, ask your lawyer.

6.7 Sewer Line Scan

Replacing a collapsed sewer line costs thousands of dollars and this is why making a purchase conditional on a scan of that pipe makes a lot of sense.

The cost of such an inspection is approximately \$200 and allows for a visual assessment of the line to determine its condition. A flexible cable equipped with a special video camera is pushed down the tube and its journey gets recorded all the way to the main. The images that are being sent allow the inspector to comment on the overall condition of the pipe and offer a diagnostic, should any problem be encountered.

This is the only way to know if there is any damage or obstruction that would restrict sewer flow.

This scan can identify several problems, including: broken, cracked or collapsed lines; blockage or obstructions often caused by tree roots; corrosion, leakage or alignment issues and so on. The buyer gets to keep a copy of the video that is produced, to be used as evidence in the event of a problem.

Since the lateral travels from the sellers' property to the city or municipality's sewer line, the location of any obstruction or collapse is critical in determining whose responsibility it will be to pay for the fix. If the damage is found to be on the owner's side of the pipe, then that settles the issue; but even if the damage is on the city's side, some old pipes can't be fixed and need to be totally replaced and the homeowner may have no other choice, but to pay his or her share.

But should every home be tested? It's a judgement call. It would make sense to inspect an old sewer line, but what about a 10-year old pipe? The obvious advantage of scanning is the possibility to walk away from the transaction, unless financial compensation is provided or the problem is fixed by the seller in the event of an issue. Because cost is a factor, it has been my experience, that a lot of buyers will not scan a line, unless it is at least 30 years old or more.

6.8 Water Tests

If the home you are interested in is located outside city limits, it probably pumps its water from a well, or maybe from a lake. The well or lake water must be tested regularly to determine its quality. A basic test is also required to obtain mortgage financing.

Personally, I wouldn't limit the scope of my test to the requirements of my mortgage company and would perform testing that goes way beyond the basics. This would be my chance to thoroughly investigate what is in the water that my family is going to drink. So I wouldn't cut corners.

If the water showed concentration levels that were higher than those recommended by my provincial or territory's Department of the Environment, I would want to know if the problem can be fixed; and if so, for how much; and then consider approaching the sellers with the problem. It is common for sellers not to be aware that their water fails to meet standards, especially if they only performed a basic test at the time of their purchase and failed to periodically keep an eye on it.

Since having good drinking water is a must, vendors often have no other choice but to fix their water problems in order to sell. So there is usually a way to come to a reasonable agreement on water issues. But if for some reason I couldn't, a good water test clause would give me the option to terminate the contract and find another home.

Bacteria can form in a well at any time and that's why it has to be tested regularly. Shocking the well or installing an ultraviolet (UV) filter are both procedures that could resolve a bacteria problem.

Another potential problem associated with well water is quantity. Some areas are known for their wells running dry and this is why doing a rough water quantity test, as well as a water quality test, is a good idea. Well water is great; it just requires a little monitoring to be on the safe side.

6.9 Sewage Disposal System

It is the same story with septic or on-site sewage systems. If the home is not connected to the municipal sewer, then some sort of sewage disposal system is present. It usually consists of a holding tank and a dispersal field. This tank is the place where your toilet and sinks empty. Septic systems work fine, but they are expensive to install and expensive to repair.

There are several different kinds of sewage disposal systems in existence. The type required for a particular home usually depends on the soil composition of the property. The choice of system, is not determined by the homeowner, but by inspectors either licensed by or working for the municipal, provincial, or territorial authority that regulates on-site sewage systems.

With a septic system, sewage comes out of the home and flows into the holding tank where a very large number of bacteria live. Solids sink to the bottom of the tank to decompose, and liquids escape to the dispersal field. This system normally works well, but a certain amount of maintenance is required to prevent problems.

The holding tank will eventually fill up with solids or "sludge". When that happens, solids coming from the home could start to flow directly to the dispersal field and could clog it up. Imagine what would happen, if sewage had nowhere else to go, but back from where it came.

Expect to pay between \$300 and \$400, to get the tank pumped out. Depending on use and the size of the tank, you may only need to get it done every 4 to 5 years; but once every 3 years, is what is often recommended.

There are definite uncertainties associated with buying a home on such a system, because everything is buried in the ground. The way most people discover that they have a septic system problem, is either when their toilets and sinks stop draining properly or when raw sewage appears somewhere on the property or in a nearby ditch. Spotting such problems is a challenge at any given time and almost impossible when there is snow on the ground.

To make things worse, wells and septic systems are areas that a lot of home inspectors do not check.

Walking the septic field area, using your eyes and especially your nose to try to see or smell a problem can't hurt; but I wouldn't put a lot of money on the effectiveness of this method.

This is why I suggest you ask the sellers about current or past septic issues – a subject often covered in the property disclosure statement. I would also ask about the location of the septic tank, so I know where to dig the next time it needs pumping.

Asking the sellers to get their septic tank pumped out prior to the closing and providing you with a copy of the receipt for your file would also be a good idea. In a perfect world, you would insist on being present for this pumping in order to see the exact location and condition of the tank, but this is not always possible.

6.10 Home Inspection

Making an offer conditional on a satisfactory home inspection, is without a doubt, one of the most important conditions to include **and the smartest money you will ever spend on your purchase.**

This may come as a surprise, but for the most part, the Canadian home inspection industry is not regulated. Training is voluntary and that means that anyone can be a home inspector and that with little or even no real qualification for the job.

The British Columbia government took measures to correct this problem in early 2009 when it became the first Canadian province to license home inspectors, a move that a few other provinces are apparently also considering.

6.10.1 Where to Look for a Good Inspector

So given the fact that the home inspection industry is not regulated, where should buyers look and who should buyers ask, in order to find a good inspector?

Your friends and relatives may have experienced the work of one individual who, they thought, was quite good; but unfortunately, they have no standard against which to compare the quality of the inspection. Some homes have no obvious problems – which means that even a very average inspector could do a good job – because there is nothing to find or miss.

I can't help but laugh, when I read or hear that buyers should ask their friends for referrals before hiring a home inspector. Your friends could help you stay away from someone they have had a bad experience with; but, when it comes to suggesting a good inspector, in my opinion, they are not qualified to make a recommendation. They may have had a good experience with a friendly individual, but that doesn't mean that he or she was competent.

A good inspector is found on a house with a problem, that only the most knowledgeable and thorough people would uncover. Unfortunately, the average purchaser will never live through enough inspections for this combination to come up. But real estate agents most likely will.

Real estate people, who have been around long enough, usually know who the best and most detail-oriented home inspectors are in their area.

This is ironic, because staying away from inspectors recommended by REALTORS® is an extremely common recommendation. If you have done any kind of reading on homebuying, I would bet that you have already come across that piece of advice a few times.

In all fairness, the statement has to be put in perspective, because it is made with the assumption that the real estate agent making it, is probably not looking out for the buyer's best interests; but rather, for those of the seller. And in that context, it makes perfect sense. Taking recommendations from someone who may not have your best interests at heart can be quite dangerous.

As an EBA, every time I walk into a house, I conduct my own inspection of the property. Even though I am not an inspector, I have lived through enough inspections to know the basics of what to look for. So when an inspector uncovers a problem that I walked by and missed, I take notice and the individual scores points in my book. The opposite is also true; when I need to step in and bring the inspector's attention to something I had spotted; my opinion is negatively affected.

In all of my years in real estate, I have never missed an inspection. They are an opportunity for me to learn more about houses and what to look for, when I view homes with my clients. I get out of the way and don't interfere; but believe me, I am all there.

Believe it or not, the very first home inspector I have ever met, turned out to be the very best. It was 1993 and I was just starting out in the industry. I was very protective of my first ever set of buyers and the last thing I wanted for them, was to end up with a house full of problems. So the inspector that we randomly picked, not only had to win my clients over, he also had to convince me that he was looking out for their best interests. Well, the guy just blew me away with his knowledge and I also liked the fact that – like me – he had an engineering background.

Soon after meeting Sherlock, (do I need to say that it is not his real name?) I also discovered that he actually had a bad name with several real estate agents who were calling him the “deal-breaker”. They were complaining that he was scaring buyers away by being way too zealous when conducting his inspections. I was already sold on him; but these statements just confirmed that I had found the kind of guy I was looking for.

For the record, the gentleman is still in the business today and I would personally never buy a home without him inspecting it first. Even if it is only to confirm that I've gotten myself a good, solid, piece of real estate. He has done hundreds of inspections for my clients over the years and it is always a lot a fun to see him again. Although, he is a lot older than I am, it's like meeting an old high-school buddy every time.

Every city has its own Sherlocks and there is a good chance that your agent knows who those individuals are in your area.

This is why, I believe that the most important player on any buyer's team, is the one with the real estate license. That professional can help you stay clear of bad properties in bad neighbourhoods

and put you in contact with inspectors; mortgage people; lawyers; and potentially a number of other service providers who have impressed him or her over the years. Having a real estate agent who is truly looking out for your best interests is invaluable.

6.10.2 What to Expect during the Inspection

Now, as for the inspection itself, it usually lasts anywhere from one-and-a-half to three hours, depending on the size of the home, and its condition. I hope for you, that the sellers will leave the property for the inspection, so you get another chance to have a good look around. Unfortunately, some sellers stay home and even at times, intrude on the inspection, by arguing with the inspector on some issues. Can you imagine?

The home inspection is normally the last time buyers get to see their house on the inside until the closing; so don't forget to measure those windows for drapes and curtains, and openings for your new appliances. Unless prohibited, you may also want to bring a camera and take pictures, so you can show friends and family what your new place looks like.

I recommend you try to complete the inspection as quickly as possible, so you get a chance to sleep on its results. Like most clauses, having a week to complete the home inspection is common. By getting it done early, you'll have more time to discuss your options and make phone calls before making a final decision.

For your information, home inspectors do not pass or fail houses. They inspect all of their systems and give their opinion as to the condition they are in and what work may need to get done to fix them (now and down the road). It is up to you, the buyer, to decide when enough is enough. The inspector will make numerous recommendations, as to how to improve the life and protect the value of your investment. Again, since no home is perfect, expect the report to provide a lengthy list of possible improvements. It is then up to you to decide, what gets fixed and what gets monitored. Most buyers address the more serious concerns shortly after they move in and often put the rest of them off for sometimes a very, very, very long time.

6.10.3 Getting a Price Reduction

If you are ever going to ask for a price reduction to fix a problem, you must realize that **this money is most likely, not going to be enough**. In my experience, a majority of repair or renovation jobs end up costing more and taking longer than initially thought. A price reduction, should therefore, be considered a contribution from the seller towards the cost of a fix.

6.10.4 My Ultimate Home Inspection Company

Sherlock is the home inspector that has performed the most inspections for my clients over the years; whenever, he isn't around or available, his partner Mr. Watson (also not his real name) is the next highest-ranked inspector on my list. But since some of my clients already know or are related to

a home inspector, I have had the opportunity to meet several individuals and it has allowed me to compare the way everyone works.

I must admit, that I like how Sherlock and Watson perform their inspections because they tape-record as they go. They do not complete their report on-site and I thank them for that. Instead, they go back to their office and deliver a copy to our mutual clients the next day.

A good inspection report takes a few hours to complete and doing it on-site often turns simple inspections into three and four-hour affairs. I certainly hate losing half a day on an inspection and I know for a fact, that a lot of buyers and sellers feel that way too.

But as much as I like Sherlock and Watson, there is one thing that I think is missing from their service, for their firm to qualify as my ultimate home inspection company.

I love the fact that they do basic well water quantity flow tests and check septic fields; as I have already said, very few inspectors bother with those two. Using a bucket, they turn the bathtub tap on and set it to deliver a certain number of litres per minute. They then let the water run for a while and after several hundreds of litres have come out; they go out and walk the septic field looking for signs of sewage. Nobody else has ever done that on any of my inspections. It is not full proof, but it is better than nothing. That's a very nice touch and obviously not what I think is missing from their service. It is not radon testing either, since they've been equipped with several monitors since the late 1990s.

What I would really like them to do is to buy machines to scan sewer lines. With that kind of gear, they would allow their clients to kill up to four birds with one stone. We could start with the **regular inspection**; if all goes well, we could then decide to get the **sewer line** scanned; and if after all of this the house is still being considered; well **water samples** would get collected and a **radon** machine would get set up in the basement before we leave.

I understand that it is wishful thinking on my part to expect home inspectors to also carry sewer line scanning gear. This equipment is extremely pricey and would require an investment of approximately \$10,000 per inspector. And that's why no inspector that I know, has done it yet.

6.11 Multiple-Offer Situations

One of the worst things that could happen to any homebuyer, is to end up involved in a multiple-offer situation. I think the best way for me to explain how this nightmarish scenario develops, is probably through the use of a simple example:

Say, my wife and I are selling our house and our agent calls us at 5pm one day to say that an offer with a 9pm deadline has been received. One option would be for us to drop everything and deal with the offer right away; but this could be a mistake.

Instead, our agent could use this one offer to try to generate a few more and create a profitable bidding war for our house. This practice is called "**shopping an offer**".

Shopping an offer involves contacting people who have previously shown interest in a property to see if they are still thinking about it and if the prospect of losing it to somebody else is enough to get them to fight for the house before it is gone.

Agents are not allowed to disclose the content of any offer to these other parties. All they do, is inform them that an offer has been received. That's it. And that is often enough for a second offer to get submitted.

For your information, in some areas, "shopping an offer" means not only informing other parties that an offer has been received, **but also revealing its price and other details to try to get better bids** – which is an illegal practice. My definition doesn't include this last part.

Say, our agent is successful in generating another bidder for our property in that way. Upon receiving that second offer, our agent would contact Buyer #1's agent to inform them of the bad news – bad news for them, but fantastic news for us as sellers.

Buyer #1 would then have to decide what to do: one option would be to remove their offer and refuse to compete for the house. Another option would be to change their offer, so it is more competitive and send it back. The third and final option would be to leave their offer as produced and hope for the best.

Since Buyers #2 were already aware that an offer had been received, they would have produced their offer knowing that they were competing against another purchaser. It is because Buyer #1 offered thinking that they would be negotiating one-on-one with us, that they would be given a chance to change their bid.

In the event that two parties, at the same time and without knowing about one another, offered on the same house, then both would get contacted and informed of the multiple-offer situation and given an opportunity to react to it – **if this is what the seller wishes to do**. It is important to realize that sellers are not obligated to reveal the existence of a multiple-offer situation to the buyers involved; but most do because of the financially profitable bidding war that often results.

The first thing I usually ask my clients whenever this happens, is whether or not the house is worth getting into a bidding war over. As an EBA, I absolutely hate these situations, because there is no way for us to know what the other party has done.

We may be competing against a joke of an offer or an extremely competitive bid. Whenever my clients decide that they like the place enough to fight for it, my advice to them, is to go as high as they are comfortable until they reach a point where they are able to say: "if these other buyers are willing to go above that price; they want the house more than we do and they can have it".

Both sets of buyers will, of course, try to strip their offer of anything that is not absolutely essential to them and this is why price is often the deciding factor – the competing offers often being almost identical, except for the money.

I instruct my clients not to hold back, because if we lose, we will eventually find out what the other party paid and may realize that we got beat by a mere \$500. There is often very little negotiating

taking place in multiple-offer situations. The sellers are in the driver seat and buyers are throwing all of their money at them to get their house.

A lot of folks have no problem offering several thousand dollars above the asking price to beat someone else for a property. So these situations can be extremely hard on the pocketbook.

Getting back to me and my wife selling our house... When our agent has managed to generate as many other sets of buyers as possible by shopping the first offer, it is time to get together and find out about our windfall.

If the best offer is acceptable, then there is a good chance we would accept it on the spot – especially if the buyers went crazy and offered us a lot more than what we are asking.

The other offers – if more than one – would probably simply get rejected or the second best bid could be offered a back-up position, in case something happens with the winning buyer. In that case, a counter-offer clearly stating that it is only for the back-up position would be sent back to the second best bid, along with any other changes (price; closing; appliances; etc.) that needs to be made for us to be satisfied. It would be up to these other buyers to decide if they want to wait in the wing.

If none of the offers are acceptable as presented, the one with the best bid would most likely be sent a counter-offer with all the needed changes on it. I would probably also send that same counter-offer to the second-best bidder for the back-up position.

For obvious safety reasons, agents usually only counter one offer in multiple-offer situations to avoid selling the property to more than one party. But it doesn't have to be that way. All bidders can receive a counter-offer, as long as each counter clearly specifies what position it is for: to get the house; first runner-up for the house; second runner-up for the house; and so on.

Say, my wife and I receive three offers instead of two that night; my three counter-offers would make it clear to all potential buyers that they are all being sent the exact, same terms and the exact, same deadline to reply, with each of them being given a priority order from 1 to 3.

If number 1 accepts; number 1 gets the house. But if number 1 refuses and number 2 accepts; than number 2 gets the house. And if both 1 and 2 refuse and number 3 accepts; than number 3 gets the property. If all three accept; number 1 gets the house with 2 and 3 waiting as back-ups in that order.

As much as I would like to receive three offers at the same time on my house if I were selling, I passionately hate what that means to those on the buying side. They are blindly opening up their wallet, hoping that what is in it will be enough to secure the property. This is no way to buy a house.

To avoid getting my offers shopped, I like to surprise listing agents with unannounced offers early in the evening, with either a deadline later that same night or early the next morning, in the hope that it makes shopping it inconvenient and that it gets my clients the opportunity to deal one-on-one with the sellers without competition.

Multiple-offer situations are profitable to sellers and can lead to abuse. If my information is correct, listing agents in the province of Manitoba are required to give the name of the agents who are involved in those situations upon request. And this is great!

I have always had two main concerns with bidding wars: First, is there really another offer? And if so, who is the agent that is making it?

What proof do I have that we really are involved in a multiple-offer situation? What if the listing agent is embellishing the truth by saying that he or she has received another offer, when in fact it is expected, but has yet to materialize? Are we opening our wallet for nothing?

By being provided with a name, I would know if we are fighting an agent or brokerage double-ender and at least know that it is not a ghost we are battling. In my opinion, every single Canadian province should have a rule similar to the one in Manitoba to protect the parties involved and minimize the risks of abuse.

6.12 Building a Home from Scratch

Getting a home built from scratch is without any doubt the most demanding and riskiest way to get into homeownership.

You see, just like in the home-inspection industry, anyone can call him or herself a home builder. And just like the inspection industry, there are associations working at protecting the public by offering their members with opportunities to further their knowledge through various courses and certification programs. But every member is different, some builders are extremely well-qualified and others not as much.

There would be absolutely nothing to stop a guy like me from opening a small home-building company tomorrow, if I wanted. And although I possess no trade qualifications, I could act as general contractor and sub-contract everything out. A lot of builders do it that way, so why not me?

Choosing an experienced builder is important, but it is unfortunately only half the battle. There is so much interaction between buyer and builder that you need someone with whom you are going to work well. Just think of your own work experiences; I am sure you can remember several co-workers you didn't get along or work well with; and that for reasons that probably had nothing to do with them being competent at their job or not. It could have been their overall attitude; personality; work ethic; etc. and for whatever reason, the two of you were not a good match.

When getting a new home built from scratch, buyers are committing to work on a huge project with a group of strangers for 4 to 5 months. And quitting is not an option – no matter what. That's why a lot of people who have had a bad experience swear that they will never do it again. Fortunately, most new construction stories are positive; but the risk of living a buying nightmare is a lot greater with building a home, than it is when picking from the resale market.

To start off, new construction agreements are all different. Even though a standard contract may be used, various schedules are usually added to it and they vary from job to job and from builder to builder. So no two contracts are ever the same; and it's a new ball game every time.

Given the complexity of the project at hand, the builder must be allowed to do things his way. Buyers have no other choice but to trust that the builder they pick, knows what he is doing because they don't. It then becomes a partnership between you and your contractor's team to make your dream home become a reality.

The new construction contract that buyers sign, requires them to make several decisions within the following two to three weeks, including signing off on their house plans. At the time of signature, they agree to a certain style and size of home based on some initial plans. But since anything can still be changed, they are given time to finalize the whole thing. They can decide to remove a window, move a door, increase the size of their back deck, etc. Any change they make is likely to have an impact on the final purchase price.

So finalizing house plans is step one – that is of course after providing your builder with confirmation of financing and giving a sizeable deposit that is going to be **held in trust, either by the builder's real estate brokerage or his lawyer. I would never give money directly to a seller – builder or not.** This will be followed by more deadlines to confirm everything else.

While this is all happening, your builder applies for all the necessary building permits and when they are received, construction can finally begin. While the builder is busy with the pouring of the foundation and the framing of the house, you will most likely be visiting store after store, shopping for flooring, kitchen and light fixtures. Since everyone's taste is different, new construction contracts are often built with allowances that enable buyers to pick what they want.

Say, \$25,000 gets built into your purchase price to allow you to buy flooring; kitchen; and fixtures; don't be surprised, if in the end, it is \$35,000 that you spend on those things. Even though you may start with a budget, it could become extremely difficult to stick to it and resist the temptation to make some upgrades.

You may find that visiting the job site every second or third day is okay during the initial stages of construction, but as soon as the house is roof-tight, I'd say you almost have to go every day. It is extremely important to catch any mistake early, as the home is nearing completion, because jobs get done in succession and the next guy covers up what the previous one just did.

So many things can go wrong at this point, that it is virtually impossible to be ready for everything. That's why visiting the site every single day is almost a must. Unknown to you, the wrong hardwood floors may have been delivered and you want to spot that when the planks are still in their boxes, not when they have already been installed.

Another potential problem with getting a home built has to do with settling and its associated foundation cracks. The ground on which the house is going to be erected may not be strong enough and that could become an issue. Talk to the folks in Pisa, Italy, if you don't believe me. They have a tower that's been a concern for quite some time. Settling issues are rare, but very real, and it

sometimes takes a few years before they become noticeable. Resale properties offer a definite advantage in that way. If a house hasn't moved after two or three years, chances are it never will.

I don't recall any of my clients who bought a resale property, ever crying over anything that happened during the buying process; but a few that had a house built from scratch did. And these are the ones that I know about. This is a very tiring process and if you already have a stressful job and children to take care of, it sometimes doesn't take much to get pushed over the edge. And unfortunately, there isn't a whole lot an EBA or any other agent can do to prevent this.

That's why I would rather see my clients buy a model home. These new properties are already built and used to show potential buyers what the builder is capable of doing. They are often loaded with extras and they save my clients from having to go through the whole building process. Yes, getting a home built from scratch can be a nightmare, but it can also be a dream; several of my clients have had extremely positive experiences.

I believe in getting a home inspection done on any property, including new homes – not to say especially new homes. The reason for this statement is that a brand-new property is, technically, the only kind of house that should be 100% perfect. But they never are. It's like I have said before, the perfect home doesn't exist; there are always a few little things here and there that could have been done better. And if that's all that an inspector can find, then it is great news.

I wouldn't rely on the fact that homes get inspected several times by municipal inspectors during the various construction stages – municipal inspectors miss things, nobody is perfect. When you think about it, what's an extra \$400 at that point?

6.12.1 Agents Play no Active Role in the Building Process

It is important to mention, that real estate agents have no active role to play in the building process. After the contract is signed, we basically get pushed to the sidelines until the house is completed. This is because most of what needs to be discussed following signatures is specific to the house: location of plugs; switches; windows; colour of the roof shingles; paint; etc. Unless the relationship with the builder deteriorates to the point where the agent has to get involved as a mediator, it usually is the buyer keeping their representative posted on the progress – not the other way around. And it is often only when the new home is ready, that real estate agents really get back in the game.

6.12.2 Agents Can Mess Things Up

When real estate agents have to come in to resolve a problem between buyer and builder, they have to be extremely careful. Their clients will eventually commit to leaving their current place of abode and will need for their house to be ready by the time closing comes.

Imagine the kind of problems an agent would be in, if he gave a builder a piece of his or her mind for the way his clients are being treated during the construction phase and the builder decided to stop building the home altogether as a result. Unknown to everybody, the builder could have been dealing with a major personal crisis – illness, death in the family, etc. – and doing his best to keep

things going, as if it were business as usual. And getting rattled by a concerned agent could push him over the edge. What would the buyers do, if the builder decided to stop everything?

This initially, well-meaning agent, could end up getting sued by his own clients for making a bad situation even worse. This is the kind of mistake an agent only makes once. You should therefore think twice before ripping into your builder; this is a complex project and co-operation between the parties is required from start to finish.

6.12.3 Big Builder versus Small Builder

I personally like dealing with small businesses and ideally, directly with their owner. Not surprisingly, I find that I normally receive better service from an owner, than I do from an employee. But I would not be as eager to get a house built from a small builder. And the only reason for that, is the length of the relationship. I find small businesses great for jobs that don't take a lot of time. But since any of us could break a leg and suffer a heart attack or a nervous breakdown, I can't help but wonder what would happen to my house, if my small builder ever got incapacitated? Who would take over?

There are pros and cons to dealing with both small and large firms. Large firms are often financially more competitive and because of their size, don't rely so heavily on one or two individuals, as do a lot of smaller shops. Small builders are hands-on and able to provide attentive, personal service that is very difficult for a big firm to match. Is one better than the other?

6.12.4 New-Home Warranty Programs

Most new homes are covered by some type of warranty. But you must realize that this protection is not full-proof. It is customary for builders to return a year after the closing, to fix minor deficiencies. But it is when the deficiencies are anything but minor that things can get complicated. At times, the only way to properly fix a problem is to redo the entire job; and that, could be enough to force some companies into bankruptcy. It is to protect the public from such nightmares that warranty programs exist, but they too, have their limits. In rare instances, buyers have had to hire lawyers and go to court to get things fixed. So new-home warranty programs are great, but don't blindly believe that they can fix everything.

6.12.5 Energy-Efficient Homes

Another thing you need to consider, is whether or not it is worth paying extra to get a more energy-efficient home built. R2000, for example, is a Canadian home-building technology that is recognized as being energy-efficient and also environmentally friendly. R2000 homes are built to higher standards, tested and certified by the Government of Canada. Several other similar programs are also in existence. Getting a new home built involves making several tough decisions, since practically everything can be upgraded. So where do you start and when do you stop? That's why the price that

is initially agreed upon, when the contract first gets signed, seldom survives the building process and a lot of buyers end up spending several thousand more in the end, because of all the upgrades.

6.13 Part Six Summary

In this block, I have talked about everything that I would expect a good agreement of purchase and sale to cover, including standard clauses and extra conditions to add; I have discussed the ever-so-important home inspection; have touched base on multiple-offer situations; and have provided details on the process of getting a home built from scratch.

Two issues discussed in Part VI stand out as particularly important to remember for me. The first one, is to always get a house inspected by a qualified home inspector and that includes brand-new homes. It truly is the best money any buyer could spend.

The second issue, is to test for radon gas. Radon is a silent killer. It is everywhere and is both a health and resale issue. At between \$150 and \$200, getting a spot check done over a two-or-three day period, is a very good idea. As I have said in the text, I truly believe that every basement in the country should be tested.

In the next and final section, I will put my EBA's cap on and take you step-by-step through a standard home purchase.

Part Seven:

Putting it All Together

In Part VI, I have talked about the contents of a good offer, along with the conditions that careful buyers should ensure are included. In this final block, I will put it all together and go through the entire buying process with you. I will show you the procedure that I follow when I coach buyers starting from the initial phone call to the final handshake on closing day.

7.1 A Buyer Inquires

Every transaction I get involved with always starts with an inquiring phone call or email, because I don't pursue purchasers. I wait for them to contact me first. This way, I don't bother anyone and know that when I talk business, it is with people who are truly interested in what I have to say.

Curious by nature, the first thing I normally ask is where the person got my name. It is important for me to find out, because I want to know which ad got them to call or who among their friends I should thank for recommending me.

The second question I ask callers, is what they have done so far. And that leads me to asking if they are pre-approved for a mortgage, if they have saved money for down payment and closing costs, and if they are currently bound by a rental agreement.

Once the conversation is well-established, I explain that I am not a traditional real estate agent; that I do not sell real estate or take listings; that I am an Exclusive Buyer Agent; that I only work with purchasers; and that although there is a lot more to it, my job is to partner up with buyers; educate them about the industry and the buying process; guide them through the purchase; look for what's wrong in houses; and suggest ways to bring prices down.

I make callers aware that, in the past, buyers had to pay to get someone like me to work for them; but that it is no longer the case, because recent industry changes have made the service available to all MLS® buyers in Canada at no extra cost to anyone in an overwhelming majority of cases.

After hearing this, most callers want to know more. And that's when I tell them that although nothing is complicated, properly explaining how it became this way along with everything else I feel purchasers should know before buying a house, would require getting together for a few hours.

To callers who are already pre-approved for a mortgage and have enough money saved up, I suggest they think about it and call me back if they would like for us to meet. To those who don't seem quite there yet, I suggest they talk to a mortgage officer at their bank, and then call me back.

This no-pressure approach, has worked well for me over the years.

7.1.1 Different Circumstances – Different Suggestions

What I learn during this first phone call determines if there is anything else I need to talk about. When callers are new to the Halifax area, I tell them that I would consider familiarizing myself with my new surroundings before jumping into a purchase if I were them – especially if their employer is

not helping with relocation expenses and they are financially responsible for everything; that renting first would allow them to get to know the area; its various neighbourhoods; schools; traffic patterns; and also give them time to decide if Halifax is a city they wish to make home.

When I hear that they currently own a house; I talk about how tricky moving from one place to the next can be; and when they seem perfectly happy with renting, but feel that they are wasting their rent money, I tell them about renting and investing the difference.

As you can see, I screen buyers on the phone and immediately make them aware of anything about their particular situation that I would personally look into, before considering a purchase.

Making a mistake with real estate can be devastating and it is the last thing I would want for any of my clients. Believe it or not, I refuse to get involved when I don't like what I hear. My job is to help; not to talk buyers out of their plans.

So if buying a house is not something I would consider doing if I were in their shoes, then I just politely decline the invite.

7.2 The First Meeting

As I have already said, the purpose of the first meeting is for me to get to know my potential clients better; answer their questions; and bring them up-to-speed on the latest real estate information.

Because it is not reasonable to expect purchasers to remember everything I talk about during these sessions, I tell them to forget about taking extensive notes and relax because everything that I say is in a book available for free on my website.

Having such a reference manual is great. And since I am the one who wrote the book, I happen to agree with everything its author says; but if it had been done by someone else, part of my presentation would be spent on explaining where our opinions differ and why.

So after formally introducing myself; thanking them for agreeing to meet with me; and inquiring about their wants and needs, I proceed with my presentation and address every subject in the same order they are introduced in this manual.

I therefore start with financial considerations and discuss mortgages; buying costs; and – of course – how powerful renting and investing the difference can be.

Then, I talk about brokerages; brokers and salespeople; client and customer relationships; the MLS® System; double-enders; and so on. I follow up with the legal duties and obligations owed to clients and customers; I introduce sub-agency and its problems; I explain specialty and full-service firms; how buyer agency arrived; what dual agency is and how it is often mishandled; what designated agency is and why I think it could be done better.

Once all of this material has been covered, it's time for me to lead them into my world.

7.2.1 Buyer Coaching

At this point, I tell my potential clients how I became an Exclusive Buyer Agent and why.

I explain that because I understood how the MLS® System worked, buying a house through the listing agent made no sense to me; that I felt it would be like going to court and asking my adversary's lawyer for advice; and that I thought there had to be a better way.

I tell them that I was so impressed in the mid-1990s, when I first heard of a new breed of American agents called EBAs who were refusing to work for sellers and instead putting their experience; knowledge; and negotiating skills to work for the exclusive benefit of buyers; that I decided to bring the concept to Canada.

Next, I tell them a little bit about me: that I possess a broker's license; that I own the brokerage and therefore care very much about its reputation; that I am the company's only employee; that I treat buyers the way I would like to be treated; that my firm takes no listings; that I have nothing to sell; that having no in-house listing hanging over my head or commitment with any seller, allows me to provide an unbiased opinion; that my job is to help my clients find the best home and then try to influence the outcome of the negotiations in their favour; that I am a professional consultant paid through the MLS® System; that my services cost nothing extra; that I help buyers make informed and educated decisions; that I am a devil's advocate, personal advisor, and negotiator all in one; and that my ultimate goal is for my clients to be so pleased with the job I do for them, that they will tell everyone they know about me after their purchase... **just like whoever gave them my name, had just done.**

7.2.2 My Promise of Service

I continue by saying, that it is because purchasers like to work with a real estate professional that looks for what is wrong in houses and suggests ways to save money, that I am not afraid to give those who hire me the unconditional right to fire me at will; without penalty, and for any reason.

I tell them, that for the first 10 years, I worked with a one-page contract that clearly spelled out the service I offered buyers in easy-to-understand English; but that because these contracts eventually became illegal, I turned mine into a promise of service – that I just then give them.

I make buyers aware, that I don't have to provide anything in writing; that we could work without a contract; but that I don't mind putting my promises on paper and signing off on them; that I offer a service a lot of people have never heard of and could potentially believe too good to be true; which is why I invite them to try it out at no risk.

I explain that this way, my clients' satisfaction is guaranteed or they do not stay; and that for me, it means that I have to keep my promises or I get fired.

PROMISE OF SERVICE

On January 1, 2007, the Nova Scotia Real Estate Commission introduced mandatory Buyer Brokerage Agreements. After trying to work with the forms, I, Alain Savard, broker/owner of HBI - Home Buyers Incorporated (HBI) decided that company clients would be better served if provided with this promise of service instead.

1. HBI HEREBY PROMISES AND/OR CONFIRMS THAT:

- a) All buyers the firm represents are always considered and treated as clients and never as customers;*
- b) The firm is a buyers-only brokerage working under common law agency rules;*
- c) The firm never takes listings or represents sellers; it works with and for buyers exclusively;*
- d) The firm only works on MLS® transactions and does not get involved with private sales;*
- e) It is the firm's duty to protect its clients' best interests in all dealings and negotiations;*
- f) The home-buying process will be clearly explained before starting to look for a home;*
- g) All buying and maintenance costs will be clearly explained and listed before starting to look for a home;*
- h) Buyers will have access to all homes on the local MLS® System without discrimination (see 3f);*
- i) Buyers will be set up on an automated search of the local MLS® System;*
- j) Buyers will get to set the pace, pick the homes they wish to view, and never be pressured into any decision;*
- k) A "house critic" approach will be used on all viewings to try to identify property flaws and defects;*
- l) A Comparative Market Analysis (CMA) of any property of interest will be done to help establish value;*
- m) The firm will strictly adhere to and abide by the principles set out in the attached "HBI's Privacy Policies";*
- n) Buyers will be told which outside service providers HBI would consider using, if it were the one buying;*
- o) HBI never accepts money or kickbacks for telling buyers about outside service providers it would consider using;*
- p) Buyers can stop using HBI's services at any time, for any reason, without penalty or compensation due;*
- q) Buyers will be given a transaction summary with written cost estimates, disclosures, warnings and concerns.*

2. BUYERS ARE AWARE THAT HBI EXPECTS ITS CLIENTS TO:

- a) Get their home thoroughly inspected by a qualified inspector not related to them;*
- b) Get their lawyer to review their Purchase and Sale Agreement after acceptance;*
- c) Negotiate the purchase of their home in good faith;*
- d) Refrain from dealing with agents from other real estate companies while working with HBI;*
- e) Ensure a representative of the brokerage is present when dealing with MLS® offers and counter-offers.*

3. BUYERS ARE ALSO AWARE AND AGREE THAT:

- a) If they retain its services, HBI will use their personal information as set out in its "HBI's Privacy Policies";*
- b) It is not a breach of duty to them for HBI to assist other buyer-clients at the same time, on different purchases;*
- c) Since HBI does not get involved with private sales, they are 100% free to pursue these properties on their own;*
- d) HBI will claim the commission split offered on the MLS® System as its sole remuneration;*
- e) This promise of service is not a contract and that both parties are free to stop working together at any time;*
- f) HBI reserves the right not to assist with the purchase of homes paying less than 2.5% of the purchase price;*
- g) They are 100% free to work with the outside service providers (home inspector, lawyer, mortgage broker, etc.) of their choice; that HBI provides its clients with specific names for free and strictly as a convenience; and that HBI will assume no responsibility in the event a problem arises with any such companies or individuals.*

HBI is committed to living by and respecting the terms of this Promise of Service.

Presented to: _____ on _____.

HBI - HOME BUYERS INCORPORATED

7.2.3 Options for MLS® Listings with Low Splits

My promise of service has evolved over the years and one of the latest additions I made to it, was to reserve the right not to assist buyers on the purchase of any MLS® listing that pays less than 2.5% of the purchase price (Promise of Service, line 3f).

I explain that I have no control over the size of the commission split; that splits as low as \$1 are legal in Canada; and that it is because a compensation of 2% on a \$750,000 home is different from 2% on a \$100,000 property, that I do not take a stance based on the percentage alone. All I want, is for the opportunity to decide if I wish to assist on a case-by-case basis.

All kinds of options are available to my clients when I refuse to get involved, including:

1. Them agreeing in writing to add to my compensation out of their own pocket;
2. Them viewing and potentially buying the house through the listing agent;
3. Them viewing and potentially buying the house through another brokerage;
4. Them terminating the relationship because of this;
5. And so on.

I don't want the fact, that I take exception to a low remuneration to hinder my clients' ability to purchase the house of their choice. As you know, I refuse to work with private sales – and low-paying MLS® listings fall in the same category for me; except that I will assist those who offer to make up the difference, something I will not do with a private sale. I tell buyers that it will be up to them to decide at the time, if we ever do business together and come across such a listing.

I refuse to let listing brokerages bully me into accepting less than I feel is fair for my services. They are free to offer whatever they want as a split on the MLS® System and I am free to accept it or ask my clients for more. Low commission splits are a reality that I just cannot ignore.

7.2.4 2010 Court Battle over MLS® Rules

Now that I have shared with you my position on low MLS® splits, this is probably a good time to talk about the big 2010 court battle between the Competition Bureau of Canada and CREA over the rules of the MLS® System.

Although a lot of people feel this was a big victory for the public and that real estate fees will soon start to come down, I tend to disagree. The reason behind this whole thing, was to allow sellers the option of choosing what services they want real estate people to perform for them – something I like to refer to as “MLS® à la carte”. Sellers would like to see real estate fees come down, but what they may not understand, is that these high fees are the reason why the system works so well for them. In the next few paragraphs, I will explore a few different ways to break down listing services and see what impact each of them would have on everything.

One option, would be to enable sellers to list their homes themselves on the MLS® System. Unfortunately, this is never going to happen. The reason for that is very simple. Although the current system is not perfect, the information in the MLS® database is, for the most part, quite

reliable. Reliable enough for banks and appraisers to pay thousands of dollars in fees every month to gain access to it. Allowing sellers to list their home themselves would tremendously affect this reliability and threaten the value of the database. And since training sellers on how to list properly would be more expensive than to get a qualified licensee to do it for them, this one will never happen. The industry will never allow the public to play with one of its most valuable assets.

Another option would be for sellers to get their house listed and then refuse all other services. But this would force EBAs like me, to negotiate with those sellers directly, since they would not have an agent. This means that I would have to explain everything to them. Selling a house involves signing legal documents; it is a very serious matter. The fact that I am fully dedicated to protect the best interests of their adversary, would make explaining anything a nightmare. How much of what comes out of my mouth would they truly believe? I refuse to represent buyers on private sales because I don't want to put myself between my clients and their adversary and have to worry about dual agency. Dealing with a seller who doesn't have an agent, is the same thing. This, therefore, means that sellers representing themselves, would lose a part of the agent pool – and that even if they offered a good commission to buyer-agents.

A final way to bring real estate fees down, would be to reduce the size of the commission split. But this is nothing new. In order to maximize their profits, listing brokerages need to know when the size of the split starts affecting the rate at which their listings are selling. No listing brokerage wants to pay more than they have to in order to get the job done. What sellers have to understand, is that in the end, their house must sell. Offering a low split and ending up with a home that doesn't sell, is a waste of the brokerage's time and money. Sellers have to realize, that the effectiveness of the system goes down with every penny they shave off the commonly accepted split. Would you agree to work for say, \$12 an hour at a job that usually pays \$15? It is the exact same thing here.

In the end, the best sellers can probably do **without reducing the effectiveness of the system**, is to pay the commonly accepted split – whatever that figure is in their area – and as little as possible to get a licensee to list and manage their house on the MLS® System and only reappear, when an offer is received. And I believe that this is pretty much what a lot of discounters already offer. Brokerages are businesses; **they must make money for their owners**. Offering sellers a good deal, but only moving 1 out of every 10 houses that you list is not profitable – and real estate people know it.

On October 24, 2010, an agreement was reached between the Commissioner of Competition and CREA. I read the official paperwork and honestly believe that very little has been changed. To me, this agreement is only a clean-up and anti-bullying measure, because CREA's rules have always allowed its members to offer "mere posting" services – a brokerage placing a house on the MLS® System and assuming the liability for the accuracy of the listing information for a small fee and doing nothing else for the seller. But apparently, in some areas, those who offered such services were being bullied by other CREA members and that was not supposed to happen. Another allegation, was that some local boards actually disallowed such services and as if that is true, then it was clearly wrong.

So this new agreement is a good thing, because it forced CREA to ensure that all local boards allow mere postings and stress that nobody is to discriminate in any way, against **members like me, who offer non-traditional services**. But the bottom line is that, in my opinion, the public didn't gain anything, because everything in that consent agreement was already allowed under the old rules.

7.2.5 Missing Information

Let's now get back to where I was before I got side-tracked. As you can imagine, I never have enough time to cover everything I'd like to discuss during my first meeting with potential clients. I sometimes spend too much time on one subject and then I have to run through the rest of my presentation. This is why I like having my buying guide on the internet. It gives those I meet with, a chance to review what was discussed and the opportunity to discover what was missed.

I try to cover as much material as possible during that meeting because I know some of them will be interviewing other licensees. My goal is therefore, to educate them enough about the industry and the buying process so they know what questions to ask when they meet with my competitors.

7.3 Viewing Procedure

After meeting for a few hours, providing them with as much information as I could, and gathering enough information to set them up for an automatic search on the Halifax-Dartmouth MLS® System, I sign my promise of service and conclude the meeting. We shake hands and I tell potential clients that I have everything I need to get us started. I suggest they take time to reflect on the meeting and invite them to call me, if and when they want to get things going.

Some buyers give me the green light on the spot; others contact me a few days, weeks, or even months later; and, of course, there are people I never hear from again.

It takes me approximately 15 minutes to set buyers up for a prospecting search on the system. I send them an email thanking them for hiring me and telling them what to do when they receive the first message from the computer.

After this is done, I take a break and they go to work. Their job is to sort through all of the matches the computer finds and pick the best properties. I tell them that a top-5 list is reasonable to start off.

Reading listing cuts and eliminating homes one-by-one, takes several hours, but it is time well spent. After reducing the number of matches to around a dozen, I tell my clients to take their car and drive past these top choices. The drive-by is very important. Steep driveways and adjacent junkyards are never mentioned in the description. Driving by the properties they picked, allows them to get a good feel for the street; the neighbourhood; and the other homes in the area. The object of this little tour is to further reduce their list down to their top picks – their five most promising prospects.

Once this is done, it is time for them to call me to arrange the viewings. After agreeing on a time that is convenient for all, I contact the various listing agents and book appointments to see the interiors of those homes. Viewing five properties can easily be done in a two-hour period.

Again, I think it makes total sense for buyers to pick the properties that they want to view, so their personal taste determines the shortlist; this way, they are guaranteed never to waste their time on homes they don't care for and it helps me develop a good feel for their likes and dislikes.

Over the years, I have developed my own procedure for viewings that I repeat with each and every property that I tour. Here is a sample of the things my clients hear me say:

On the outside: "... do you hear the noise from the highway? This will be going on 24-hours a day; so, if you are a light sleeper that could become a problem. ... This street is fairly busy, so your kids will not be playing hockey or riding their bikes here. ... Living on a dirt road means having to deal with dust; it also makes it hard to push a stroller. You should also know, that you'll have to pay if the street ever gets paved. ... Did you notice that hill in the backyard? I feel bad for whoever will have to mow it. That hill is also bad for drainage; our weather is changing, so you always have to ask yourself where excess rainwater will go if we ever get dumped on in a significant way. Low-lying lots are prime targets for basement floods. ... Check the roof out! I am no home inspector, but I think it will need replacing soon. Windows and foundation look good; we'll take a closer look when we go in. That's pretty much all that I see on the outside. Let's barge in..."

And this little speech carries on inside the house, where I do a visual inspection of everything and comment on all aspects of the property, good and bad.

If no strong favourite emerges after our initial look-around, my clients still have several options: they can review their list and try to pick a few more homes; they can widen the search by changing their price range; or they can consider new areas. And if none of these options are practical, then we just wait for new properties to get listed.

A lot of the people I assist, are happy to wait for new homes. The prospecting program I set them on is fantastic: MLS® listings are checked every 15 minutes, 24 hours a day and whenever a new match is discovered, they are automatically informed by email.

Every buyer's goal should be, to be among the first to view the new data as it comes online. Once my clients receive the computer information, it is up to them to decide if the house is worth taking a peek at or not. But even when we act quickly; sometimes we are not fast enough.

I always look at homes with a critical eye; but it is only when some real interest develops that I truly become a devil's advocate. While my clients only seem to see positive features, I look extra hard for negative ones, including: price; resale value; location; layout of the home; room sizes; amperage; privacy; traffic; landscaping that will avoid basement leaks; mowing difficulties; etc.

Some buyers are so taken with the property, that they become blind to obvious problems. And it is my job to bring them down to earth.

7.3.1 Sellers Staying Home during Viewings

I know that real estate practices vary from one city to the next, but in Halifax, neither the sellers nor their agent are normally on the premises during viewings – **and I thank them for it**. It would be extremely uncomfortable, to have people around while we tour the property. The last thing we need, is for anybody to watch us or even worse, butt in. This would force us to keep a poker face at all times and always pretend to be behind on our schedule, so we could quickly get out of there. This is serious business. Showing interest in front of the sellers could affect our bargaining position and

cost my clients thousands of dollars in the end. I realize that it is difficult for some elderly people to get out to accommodate viewings and I am okay with that; but I have very little patience for able-bodied vendors who decide to stay home. We often quickly realize that a house is not suitable and don't want to hear about the extras the property may have to offer. My not wanting to see or meet sellers is one of the reasons why private sales would also be out for me as a buyer. I'd have to be absolutely desperate or see a home that is amazingly stunning, before I would consider buying it privately. There is more than enough stuff to choose from on the MLS® System that I would not subject myself to the misery of having sellers try to sell me their house directly.

7.3.2 Open Houses, Newspaper Ads, and For Sale Signs

Since I am talking about things I wouldn't do, I might as well mention that I would not visit open houses or call listing agents on ads or for sale signs either. Open houses, newspaper ads, and for sale signs are a great source of buyers for real estate agents and I wouldn't want to be bothered by other licensees. I'd want absolutely no contact with the sellers or their agent. My goal would be to remain 100% anonymous; because **I don't see how meeting vendors and/or their representatives could benefit me as a buyer.** I would go through my representative for information. I am a friendly guy and would have no problem with meeting them after we have a firm deal in place. But until then, business is business. Buying a house is like playing poker – the less other players know about my hand; the better it is for me.

7.3.3 Secret Insider Reports

Same story with ads about “insider reports” supposed to reveal some wonderful secrets. Biting on that would be like raising my hand in a crowd of real estate agents and letting them know that I am in the market to buy. Those who respond to these ads get their name and number put on a list for follow up – and I have no need for that either. **My agent is the only REALTOR®, I would talk with about real estate.** He or she would be my sole advisor.

7.4 Finding the Right House

Love at first sight is more common in real estate than it is in real life. This is why I tell my clients that we should keep looking at properties, until one of them literally ruins their day.

I explain that the first sign they may have found the right place for them, is that it is all they will be talking about, as soon as we leave. They'll be all excited and will even start picturing themselves living in the property. And the second sign, will be a nauseating fear that they could lose the property to another buyer, if they take too long to make up their mind.

These signs are unmistakable; so my advice is to keep looking until a house rattles them in that way. If a home is nice, but they don't think they would feel bad if it were to sell before they could act on it, then there is a good chance it is not the right house for them. I know it is kind of sick, but these are the signs: first the sparks; then the fear.

As an Exclusive Buyer Agent, I have learned to look for these signs in my clients. And when they start talking about making an offer, it is time for me to become more involved. When the flaws and negative features I find are not enough to deter them, I turn to the MLS® System and run a CMA on the property.

We normally return to view the home a second time before producing paperwork; but not always, since some buyers would rather not take any chances and decide to place an offer after just one visit.

When we do go back for a second look, it is usually at that time that I suggest they get relatives and trusted friends to come as well. If my clients are going to seek the opinions of loved ones before they purchase, the second viewing is the time to get them.

It is my job to explain the information that gets pulled off the MLS® computer and answer any questions they may have, before going any further.

After the second viewing, the ball is in their court; because the next step, if they are still interested, and whenever they are ready, will be to place an opening bid on the property. If they decide to pass, then we just wait for new houses to be listed.

I like for my clients to tell me what our next step will be. This way, if they need more time, they take more time. I believe that the home should look as good, if not better, after the second viewing. If it does not, it may be a sign that it is not the right place for them. On the other hand, knowing that they would be upset if it sold to someone else is usually a very good indication.

For some, pulling the trigger to place an offer is the most difficult part of the buying process; which is one more reason to take all the time they need before making their decision. I wouldn't want to feel pushed into such a big financial decision if I were buying; that's why I would rather see them lose the home to someone else, than rush into spending hundreds of thousands of dollars.

7.5 Making an Offer

My clients find a property that they really like. I do my best to find flaws and defects; but the few little things I come up with aren't enough. I run a CMA on the house. We look at the place a second time. They go home to sleep on it and are now ready to make the sellers an offer.

After going on the internet and searching the sellers' name and the address of the property to ensure that no information of interest is available there, I come to our meeting with the mandatory Agreement of Purchase and Sale form already 90% filled out, having only left the most important issues blank for discussion.

7.5.1 The Opening Price

In real estate, money talks and price is the deciding factor in most negotiations. When it is very good, sellers are often willing to overlook a few things; when it is not what they were hoping for, even the smallest of details become important.

Let's assume, that my clients just fell in love with this house:

Address: 123 Any Street
Asking price: \$259,900
Market time: Only 7 days

In this situation, my job is to remind them that they can make the sellers the kind of offer that they want; that I will explain their various options; tell them what I would do if I were in their place; and that in the end, it will be up to them to decide how we shall proceed.

I explain that it doesn't matter what the sellers are asking for their house, because that price may not be a good reflection of the property's true worth. Selling a home is an emotional process and a lot of sellers have a biasly-inflated sense of value.

But in this case, we'll assume that the asking price is in line and that the CMA we reviewed showed several similar homes selling between \$250,000 and \$255,000 in the immediate area recently. The reason for a range, rather than an exact figure when an estimate of value is given, is that no one can really pinpoint the price of real estate. These figures are relative and vary for everyone. Is this home worth \$252,000 or \$252,500? Who knows? And what's the difference?

It would also be my job to make my clients aware that for several years now, sellers in the Halifax area have consistently been getting 97% to 98% of their asking price on their sales; that there has been no significant change in market conditions; that the sellers are very likely to be aware of this fact; and that to complicate things even more, the property has only been on the market for a week.

I explain that in order to get sellers to move on price, buyers sometimes have to risk losing the house to somebody else; and that unless they are willing to do that, we may have a very hard time getting the vendors to accept less than \$250,000.

One critical factor in negotiations for me, is how much my clients seem to like the house we are offering on. This usually determines if it is really worth losing for the sake of a few thousand dollars. If they can honestly tell me that they won't be devastated if the deal doesn't go together; then we may be able to try a few negotiating tricks. On the other hand, if they are petrified at the thought of losing the house before we even start; then getting the sellers to blink first will be a challenge.

This is why I don't want my clients to meet the sellers or their agent. These people can't know how much my folks like their property; because if they did, our efforts at negotiating its price down could be doomed from the start.

When there doesn't seem to be anybody else interested in the home at the time, I often recommend that we write an offer with a price that would represent a half-decent deal if accepted right away; while at the same time, close enough to entice the sellers to at least send us a counter-offer.

Since it seems pretty obvious that the home in this example is easily worth at least \$250,000, I would probably suggest \$245,000 as a starting point. When my clients are very nervous, I tell them that the offer we are about to make has no legal value whatsoever, unless the sellers accept it as produced. I reassure them, that unless the sellers do that, there will be no obligation for them to go any higher unless they choose to; that I could easily tell the listing agent that this was all we had.

But it is imperative that they understand, that by offering \$245,000, we are never going to get this house for less. We are setting the low-water mark in the negotiations and price can only go up from there.

Even if they are terrified at the idea of losing the house, I would probably still recommend that they start at that level; unless of course, I know that other buyers have shown interest and sense that the property may not last on the market very long. In that case, I'd probably jump to \$250,000 as a starting figure, knowing that I will be informed if competing offers are ever received – in which case everything would have to be reconsidered.

I don't think I would recommend going lower than \$240,000, even to the most aggressive buyers. I would tell them to take a chance at that price and to just walk away if it doesn't work; since the odds of seeing these sellers let go of their home for over \$10,000 less than it is potentially worth **after only 7 days on the market**, are quite low.

I, personally, have no problem with paying fair-market value for any piece of real estate. I would, of course, like to pay a lot less, but realize that in a good market, "steals" are extremely hard to obtain.

That's why I would consider an opening bid of \$245,000 with all the extras included on this home, to be a good first offer, given the vendor-friendly market conditions. Going below \$240,000 would probably be too aggressive. But maybe not and that's where it gets tricky.

Again, selling a home is an emotional process. A lot of sellers are attached to their residence and could easily overreact when receiving a low bid. Angry sellers could subsequently decide not to sell to us – even for full price – judging that we are not worthy of their beloved property.

As an EBA, my job is to provide my clients with a range of prices with which to work. I let them know what I think could be considered an insult; what price could be considered aggressive; and what the lowest price I think could get accepted right away is.

I also realize, that the amount of consideration my clients give to my advice is directly connected to the amount of trust they have in me. If I have failed to impress them or if they have any doubt as to where my loyalty lies, than my opinion won't weight much in their balance. On the other hand, if they feel that they are working with someone who really cares about their purchase, then my opinion could greatly influence their decision.

7.5.2 How Much can we Expect to Shave Off the Asking Price?

I have been asked this question so often over the years that I feel obligated to talk about it here. And unfortunately, my answer is never what people want to hear, because it depends on a variety of factors.

If a CMA shows a home to be worth around say \$180,000, it could be quite difficult to get a seller to greatly reduce an asking price of \$179,900 in a good market. It makes complete sense. That individual is arguably already asking for less than he/she could possibly get. So unless we are aware of special circumstances like a divorce, job loss, or financial trouble, I usually tell my clients not to be surprised if there is limited flexibility.

On the other hand, no reasonable purchaser should consider buying that same property without a \$15,000 +/- discount, if it were offered on the market for \$195,000.

Again, the asking price is usually not the most determining factor when deciding on an opening figure. The fair-market value of the property is what really counts. The amount of money to be shaved off depends on these two figures.

If the asking price is a good reflection of a home's fair-market value, sellers normally don't have any problems finding buyers willing to pay close to full price and sometimes even more. But if asking price and fair-market value are far apart, knowledgeable buyers may not even bother offering. And if they do, they will ask for a substantial price reduction or walk away from the deal.

Some sellers refuse to take their agent's advice and insist on an inflated asking price, just to see if anyone will bite. This practice can be harmful.

An overpriced property could remain unsold for several months. And even after a price reduction, who is to say buyers will be totally convinced that the high asking price was the only reason the home did not sell in the first place? They could and probably will wonder if there isn't something else. Something they do not see.

Overpriced properties are not inviting. A lot of buyers are not ready to fight and would rather keep shopping, than waste their time with unrealistic sellers.

7.5.3 Do Sellers have to Accept a Full-Price Offer?

In case you are wondering, sellers are not obligated to accept a full-price offer. They can raise or lower their asking price at any time and even decide not to sell at all. This is why there is no deal, until the two parties have signed on the dotted line. Refusing a full-price offer would most likely upset their agent, but they can legally do it.

You should also know, that placing a low asking price on a house is a selling technique used in a good market to generate bidding wars. At times, the figure is so low that an offer \$10,000 or even \$20,000 above it stands absolutely no chance of ever getting accepted!!!

7.6 Counter-Offer

So we make the sellers an offer of \$245,000 asking for all appliances, curtains, rods, blinds, etc. I scan the paperwork and email it to the sellers' agent for their consideration. For your information, in some areas, it is customary for buyer representatives to meet face-to-face with the sellers and their agent to present offers, justify the price and different terms. But this is not how things are done, here in Halifax.

The offer is ready at 4pm. We give the sellers until 10am the next day to reply. But I purposely wait until early evening before sending the paperwork over, to minimize the risk of our offer getting shopped around. And just before the time is up the following morning (as it is often the case) I receive a phone call saying that a counter-offer at \$255,000 has been produced.

I explain to my clients, that a counter-offer is the sellers' way of thanking us for our offer and keeping negotiations going by suggesting changes that would make it easier for them to accept it.

Although everything is negotiable at this stage of the game, the most common items up for discussion usually are: price; date of possession; appliances; and other items that are to remain with the property at closing. In this case, let's say that price is the only issue; everything else is acceptable.

Just as we did with our offer, the sellers also gave us a deadline for a reply – say 6 hours or until 4pm that day.

We now have three options:

1. Accept the counter;
2. Reject the counter (or let it expire on its own) and walk away;
3. Make a brand new offer and keep the back-and-forth going.

Countering the counter – crossing out unacceptable items on the form; making changes that are initialled and sent back – is technically another option but things quickly get messy that way. That's why I like to simply produce another offer and start over from scratch.

But the problem that arises when we choose to re-offer, is that as soon as the sellers' **irrevocable** counter-offer expires, they are allowed to sell their house to another buyer. So a good way to keep negotiations going without opening the door to other buyers, is to do the back-and-forth before the expiry of the sellers' counter. Unfortunately, it is not always possible.

At this point, any bit of information I was able to extract from the sellers' agent during our conversations, becomes critical. My main goal is always to find out if there are other buyers in the picture – which listing agents very seldom forget to mention. I don't usually ask the question directly, but when nothing is said about other parties being interested, I assume that it is probably safe for us to extend the negotiation past the counter-offer's deadline. **But I could be wrong.**

Splitting the difference right down the middle and upping our price to \$250,000 is an attractive compromise; we show some flexibility and the willingness to accommodate the sellers, while at the same time, asking them to accommodate us right back by the same \$5,000.

Before producing the second offer, I make sure that my clients understand that anything could happen after we let the deadline on the counter pass, because the sellers don't have to let us know if another party is waiting. We could therefore, find ourselves in a multiple-offer situation with our second bid and accepting that \$255,000 would no longer be an option.

I personally like these little games, but I do not want my clients to lose their house because of me. In this particular scenario, the difference between accepting the counter and producing a new offer at \$250,000 is \$5,000. This is a non-negligible amount that would probably convince most people to take a chance. But the figure is not always this big. Very often, we are within less than \$3,000 of an agreement and this is when I tell my clients that we are doing all of this for the sake of say \$2,500 or roughly \$15 per month on their mortgage. I quite honestly don't care which way they go. As I have said, I am a gambler by nature and would most likely take my chances since there doesn't seem to be anybody else trying to get the house.

But, I absolutely do not want to get blamed if things go bad. That's why I always make a point of getting both of my clients (if they are a couple) to agree that we are doing all of this to save "X" number of dollars. Only when both of them give me their approval, do I proceed with the second offer. If I sense that one of them is not fully on board, I suggest they talk and come to a common accord.

For the sake of this example, let's say that the sellers agree to our \$250,000 and that we have a deal.

Things are not always that easy. At times, we don't manage to bridge the gap. We either have to give the sellers what they want or walk away.

7.7 We Have a Deal

Although I never said anything about it, it was understood (I hope) that the offer in this fictitious transaction included each and every buying condition that applied: such as financing; lawyer's review; home inspection; radon gas test; sewer line scan; home insurance; etc.

As soon as I hear that we have a deal, I call my clients and request that we get together for a quick meeting to discuss our next steps. I tell them to bring their chequebook since I now have to provide the other side with a deposit of say, \$2,500, payable to the listing brokerage in trust.

My clients would also need to start thinking about who they are going to use as a real estate lawyer; mortgage person; and home inspector.

As mentioned in my promise of service, I made it a habit to tell my clients who I would personally go with (or consider going with if I am not sure) for those tasks as a convenience; and make it clear, that they are free to use whoever they want.

By far their biggest decision is the choice of an inspector. By that time, I would have told them about the negative features and defects I was able to find – meaning that whatever else is beyond me. **If there is anything wrong with the house, their inspector will have to find it.**

7.7.1 Pre-Inspected Listings

For your information, some sellers have their house pre-inspected before going on the market; but I put no value whatsoever in the results of those inspections. If this is done in the hope that buyers will skip the home inspection, then these folks are out of luck, whenever I am involved. I don't care how many inspectors people invite into their house before listing, nothing will ever prevent my clients from hiring their own expert to check out the place. What's \$400 or \$500 when you are spending hundreds of thousands of dollars?

7.7.2 Written Transaction Summary

A comment made by a client in the spring of 2005, made me add the production of a transaction summary to my list of things to do, as soon as a deal is reached. For some reason, my lady client was surprised by the size of her closing costs after meeting with her lawyer – **even though we had gone over every single item, one-by-one during our first meeting.** To ensure this never happened again, I started providing my clients with a detailed, transaction summary soon thereafter.

On that two-sided piece of paper I include:

- Comments on the price we are paying for the house;
- Comments on the neighbourhood where the house is located;
- Comments on the house's resale potential;
- A summary of all the issues/negative features found that should resurface at inspection;
- An estimate of all their closing costs;
- An estimate of their monthly maintenance costs after they close on the property;
- A list of all our conditions, with deadlines and general comments about their importance.

Such a summary is great for my clients but in all honesty, I think it is even better for me. Because of the promises I make to my clients, I expose myself to increased liability. But by writing down the verbal warnings and various pieces of advice I provided them, I produce a record of what was said and force myself to retrace my steps to ensure nothing was missed.

I give my clients a copy of this summary and go through it with them at the time of the inspection. Buyers have so much to think about after an offer is accepted that it helps them relax since everything they need to remember is on that one sheet of paper.

But working on my website project, made me realize that some disclosures were missing from my transaction summary. I have always told my clients if I suspect I may know who the sellers are, but I have never put that down in writing.

So in the spring of 2010, I added a "Conflict of Interest" section that talks about:

Any connection members of my family or my firm have with the sellers. Why not go the extra mile and confirm that the sellers are total strangers? It doesn't cost me anything and proves that I take conflicts of interest very seriously.

Any connection members of my family or my firm have with the sellers' agent. Since I have been in the industry for awhile, I know quite a few licensees and believe that my clients should be made aware of the type of relationship (if any) that exist between us. As a buyer, I wouldn't like to hear that the sellers' agent is my representative's best friend; ex-wife; brother-in-law; or whatever. So I made it a policy to always set the record straight and let my clients decide if they are okay with whatever relationship that may exist.

And later on, I also officially **disclose who my own home inspector; mortgage person; and personal lawyer are.** The fact these folks are good enough for me is relevant and I want to tell them as well. I know my clients are most likely going to ask friends and family for names. So I let them know who I would use or consider using, and leave it up to them to decide. I provide them with the info; make it clear that I assume no responsibility and will not receive compensation of any kind, if they decide to do business with any of these people.

I know this may sound a little bit over-the-top but why not? It is important to me, for my clients to know that I care about their purchase. So how can this hurt? I'd rather provide them with too much information, than not enough.

Getting back to my story, I get together with my clients after our second offer has been accepted; I pick up their deposit cheque; we discuss our next steps; I tell them about my contacts; I suggest they think about who they want to go with and tell them to let me know to whom they want me to forward the paperwork.

Then, I go back to the office and produce my transaction summary. I often send my clients a copy by email for them to review and **always** bring a copy for us to go through at inspection.

Here's what my transaction summary would probably look like on this fictitious purchase:

TRANSACTION SUMMARY

Clients: John and Jane Doe
Property: 123 Any Street
Closing: September 12, 2012

Conflict of Interest: For the record, neither myself, my wife, nor anyone affiliated with my brokerage, personally know or have any connection with the sellers Mark and Mary Smith of 123 Any Street. As far as the Smith's agent is concerned, I met Steve Stevens in the late 1990s, I never worked with him anywhere and have absolutely no connections or friendships with him; except for the fact that I could pick him out in a crowd, and he me.

Price: As discussed, \$250,000 seems to be in the right range for this house, with several comparable properties selling between \$250,000 and \$255,000 in that neighbourhood so far this year. For the

record, although we are not stealing anything, I am pretty happy with that price; in my opinion, the sellers could have easily held out and received a little more money for the property.

Location: High-demand neighbourhood, good reputation, no concerns.

Resale: The large, fenced backyard is a great feature. The fact that the property is located in a good area within walking distance of an elementary school makes me believe that resale should not be a problem, if you keep it in the kind of shape it is in right now and price it according to market.

Inspection: At 30 years of age, I expect a few things to come up; but thought that the house looked quite good, overall. The roof; windows; foundation; furnace; and flooring throughout seem to be in okay shape; we know that the outside drainage is not ideal; that the electrical panel may need a little work; and that attic insulation/ventilation are unknowns (as usual). So let's just hope that only a few minor issues are found.

Closing Costs Estimate on a \$250,000 purchase:

1. 20% Down Payment:	\$50,000.00
2. 1.5% Deed Transfer Tax:	\$ 3,750.00
3. Legal Fees :	\$ 1,350.00 (All in: title insurance, HST...)
4. Location Certificate:	\$ 0.00 (\$600 + if needed, ask your lawyer)
5. Inspection:	\$ 450.00
6. Radon:	\$ 175.00
7. Sewer Line Scan:	\$ 200.00
8. CMHC:	\$ 0.00 (20% down payment)
9. Tax Adjustment:	\$ 1,400.00 (for 6 months, next bill in April 2011)
10. Fuel Adjustment:	\$ 0.00 (electric heat)
11. Water Tests:	\$ 0.00 (municipal services)
Total	\$57,325.00 (minus \$2,500 deposit so \$54,825.00 left to pay)

Monthly Costs Estimate:

1. Mortgage (\$200,000 @ 5.50%):	\$ 1,220.00 (\$6.10/K on a 25-year mortgage)
2. Property Taxes:	\$ 235.00 (based on a \$250K assessment)
3. Heat:	\$ 200.00
4. Lights:	\$ 100.00
5. Water Commission:	\$ 25.00
6. Home Insurance:	\$ 65.00
7. Leases	\$ 0.00
8. Telephone/Cable/Internet	\$ 150.00
Total	\$ 1,995.00 (it's a guess but I should be close)

Conditions:

- 1- **Financing:** Deadline June 25th: best 5-year closed mortgage I know of is 5.50% (as of June 10). This process can take 2 or 3 business days. You don't need to commit right now, but you **MUST** ensure that at least one institution, is offering you terms that are acceptable. After this deadline, backing out for a lack of financing, will no longer be an option. **Don't**

forget to ask about an appraisal and insist on them picking up the tab if one is needed. To whom should I fax the paperwork? (Adam Adams is my mortgage broker)

- 2- **Home Insurance:** Deadline June 25th. \$600 to \$900, but University alumni and members of professional groups and associations can get better rates through companies like The Insurers. I suggest you call your insurance company before the inspection, as they may have questions that require access to the house to find the answers. (The Insurers is the broker my wife and I went through for our house this year)
- 3- **Lawyer's Review:** Deadline June 23rd. Total cost of \$1,350 +/- includes: basic fee, recording costs, tax certificate, disbursements, title insurance and HST. To whom should I fax the paperwork? (Gus Gustafson is my personal real estate lawyer)
- 4- **Property Condition Disclosure Statement (PCDS):** Even though sellers have to tell the absolute truth when they fill it out, the answers we get can't be trusted since they sometimes don't know what is going on themselves. This is why we must do our own inspection.
DON'T RELY ON ITS INFORMATION!
- 5- **Location Certificate:** Nice to have, but no longer mandatory if you buy title insurance. Ask your lawyer for his/her input since some recommend both. At \$600 +/-, cost is the issue.
- 6- **Radon Test:** Deadline June 25th. Health Canada drastically reduced its safe standards in 2007; so I recommend you test. The test takes two days to perform. I know home inspectors who have radon machines, so we could kill two birds with one stone. Costs: \$150 + HST. Let me know if you wish to test or not.
- 7- **Home Inspection:** Deadline June 25th. Using the results of an inspection to get a price reduction or to get sellers to make upgrades, gives them the right to terminate the contract. Cost: \$400 + HST. (Sherlock Holmes is my guy; and he has radon machines.)
- 8- **Sewer Line Scan:** Deadline June 25th. With what is most likely the original 30-year old pipe, I think I would get it done. Your call. Cost: \$175 + HST (Carl Carlson is the guy I would probably hire???)
- 9- **Water Tests:** Municipal water, no client of mine has ever tested. I wouldn't either.

As you can see, my summaries are specific to the transaction. In this fictitious scenario, my clients would know going in, that the house they have picked is in decent shape; and that I am not 100% sure about a few things. **They would also understand that I don't have all the answers.**

7.7.3 The Inspection

Again, from my perspective, the best inspector is the “deal-breaker”: the one who is not afraid to tell it like it is; has no vested interest in the transaction; pays most attention to details; and does not care if we back out of the deal or if the listing agent gets upset.

With this said, I also remind my clients that every property – whether brand new or a hundred years of age – has its pros and its cons; and that they should not expect everything to be perfect, because they will never be satisfied. What they should really be looking for is a solid house, in good repair, with only minor improvements required to prolong its life.

Whenever the inspection uncovers problems, a few options are available to us:

First, the clause is worded in a way that allows us to request termination of the contract. In Halifax, all buyers need to do, is send the other side a written notice saying that the home inspection was not satisfactory along with a copy of the report. That’s it. Whenever that happens, my clients’ deposit gets returned in full without interest or penalty, and we just carry on with our search.

Second, we have the option to renegotiate the purchase price to reflect the cost of repairs. However, buyers have to **pay careful attention to the wording of the inspection clause**. As you may have noticed in my transaction summary, in Halifax, trying to get the agreement modified based on the results of the inspection, gives sellers the unconditional right to terminate the contract on the spot.

I explain to my clients, that all the sellers have is a conditional sale. There is no guarantee we will buy their home. Something could go wrong. That is why they could have accepted a back-up offer. And such an offer would only come into effect after the contract with us is legally terminated. If no one else is waiting in the wings, we may be successful in renegotiating our deal. But is it worth the risk?

As a buyer, unless I found a major deficiency with the property, I would probably keep the deal the way it is. Why gamble for a few hundred dollars and risk losing something worth hundreds of thousands? I do my negotiating upfront and expect to have to spend a little money to fix minor problems. I don’t sweat the small stuff. But that’s just me; some of my clients choose to renegotiate for very small amounts. Everyone is obviously different.

Our third and final option, is to ask the sellers to do the necessary work before the closing. Again, this gives them the right to terminate the contract. I don’t like asking sellers to do any work because we have little control over the quality of the repair job, even though we could return to inspect it. I would rather get a price reduction or a cashback on closing, so my clients can take care of the fix themselves and make sure that things are done properly.

So I explain their options; take position and pick a favourite; remind them that they can do anything they want, including getting out; tell them how much time they have left to decide; and just leave.

7.7.4 Kitec may Become the Next UFFI

A new issue has recently emerged during home inspections: Kitec fittings and pipes.

Manufactured by IPEX, Kitec is a brand of plastic plumbing pipes and brass fittings that was sold in Canada and the United States starting in the 1990s. It was recalled in 2005 because of premature failure. Although we have yet to experience any of the issues that have plagued those living in the southern US, nobody knows for sure how the brand is going to perform in the years to come.

Fittings and pipes were sold in Canada under various names including: KITEC, PEX-AL-PEX, PE-AL-PE, PERT-AL-PERT, PLUMBBETTER, IPEX AQUA, WARMRITE, KITEC XPA, AMBIOCOMFORT, XPA, KERR CONTROLS, PLOMBERIE AMÉLIORÉE and maybe others.

Since disclosure requirements vary across the country, sellers may not have to disclose the fact that their home contains this type of plumbing when selling their property. It is therefore recommended that you specifically ask your home inspector if the house you are considering contains Kitec pipes or fittings. And that the answer to this question be included in the written report you will receive.

Is this thing a tempest in a glass or the beginning of a huge plumbing nightmare? One thing is for sure: this problem is real. There is a US \$125,000,000 settlement to prove it.

For more information, visit www.kitecsettlement.com.

7.7.5 Paperwork During Inspection

As I have mentioned, I use the dead time at inspection to finalize the paperwork. I bring a stapled copy of every single piece of paper that relates to the transaction for my clients' personal file. I then review everything with them, item-by-item, as I do with offers and counter-offers.

I usually start with my transaction summary and go through my disclosures; comments about price; resale; what issues I expect will resurface at inspection; closing costs; monthly costs; and our list of conditions. I answer all questions and make sure they are clear on everything.

I then show them the copy of the listing cut that I included in their package, along with the signed contract bearing the sellers' signatures and initials in the proper spots. We review the PCDS question-by-question together and then sign and initial it, both on their copy and also on mine.

The last order of business for me, is to ask my clients for their driver's license so I can fill out the form about money laundering and the financing of terrorist activities that I have talked about before. These two pages join a third one completed after I received and photocopied their deposit cheque.

This paperwork review is done bit-by-bit, whenever the inspector doesn't need us and usually takes fifteen to twenty minutes. As soon as I get back to the office, I forward a copy of the signed PCDS to the listing agent for his/her file.

7.7.6 Skipping the Home Inspection

I often hear of buyers who willingly choose to skip the home inspection. I won't beat around the bush; I think it is plain crazy. I don't care how many competing purchasers are interested in a house, waiving the inspection is playing Russian roulette to me.

As I have said, I am a risk-taker by nature and don't mind taking a calculated chance with a few hundreds, even a few thousands at the limit, but hundreds of thousands of dollars? There is no way.

Getting a home inspected by a qualified professional is the best money you can spend. If it uncovers a major problem, it is often the only cost you will incur to get out of the deal. I recommend an inspection to everyone; even those who get a home built from scratch or buy something that is brand new.

I also strongly recommend to my clients, that they stay away from family members and friends as potential inspectors. Yes, some of their relatives may be contractors, electricians, or handymen, but I believe they should still hire an independent home inspector. This is an important decision they are making – they need to hire a professional. I understand they want to get their relatives' opinion but they should never do it at the expense of hiring an expert. So I recommend they get both.

The home inspection is not the place to save money.

7.7.7 Satisfying Conditions

My clients are always busy the day we reach an agreement and the following day. Getting the home inspected as quickly as possible is usually my biggest concern. I want to know what we are dealing with fairly early; so they have time to sleep on potential problems and consider their options.

Once the inspection has been booked, my clients need to call their insurance company for a quote. I tell them to write down any questions they are unable to answer; so we can ask the inspector.

Contacting and forwarding the paperwork to their financial institution is next. Again, the fact that they are pre-approved for a mortgage doesn't mean the lender will automatically approve of the price we agreed to pay for the property. A thorough procedure needs to be followed before an official approval is granted. I also remind them to ask about the appraisal.

Their lawyer is also sent a copy of the paperwork – mortgage providers don't need to see every single piece of paper that relates to the transaction; but I make sure that my clients' lawyer does see them. This review is usually a formality, with their lawyer simply going over the contract to confirm that it looks okay; that our mutual clients' best interests are properly protected; and that their wishes or any special requirements that needed to be addressed, have been dealt with in the right manner.

Ideally, I would want to delay our radon test, water test, and sewer line scan until after the home inspection, because it would be a waste to spend on those if we bail on the purchase. That's why my ideal inspection company would take care of those four items in one shot. First, we would inspect. If

things look good, we would proceed with the sewer line scan. Then, we would take water samples (if needed). And finally, a radon tester would be left in the house before we leave. It would make for longer inspections, but a superbly efficient use of everyone's time.

It is impossible to predict what problems are going to be encountered on a purchase; every deal is different. Buyers have to roll with the punches and hope for the best. But, as it is often the case when everyone focuses on flaws and defects from the start, the home that is ultimately picked usually performs quite well on tests and gets purchased in the end.

7.7.8 My Own Checklist

Another small thing that working on this project has made me add to my post-acceptance ritual, is the creation of a checklist for me to complete. For years lawyers have been recommending that we – real estate people – keep good notes and document our transactions in case a problem resurfaces years later, long after the memory of how things unfolded has been erased.

I keep the page in my client-files after the deal has closed; and on it I try to write down as many small, transaction details as possible.

Here's what such a checklist would look like on the sample purchase we are working on currently:

CHECKLIST

Clients:	John and Jane Doe
Clients' Lawyer:	Michelle Johnson
Sellers:	Mark and Mary Smith
Sellers' Agent:	Steve Stevens
Sellers' Lawyer:	Andrew King
Property:	123 Any Street
MLS® Number:	9876543210
Price:	\$250,000.00
Closing:	September 12, 2010
First Offer:	June 18
Counter:	June 19. Deadline 4pm.
Second Offer:	June 19
2nd Counter:	N/A
Third Offer:	N/A
Deal:	June 19 7pm.
Google Sellers & Property:	June 18. Nothing. The Smiths celebrated 50 th Anniversary May 2009!
CMA:	June 18. Emailed to them same day, discussed on the phone.

Transaction Summary: June 19. Emailed to them same day. Reviewed a copy at inspection.

Financing (June 25): Faxed to Henry Hicks on June 21. Confirmation by email June 24.

Home Insurance (June 25): June 22: Told me they were good.

Lawyer's Review (June 23): Faxed to Michelle Johnson on June 21. Okay received same day.

Inspection (June 25): With Sherlock 6 to 8pm June 22. Reviewed paperwork. Filled out ID Forms. Radon machine left behind. No big concern at this time.

Sewer Line Scan (June 25): June 22: Told me they won't bother. Their call.

Radon (June 25): Results June 24, 7pm: 275 becquerels/cubic meter. Above limit of 200. Call S. Stevens: says buyers have a good deal at \$250K. Doesn't think sellers will offer anything.

Water Test ():: N/A. Municipal services

ID & Deposit Forms: Photocopied deposit cheque and filled out form June 19, gave cheque to S. Stevens June 20; checked IDs and filled out a form for each at inspection June 22.

Notes: Several discussions about radon and asking for \$\$\$\$\$ from the time we first heard until June 25, 6pm. Told them the test was a part of the inspection and could put the deal in jeopardy. They decided to take the house as is. Said they will install a vapour reduction system to lower the reading and go from there: "We don't want to risk the transaction over this".

Of course this checklist is not all typed up and neat like you have it here. Only the bolded part is pre-printed. I manually put in our deadlines in the brackets and complete it as we progress.

7.8 While Waiting for the Closing

So we go through everything and after thinking of renegotiating the deal over the higher radon reading, my clients choose not to do so. I let the sellers' agent know that all of our conditions have been met. We are now officially done. And my clients have just bought themselves a house!

They now need to wait several weeks before taking the property over, which gives them plenty of time to get ready for the big move. A few other things need to be taken care of during that period; but with so much time on their hands, there is no stress.

One of those things is to make several people/organizations aware of their upcoming change of address including:

Power/oil/gas Company;
Telephone Company;
Cable/satellite Company;
Water Commission;
Canada Post Corporation;
Canada Revenue Agency;
Provincial Health Services;
Registry of Motor Vehicles;
Registry of Joint Stocks (if they own a business);
Banks/Credit Cards/Insurance Companies;
Newspapers and Magazines;
Friends and Family

I warn my clients that their lawyer could request a face-to-face meeting to answer questions and explain the closing procedure. This would also include a review of all of their costs; the size of their down payment; discussions about what bank and insurance company they plan on using; etc.

Another similar meeting with their financial institution is likely to be set up; where they are going to commit to certain mortgage terms and sign several papers. I personally like shopping around and would definitely try to get the very best rate and terms available, given my financial situation. My goal would be to get whichever lender I pick, to bend over backwards for me. I am used to playing banks against one another and don't see why that would change. Giving my mortgage business to one institution early could be dangerous if rates dropped between the time of my signing and the actual closing. This is why getting my signature would require the institution to guarantee, in writing, the rebate I am being offered and that, even if markets take a tumble and such discounts suddenly disappear – as had happened in the Fall of 2008.

7.8.1 Buyers Leaving Sellers Alone

From experience, I know that unless directly invited to call or drop by for a chat, **buyers should leave sellers alone, until the closing**. These folks may be forced out of their beloved property for health or financial reasons and selling may be a very hard thing to accept.

A lot of buyers are also tempted to keep asking questions, as they anxiously await the closing; but these questions could be interpreted as a sign they may be having second thoughts and thinking of disappearing before taking possession. Although extremely rare, some buyers do get cold feet and try to get out of binding agreements. Such moves usually result in them forfeiting their deposit and potentially getting sued. So unless the sellers invited them to drop by or call, I tell my clients not to contact them before the big day.

7.8.2 The Pre-Closing

I am always available for questions, but most clients don't need me until the final inspection. Again, this last check is of the utmost importance, since it gives us one final chance to look at the house before sending the rest of their money over to the other side. So we make sure that the property is

still in the same shape it was the last time we were in; that it didn't get damaged when the sellers moved out or vandalized after they left; and that fuel and gas tanks did get filled up as per the contract. I remind my clients that we could refuse to close or ask for a price reduction, if things are not the way they should be. But because the sellers know we will be coming back to check on the house before giving them their money, most pre-closings are uneventful.

At the end of this 30-minute +/- final inspection, I congratulate my clients on their purchase, thank them for taking a chance on me, and say my final goodbyes.

7.8.3 Closing at the Lawyer's

Depending on everyone's schedule, the final meeting with their lawyer could happen the day of the closing or a few days before. This is when my clients have to bring a huge certified cheque payable to his/her law firm **in trust**, to cover their down payment and various other costs and adjustments.

At this point, their lawyer will have received their mortgage funds and should then be sitting on a huge pile of money that is only going to be sent to the sellers' lawyer after we have confirmed that the final inspection was satisfactory.

I tell buyers to expect to have some final papers to sign, including their official mortgage. Their lawyer will also provide them with a complete breakdown of all of their various costs and credits to confirm that the accounting was done properly; as well as a copy of all of this paperwork for their personal file. This meeting could last anywhere from 45 minutes to an hour or more, depending on how talkative or busy everyone is. And at the end of it, they should receive their keys **and officially become homeowners**.

7.9 What about Quebec?

Although the real estate industry in the Province of Quebec never went through sub-agency, assumed buyer agency, or dual agency, its challenges are exactly the same.

In the end, the fact that it operates under a Civil Code as opposed to the Common Law, doesn't really matter for our purpose: **Conflicts of interest are an issue for everyone, Quebec REALTORS® included.**

For your information, a new Real Estate Brokerage Act (Bill 73) came into effect in Quebec on May 1, 2010. As a result, some of the terminology was changed and is somewhat different than what I have used in this manual.

The most obvious differences are: that brokerages are called **Real Estate Agencies**; that **salespeople are known as Real Estate Brokers**; and that those qualified to work on their own with no affiliation to a real estate agency (something I didn't know existed) or to run real estate agencies, are referred to as **Certified Real Estate Brokers**.

So salespeople are real estate brokers; brokers are certified real estate brokers; and brokerages are real estate agencies. Other than that, **everything else is pretty much the same.**

This is why I wouldn't change a thing, if I were to buy in Quebec. I would still look for the same independent broker/owner who operates a buyers-only brokerage or should I say a certified real estate broker, who runs a real estate agency for buyers-only or one of those who works on his/her own and does not list properties. And ask him/her to coach me through my purchase.

As a side-note, Quebec and several other provinces have put a search engine on their website that allows the public to input the name of a REALTOR® and confirm that the individual is licensed; what type of license the person holds; and with which real estate company he/she is affiliated.

7.10 After the Closing

If you recall, in the first part of this book I had talked about set-up costs. Well, this is when those start kicking in. So don't be surprised if in the two years that follow your closing, you ever feel that not a weekend goes by, where you don't end up spending money on things you need for the house including: BBQ; patio furniture; lawnmower; snow blower; garden hose... the list is endless it seems.

The spending will eventually slow down and before you know it, it will be time to renew your mortgage.

7.10.1 Mortgage Renewal

A mortgage renewal is almost like a new application with exactly the same requirements as before. So be aware, that if your debt load has gone up; real estate values have gone down; or if your employment situation has changed or even worse, if you happen to be without a job at the time, this process could get tricky. I have been told, that financial institutions are legally obligated to offer a renewal to people who have never been late or had problems with their repayments, regardless of their current situation. But I am not fully convinced. On the other hand, if everything is still fine, you may be in a good position to bargain.

Since a renewal is a new application, there is therefore, no obligation on your part to stay with the same institution. You can sign up with whoever you wish, which means that the firm you are currently with, should need to earn your business all over again and that of course means **offering you a competitive mortgage rate and maybe even paying all of your fees.**

I personally make sure of this every time I renew and **that's why I never pay renewal fees.** Why should I? These guys should consider themselves lucky to have me as a client. So no renewal fees for me, ever. I also make it clear to them, that I am shopping around and would have no problem with taking my mortgage elsewhere. This way, I ensure that whatever rate I get offered, is the best they have available.

Because I am applying for a brand-new mortgage, it means that I am also free to change anything I want. Say, I had picked a 20-year amortization 5 years before; there is nothing forcing me to carry this on and pick a 15-year mortgage this time around. I could decide to go with a 10-year plan or **even go backwards and choose a 25-year amortization.**

This would also be the perfect time to consider **refinancing** my mortgage by increasing its amount (up to a recently-reduced maximum of 80% of the value of my house) in order to free some money to pay off debts; replace the roof; travel or whatever. There is absolutely no extra cost to me for doing this.

As you already know, I like the low, mandatory payments of longer amortization periods. I like knowing that if anything ever happened, I would not be committed to an accelerated schedule. I could stick to the low payment and stop making extra ones until I get back on my feet.

So the message here is that a mortgage renewal is an opportunity to make changes; but also a time, when things can get thoroughly checked again – and for some, this could mean trouble.

7.10.2 Smith Manoeuvre

The Smith Manoeuvre is a money strategy that allows Canadians to make their mortgage tax-deductible. As I have mentioned in the beginning, our American neighbours are allowed to claim the interest they pay on their mortgage against their income; but we are not. Fraser Smith – the father of the manoeuvre named after him – found a way to legally change that by making use of certain Canadian tax rules. He actually wrote a book about the technique. I must admit that I am not very familiar with the Smith Manoeuvre. Some folks rave about it; while others feel that it is too risky. But if you have extra cash available and are curious to find out how this works, look it up on the internet or buy the book.

7.10.3 Reverse Mortgages – CHIP Program

A reverse mortgage allows people who are 60 and over to receive a lump sum of money or regular monthly payments, by using the equity they have built up in their home. People are allowed to convert up to 40% of the value of their property into cash without ever having to make a payment. The Canadian Home Income Plan (CHIP) is currently the only reverse mortgage seller in Canada.

At first, the offer seems interesting; but unfortunately, there are drawbacks. One of them, is the fact that the interest rates being charged are usually much higher (often by several percentage points) than, say, a **home-equity line of credit**. And since no payment has to be made, there is no monthly statement. It is therefore easy to forget about the loan and allow it to balloon out of control.

Reverse mortgages get repaid either when the home is sold; the owner dies; or after a pre-determined amount of time – often 10 or 15 years. I am not qualified to comment on reverse mortgages, but I must say, that most of what I have read about them raised a red flag in my mind.

Remember to always do your own research and of course, talk to a financial expert before making any drastic changes to your mortgage; implementing the Smith Manoeuvre; or signing up for a reverse mortgage.

7.11 Conclusion

If you recall, in the preface of this manual, I said that what you were about to discover was extremely powerful and yet so simple – that it was all common sense. Unfortunately, it took over 75,000 words for me to finally be able to tell you this:

If I were in your shoes and thinking of buying a home, I would:

1. Confirm that renting an apartment and investing the savings is not a suitable alternative;
2. Ensure that I can comfortably afford buying and maintaining a house;
3. Get pre-approved for a mortgage before getting started;
4. Stay away from all medium and large-size brokerages;
5. Stay away from any brokerage that works under designated agency rules;
6. Favour a small buyers-only brokerage over any small full-service brokerage;
7. Interview real estate agents that are REALTORS®;
8. Ensure that I will always be in a client relationship with my representative;
9. Ensure that I can fire my agent at any time without penalty or restrictions;
10. Favour a representative with a broker's license over one with a salesperson's license;
11. Favour a representative who also owns the small brokerage for which he works;
12. Ensure my agent takes a house-critic approach during viewings;
13. Get email or some written proof of the service my representative has agreed to provide;
14. Stay away from listing agents and open houses;
15. Remain anonymous, by never responding to newspaper ads;
16. Ensure that I am the one who picks the homes that are going to get viewed;
17. Get my agent to provide a CMA before making an offer;
18. Get my agent to provide his/her personal opinion on the asking price for the property;
19. Get my agent to tell me how he/she would negotiate the purchase if in my shoes;
20. Get my agent to explain my options and the risks associated with each – every step of the way;
21. Get my agent to provide a list of local service providers he/she would consider hiring;
22. Get any house I consider buying inspected by the most thorough inspector I can find;
23. Get any house I consider buying tested for radon gas;
24. Expect to have several little things to fix or look into, after the closing;
25. Be ready to walk away and start all over again, if needed.

And if you have read this manual in its entirety, these 25 statements are now self-explanatory.

7.12 Message to the Public

Congratulations! You have survived this long read. I hope you have found it informative. Believe it or not, you have become one of the most knowledgeable homebuyers in the entire country. What you do with this information is now totally up to you. **But if you agree with most of what you have just read, you unfortunately have a problem.**

And that problem is: Where are you going to find a small buyers-only brokerage; a deal-breaker kind of inspector; a mortgage person with great rates and good service; or a reasonably priced real estate lawyer – people who are familiar with my website and offer the services that I praise in this manual?

Such unique individuals are hard to find. So to make the job a little easier I created...

7.12.1 The Buying-a-Home-in-Canada Network

When I first thought of creating such a nationwide group, 4 benefits immediately came to my mind:

1. It would prove that I am not the only one who believes that the public should know how things works; who is who; who does what; and why; when it comes to buying and selling a house.
2. Teaming up with professionals from various real-estate-related fields would allow the public to benefit from the collective wisdom of an entire group, as opposed to that of only one individual.
3. Inviting professionals from across the country to join the cause would increase the credibility of the site and make it easier for the public to locate local experts who offer the services that I praise.
4. Providing these professionals with a relatively inexpensive way to advertise their real estate service would make it very easy for them to generate new business for their firms.

I realize that a lot of professionals will be upset with me for doing what I have done. But I also know that maybe just as many, if not more, will back me up – some secretly; others out-in-the-open. As I have said in the beginning, I waited over 10 years to lend my voice to such an initiative. That's why I know that others will too. How many and how fast? We are all going to find out together. I am ready to go at it alone if I have to; but I don't think it will come to that.

Teaming up with others makes all the sense in the world. How else could I improve the contents of the website? I have shared with you everything that I know about real estate. There is no more; the well is dry. The wisdom that is missing from these pages is unfortunately wisdom that I do not possess. This means that eventually the opinions expressed here could be those of a group of Canadian real estate service providers, as opposed to only my own. And as experts from various fields slowly start to join in, the credibility of the site would slowly start to increase.

And as the group expands, the easier it is going to be for you to find people who offer a wide variety of real estate services; and the easier it is going to be for these people to find new clients. I have spent years teaching seminars to survive in the industry; but now that the website is up and running,

the information barrier that has always prevented the arrival of specialty brokerages has disappeared. And in my opinion, the real estate landscape will eventually undergo a significant makeover.

This is what I call a win/win situation. The public benefits and real estate service providers benefit. I am a patient man; I'd rather see modest network growth with good-quality people, as opposed to an initial explosion followed by a cleansing period.

But one thing is for sure though; the website is not going away. I have invested way too much into this project to let the dream die. The thing is here to stay.

7.12.2 Help Me Spread the Word

So if you have liked what you just have finished reading, then please help me spread the word. Tell your friends; relatives; and co-workers about the website; but real estate service providers as well. Let these people know about it and tell them about the services which are of interest to you.

The real milestone for me will be when enough REALTORS® have opened buyers-only brokerages to form a coast-to-coast network. I will truly cherish the day when buyers will be able to purchase a home anywhere in the country without having to worry about dual agency.

7.12.3 Screen Advertisers Carefully

I would really want for this network to be a gathering of like-minded individuals, all offering top-notch service within their respective fields. But since I can't screen members, I realize that some of the people who are going to join will be advertisers willing to gamble a small amount, only to see if it can generate some business for them. It is unfortunate, but that's the reality.

That's why you will always have to be extremely careful before hiring anybody – “member” of the network or not.

If you have read and have understood the things I have talked about in this book, you know more than enough about real estate to screen advertisers. I truly hope that you can find the service providers you are looking for on the website; but that may not be possible – especially in the first few years. That's why you will have to trust your judgment and go with whoever is making you the best offer. This is your purchase; you don't owe anything to anybody, including me.

7.12.4 Where Do I Go From Here?

When I opened my small company in the mid-90s, I knew I would have to educate the public in order for purchasers to understand the benefits of dealing with a tiny buyers-only brokerage. But I naively believed that over time, other brokers would start doing the same in their own area and that slowly, the information would eventually reach everyone.

In 2007, I realized, that I still didn't know of anybody else working at it – the process had yet to start outside of Halifax. And that was a turning point for me. It is at that time that I decided to reach out to a national audience. I know that things are the way they are today because of a lack of knowledge on the public's part. Given a choice, how many buyers would choose the traditional house-finding service offered by the industry over the buyer-coaching service you have just finished reading about? Not that many – which means that the minute purchasers start asking for it, companies offering the service will start to pop up everywhere.

I took a break from my job as an Exclusive Buyer Agent to launch the site and returned to it after the dust settled. My plan is to keep on helping purchasers and work at growing the Network to hopefully one day, stop for good and make running the website my full-time occupation.

It has truly been a pleasure; I hope your newly-found knowledge will come in handy.

Good luck on your purchase; and buyer beware.

Your friend in home buying,

Alain Savard

7.13 About Alain Savard

Born and raised in Quebec City, I left “La belle Capitale” after high school to join “Le College Militaire Royal” in Saint-Jean-sur-le-Richelieu, 30 minutes south of Montreal. I spent three years in Saint-Jean and the following two in Kingston, Ontario at the Royal Military College where I graduated with a bachelor’s degree in Mechanical Engineering and an Officer’s Commission in 1989.

I was posted to Esquimalt, British Columbia after graduation to continue my Combat Systems Engineer’s training with the Navy. It is that training that brought me to Halifax in May 1990. I spent the rest of that year taking electrical engineering courses at what was then called the Technical University of Nova Scotia (TUNS).

My interest for real estate goes back to my teenage years. In the summer of 1990, I purchased my first rental property. By the end of 1992, I had bought two more houses and sold the first one for a small profit. I was determined to make it as an investor and decided to leave the Armed Forces and the world of engineering in the spring of 1993 to join the industry full-time. My goal was to learn how things worked on the inside, so I could better protect myself on any future purchase or sale.

I obtained my salesperson’s license in April 1993; became a broker in April 1995; and immediately opened my own brokerage: Realty 2000 – Executive Real Estate. A few months shy of my 28th birthday, I was one of the youngest, if not the youngest, broker in Nova Scotia at the time.

I gave my first live home-buying seminar in September 1995. I thoroughly enjoyed learning about the industry, but discovered after that talk, that I loved teaching and helping buyers even more.

In December 1996, I officially announced that my brokerage would no longer take listings or represent sellers and would from then on be 100% dedicated to protecting purchasers. And that’s when Realty 2000 – Executive Real Estate became Alain Savard – Professional Home Buyer. As far as I know, my firm was the first buyers-only brokerage in Canada.

From 1997 to 1999, I worked on a manual to accompany my seminar to save attendees from having to write for three straight hours – its very first printing is dated December 1999. I updated the manual regularly after that.

On a more personal note, it was during a business meeting (and dressed as a monkey, as she likes to recall) that I met my future wife, Annie, in April of 1996. She had recently moved to Nova Scotia from the Province of Quebec with her family and they needed a house. We didn’t know at the time, that we were going to end up together, but that’s what happened. We got married in the spring of 2000 and our son Mikael was born in March 2001.

I incorporated my brokerage in December 1999 and changed its name to HBI – Home Buyers Incorporated.

I must have taught close to 100 live seminars between September 1995 and April 2007, and by that time, my manual was once again due for an update. But I knew that designated agency was coming to Nova Scotia, so I decided to wait a little longer.

And it is during that time, that I thought of producing a national version of my manuscript along with an accompanying video seminar for the Internet. The local feedback I had received was so positive, that I couldn't imagine people in other provinces reacting differently to learning about the real estate industry and the home buying process. And this is what got me started.

Because my material was out of date, I stopped teaching seminars and instead invested every spare minute of my time in this project. Writing this book has taken me a lot longer than I thought it would; but I must admit, that I am pleased with the end result. And I hope you have been too.

7.14 Bibliography

Here's a list of books and manuals that helped me with this writing:

Real Estate Encyclopedia – Education for the Professional, Canadian Edition, June 2002.

Copyright: Alliance for Canadian Real Estate Education with original copyright to the Ontario Real Estate Association.

Nova Scotia Provincial Reference Manual – Companion Publication to the Real Estate Encyclopedia, Canadian Edition, June 2009. Copyright: Nova Scotia Association of REALTORS®.

Brokerage Manual. Nova Scotia Real Estate Commission

Agency Fundamentals – The National Perspective, October 2006. Copyright: Alliance for Canadian Real Estate Education (ACRE)

Buyer Agency – Building Careers and Communities, November 2008. Copyright: Nova Scotia Association of REALTORS®.

Understanding Designated Agency and Transaction Brokerage, August 2007. Copyright: Nova Scotia Real Estate Commission.

Risk Management Strategies for Errors and Omissions Insurance, September 2008. Copyright: Alliance for Canadian Real Estate Education (ACRE).

Reference Manual (Broker Licensing Course), 2008. Copyright: Nova Scotia Association of REALTORS®.

Buying?

Something big happened in Canadian real estate in 1995. In the early years, when a company sold a house, half* the commission usually went to the agent on the sign; and the other, to the member of the firm that had found the purchaser.

In the 1950s, this deal was fine-tuned. The agent on the sign kept his share, but to attract more purchasers, the rest of the money got offered to agents from all companies. They called this the Multiple Listing Service®. And transactions involving two different real estate firms were born.

But their MLS® System was flawed. Because it didn't allow for the commission to be shared with a buyer agent. Buyer agents are real estate professionals who instead of selling houses, point out property flaws and defects and help purchasers negotiate prices down. The rules were clear. The two firms had to work together at trying to get the highest price for the seller. Siding with the buyer – regardless of his identity – and claiming the money, was strictly prohibited. But it was happening anyway.

By the mid 90s, the practice was so common – especially when the buyer was a relative or a friend – that the industry had to make it legal. And fighting for purchasers was “officially” born.

But allowing buyer representation on MLS® transactions was dangerous. What if purchasers started asking for companies that did it exclusively? Firms with no listings and no sellers, whose job would be to save homebuyers headaches, time, and money. Companies that offered to treat all purchasers like family and try to get them the best homes at the best price. To make things worse for traditional firms, these companies wouldn't have to charge buyers anything for their service since the other half of the commission could now serve as their fee.

Allowing buyer representation on MLS® transactions should have led to the arrival of these firms. But it did not. Because people can't ask for something unless they know it exists. When the new rules came into effect, everyone got told that it was business as usual. And so it remained.

There were no companies dedicated to fighting for the little guy back in 1995. And although they can be found in all 50 states south of the border, only two of them are currently in existence in Canada. All because of a lack of knowledge.

But what if someone wrote a book about them, created a website, and made all the info on it available for free? Would the public invest the time to learn and spread the word so all Canadians can one day benefit from this great service? We'll soon find out.

Because this is the book. BuyingaHomeinCanada.ca is the site. And you are the public.

"Buying a home
could be the single
biggest investment
you will make in
your lifetime."



* Real estate commissions are negotiable by law and although 50-50 splits between firms are still common, these percentages can and do vary.