



MODULE 4

PURCHASE AND SALE OF A HOME

OVERVIEW

This module introduces students to the three stages of purchasing and selling a home: the creation of the Agreement of Purchase and Sale (APS), due diligence, and closing. It also provides an overview of the basic principles of contract law, and how they relate to the APS in the real estate context. Students will explore the financial realities involved in buying and selling a home, including the additional costs and conditions associated with such transactions. Students will have the opportunity to engage in experiential learning through a mock purchase and sale of a home where they will create a negotiation plan, as either buyers or sellers. This module builds students' advocacy, persuasive, and critical-thinking skills, and teaches them how to resolve potential conflicts that can arise.

Learning Objectives

- To expose students to basic concepts relating to real estate transactions, including the Agreement of Purchase and Sale, due diligence, and closing.
- To enhance students' financial literacy and understanding of the costs associated with purchasing and selling a home.
- To cultivate students' listening, speaking, reasoning and persuasive skills.
- To enhance students' critical-thinking and advocacy skills.

Materials

- Copies of *Buying and Selling a Home in Ontario* (one per student)
- Copies of the *Confidential Instructions for Seller* (one for each seller)
- Copies of the *Confidential Instructions for Buyer* (one for each buyer)
- Copies of the *Negotiation Timeline* (one per student)
- Copies of the *Negotiation Plan* (one per student)
- Copies of the *Agreement of Purchase and Sale*¹ (one per pair)

Teaching and Learning Strategies

1. Activate students' knowledge of this topic by having them review the video, *Market View: Can you really afford to buy that house?*, and the article, *Can you afford a home in these cities?* Both resources are available here: <http://www.theglobeandmail.com/globe-investorpersonalfinance/mortgages/can-you-afford-a-home-inthese-cities/article19435194/>

Discuss the following:

- Were you surprised to learn of the price of housing in Canada?
- Would these prices affect your decision to purchase a home?
- Would you be willing to move to a different location if it meant that you could afford to buy a house? Why or why not?
- What steps would someone need to take in order to afford a house?
- How do you think the high prices in Canada's housing market affect the average Canadian?
- Do you think the prices will change in the future? If yes, how so?

Explain to students that real estate plays a significant role in our daily lives. For example, it is very difficult to get a bank account if one



does not have a residential address. Whether the roof is rented or purchased is a choice we have because of our property rights. The free economy is based on a good private property rights system, which permits individuals to create wealth and use it to create more. Investment is required to create something. The risk and reward system which property rights provides our society spurs individuals to create. Property rights are not limited to real estate and the same principles can be applied to buying a car, a boat, etc. That we have the choice to buy or rent stems from our property rights, in that someone determined that if they created a housing unit, they could rent it or sell it to make a profit. To do so, they most likely had to commit their own property rights and pledge their assets to borrow money to make their project a reality. The fundamentals of real estate found in residential real estate remain true, and are a good training exercise for commercial, industrial or other real estate where you simply add more 000s to the purchase price or size to the land or building. Buying creates forced savings and equity, and renting provides easier options to relocate for work or lifestyle decisions. There is no right answer, as it depends on the individuals and their circumstances.

2. Using either a teacher- or student-centred reading strategy, have students review the handout, *Buying and Selling a Home in Ontario*. Check for understanding and clarify any points that are unclear.
3. Explain to students that they are going to be completing a mock negotiation of a purchase and sale of a home. Organize students into pairs, with one person playing the role of the seller and the other the buyer. Distribute the *Negotiation Timeline*, *Negotiation Plan*, and *Agreement of Purchase and Sale* (APS) to each pair and review the documents with students. Highlight that most of the APS is pre-printed with “standard” terms and explain the significance of the following sections: 1) Purchase Price 2) Deposit

3) Chattels Included 4) Fixtures Excluded and 5) Schedule A (Conditional Offers) – e.g., purchase financing, building inspection, conditions re: purchaser selling its own property. Emphasize that these elements are all **negotiable** and can be discussed in the mock negotiation. Explain to students that they will complete this document in pairs once they have negotiated the final terms of the agreement.

4. Distribute the *Confidential Instructions for Seller* separately to students playing the role of the seller, and the *Confidential Instructions for Buyer* to students in the role of the buyer. Provide students with time to review the instructions and facts outlined in their memos.
5. Before beginning the negotiation, give students time to develop their negotiation strategy and tactics, and complete all portions of the *Negotiation Plan* with the exception of the section on the final agreement. Have students refer to the *Introduction to Negotiation* handout from Module 2 as needed.
6. Have students negotiate the agreement using the strategies, tactics, and techniques they have learned. Follow the *Negotiation Timeline* and give students about 30 minutes to complete the negotiation and the *Agreement of Purchase and Sale*. Once they are finished, they should also complete the final portion of the *Negotiation Plan*.
7. Take up the activity as a class, noting points of similarity and differences between groups in terms of final agreements, strategies, and techniques. Optionally, circulate all of the *Negotiation Plans*, and have all students who represented the seller, and all those who represented the buyer, vote for one. There will be many different results which will help highlight that there is no right answer to a negotiation but rather the answer is an agreement by the parties, which satisfies them. A discussion about “buyers remorse” might be appropriate. Once decisions are made and an agreement achieved, parties often start to second guess themselves

**MODULE 4**

once they speak to others who may criticise their decision. This highlights the importance of having every decision maker and possible influencer participate in the negotiations and the importance of properly preparing by considering all options before the actual negotiations.

8. As an optional follow up, have students write a reflection on their negotiation, commenting on their strengths, weaknesses, and what they would have done differently. Students should discuss both the appropriateness of their overall strategy as well as the tactics and techniques they used or should have used.

Extension

Enhance students' understanding of various housing markets by having them research a house to purchase in three markets of their choosing, including locations outside of Canada. Have students do short presentations on which locations and houses they selected, what the general costs for housing are in the markets, and what the pros and cons of purchasing in those markets are.



MODULE 4

PURCHASE AND SALE OF A HOME

BUYING AND SELLING A HOME IN ONTARIO

BUYING A HOME: THREE-STAGE PROCESS

The process of buying a home involves three major stages: 1) the negotiation and signing of the Agreement of Purchase and Sale (APS); 2) due diligence; and 3) closing. These three stages also involve a money-transfer component. Although the closing is always the last stage, the other two stages are usually intermingled or in the reverse order.

STAGE ONE: AGREEMENT OF PURCHASE AND SALE (APS)

At this stage, the buyer (purchaser) normally submits an offer to purchase the home from the seller (vendor). In Ontario, an “Agreement of Purchase and Sale” (APS) is a legal contract that outlines the terms of the agreement between the buyer and the seller.

A contract is a promise between two or more parties (i.e., individuals or businesses). This promise is legally binding, meaning that there is a legal obligation to keep the promise. The promises that the parties make are called the “terms” of the contract, and they describe each party’s rights (i.e., what a party is entitled to from the other party) and obligations (i.e., what a party is required to do) according to the contract. Contract law sets out the principles that determine whether an agreement is a legally binding contract, or not. In any real estate transaction, general contract law applies. In a real estate transaction, time is of the essence. The importance of time is reflected in the APS, which requires that all time limits be strictly adhered to by the buyer and seller. For example, if the buyer has 10 days to obtain financing and does not do so within that time period, the deal may come to an end.

The APS is one of the most important contracts that a person will enter into during their lifetime and it is well advised that, before it is signed, it be reviewed by a lawyer. A lawyer can raise questions to ensure that important issues are canvassed before and properly documented or provided for in the APS. A lawyer can assist to de-mystify the process which can be very unnerving for first time buyers and for a process that the average person rarely undertakes.

BUILDING BLOCKS OF A CONTRACT

In order for an agreement to be considered a legal contract, there are some essential elements that must be present. There must be an intention to contract, an offer to contract and an acceptance of that offer, and consideration. In addition, the terms of the contract must be clear in order to be enforceable by a court.

- 1. Intention to contract** – In order for a contract to be legal, the parties must have intended to create a legally binding relationship. A court will not, for example, enforce a casual agreement between two people who agree to go shopping at 3 p.m. because there was no intention to have a legally binding contract. However, where the parties are entering into a business transaction, it may be easy to demonstrate that such an intention existed.
- 2. Offer and Acceptance** – An offer is an invitation to enter into a contract. The offer outlines the terms of the contract and is made with the intention that it will become a binding agreement once accepted by the person to whom it is addressed. An acceptance of an offer is when the other party communicates his/her acceptance of the offer.



3. Consideration – Consideration is when something of value is promised by one party to the other when making a contract. Typically, a deposit is included in the agreement of purchase and sale to constitute the consideration necessary to make the agreement binding. Legally, a seal (the little red sticker or seal, representing what used to be wax) constitutes consideration.

4. Certainty of terms – A valid contract must have clear terms that make sense to both parties. They must also be certain enough to be interpreted by a court should they need to be enforced.

In a real estate context, once the offer to purchase is accepted by the seller, the legal interest immediately shifts to the buyer. In this case the seller no longer has an insurable interest and the seller's insurance would no longer cover any loss. This would create dangerous situations pending the buyer getting insurance. That is why APS' generally provide that the seller remains liable for the value of the property right up until closing.

A contract is not enforceable unless there is consideration. Consideration means an exchange of something for the bargain. Typically, this is accomplished through the APS because it provides for a deposit to be paid by the buyer to the seller. The deposit is a "good faith" gesture that shows the seller that the buyer is serious and has the financial capacity to purchase the property. Additionally, the deposit represents a fair amount to protect the seller against a loss if the buyer does not hold up their side of the deal. If the buyer backs out of the deal without a valid legal reason, the deposit is "forfeited," meaning the seller gets to keep the money. The law allows the seller to keep the deposit money as compensation, or what is known as "damages." The seller may be entitled to compensation or damages when the buyer backs out of a deal because the buyer failed to complete his/her obligations under the legally binding contract that was created when the seller accepted the purchase offer.

The amount of the deposit is negotiable and can be any amount. When the deposit money is given, it is typically held "in trust" on behalf of the buyer by the seller's lawyer or real estate agent until the day of closing (i.e., the last step of the process). When closing occurs, the deposit amount is applied to the purchase price.

In a real estate transaction, the buyer also has rights. After the APS is signed, the seller cannot back out of the deal subject to certain conditions. If the seller tries to back out, the buyer has the option of getting a court order for damages, or an order that the seller must transfer the legal ownership of the property to the buyer and perform exactly what was promised in the APS. This concept of obtaining a court order to perform exactly what was promised in a legally binding contract is called "specific performance."

Most APSs have conditions. These are usually provisions that one of the parties wants, but cannot get (or confirm) prior to making or accepting the offer. For example, the seller might want to make the sale conditional on buying another home. Or, the buyer might want to make the offer conditional on selling their existing home. If the buyer tries to sell his/her home before making the offer on the new house they want to buy, the new house may be sold in the interim. Therefore, adding in a condition can guarantee the purchase of the new home while they work to sell their existing one. Such conditions can also apply for getting a mortgage, verifying the new home's compliance with building regulations, and confirming that the buyer can do work on the new home after closing for renovations or improvements. There is really no limit to the number, or type, of conditions that parties can put in the APS. This is why it is very important for the parties to use clear language when making conditions, and setting out obligations as to who has to do what by which date, and including how the parties should communicate with each other to disclose whether conditions have been satisfied. Here is an example of a condition for financing:

**MODULE 4**

“The Purchaser (buyer) shall have 10 calendar days from the date of acceptance to advise the Vendor (seller) that it has satisfied itself that they can secure a mortgage on terms favourable to them to purchase the property, failing which the agreement shall be deemed to be at an end and all deposit monies returned.”

Under the terms of this condition, if the buyer does satisfy itself but does not advise the seller within the 10 days, the APS is at an end and the seller is open to sell to someone else.

STAGE TWO: DUE DILIGENCE

In order to purchase a property, the buyer must satisfy a number of matters, including:

• Getting a mortgage

Before looking into a property, many buyers consult their bank to get an idea of the amount of mortgage they could qualify for and at what terms. Some buyers shop around for a mortgage after they have an accepted offer to purchase a home, but this is not recommended.

• Conduct a home inspection of the home

A home is a significant investment and one would be wise to have the property thoroughly inspected by a qualified person to assess its strengths and weaknesses before committing to buy. Often, the APS includes the condition that the buyer must get a satisfactory inspection report after the APS is accepted in order to avoid the expense of an inspection if the APS is not accepted.

• Seek insurance availability

As soon as a person finds a home they want to buy, they should consult with an insurance broker to ensure they can get insurance on the home (fire/damage and content insurance) at a reasonable cost and terms which are acceptable.

• Assess the affordability of any prospective work or plans for the property

If the buyer has plans to make changes or renovate the home after closing, it would be wise to verify with authorities, like the city/municipality, if they can do the work and if they require any permits.

• Ensure the building is in compliance with regulations

If the home was newly renovated, the buyer should verify that the work was completed with the necessary permits and all inspections and approvals were obtained. This could avoid potential situations where a renovated portion of the home must be redone or made compliant.

• Register for services and utilities

Buyers should personally contact all utilities and service providers for the home to register with them and arrange for their billing preference.

- **Pay the down payment money**

Many times, buyers think they have enough money for the down payment, but will forget that they invested the money in a car or placed it in investments that they may not be able to withdraw from in a timely fashion or without penalties.

- **Any issues which are important to the buyer or for which they want to confirm before closing.**
- **The lawyer acting for the buyer conducts title and off-title searches and other inquiries to ensure that the buyer will get what they contracted to get.**

- **Bridge financing**

Also, when selling a home and buying another, buyers will often want to use the value from their existing home to purchase the new home. This presents timing issues, as a person must sell their existing home to get the monies to buy the new home. If buying and selling happens on the same day, buyers should discuss this arrangement as soon as possible in the process, and ideally before signing any agreements. They may want to ask their bank for “bridge financing”, a loan which is repaid out of the proceeds of the sale, in order not to delay the purchase if the sale is delayed.

STAGE THREE: CLOSING

On the date of closing, legal ownership and keys are transferred from the seller to the buyer and the payment (either by certified cheque, bank draft or wire transfer) is delivered from the buyer to the seller for the purchase price, minus the deposit amount. This remaining balance typically comprises of a ‘cash’ component in the form of the down payment and a ‘loan’ component in the form of a mortgage by a mortgage lender (e.g., a bank).

A concept known as a “merger” happens on closing. A merger provides that, with the exchange of the money and keys, all parties are said to be satisfied with the deal and all rights merge. This prevents any party from later suing the other for things not delivered. In a real estate transaction, a lawyer can ensure their client has received everything they were promised in the contract, and if not, then to ask for it. For this reason, on closing, the parties will exchange “undertakings,” which is a promise to do something (e.g., readjust any amount if it is revealed that one of the parties should have paid it), after closing.

Charges for the property are allocated on closing between the buyer and seller. However, in some cases, the charges are assessed against one of the parties. For example, municipalities assess taxes against every property on an annual basis, and they do not adjust the amount of taxes owed by the duration of ownership of one of the parties. On closing, the lawyer uses a document known as the “Statement of Adjustments” to adjust the amount owed by the parties.

The annual amount that is owed is calculated on a daily basis. Normally, charges on the closing date belong to the buyer and they are responsible for costs and benefits, if any. The seller is assessed by his/her share of the property taxes from January 1st to the day before closing of the same year. If the seller paid that year’s taxes to the municipality already, they are entitled to a credit for “overpayment” or the buyer is credited with an “underpayment.” If there are any rentals in the house (e.g., furnaces or water heaters), they must be identified in the APS for the buyer. This way, the buyer can choose to keep those rentals and continue to make the payments, or if not, then the seller must pay the outstanding balances.

When closing occurs, the seller must deliver what is called “vacant possession” to the buyer. The APS sets out in paragraph 2 that the seller has until 6:00 p.m. on the day of closing. This means that the parties’ lawyers must deliver the keys, money, documents, and register the transfer, commonly known as a “deed.” A deed transfers the


MODULE 4

legal ownership from the seller to the buyer. Most government registry offices where deeds are registered close by 5:00 p.m. – therefore, closing must occur before then.

The closing date is a negotiated term of the contract. Although the date must be on a business day when the government registry office is open to register the transfer and mortgage, the parties are free to choose:

- Any weekday to close (no holidays, though)
- The date on which typically possession of the property is to be exchanged between the buyer and seller
- The day on which legal title to the land is recorded in the name of the buyer

While many people prefer a closing date on the 1st, middle, or end of month and on Fridays, these are very busy times for all parties in the real estate transaction! Knowing this, it might be beneficial to opt for another day.

Time is crucial in real estate transactions. Therefore, it is important to explore all of your options and get into contact with the seller/buyer, lawyers, real estate agents, and other representatives and service companies earlier rather than later!

COSTS OF BUYING A HOME

• How is a purchase priced determined?

In real estate, the purchase price is said to represent what a willing buyer will pay to a willing seller. This is subjective, however, because often sellers view their home as a castle!

Instead, the market dictates the price of the property:

- In a seller's market, where there is little supply and many buyers, the price will generally be higher.
- In a buyer's market, where there is lots of supply and few buyers, the price will generally be lower.

• How, then, does one determine the market price of a house?

Many people hire an evaluator to give their professional opinion on the value of one's property. This is called an "appraisal." Also, real estate agents use their experience and market research to estimate the value of a particular property. It is important to remember that the purchase price is a negotiation between the seller and the buyer. Some people have a natural ability to negotiate, but many do not. Real estate agents and lawyers can assist with the negotiation process.

The APS typically deals with three types of property:

- Land
- Fixtures (i.e., things affixed to the land)
- Chattels (i.e., personal belongings)

The land is simply the parcel of real estate, which includes fixtures to the land. In law, it is a misconception to say, "We are buying a house." Instead, we buy land and the house is simply a fixture to the land. Personal property, also referred to as chattels, does not become affixed to land. A good example of this is furniture, which is not transferred with the land, unless specifically outlined in the APS. Paragraphs 1 and 2 provide space for the parties to specifically designate various items, such as fixtures, to be removed and kept by the sellers (i.e., lighting fixture in dining room) or a chattel, which is included in the purchase price to remain with the home and become the buyers (i.e., appliances). In theory, the parties should separately price the fixtures and chattels at a different rate

than real property (i.e., separate from the land). In practice, except in commercial transactions, the price of the chattels is included in the purchase price, without any breakdown.

1. UPFRONT COSTS

The following is a list of common one-time, upfront costs involved in purchasing a home:

Buyers should prepare themselves for the cost of a real estate transaction. Generally, buyers should expect to pay 2-5% of their purchase price in additional costs.

1) Down payment

- The down payment is the amount of his/her own money that the buyer puts into the property. Part of the down payment is paid as the deposit when the offer to purchase is presented to the seller and the balance of the buyer's money is added at Closing. The buyer provides his/her lawyer with all of the monies needed to close, other than the lender's funds. The monies paid to the lawyer include the balance of the down payment and the sums noted below.

2) Legal fees and disbursements

- Legal fees are what the lawyer is paid to act for the buyer. "Disbursements" are additional costs which lawyers will incur while completing the due diligence or registration processes on the buyer's behalf. Examples of such costs, include title and off-title search costs; cost of copies (i.e., house plans); registration costs; title insurance policy cost, etc.

3) Real estate agent fees (if applicable)

4) Closing adjustments to the purchase price

- This could include municipal taxes, utility charges not separately assessed or rental charges if any for a furnace or other equipment or security service; oil tank; etc.

5) Land transfer taxes (if applicable)

- Purchasers in Ontario, as in most provinces, pay Land Transfer Tax to the province on the value of the real property they purchased. The qualifications, exemptions, calculations and rebates are beyond the scope of this exercise, however, generally purchasers pay provincial land transfer tax on the following sliding scale. The City of Toronto is the only municipality in Ontario with the right to assess its own land transfer tax and it generally mirrors the provincial scheme. In Ontario, the tax is paid by the lawyer when he/she registers the transfer. In contrast, in Quebec, it is known as the "Welcome Tax" and the municipality will send a bill to the buyer after closing.
- The Ontario tax rate in effect since June 1, 1989:
 - 0.5% of the value of the consideration up to and including \$55,000,
 - 1% of the value of the consideration which exceeds \$55,000 up to and including \$250,000, and
 - 1.5% of the value of the consideration which exceeds \$250,000, and
 - 2% of the amount by which the value of the consideration exceeds \$400,000 for land that contains at least one and not more than two single family residences. For example, a \$275,000.00 property would be assessed with \$2,600.00 of Land Transfer Tax. The same property in the City of Toronto would be assessed with \$5,075.00 of provincial and city taxes. A first time homebuyer, because of special discounts, would only pay \$600. Many banks and law firm websites have land transfer tax calculators free for prospective purchasers to use.

**MODULE 4****6) Home inspection****7) Up-front mortgage costs**

- This could include application fees, processing fees, appraisal fees or mortgage insurance premiums if not included in monthly mortgage payments.

8) Moving expenses/storage expenses**9) Hook-up costs (e.g., cable, gas, hydro, phone, internet, etc.)****10) Additional furniture, appliances, window coverings, tools****11) Repairs, improvements and other items needed on moving in; and****12) Other expenses (e.g., soil or water analysis, foundations, etc.).****2. ONGOING COSTS**

The following is a list of typical ongoing costs involved in owning a home:

1) Mortgage payments**2) Mortgage insurance (if required, and often included in mortgage payments)****3) Mortgage life/disability insurance (optional)**

- Most lenders will offer this and may require it. Although good coverage, it is generally best to get this type of insurance from a third party. Lender specific coverage will only cover the outstanding amount of the mortgage and therefore the value decreases as the mortgage is paid down. Third party insurance will maintain its original coverage value, while the premium under both remains constant.

4) Home/property insurance**5) Utilities (e.g., heat, electricity, water, sewer, gas, etc.)****6) Telephone, internet, cable (same as when renting)****7) Property taxes (which the lender may require be added to and paid with mortgage payments)****8) School taxes (if paid separately from your property taxes as in Quebec)****9) Condominium fees (if applicable)****10) Cleaning supplies/service (same as when renting)****11) Repairs and maintenance (e.g., roof repairs, painting, plumbing, etc.)****12) Other expenses (e.g., lawn service, snow removal, etc.).**

MOCK NEGOTIATION FOR THE PURCHASE AND SALE OF HOME

CONFIDENTIAL INSTRUCTIONS FOR SELLER

You will work in pairs to complete a mock negotiation of a purchase and sale of a home. One student will play the role of the seller and the other will play the role of the buyer. Review the confidential facts below. Before beginning the negotiation, take time to develop your negotiation strategy and tactics, and record the details in the *Negotiation Plan*. Negotiations are always more successful if undertaken after considering what is at stake, what the options are, and what strategies might be best. Complete all portions of the *Negotiation Plan* with the exception of the 'Final Negotiation Agreement' section. You may want to refer to the *Introduction to Negotiation* handout from Module 2. When both parties are ready, begin the negotiation. The goal is to finalize the terms of your agreement and record the details in the *Agreement of Purchase and Sale*.

FACTS

- You have been living in your home for the past 12 years. Your children have moved out and you are looking to downsize because you simply do not require 4 bedrooms anymore and the upkeep is becoming more difficult to maintain every year.
- You have listed your property for \$625,000 but are prepared to accept an offer as low as \$575,000.
- The house is in a desirable location, close to shopping and most amenities and in good shape for a 20 year-old building.
- You are hoping to move as soon as possible as you have already found a condo to move into.
- As you are downsizing, you are prepared to sell some of the furniture at a modest cost and in fact to save you the expense of disposing of it, you are prepared to leave it if the buyer agrees.
- You have a home inspection report which notes that despite some minor deficiencies, the home is in good shape, except that a new roof will have to be installed in the near future. You prefer not to undertake any more work on your home before you move out. You have obtained estimates which indicate that the work to replace the roof ranges from \$15,000 to \$25,000.
- Your agent says that the standard deposit in this situation would be \$5000 but you have had a bad experience in the past with a buyer backing out of a deal and so you want a more significant amount as the deposit.
- The dining room chandelier has been in the family for years and you want to move it with you to the new condo.

**MODULE 4****CONFIDENTIAL INSTRUCTIONS FOR BUYER**

You will work in pairs to complete a mock negotiation of a purchase and sale of a home. One student will play the role of the seller and the other will play the role of the buyer. Before beginning the negotiation, take time to develop your negotiation strategy and tactics, and record the details in the *Negotiation Plan*. Negotiations are always more successful if undertaken after considering what is at stake, what the options are, and what strategies might be best. Complete all portions of the *Negotiation Plan* with the exception of the 'Final Negotiation Agreement' section. You may want to refer to the *Introduction to Negotiation* handout from Module 2. When both parties are ready, begin the negotiation. The goal is to finalize the terms of your agreement and record the details in the *Agreement of Purchase and Sale*.

FACTS

- You are looking for a 3- or 4-bedroom home for you and your three children.
- You have a down payment of 10% and have been approved by your bank for a loan on a purchase price up to \$595,000.
- The seller has a home inspection report which notes that despite some minor deficiencies, the home is in good shape, except that a new roof will have to be installed in the near future. You have no money for this and want to negotiate and have the seller do the work prior to you taking possession or to give you a credit reducing the purchase price for the work you will have to undertake after you become the owner. The seller has estimates which indicate that the work ranges from \$15,000 to \$25,000.
- You need to move in two months time.
- The home is listed for sale at \$625,000. It is in a desirable location for your children's school and your work.
- You have \$5000 available in your chequing account to use as what is considered the standard deposit but could easily access another \$7000 in bonds which you could cash in at any time.
- The seller has a second refrigerator in the basement and a freezer which would be very convenient for you if you could have it included as part of the deal.



NEGOTIATION TIMELINE*

Preparing for the Negotiation		
Develop Your Negotiation Plan	Each student (seller & buyer) individually complete their Negotiation Plan.	10 mins
Seller & Buyer Negotiation		
Step 1	The seller and buyer should set out the issues to be discussed and negotiated. The buyer completes the Agreement of Purchase and Sale (APS) with the terms it is prepared to offer and delivers it to the seller at the beginning of their negotiations.	5 mins
Step 2	The seller and buyer meet to discuss the home for sale and the purchase details. The students negotiate the terms under which they will agree to sell/buy the home. During this stage, generate settlement proposals that satisfy the interests of both parties. Agree to the identified issues individually or as a package.	20 mins
Step 3	The parties change the terms negotiated to the agreed terms, and initial all changes. Have both the seller and the buyer sign the APS with the teacher or another student signing as the witness.	5 mins
Debrief		
Class Discussion	Debrief with the whole class by comparing the results of the negotiations. There will be many different results which will help highlight that there is no right answer to a negotiation but rather the answer is an agreement by the parties, which satisfies them.	15 mins

*Times are approximate/suggested. Sometimes the negotiation process can lead to an agreement at the first meeting, but often this meeting lasts several hours or longer. Depending on the complexity of the case, it can also take many meetings before an agreement is reached.

**MODULE 4****NEGOTIATION PLAN TEMPLATE****OBJECTIVES/ISSUES:****OVERALL STRATEGY:****TACTICS AND TECHNIQUES:****OFFERS:**

Opening Offer	Target	Bottom Line

FINAL NEGOTIATION AGREEMENT:



Agreement of Purchase and Sale

(This document is a summary only of the content of an APS for the purposes of the student exercise)

This agreement of purchase and sale dated this ____ day of _____, 20____ between

_____, Buyer, agrees to purchase from
(Print full name of Buyer(s))

_____, Seller, the following:
(Print full name of Seller(s))

Address: _____
(Add Street Number and Street Name of property being purchased)

in the City of _____ and having a frontage of _____ more or less by a depth
(Add width of property at the street in feet or meters)

of _____ more or less and legally described as _____
(Add depth of property in feet or meters) (Add legal description of property being purchased)

_____ (the "Property").

Purchase Price: _____ Dollars (CND\$) _____
(Spell out Purchase Price) (Add Purchase Price in numbers)

Deposit: _____ Dollars (CND\$) _____
(Spell out Deposit amount) (Add Deposit amount in numbers)

By negotiable cheque payable to _____
(Add Vendor's lawyer's name or real estate agent's name – adding "in trust" to their name)

Schedule(s) A _____ attached hereto form(s) part of this agreement.
(Add "B" if a second schedule is attached and so on for all schedules attached to Offer)

(Note: this space is provided to add conditions or other terms to the APS, if needed. If additional space is required, use a schedule.)

1. Chattels Included: _____
(Add items that Buyer wants to remain after Closing as part of the Purchase Price)

2. Fixtures Excluded: _____
(Add items that Seller wants to keep and remove from the home when he/she leaves)

3. Rental Items: Following equipment is rented and Buyer agrees to assume contract.

(Add rental items, such as hot water tank, furnace, security alarm system, etc.)

4. Irrevocability: This offer is irrevocable by the (Buyer / Seller) until ____ am/pm on the ____ day of _____, 20____, after which if not accepted, this offer shall be null and void and the deposit returned to the Buyer in full without interest.

5. Completion Date: This agreement shall be completed no later than 6:00pm on the ____ day of _____, 20____.



(The following represent paragraph headings of issues typically dealt with in the APS. They are preprinted and no changes are generally made to these.

Time does not permit to elaborate on the content and importance of these provisions.)

- 6. Notices:
- 7. GST:
- 8. Title Search: (Sets out the period of time to conduct due diligence searches and has a blank to insert the date by which any issues must be communicated to the Seller to correct before Closing.)
- 9. Future Use: (Refers to the present use being continued and has a blank space to insert a description of that use (e.g. single family home or triplex).)
- 10. Title:
- 11. Closing Arrangements:
- 12. Documents and Discharge:
- 13. Inspection:
- 14. Insurance:
- 15. Planning Act:
- 16. Document Preparation:
- 17. Residency:
- 18. Adjustments:
- 19. Time Limits:
- 20. Tender:
- 21. Family Law Act:
- 22. UFFI:
- 23. Consumer Reports:
- 24. Agreement in writing:
- 25. Successors and Assigns:

Signed, Sealed and Delivered in the presence of

this _____ day of _____, 20_____.

(Date on day signed and spell out name of Buyer and Witness in addition to signature)

Witness:

_____ Seal
Buyer:

Witness:

_____ Seal
Buyer:

this _____ day of _____, 20_____.

(Date on day signed and spell out name of Seller and Witness in addition to signature)

Witness:

_____ Seal
Seller:

Witness:

_____ Seal
Seller:

Note: A copy of the standard Agreement of Purchase and Sale used in the Province of Ontario can be obtained by contacting a real estate lawyer or agent.

