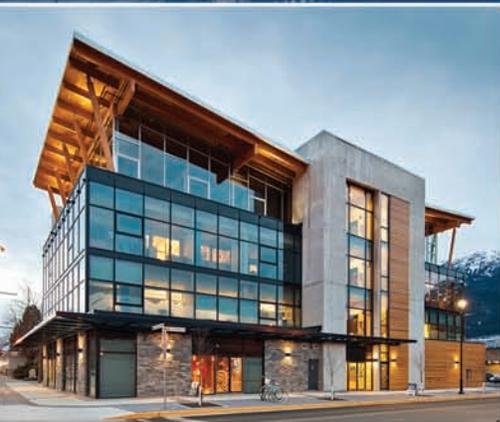


RACE & COMPANY LLP
LAWYERS

BUYERS' GUIDE
For the Sea to Sky Corridor and Area Real Estate



raceandcompany.com

RACE & COMPANY'S BUYERS' GUIDE FOR THE SEA TO SKY CORRIDOR AND AREA REAL ESTATE

It is our intention with this guide to provide purchasers of real estate in our area a resource to assist them in making an informed decision about purchasing.

THE PROPERTY

British Columbia has a Torrens land title system. This is fundamentally different than many other jurisdictions where title insurance companies handle land transactions and insure the title to the property. In those jurisdictions, insurance is necessary to pay a buyer compensation in the event someone successfully asserts ownership of the property by either claiming that they once owned it and never sold it or claiming they own it by virtue of a period of uncontested occupation of the property. In B.C. this cannot happen. Once title is registered in a purchaser's name, historical claimants' right to the property are extinguished. A purchaser in B.C. can be confident that when they buy a property in B.C., they own that property.

LEASEHOLD, FEE SIMPLE, CONDOMINIUM, OTHER

Typically, most properties in the region are "fee simple" properties. Fee simple means holding direct title absolutely. A leasehold property, on the other hand, is a lease from the fee simple owner. Some properties are owned by the Resort Municipality of Whistler or the province, directly or indirectly, and leased for up to 60 years or more. Condominiums are usually portions of the fee simple called strata lots. However, they can also be leasehold. Condominium owners typically own the space inside their unit. The building itself and the grounds are owned in common with all the other owners. Portions of the common area may be restricted for the exclusive use of individual strata lot owners. These portions are typically parking stalls, storage areas and balconies, but may also include portions of yards in duplex condominiums. Because the building and grounds are owned in common, the repair and maintenance must be managed. Some complexes are managed by the owners, while others are managed by professional, licensed property management companies. Management sets budgets each year and then collects monthly, quarterly or annual assessments from each owner. Special costs, such as new roofs, are usually collected by a special assessment.

It is important to review the records of a condominium's operations to determine whether or not a large special assessment is pending or contemplated.

There are a few properties in the Sea to Sky communities and some outlying areas that have a different form of title. Certain properties are owned by companies, and ownership of a unit within that property is evidenced by holding a share in the company and entering a shareholder agreement to match the unit to a share. Other properties are held by a trust company and portions of the property are held with trust certificates and subject to a trust agreement which matches the trust certificate to a certain area of property.

Some properties are part of "bare land strata" developments. In these developments, individual owners hold title to a certain strata lot and the house on it, and also own, in common with the other strata lot owners, the common lands and roads in that development. Each owner is responsible for the repair and maintenance of their own buildings, and are collectively responsible for such expenses as landscaping and snow clearing of common property.

SURVEY ISSUES

Banks lending mortgage funds often require a survey of the property. The banks want to make sure that the buildings are entirely within the lot's boundaries, so neighbours or statutory authorities cannot force removal of the building. As an alternative to commissioning a survey, a purchaser can buy a title insurance policy that provides insurance on the issue of encroachment, often at an expense significantly less than the cost of the survey. Title insurance has expanded to insure a variety of issues. Purchasers should consider obtaining surveys that go beyond simply placing the buildings on the lot. A driveway that unlawfully crosses a neighbour's lot can be very expensive to rectify. Banks do not always require surveys of condominium units where the strata plan prepared by a surveyor is on title at the Land Title Office.

PROPERTY RESTRICTIONS

The zoning status of a property is the first place to look for restrictions on the use of a property. The zoning of a property refers to its designation by the municipality or district in which it is located. There are properties without direct zoning, or with zoning that is residential, commercial or some form of tourist accommodation zoning. The properties without direct zoning may have indirect zoning through a title covenant, discussed below. Residentially-zoned property may not be rented for periods of less than 28 days.

Title covenants will often contain use restrictions instead of, or in addition to, zoning restrictions. Whistler has many different forms of covenants such as: land use covenants dealing with basic zoning-type issues; covenants restricting the keeping of livestock; protection of trees; creation of public trails; and covenants dealing with rentals. Rental covenants are either Phase 1 or Phase 2 covenants. The Phase 1 covenants contain language that requires the owner to make the property available for rent to the tourist public when not using it themselves. This has historically been interpreted to allow the owner to keep it for their own use entirely though some more recent Phase 1 covenants are more restrictive. The Phase 2 covenants restrict the owner usage to 28 days in the summer and 28 days in the winter, keeping the balance of the time available to the tourists. There are properties in Pemberton or Squamish with variations of these covenants that restrict full-time occupancy.

Properties may also be restricted by agreements which may or may not be registered on title. Rental management agreements are very common in Whistler and some of them are essentially mandatory and can have the effect of restricting owner use even more than a Phase 2 covenant. These agreements can apply to any type of tourist accommodation zoned property, so it is possible to have a Phase 1 property restricted to 4 weeks of owner use.

PHYSICAL CONDITION OF PROPERTY

"Buyer Beware" still reflects the basic state of law in B.C. Accordingly, it is prudent to have any property inspected by a qualified inspector prior to committing to the purchase. Some information about the property will be found in a Property Condition Disclosure Statement, but this remains fairly limited, and in the case of condominiums, very limited. With condominiums, it is prudent to consider having the entire complex inspected. Condominium owners are collectively responsible for the buildings. The minutes and records of the management of any condominium complex may be a source of disclosure of problems and should be reviewed closely before committing to the purchase. Other means of protection against defects include getting specific warranties from the vendor in the contract. Unless the seller is the builder, it is unlikely that the vendor will agree to such warranties. These are not usually as good as hiring an inspector, because an unsatisfied buyer would likely need to undertake an expensive lawsuit against a seller for damages suffered from a breach of a warranty. Title insurance may insure against defects that are not apparent on an inspection.

CLOSING COSTS

There are many things that will affect the final purchase price of a property. These include:

- Property Transfer Tax - This tax equals 1% of the first \$200,000.00 of the purchase price, 2% on the value between \$200,000.00 and \$2million, 3% on the portion greater than \$2million, and a further 2% on the value over \$3million. Buyers of newly-constructed homes under \$750,000.00, and first time home buyers of homes under \$525,000.00 may be exempt from this tax;
- Goods and Services Tax (GST) – This tax equals 5% of the purchase price. First purchasers of new or commercial property that will be occupied as a principal residence may be eligible for a rebate of a portion of the GST. Some purchases of used property may be exempt from it. Some purchasers may defer it. GST is discussed in greater detail under its own heading;
- Surveyor fees;
- Building Inspector fees;
- Mortgage broker fees;
- Appraisal fees;
- Mortgage commitment fees;
- Insurance fees;
- Legal fees – discussed further below;
- Adjustments for operating costs - These are prorated and divided between the buyer and the seller according to whether they are outstanding or have been prepaid.
- Extras - usually special construction finishing costs or furniture packages associated with new projects; and
- Transfer fees- These may be charged to transfer golf memberships, tennis membership, extra parking entitlements and the like.

Your closing funds must be delivered to us in the form of certified cheque or equivalent guaranteed form which does not require clearing.

OPERATIONAL COSTS

These are costs associated with ownership that reoccur. Common operating costs are:

- Property Taxes - These are annual taxes due to the municipality or region. They cover calendar years but are typically paid in early July. Homeowners that reside in their property may be eligible for a homeowner's grant.
- Sewer and Water Utility Charges - These are annual charges for water and sewer. Water is not charged on the basis of consumption. Some properties further out from city centre do not have municipal sewer hookup. Some properties in more rural areas will not have either sewer or water hookups. Purchasers of these properties will have to budget for septic and/or well maintenance costs;
- Dyking Taxes - These are annual taxes used to maintain dykes in low-lying areas such as Pemberton;
- Strata Maintenance Fees - These can be monthly, quarterly or annual, depending on the strata management. They are for the maintenance of the building and grounds of condominium properties or just the grounds for bare land strata developments;
- Whistler Resort Association Assessments - These are fees that go to pay for Tourism Whistler's marketing of the resort. They are assessed on a quarterly basis on properties designated as "Resort Land";
- Insurance – Building insurance is included in strata maintenance fees, but not contents insurance. Properties in rental arrangements may have specific insurance requirements in their rental management agreements and may wish to consider loss of revenue insurance;

- Accounting Fees - If the property is a revenue property, then non-residents will have to file tax returns each year in Canada, and again upon disposition of the property;
- Rental Management Fees - These are commonly a percentage of rental revenue, but there may be other arrangements; and
- Telephone, hydro, gas, propane, cable, security.

NEW CONSTRUCTION CONSIDERATIONS

This section applies to buyers of new or recently renovated property. Generally, there are two scenarios involving new construction. The first is purchasing a single-family residence. The other is the purchase of a unit in a condominium development.

SINGLE FAMILY

In this situation, buyers have a good deal of control over the terms of the contract of purchase and sale. The purchaser can set the closing date; provide for a deficiency holdback procedure; inspection procedure and determine the scope of what is included in the construction.

CONDOMINIUM DEVELOPMENT

In this situation the purchaser should expect to have to accept the developer's standard form of purchase contract. These contracts typically reserve the right to make small changes to the size and design of the units. These contracts also usually exclude any right to request a deficiency holdback. Inspection and completion happen very quickly on fairly short notice given by the developer that the units will be ready. There is usually no pre-set completion date, though the developer may predict a non-binding, anticipated completion date.

BUILDERS' LIENS

Purchasers have statutory rights to have funds held back from the vendor as security against liens placed by trades or material suppliers who have not been paid by the vendor. This fund cannot secure the completion of deficiencies. The buyer still must pay the entire purchase price at closing, but the lien holdback is held in a lawyer's trust account during the statutory lien period, and then released to the developer if no liens have been registered.

GOODS AND SERVICES TAX ("GST")

GST is a consumer tax. It is payable on most goods, including real estate. Purchasers will have to pay it unless the real estate is exempt, or the purchaser's use of the property and their GST registration will entitle them to self-assess. Purchasers of commercially-used property, such as nightly-rental units, should seek tax advice from a professional accountant.

Whether or not a property is exempt from GST depends on the seller's use of the property. If the vendor uses it for residential purposes, then it will be exempt. If it is vacant land held for the purpose of building a residential building for use by the vendor, and not as inventory, then it may also be exempt.

Property that the seller uses commercially will attract GST. “Commercially” includes being rented or available for rent for periods of less than 28 days, new construction, and lands or premises being held as inventory in a business of land speculating.

The important point to understand is that the GST status is determined by the vendor, so the purchaser should obtain a warranty concerning the property’s GST status in the contract of purchase and sale.

If a property is subject to GST, the purchaser may self-assess the tax if they register for GST and continue a commercial use of the property. This is commonly done in respect of nightly rental properties. However, if such a property is taken out of the rental pool and kept for personal use, GST will be payable at that time on the market value at that time. More complex rules apply if Phase 1 property is rented nightly and is occasionally occupied by its owner, so buyers should obtain tax advice from their accountant.

If the property is new, buyers may be entitled to a GST rebate. Developer vendors usually will be willing to credit the purchasers with an amount equal to the rebate in exchange for an assignment of the rebate. This saves the homebuyer from having to pay the full GST at closing and then waiting for the rebate.

FIRST TIME HOME BUYER CONSIDERATIONS

First time homebuyers may be eligible for exemptions in respect of Property Transfer Tax. They must meet the following criteria:

- Be Canadian citizens or landed immigrants;
- Have lived in B.C. for the immediately preceding year or filed a B.C. income tax return two years of the past six ;
- Have never owned an interest in a principal residence anywhere;
- The purchase price must be less than \$500,000.00
- Property must be less than 1.24 acres in size; and
- They must move in within 92 days of purchase and reside for at least one year in the property. Moving out during the first year may trigger assessment of a portion of the tax.

Partial exemptions are available for purchase prices between \$500,000.00 and \$525,000.00.

Mortgages of greater than 80% of the purchase price usually need to be insured by the federal government mortgage insurance program. These fees can usually be added to the amount of the mortgage. The buyer must ask the bank to do this, or be prepared to pay the insurance premium.

HOW TO HOLD TITLE

The title indicates who legally owns the property and how they own it. Purchasers must decide whether to hold title in one name, more than one name, or in a corporation. If property is held in more than one name, a decision between “joint” ownership or “tenants in common” must be made. Joint ownership implies a right of survivorship, so that the property vests in the surviving joint owner in the event of a death. The ownership of a deceased tenant in common is determined by the deceased’s will. Some purchasers will place title only in a spouse’s name if they earn their living at a business that might expose them to judgments. Corporations may be used as part of a risk management plan too, but are generally reserved for consideration in the purchase of commercial property or as part of an estate plan.

Title may not be registered directly in the name of a revocable trust. However, these entities may hold title indirectly, usually by having a corporation hold title under an unregistered trust agreement in favour of the trust.

It should be noted that individuals, corporations, and trusts may attract different levels of taxation on revenue.

ESTATE PLANNING AND OWNING PROPERTY

For residents of B.C., the estate planning considerations are limited to choosing who will be on title and whether they will be joint tenants or tenants in common. The right of survivorship associated with joint tenancy may be used as an estate planning tool to avoid probate fees. The passing of joint property circumvents the deceased's estate and is not subject to probate. Accordingly, some elderly purchasers may choose to register property jointly with their children. Couples would also usually register title jointly. However, joint ownership is not conclusive evidence of true joint ownership with the right of survivorship.

For non-residents of B.C., the same theory of joint tenancy applies. In addition, however, the non-resident should plan for succession of their B.C. property, either by incorporating a company to hold title to the property, or by having their B.C. lawyer draft a B.C.-assets-only will in order to simplify the B.C. probate process. For non-residents other than residents of the United States, this is the common planning tool.

Many United States residents have estate planning trusts. As title may not be held directly in such entities, the solution is to hold the title in the name of a corporation or individual and have an unregistered trust agreement in favour of the beneficial owner.

Any estate planning decisions should be made with the assistance of the purchaser's professional advisors in their home jurisdiction.

All purchasers of property in B.C., other than corporations, should consider granting their spouse or some other trustworthy individual a Power of Attorney in B.C. Land Title format. This would allow for a sale or mortgage of the property in the event of a loss of mental capacity, or just if the title holder is unavailable to sign documents. Without a Power of Attorney in place, it takes an expensive court application for someone to be appointed to represent the incapacitated individual. Joint tenancy of property is not like a joint bank account; both parties must sign transfer and mortgage documentation.

NON-RESIDENT CONSIDERATIONS

Canadian income tax legislation requires non-residents to pay 25% of gross rental income to Canadian taxation authorities as security for actual taxes due. Owners can frequently obtain an exemption from this requirement by formally filing a budget. Property rental managers usually assist with this. It then becomes important to file annual income tax returns to retain the exemption.

Non-resident corporations need to provide extra documentation to satisfy land registration requirements. If the corporation is going to carry on commercial activity (rent property on a nightly basis), then the corporation will have to be extra-provincially registered in B.C. If the purchase is a one time purchase and the corporation does

not do business in B.C., the corporation will only have to file a certificate of incorporation, certificate of good standing and affidavit of no commercial activity. Extra-provincial registration is more involved. Both procedures take time and completion dates should reflect this. Original documentation is required from the corporate registrar, or whatever statutory authority regulates corporations in the corporation's home jurisdiction.

Non-residents should note that they will have to obtain clearance certificates from the Canada Revenue Agency at the time of the sale of their property. Typically, non-residents hire a Canadian accountant to prepare a clearance application. As much as 50% of the gross value of the property will be held back on sale pending receipt of clearance as security for unpaid income tax and capital gains tax.

MORTGAGES

Mortgages in B.C. may be "open" or "closed", with "fixed" or "variable" interest rates. An open mortgage is one that can be paid down, in full, or in part, without an early prepayment penalty being assessed. A closed mortgage is one that will have limited rights of prepayment and prepayment in excess of this limit will trigger a penalty of typically 3 to 6 months interest or an interest rate differential. Closed mortgages may be paid off without penalty at the end of the term.

Mortgages in B.C. usually have terms of 6 months to 5 years. A fixed interest rate mortgage will have the same interest rate during the term. Mortgages are usually renewed, with new interest rates, by letter agreement with the financial institution near the end of each term.

In B.C., one lawyer may represent both the lender and the borrower in a mortgage transaction if the parties consent, the lender is a financial institution and the mortgage is simple. The advantage to the purchaser is a saving in legal fees and disbursements. Some financial institutions will not consent to one lawyer representing both parties. Mortgages where title is held in a complicated manner, such as a company holding in trust, will prevent one lawyer from representing both parties.

Mortgage documentation must be original and executed before a person authorized to take affidavits for use in a court in that person's jurisdiction. In many jurisdictions, lawyers are also notaries public, but this is not true of all jurisdictions. Non-resident purchasers may wish to consider making a limited power of attorney before leaving the area to deal with this issue. Improperly completed mortgage documentation from non-residents is a frequent problem requiring postponements of completion dates. Purchasers requesting extensions of completion risk losing the property and being sued by the seller. Some banks are requiring borrowers to attend at a branch to open accounts and/or meet directly with their BC lawyer to sign mortgage documents.

BUYING PROPERTY IN FORECLOSURE

Purchasers of property in foreclosure must make offers free of subject conditions, except the condition of being subject to court approval. Purchasers should be aware of the risk of damage/change in the property immediately prior to completion, as individuals losing their home in foreclosure often want to take some of it with them. This is why most foreclosure contracts contain an "as is, where is" warning.

LEGAL FEES AND DISBURSEMENTS

The amount of legal fees and disbursements (expenses) will depend on the tasks performed by the lawyer. Taxes on lawyers' fees and some disbursements are 12%. The amount of expense will also depend on the tasks involved. For a straight-forward purchase/mortgage file, these expenses usually amount to approximately \$500.00.

Package fees rates are provided where one lawyer represents both the borrower and lender. If the financial institution is represented separately, the borrower will typically have to pay the lender's lawyers in addition to their own.

New identification verification rules add a complication to the signing of purchase and sale documents in any place other than the office of the lawyer representing you. If you are considering purchasing or selling property and will not be signing the closing documents at the office of the lawyer representing you in the transaction, please have your identity and identification documents verified by your real estate agent and lawyer while you are in the area.

Most lawyers or notaries public will provide fee quotes upon request. It is important to note that notaries cannot legally do all the tasks set out in this guide, nor can they legally provide advice if the transaction collapses. When obtaining quotes, be sure of what the quote includes, specifically, whether or not it includes expenses and taxes.

It is hoped that you will find this guide useful. If we can ever be of assistance in answering your questions, do not hesitate to contact us.

Yours truly,
RACE & COMPANY

CONTACT INFORMATION

SQUAMISH

301-37989 Cleveland Avenue, P.O. Box 1850
Squamish, BC Canada V8B 0B3

Tel: 604.892.5254
Fax: 604.892.5461

WHISTLER

332-4370 Lorimer Road
Whistler, BC Canada V8E 1A6

Tel: 604.932.3211
Fax: 604.932.2515

- **Ian T. Davis:** i.davis@raceandco.com
- **Sholto Shaw:** s.shaw@raceandco.com
- **Kathleen van der Ree:** k.vanderree@raceandco.com

www.raceandcompany.com