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CHAPTER 24

FROM CONTRACT TO COMPLETION

Learning Objectives

After studying this chapter a student should be able to:

- Discuss what information is required to complete the conveyancing documents, including the statements of adjustments, for a seller and a buyer
- Describe generally what steps are taken between signing the contract of purchase and sale and completion
- Describe the usual procedures and documents that lawyers or notaries use to complete the transaction set out in the contract of purchase and sale
- Correctly calculate adjustments for various items including mortgages, property taxes and rent
- Correctly designate items appearing on statements of adjustments as either debits or credits
- Prepare a seller's and buyer's statement of adjustments

INTRODUCTION

The purpose of this chapter is to provide you, as a real estate licensee, with a broad overview of the conveyancing process in British Columbia. Once the contract of purchase and sale for a property has been signed, and all of the subjects have been removed, the contract will be sent to the conveyancer (a lawyer or notary public) to complete the transaction and register the title to the property in the name of the buyer(s). While a licensee does not complete the *conveyance* themselves, having some general knowledge of this process is important because licensees are often looked to by their clients as the first source of information when buying or selling property. Licensees can play a valuable role in setting their clients' expectations about a real estate transaction long before the conveyancer has the contract in hand. By knowing what can potentially "go wrong" or complicate a closing, a licensee can take steps to ensure that matters within their control are dealt with early in the process. Finally, having this general knowledge will help the licensee ensure that the timing for closing, as set out in the contract, is realistic given the particular transaction. This can save the client a lot of frustration in the days and weeks before the completion date.

conveyance

the process of transferring the estate in fee simple from one person to another by way of a transfer document. Conveyancing usually refers to the transfer of title to land but also includes dealings such as assignments, leases, and mortgages

Throughout this chapter, you will notice a new type of box in the margins of the text. These dark blue boxes contain references to previous chapters in the Course Manual where a particular topic was introduced and discussed in further detail. It is intended that, with these reference boxes, you will appreciate how many of the topics in the previous chapters fit together to achieve the goal of creating a binding contract of purchase and sale that ultimately finishes with the transfer of title from the seller(s) to the buyer(s).

INFORMATION REQUIRED FOR COMPLETION

Information Contained in the Contract of Purchase and Sale

Chapter 10: "The Law of Contract" and Chapter 11: "Contracts for Real Estate Transactions" set out the basic principles of contract law and reviewed some contracts commonly used in real estate transactions. These principles are important for a licensee to know and to understand because it is the licensee who will be drafting and reviewing the contract of purchase and sale with their client. The licensee has a responsibility to ensure that a binding contract of purchase and sale is entered into between the seller and the buyer.

The contract by which the seller sells their property and the buyer buys that property is called the contract of purchase and sale. In British Columbia, the real estate industry uses a standard form of contract of purchase and sale for most residential transactions. For ease of reference, in this chapter, we will refer to it as the "contract". It is the licensee and not the lawyer or notary public who normally prepares the contract in British Columbia. Therefore, the licensee needs to ensure that a valid and enforceable contract has been prepared. The lawyer or notary puts the contract into effect by carrying out the closing procedures discussed in this chapter. While much of the preparation of the contract simply involves the insertion of information into blank spaces, some preparation, such as the drafting of "subject to" clauses or "72 hour" clauses, may be more difficult. Fortunately, clauses that are not in the contract but that are commonly used are available to licensees in precedent form through various industry resources. One particular resource is the Knowledge Base, which is available online.

A failure to complete all of the information or to draft a clause properly can lead to unfortunate results for both the licensee and the seller or buyer. For example, clause 9 of the contract sets out the encumbrances that will be "permitted encumbrances" on closing:

"TITLE: Free and clear of all encumbrances except subsisting conditions, provisos, restrictions exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way in favour of utilities and public authorities, existing tenancies set out in Clause 5, if any, and except as otherwise set out herein."

If title to the seller's property is not in accordance with that clause, the licensee will be required to modify the contract to reflect the true state of title.

 Contracts for purchase and sale were discussed in Chapter 11

 "Subject to" clauses, or conditions precedent, and "72 hour" clause, were discussed in Chapter 11

As previously discussed, clause 9 of the standard residential Contract of Purchase and Sale contains an obligation that the seller deliver clear title, subject to a few listed exceptions. Not included in the listed exceptions are common non-financial charges such as easements, building schemes, and restrictive covenants. This means that if a licensee knows of a charge that will not be removed from title prior to closing, they must add it to the list of exceptions under clause 9. The following case is an example of a seller's licensee who failed to do this.

JBP Developments Ltd v. Li, 2018 BCSC 209

In *Li*, the title to the property listed a restrictive covenant which prohibited the construction or alteration of any building on the property without the written consent of a third party. The buyer and seller completed the contract of purchase and sale without altering or adding to clause 9. When the seller tried to transfer the property with the restrictive covenant on title, the buyer refused to complete. The buyer treated the seller's failure to deliver clear title as a repudiation of the contract.

The seller was unsuccessful in suing the buyer for damages, and the deposit was returned to the buyer. The Court stated that since the restrictive covenant was not listed as an exception to clear title on the Contract of Purchase and Sale, the seller had an obligation under clause 9 to remove it.

For these reasons, a proactive seller's licensee should perform a title search and address all charges on title to ensure that all are removed prior to closing, unless the buyer has agreed for them to remain on title after completion.

Once the contract has been signed by all of the parties and any “subject to” clauses or conditions have been waived or satisfied, the licensee's role is, for the most part, over. However, much work remains to be done in order to successfully conclude the purchase and sale contemplated by the contract.

In compliance with section 47 of the *Real Estate Services Rules* (the “Rules”), the licensee will have provided to their brokerage a true copy of the contract (plus any addenda such as subject removals). The brokerage acting for the buyer will normally be holding the deposit in its trust account as a stakeholder.

It is at this time that the lawyer or notary will step in to “close” the transaction. The buyer should be advised to immediately provide a copy of the contract to their lawyer or notary. For ease of reference, for the balance of this chapter, the lawyer or notary will be referred to as the “conveyancer”. Do not be confused by this term. We often refer to the notary's or lawyer's assistant as the conveyancer, but that assistant can only carry out the transaction under the supervision of a lawyer or notary.

The conveyancer will immediately conduct a search of title to the property through myLTSA, an electronic title searching portal maintained by the Land Title and Survey Authority of British Columbia. One of the main reasons that the conveyancer conducts the search is to ensure that the contract prepared by the licensee is complete and accurate. Has the licensee included all of the persons who appear on title as registered owners as sellers in the contract? Has the licensee disclosed all of the encumbrances registered against the title in the contract? If, for example, the licensee has not set out in the contract the true state of the title, or incorporated a “subject to” clause for the approval of the title in the contract, there may be a problem.

Example

Ashton is the listing licensee for a lakefront property owned by his client, Sasha. There is an easement registered on the title of Sasha's property granting an easement in favour of a neighbouring property to access a portion of Sasha's property for the purposes of accessing the lake. When Ashton was reviewing an offer for the property, he did not notice that the easement was not mentioned. Therefore, he did not modify the standard title clause set out above to make note of the easement on title. Sasha subsequently accepted the offer. When the issue was brought to Sasha's attention by her lawyer, she spoke with her neighbour about releasing the easement, which the neighbour would not agree to (as he would lose his lake access). In this case, Sasha would be in breach of the contract on closing if she is unable to remove the easement from title, as the obligation in the contract was to convey title as set out in clause 9 (above), without an easement encumbering the title.

Generally, terms related to the state of title (or title provisions) are viewed as *conditions*, or essential terms. If the seller is in breach of a condition of the contract, one of the buyer's potential remedies is to terminate the contract. Without getting into the legal technicalities of the issue, it is important for licensees to know that if title is not accurately described in the contract, the buyer will likely be able to terminate the contract, or "get out of the deal". If, since signing the contract, the market value of the property has increased, or if the buyer is anxious to buy that particular property, the buyer may waive the seller's breach of the title condition. However, if the market is declining or the buyer is experiencing regret or remorse over agreeing to purchase the property, they may be able to use this breach or title defect to terminate the contract.

If, as a result of an improperly drafted title clause, the buyer is able to terminate the contract, one can be certain that the seller will hold their licensee at least partially responsible. If the seller is able to re-sell the property, but at a lower price, the licensee may be liable for damages to the seller (see *Price v. Malais* referred to in Chapter 5: "The Professional Liability of Real Estate Licensees") and the brokerage (and therefore, the licensee) may not be entitled to commission. Recall that in Chapter 12: "Law of Agency", the trigger in the listing agreement most often relied upon by licensees to claim their commission is when "a legally enforceable contract of sale between the Seller and the Buyer is entered into during the term of this Contract...". A contract that does not accurately describe title may well not be a "legally enforceable" contract and therefore, in addition to being liable for damages, the licensee's brokerage – and therefore the licensee – may not be entitled to any commission.

Assuming there are no defects in the contract, the conveyancer will commence preparation of the documents required for completion. The contract specifies the date for completion – often called the *closing date*. On the completion date, the seller is obligated to transfer title in the state set out in the contract, and the buyer is obligated to pay the purchase price in accordance with the contract. Normally, the completion date is a few weeks after the subject removal deadline, in order to give the buyer time to make appropriate financial arrangements, to give the seller time to pack up their belongings and move out, and to give the conveyancer the time to conduct searches and prepare documents. The conveyancer will use the land title search from myLTSA for information regarding the sellers' full names and will confirm directly with the buyers their full names and occupations, as well as the form of co-ownership that should be set out on the new title. The land title search will also disclose the proper legal description of the property (which should match the one set out in the contract) required for the transfer document. The contract should accurately set out the purchase price, deposit, included or excluded items (clause 7 regarding chattels and fixtures) and, in addition to the completion date, two other dates: the possession date and the adjustment date.

The *possession date* is the date on which the buyer is entitled to possession of the property. In most contracts of purchase and sale, the time of the day at which possession changes hands is formally stated, for example, 12:00 noon may be the arranged time. In the contract used in British Columbia, clause 5 requires that the licensee complete the time of day. The *adjustment date* is the date agreed to by both parties for the adjustment of taxes, interest, rent and other appropriate items.

The three dates may occur in any order but it is necessary to address some realities. For example, the registration takes some time to effect, so to set the possession date on the same date as the completion date may not be a good idea, especially if the buyer wants possession at noon. A more prudent practice would be to have the possession date the day after the completion date. Likewise, the date of completion should not be too close to the date of acceptance of the buyer's offer, since new mortgages take some time to approve. The adjustment date can coincide with either the completion or possession date or fall in between the two. Subject to there being an assumption of an existing mortgage, discussed below, most often the adjustment and possession dates are the same.

condition

a fundamental term of a contract, a breach of which allows the non-breaching party to terminate the contract and/or sue for damages or specific performance



Conditions (essential terms) and warranties (non-essential terms) were discussed in Chapter 10

closing date (completion date)

the date specified in the contract for purchase and sale on which the seller is obligated to transfer title in the state set out in the contract, and the buyer is obligated to pay the purchase price in accordance with the contract



Co-ownership of property was discussed in Chapter 3

possession date

the date on which buyer is entitled to possession of the property

adjustment date

the date agreed upon by the buyer and seller for the adjustment of taxes, interest, rent, and other appropriate items



ALERT

Strict compliance with the possession date stipulated in the contract of purchase and sale is required; otherwise, the licensee may be subject to disciplinary proceedings.

In one case (2016 CanLII 46769 (BC REC)), the sellers' licensee left the keys to the property at his office for the buyers' licensee to pick up on October 9, 2015; however, the possession date in the contract for purchase and sale was stipulated as October 10, 2015. The buyers' licensee picked up the keys on October 9 and provided them to his clients (the buyers) on the same day. The buyers used the keys to enter the property on October 9, which set off the security alarm. The buyers' licensee said he did not expect or intend for the buyers to use the keys prior to the agreed-upon possession date.

The buyers' licensee was found to have committed professional misconduct under the *Real Estate Services Act* in that, contrary to section 34 of the Rules, he failed to exercise reasonable care and skill. As a result, the licensee was reprimanded and ordered to pay \$1,500 to cover the former Real Estate Council's enforcement expenses.

Other Information Required for Completion

In addition to the information contained in the contract, the conveyancer will require additional data for:

 Property tax notices were discussed in Chapter 19: "Taxes on Real Property". The calculation of a mortgage's outstanding balance was reviewed in Chapter 14: "Interest Rates and Mortgages"

- the adjustment of taxes, water rates, rent and other items;
- the net advance of a new mortgage to be granted by the buyer; and
- the amount required to be paid by the seller to obtain a discharge of an existing mortgage.

The sources for this data will include a property tax statement or notice, written advice from the buyer's lender about deductions to be made from the advance of the mortgage moneys, a mortgage payout statement provided by the seller's financial institution, water bills, etc. Where the amount of these charges cannot

be finally determined prior to the date of adjustment (for example, where property taxes are to be adjusted very early in the year), an estimate of the charge will have to be made.

Survey

If a buyer grants a mortgage to finance the purchase of a property, the lender often requires a survey of the property for mortgage purposes before advancing the mortgage funds. The lawyer or notary representing the

buyer normally orders the survey from an accredited land surveyor. The survey confirms the boundaries of the property and the location of any buildings in relation to its boundaries. If, for example, the property contains a house that encroaches over the property line into adjacent land, the survey will reveal the *encroachment*. Since the adjacent land owner is entitled to demand the removal of the encroaching structure, the use and value of the subject property may be

adversely affected. The lender in this example will likely refuse to advance the mortgage funds because the encroachment impairs the quality of the proposed security for the mortgage loan.

The cost of a survey depends mainly on the nature of the property and the complexity of the survey. A basic survey of a residential property in an urban setting for mortgage purposes will typically cost several hundred dollars. Surveys of commercial or rural property tend to cost considerably more. The time required for a basic survey may vary from one day to a week or more, depending on the complexity of the assignment and the surveyor's availability. Sometimes, a lender will require title insurance as an alternative to a survey; other times, a lender will require neither. The buyer/borrower should be advised to find out the lender's requirements at an early stage to have a better idea of possible additional costs that may be incurred in the financing.

encroachment

a fixture, such as a wall or fence, which illegally intrudes into or invades public or private property

Surveys must conform to the Association of British Columbia Land Surveyor's (ABCLS) General Survey Instruction Rules and the *Land Title Act*'s requirements, whenever the latter applies. The rules governing surveys prepared in BC will vary in relation to the purpose for which the survey is prepared and the location of the property being surveyed. A sample Building Location Survey, provided by the ABCLS, is provided at Appendix 24.1. This type of survey shows the parcel's boundaries according to the plan or legal description on which the title is based. Surveys will include a formal title indicating the type of survey, and may include the legal description of the property, the purpose for which it was prepared, and a disclaimer of liability to third parties (see the text located at the top of the sample survey). A Building Location Survey must show the location of all structures and property interests, including easements, covenants and rights-of-way, in relation to the property's boundaries. Note that the sample survey clearly delineates, using distances (in metres), the location of the house, the attached deck, a separate garage, and the right-of-way (with its registration number). Furthermore, note that the property sits between Eighteenth Avenue and a lane. The surveyor has also included the registration numbers of the documents that affect the property at the bottom right of the survey. For more information on surveys in BC, visit the ABCLS's website at www.abcls.ca.

Title Insurance

A *title insurance* policy is a relatively new tool for use in real estate transactions in British Columbia. Title insurance may serve as a substitute for a survey, and the premium may be less than the cost of a survey. In other cases, the presence of a title insurance policy may resolve defects revealed by a survey. For instance, where a survey reveals an encroachment, title insurance may permit the lender to advance the mortgage funds, despite the encroachment.

In Chapter 4, readers learned about the modified Torrens system of land title registration in British Columbia. The cornerstone of the system is the indefeasibility principle. Subject to only a few exceptions, if a person's name appears on title as the registered owner in fee simple of a parcel of land, it serves as conclusive evidence against all persons that the person named is the fee simple owner of that land (*Land Title Act*, section 23). All lesser estates and interests in the land are registered as charges against the title. Unlike indefeasible registered fee simple ownership, the BC Torrens system does not make ownership of a charge indefeasible. There is no guarantee that the person registered as the owner of a charge is, in fact, the rightful owner of that charge (*Land Title Act*, section 26). Instead, there is only a presumption that the registered owner of a charge is entitled to the interest created by that charge. Similarly, registration of a charge does not constitute a determination that the charge represents an interest in the land or that the charge is enforceable (*Land Title Act*, section 26). Despite our system of land title registration, errors can occur and, like with any system, there is still room for various forms of criminal activity, including forgery and fraud.

A title insurance policy is a device to protect an owner, or a lender, against certain losses associated with title defects or related problems. As we saw in Chapter 4, title insurance allocates the risk of loss in a different manner than the Torrens system. Broadly speaking, there are two types of policies to deal with risks of loss: owner's policies (which are sold to buyers), and lender's policies. An owner or lender may purchase residential or commercial title insurance, as the case may be.

Title insurance serves as an assurance of the state of title as at the date of purchase or, in the case of a mortgage loan, the date the mortgage is registered. A title insurance policy provides compensation to an owner or lender up to a set amount if it turns out that title to the property is not as stated in the policy and the owner, or lender, suffers a loss as a result. As well, a title insurance policy usually contains the insurer's "duty to defend", being the insurer's promise to defend the policy holder's title or, in the case of a policy held by a lender, to defend the enforceability of the lender's interest in the title.

title insurance

an insurance policy that protects the insured (either an owner or a lender) against certain losses associated with title defects or related problems with the insured property



Title insurance was also discussed in Chapter 4

A typical owner's policy indemnifies the owner against various risks, including:

- the title to the interest being different from that stated in the policy;
- certain defects in the title, including charges, liens, or encumbrances;
- the unmarketability of the title;
- lack of right of access to land;
- a third party interest in the title;
- forgery, fraud, duress, incompetence, or impersonation;
- forgery of an instrument claiming an interest in the land after the policy date;
- liens against title because of a mortgage, tax or utility account, judgment or condominium charge;
- third party rights of possession in the property as a result of leases, options, or family law rights;
- builders liens for materials provided prior to the policy date;
- easements over the land;
- the owner being forced to remove an existing structure (other than a boundary wall or fence) because it encroaches onto adjoining land or an easement, or it violates a municipal bylaw; and
- restrictions on the owner's use of the land as a single-family residence due to the violation of a restriction or zoning bylaw

Source: Quiring, C. 2000. "Title Insurance in British Columbia" in D. Akerly, Title Insurance. Vancouver: Continuing Legal Education Society of BC. 2000 at 1.1.06.

Depending on the circumstances, a lender may accept title insurance in substitution for a survey. A title insurance policy may also include survey coverage to protect the policy holder against loss or damage suffered as a result of matters that would have been revealed by an up-to-date survey. In the previous "Survey" section, we saw how a lender would likely refuse to advance mortgage funds where the survey revealed an encroachment. In these circumstances, title insurance may resolve this problem. If the buyer pays the premium for a lender's title insurance policy in favour of the lender, the lender will likely agree to proceed with the mortgage.

CLOSING PROCEDURES

Conveyancing for a fee may be undertaken only by a lawyer or a notary public. The conveyancing fees are generally paid by the buyer; therefore, it is the buyer's right to choose the conveyancer. Mortgage lenders nearly always require the mortgage document to be prepared by their own lawyers, and these lawyers will generally deduct the mortgage costs, including legal fees, from the amount of the loan and pay the net proceeds (with the borrower's written instructions) to whomever is doing the conveyancing. In some cases, the buyer will use the same lawyer for the mortgage and the conveyance; however, this practice is not universal because of potential conflict of interest problems. Similarly, a conveyancer acting for the buyer may insist that the seller retain their own lawyer, even for the execution of the documents. That is, once again, because of potential conflict of interest problems.

FIGURE 24.1: The Three Steps in a Closing



Preparation of Documents

The conveyancer acting for the buyer will prepare the Form A Freehold Transfer (or simply, a “Form A”) which will be filed at the land title office on closing. A sample Form A can be found at Appendix 3.1. The conveyancer will also prepare a Property Transfer Tax form (discussed later in this chapter), which must accompany the Form A. Additionally, the conveyancer will prepare both the seller’s and buyer’s statements of adjustment and any other conveyancing documents required or commonly used for that type of transaction.

If the seller has a conveyancer acting for them, the buyer’s conveyancer will send the Form A and seller’s statement of adjustments to the seller’s conveyancer, for review by the seller’s conveyancer and execution by the seller. Since almost all transactions are now filed electronically at the land title office, the Form A will be in an electronic format and will be sent and received by conveyancers in that format, with “hard copies” usually scanned for record keeping purposes. If the seller does not have a conveyancer acting for them, the seller will attend at the buyer’s conveyancer’s office to review and execute the documents.

If the buyer is granting a new mortgage, and the lender is represented by a notary or lawyer, then the lender’s conveyancer will prepare that mortgage in electronic format and send it to the buyer’s conveyancer for review and execution by the buyer. Otherwise, the buyer’s conveyancer will prepare the mortgage.

On or before the completion date, but usually before, the buyer will attend at the buyer’s conveyancer’s office and sign the Property Transfer Tax form, buyer’s statement of adjustments, any new mortgage being granted by the buyer, and any other required documents. The buyer will also provide the conveyancer with the balance due to complete, as shown on the buyer’s statement of adjustments. These funds will be deposited into the conveyancer’s *trust account*.

By the closing date, the buyer’s conveyancer will have the following:

- the Form A executed by the seller (electronic format);
- the seller’s and buyer’s statements of adjustments, executed by the seller and buyer;
- the Property Transfer Tax form, executed by the buyer (electronic format);
- any other documents required for completion, such as a Form F Certificate of Payment for the transfer of a strata lot or a Form B Mortgage (see Appendix 15.1) if the buyer is granting a new mortgage over the property; and
- the balance due from the buyer in the conveyancer’s trust account.

trust account

an account where money is deposited by one for the benefit of another. The money is devoted to a particular purpose and cannot or should not be diverted for other purposes

It should be noted that the buyer’s conveyancer will have an executed Form A from the seller but that the seller has given this to the buyer’s conveyancer without having received the balance due to the seller in exchange for an undertaking. An undertaking is a solemn promise of a lawyer or notary that can be relied on. Undertakings are commonly used to facilitate transactions where documents are delivered without the delivering party having received payment yet. Since the buyer’s conveyancer will be attending to the registration, they need the Form A in advance of payment of the sale proceeds. The undertakings given and received will be in accordance with clause 13 of the contract. If the buyer’s lender has a conveyancer, then the buyer’s conveyancer and the lender’s conveyancer will exchange appropriate undertakings about registration of the new mortgage and payment. Finally, if the seller has an existing mortgage and is represented by a conveyancer, the seller’s conveyancer will be giving an undertaking as set out in clause 14 of the contract about discharging that existing mortgage.

 The use of lawyer undertakings was discussed in Chapter 11



ALERT

As a licensee, you should know that buyers, especially first-time buyers, are not always aware of all the costs of purchasing a property and can be unexpectedly confronted with having to spend more money than expected at the completion date. Although most buyers are aware of costs such as land transfer tax, other closing costs might surprise them when it comes time to close. The three biggest items to come up as unexpected costs are property tax adjustments, mortgage interest adjustments, and PST on mortgage-default insurance.

As will be discussed later in this chapter, property taxes are sometimes pre-paid by the seller, which means that the seller would be owed a credit for a portion of the paid amount after the buyer has taken possession. This adjustment requires the purchaser to credit the seller for the difference.

Mortgage lenders may also sometimes take a fixed amount for property taxes along with the mortgage payment, and may require the buyer to pay a few months' worth at the beginning of a mortgage. The mortgage lender would accumulate the property taxes for you and remit from time to time to your municipality.

Another surprise cost for first time homebuyers is the mortgage interest adjustment. Depending on the date chosen for closing and the date of the first mortgage payment, there may be an extra cost for the interest adjustment period. A purchaser may want to discuss with their lender the possibility of choosing the date of the first interest payment to minimize this cost, but each lender will have a preference for payment dates.

Finally, buyers may not be aware that provincial sales tax (PST) applies to mortgage-default insurance premiums (mortgage loan insurance was discussed in Chapter 17: "Mortgage Underwriting and Borrower Qualification"). This amount must be paid at the time of the purchase and cannot be added to a mortgage. Because mortgage-default insurance is mandatory on any property purchase with a down payment of less than 20% of the purchase price, most first-time buyers will face this required PST payment.

Helping buyers understand what costs to expect sets correct expectations for a buyer's budget and helps to avoid surprise costs. Licensees should consider whether their clients will face any of these extra costs, and should recommend their clients seek professional advice if required.

Application for Registration

On the closing date, the conveyancer will conduct another search of the property to make sure title is in the same condition as when the conveyancer did the first search. If there are other charges such as a Claim of Lien (used for builders liens), the buyer's conveyancer will require that they be discharged prior to closing. If

title is in an acceptable condition, the conveyancer will electronically file the Form A and Property Transfer Tax form. Both of those documents will have affixed to them an electronic signature of the lawyer or notary, which is a confirmation that the lawyer or notary has a true paper copy of the filed document, properly signed. That signature will be verified by a certifying authority. If the buyer's conveyancer is also acting for the buyer's lender, they will also electronically file any new mortgage (the Form B and the express mortgage terms, if the

prescribed standard mortgage terms, or lender's previously filed standard mortgage terms are not being used) being granted by the buyer. Otherwise, the lender's conveyancer will make arrangements with the buyer's conveyancer about concurrent filing of all documents.

After the documents have been submitted for registration, the conveyancer will wait until the Form A (and new mortgage, if applicable) are identified on the title as "pending applications". The pending section can be seen near the bottom of a certificate of title, as shown on the title located at Appendix 4.2 (Note 12). If there are no intervening applications, i.e., the only new items on the title are the new pending numbers for the Form A and Form B Mortgage, then the payment process will begin.

It is the practice in British Columbia for conveyancers to make closing payments based on pending applications. That is not the case in some other jurisdictions, where the conveyance will await "final" registration. Depending on the workload of the land title office, the applications may be pending for one or two weeks before they are finally registered. During the pending period, land title staff will check the

The Form B and associated mortgage terms were discussed in Chapter 15: "Introduction to Mortgage Law"

documents for accuracy, and any mistakes will have to be corrected. It is possible, but unlikely, that an application may be rejected totally. However, it will be the responsibility of the conveyancer to resolve this issue, if it arises.

Payment

The payment process starts with the lender's conveyancer sending to the buyer's conveyancer the net mortgage proceeds. Later in this chapter, we will review the typical deductions from gross mortgage proceeds. The buyer's conveyancer, on receipt of those proceeds, and already having in trust the balance due from the buyer, will make payments in accordance with the statements of adjustments. Those payments would include payments to existing lenders, the seller, the brokerage (if there is commission payable in excess of the deposit), and payments to the municipality (if there are outstanding taxes). The statements of adjustments will contain language authorizing the buyer's conveyancer to make these payments. Prior to the closing date, the buyer's conveyancer will have prepared a trust account reconciliation based on the seller's and buyer's statements of adjustment. Prior to closing, the conveyancer will ensure that the total of all amounts coming into the conveyancer's trust account (i.e., the new mortgage proceeds and the *balance due to complete*) is exactly the same as the total of all amounts being paid out of the trust account (i.e., the balance due to seller, payout of existing mortgage and conveyance fees). The document setting out the incomings and outgoings is called a trust reconciliation.

balance due to complete
the amount of cash the buyer must be able to provide to the conveyancer (amount due to the seller) in order to complete the transaction



ALERT

The closing procedures can take hours before they are finished. That is one reason why the possession date should not be the same as the completion date, or if it is the same, why a licensee should not contemplate “noon” as an acceptable time in clause 5 (possession) of the contract. Similarly, having a seller's sale of their old property and subsequent purchase of a new property scheduled to complete on the same day is not a good idea.

As was stated earlier, the licensee will not likely have much involvement after the contract is signed, but often sellers or buyers will contact the licensee about the status of the purchase and sale, and the licensee should have a general idea of what steps are being taken. In many circumstances, it will be wise for the licensee to refer the client to their lawyer or notary.

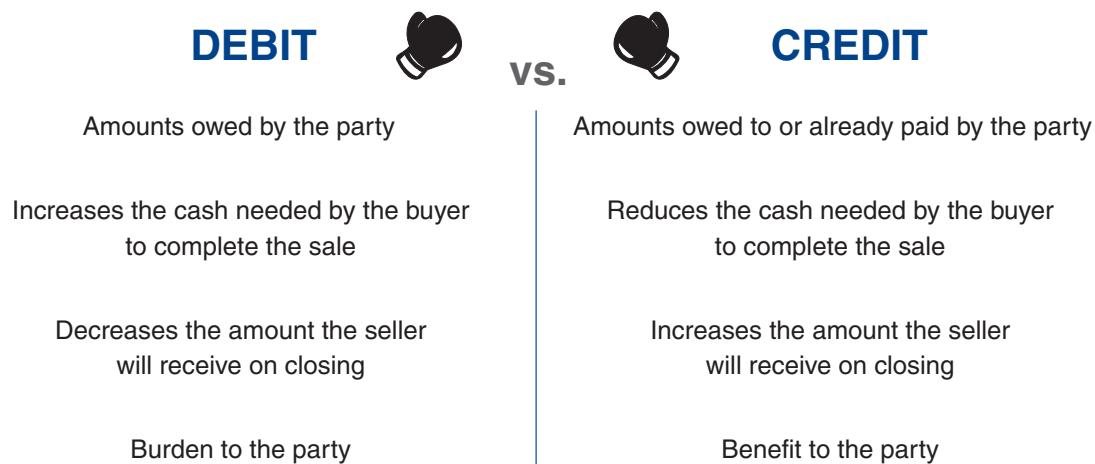
GENERAL INTRODUCTION TO STATEMENTS OF ADJUSTMENTS

Statements of adjustments are a convenient method of providing the parties with detailed information relating to the balance due from one (the buyer) and the balance due to the other (the seller). On a buyer's statement, the conveyancer is calculating the amount of cash the buyer must be able to provide to the conveyancer in order to complete the transaction. On the seller's statement, the conveyancer is calculating the amount of cash the seller will receive from the conveyancer on completion. The amounts “due from” and “due to” are not the same. It is important to treat each statement separately: the buyer's statement and the seller's statement are not comprised of identical information.

To calculate the balance due from the buyer (the balance due to complete) and the balance due to the seller (the *cash proceeds of sale*), conveyancers will place certain financial amounts or items in either a “debit” or “credit” column on the statement of adjustment. A “credit” is an amount that has already been paid or is owing to the party, while a “debit” is an amount that will have to be paid upon completion. On the statements of adjustments, the terms “debit” and “credit” are used in a manner that is different from their use in accounting.

statement of adjustments
a closing statement in a real property transaction whose format is structured by Debits and Credits

cash proceeds of sale
the amount of cash the seller will receive from the conveyancer (from the buyer) upon completion of the transaction

FIGURE 24.2 Debits vs. Credits

Note: In accounting, the terms “debit” and “credit” are used in a different manner

Example

A buyer and seller have signed a contract of purchase and sale for a property at a price of \$100,000. The buyer has paid a \$10,000 deposit, being held in the buyer's conveyancer's trust account. The conveyancing fees to be paid by the buyer will be \$550.00. The real estate commission payable by the seller is 5% of the purchase price.

The buyer's statement of adjustments would be as follows:

BUYER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Purchase price	\$100,000.00	
Deposit paid		\$10,000.00
Conveyancing fees	550.00	
Balance due to complete	<u>\$100,550.00</u>	<u>90,550.00</u>
		<u>\$100,550.00</u>

Notes:

1. The two columns represent “debits”, i.e., amounts owing by the buyer, and “credits”, i.e., amounts which the buyer has already paid or are due to them. The purchase price, which the buyer owes, is a debit. The deposit which the buyer has already paid, is a credit.
2. The conveyancing fees, which the buyer normally pays, are a debit that increases the amount the buyer owes. This amount does not appear on the seller's statement. However, if the seller has engaged a lawyer or notary, the seller may have a separate debit for fees charged by that lawyer or notary.
3. The debits and the credits columns on any single statement of adjustments should always total the same amount. The item shown as “Balance due to complete” is really the total debits minus the total credits, and while shown under the heading “Credits” is just the result of subtracting total credits (excluding “Balance due to Complete”) from total debits. This amount will not appear on the seller's statement.

The seller's statement of adjustments would be as follows:

SELLER'S STATEMENT OF ADJUSTMENTS		
	Debits	Credits
Sale price		\$100,000.00
Real estate commission	\$5,000.00	
Cash proceeds of sale	95,000.00	
	<u>\$100,000.00</u>	<u>\$100,000.00</u>

Notes:

1. The cash proceeds of sale due to the seller on completion (\$95,000.00) is different from the balance due from the buyer on completion (\$90,550.00).
2. The sale price becomes a credit on the seller's statement of adjustments because it is an amount owing to the seller. The commission is a debit because it is an amount owing by the seller. The commission, because it is paid by the seller only, does not appear on the buyer's statement.
3. Students may wonder why the deposit is not reflected on the seller's statement. Remember that the facts stated that the deposit was in the trust account of the buyer's conveyancer. Unless the seller had actually received the deposit, it will not affect the amount of cash they will expect on completion. In other words, if the price is \$100,000 and the buyer pays a deposit of \$10,000 directly to the seller, the seller can only expect a balance of \$90,000; in this case, the \$10,000 would appear as a debit on the seller's statement. However, where the deposit is held by a third party, for example, the real estate brokerage (as is almost always the case), it will not affect the amount of cash the seller expects to receive on completion.

The statements of adjustments contain what can be considered financial information about how the real estate transaction is being financed. Sometimes the statements of adjustments contain accompanying notes about the closing procedure as well as an explanation of the method used to calculate the more complicated adjustments. They may also contain directions as to payment of moneys to the seller, and exclusions of liability for the conveyancer relying on information provided by lenders or public authorities. The statements would not include the notes we have shown, as they are explanations solely for the benefit of the students enrolled in this course.

ITEMS ON STATEMENTS

Some of the more common items which may appear on the statements include the deposit, commission, mortgages, property taxes, legal fees and taxes such as Property Transfer Tax. These are discussed below.

Deposit

A deposit is normally paid by the buyer to the buyer's brokerage when the offer to purchase is made or when the "subjects" are removed. Sometimes a small deposit is paid when the offer is made, and is subsequently increased on subject removal. If the offer is accepted, the deposit is regarded as a sum of money (representing part of the purchase price) which the buyer has paid in advance. On the buyer's statement, the amount of the deposit will be reflected as a credit, thereby reducing the balance due from the buyer to complete. However, the deposit paid to the buyer's brokerage will not appear on the seller's statement. On completion, the deposit would theoretically be paid to the seller by the brokerage holding the deposit as part of the cash proceeds of sale. In practice, the brokerage holding the deposit will apply the amount of the deposit held to the commission owing, but that is because the seller has approved this in the listing agreement (see clause 6A of the Multiple Listing Contract, which can be found at Appendix 11.1) and in the seller's statement of adjustments. If the deposit is paid by the buyer directly to the seller, the amount of the deposit will appear as a credit to the buyer and a debit to the seller, because it will reduce the cash proceeds to be received by the seller upon completion.



"Subject to" clauses, or conditions precedent, were discussed in Chapter 11

Brokerage's Commission

The brokerage's commission, which is normally paid by the seller, would appear as a debit to the seller, thereby reducing the amount of cash proceeds of sale due to the seller on the seller's statement. The buyer's statement would not be affected. Many people confuse the deposit with the commission, because, in fact, the deposit held by the brokerage is used to pay the commission. However, the two items are completely separate.

The deposit is paid by the buyer pursuant to the contract, and is usually held by the brokerage acting for the buyer. That brokerage holds the deposit as stakeholder. That means the brokerage holds the deposit for the benefit of both the seller and the buyer. Separate from any deposit paid is the liability of the seller to pay the brokerage its commission. If the seller and buyer have, for example, entered into a legally enforceable contract and triggered the obligation of the seller to pay commission pursuant to clause 5A(i) of the standard listing contract (which can be found at Appendix 11.1), then the commission has been earned by the brokerage.

However, clause 5B of the standard listing contract provides that the commission is not payable until the completion date. Then, under clause 6A of the standard listing contract, the seller authorizes the brokerage to retain the commission due from the deposit. The brokerage can only do that once the sale has completed. That is because once completion occurs – the seller has transferred title and the buyer has paid the purchase moneys – the deposit is no longer stakeholder money. The buyer has title and therefore no claim to the deposit. The seller has transferred title and is therefore entitled to the purchase moneys. The deposit is now the seller's money and the brokerage can use that money to pay itself commission.

If the commission payable is greater than the deposit held by the brokerage, then the buyer's conveyancer will pay the brokerage an amount equal to the difference between the deposit and the actual commission. The seller will have been debited with the full amount of the commission. In most cases, if the commission is less than the deposit, the brokerage will pay the excess deposit to the buyer's conveyancer, who will then pay the listing brokerage its commission as part of its closing procedures. The contract contemplates the forwarding of excess funds to the conveyancer on an undertaking to hold the funds pursuant to the provisions of the *Real Estate Services Act*. Occasionally, the brokerage will forward the excess to the seller's lawyer directly; if this is the case, the conveyancer will make a note on the seller's statement of adjustments how much the brokerage (rather than the conveyancer) owes the seller, i.e., the excess of deposit over commission.

Mortgages

The relevant considerations for the statements of adjustments are whether the financing is supplied by the seller or by another source and, if a mortgage loan is from another source, whether it involves new financing or the assumption of the seller's existing mortgage. These facts will determine where on the statements the mortgage financing will appear and what the final cash requirements or payment will be.

New Loan by Mortgage Company (or Other Third Party)

A new loan from a mortgage company or third party is a credit to the buyer and has the effect of reducing the amount of the balance due from the buyer to complete because part of the cash is being supplied by someone other than the buyer. No adjustment would be shown on the seller's statement because the seller is not concerned with the buyer's arrangements for financing the purchase price. The seller's primary concern is how much they will be receiving in cash. The seller will receive the same amount whether the buyer pays all of their own cash or whether some of that cash is supplied by a lender. A borrower is normally charged the costs of preparing and registering the mortgage and, where applicable, the lender will deduct these from the loan. One way of making this adjustment would be to enter the amount of the net proceeds

of the loan as a credit on the buyer's statement of adjustments. When this method is used, the conveyancer will show the gross loan amount and the deductions "on the side" for disclosure purposes, but those amounts do not form part of the computations. Another method would be to show the gross amount of the loan as a credit on the buyer's statement with the associated costs shown as debits.

 Mortgage assumptions were introduced in Chapter 15

Returning to our original example, we can add the following facts:

The buyer has arranged a new first mortgage with Crown Bank in the amount of \$50,000. The appraisal and administration costs total \$250.00.

The buyer's statement of adjustments will now appear as follows:

BUYER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Purchase price	\$100,000.00	
Deposit paid		\$10,000.00
Gross mortgage proceeds from Crown Bank		50,000.00
Appraisal and administration fees for mortgage	250.00	
Conveyancing fees	550.00	
Balance due to complete	<u>\$100,800.00</u>	<u>40,800.00</u>
		<u>\$100,800.00</u>

Notes:

1. Alternatively, the net mortgage proceeds (\$49,750) could appear as a simple credit, but in that case the conveyancer would indicate on the statement the gross proceeds and the items that were being deducted to arrive at the net advance.
2. There would be no change to the seller's statement because the source of the buyer's cash (i.e., from their own pocket or from a bank) will not affect the cash proceeds of sale due to the seller.

Interest Adjustment

There may also be an interest adjustment in the event a new mortgage is arranged. This may be necessary because the mortgage funds were given to the buyer on June 14, for example, but the first payment is not due until August 1. That is because if the buyer made a regular mortgage payment on July 1 (and a borrower is always paying mortgage interest in arrears) the buyer would be paying too much, only having had the money from June 14 to July 1. There are two ways the buyer could pay the interest adjustment for the interest accruing from June 14 to July 1. The lender could have the buyer pay it on July 1. Or, the lender could deduct it from the mortgage advance with no payment on July 1, and the first regular mortgage payment being made on August 1. In the latter case, this interest adjustment would appear as a debit on the buyer's statement of adjustments, reducing the gross mortgage proceeds and therefore increasing the balance due to complete. If the mortgage advance date is early in the month, the adjustment can be almost as much as a regular mortgage payment. All buyers should take this into account to determine the balance due on completion, but in the case of first time, "high ratio" buyers, this may be problematic if they are working with tight budget constraints and are not expecting this up front deduction.



Interest adjustments were discussed in Chapter 17

New Loan by Seller

Whether a seller take-back mortgage or an agreement for sale, a new loan by the seller is a credit to the buyer as it reduces the amount of cash due to complete, just as a new mortgage from a bank would. However, it is also a debit to the seller because it reduces the amount of cash proceeds of sale, since the seller has agreed to accept the amount of the loan by way of future monthly payments, instead of all cash upon the completion. We can return to our original example and alter the facts as follows:

Instead of arranging a first mortgage with Crown Bank, the buyer and seller agreed that the seller would take back a first mortgage in the amount of \$50,000.

The buyer's and seller's statements of adjustments will now appear as follows:

BUYER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Purchase price	\$100,000.00	
Deposit paid		\$10,000.00
Mortgage taken back by seller		50,000.00
Conveyancing fees	550.00	
Balance due to complete		40,550.00
	<u>\$100,550.00</u>	<u>\$100,550.00</u>

SELLER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Sale price		\$100,000.00
First mortgage taken back by seller	\$50,000.00	
Real estate commission	5,000.00	
Cash proceeds of sale	45,000.00	
	<u>\$100,000.00</u>	<u>\$100,000.00</u>

Notes:

- Because the seller has agreed to accept a mortgage loan as part of the purchase price, the amount of the mortgage loan is a debit to the seller. This is because the mortgage loan reduces the amount the seller will receive as cash proceeds of sale. An agreement for sale would be treated in the same way: it would appear as a debit on the seller's statement as an amount reducing the cash proceeds of sale to the seller.

Existing Mortgage Assumed by Buyer

Where there is an existing mortgage on title before the sale and that mortgage will be assumed by the buyer and remain on title, the amount of cash due from the buyer as well as the amount of cash due to the seller is reduced.

The Real Property Section of the BC Branch of the Canadian Bar Association recommends that where a mortgage is assumed by a buyer, the balance of the mortgage to be assumed should be adjusted as at the completion date rather than the adjustment date. That is because the amount assumed under the mortgage is really part of the payment of the purchase price required to be paid on the completion date. The buyer should assume responsibility for the mortgage payments commencing on the completion date. This recommendation should be kept in mind when the completion date is not the same date as the adjustment date. For the purposes of the examples in this chapter, assume that the adjustment and completion dates are the same date.

We can again alter the facts of the original example as follows:

Because there is an existing first mortgage registered against the title, it is not necessary for the buyer to arrange any outside financing. Instead, the buyer will assume the existing mortgage loan in the amount of \$47,000.

The buyer's and seller's statements will now appear as follows:

BUYER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Purchase price	\$100,000.00	
Deposit paid		\$10,000.00
Assumption of first mortgage		47,000.00
Conveyancing fees	550.00	
Balance due to complete		43,550.00
	<u>\$100,550.00</u>	<u>\$100,550.00</u>

SELLER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Sale price		\$100,000.00
Assumption of first mortgage	\$47,000.00	
Real estate commission	5,000.00	
Cash proceeds of sale	48,000.00	
	<u>\$100,000.00</u>	<u>\$100,000.00</u>

Notes:

1. Because the buyer is assuming the mortgage loan rather than paying the whole price in cash, the amount of the mortgage loan is a credit to the buyer and reduces the amount of cash required to complete.
2. Because the seller's obligation to pay the mortgage loan has been transferred to the buyer, the amount of the mortgage loan must be debited from the amount due to the seller on the seller's statement.

Existing Mortgage Paid Off or Discharged

An existing mortgage will normally be discharged by the seller out of the sale proceeds. This does not affect the amount due from the buyer. The buyer is not concerned with what the seller chooses to do with their money, as long as the title is cleared. The total cost of the discharge, being principal, accrued interest and any costs, including legal fees, of the lender, shows as a debit to the seller and reduces the cash proceeds of sale due to the seller on the seller's statement.

The original example now has the following additional facts:

While the buyer is assuming the first mortgage, there is an existing second mortgage in the amount of \$22,000 which will be discharged by the seller. The fees payable to the lender to obtain the discharge are \$130.00.

The buyer's and seller's statements would appear as follows:

BUYER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Purchase price	\$100,000.00	
Deposit paid		\$10,000.00
Assumption of first mortgage		47,000.00
Conveyancing fees	550.00	
Balance due to complete		43,550.00
	<u>\$100,550.00</u>	<u>\$100,550.00</u>

SELLER'S STATEMENT OF ADJUSTMENTS

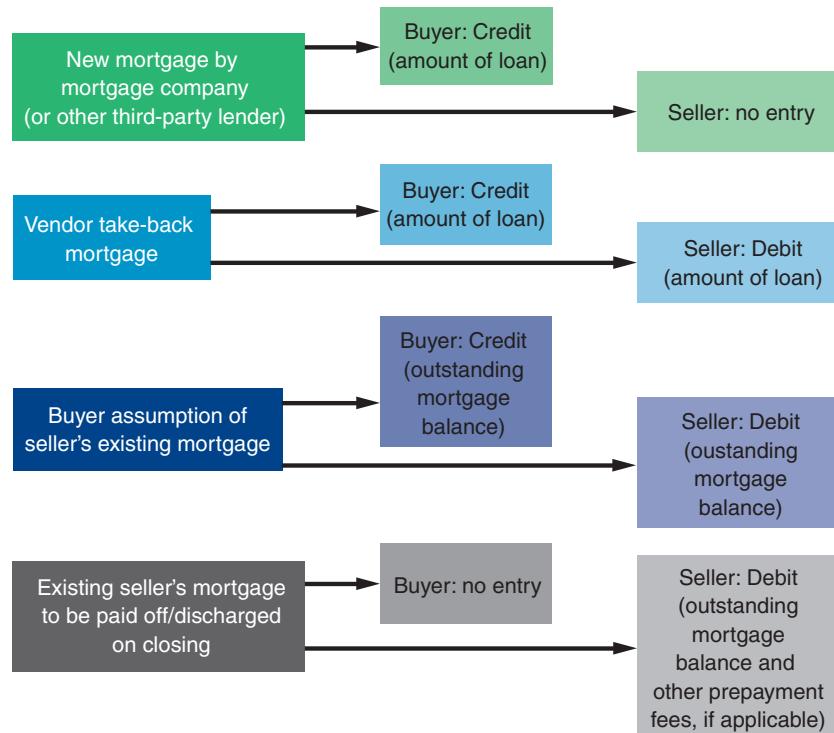
	Debits	Credits
Sale price		\$100,000.00
Assumption of first mortgage	\$47,000.00	
Real estate commission	5,000.00	
Discharge of second mortgage	22,000.00	
Lender's fees for discharge	130.00	
Cash proceeds of sale	25,870.00	
	<u>\$100,000.00</u>	<u>\$100,000.00</u>

Notes:

1. The fact that the seller will be discharging a mortgage from the title will not affect the balance due to complete from the buyer.
2. Because it is the responsibility of the seller to provide title as agreed in the contract of purchase and sale, the seller must pay any fees, including legal fees, and any disbursements involved in clearing any extra charges (mortgages, judgments, etc.) from title. Such fees will appear as debits on the seller's statement, reducing the seller's cash proceeds of sale. Those fees may be payable to the lender or to the lender's lawyer or notary.

The following figure summarizes the treatment of the various sources of financing on statements of adjustments.

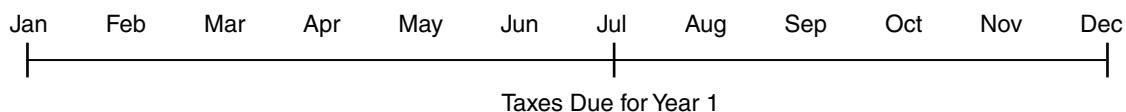
FIGURE 24.3: Treatment of Financing on Statements of Adjustments



Taxes

The amount of the taxes for the year must be apportioned between the parties as of the adjustment date. Remember that property taxes are paid for a calendar year even though they are usually due on July 1. Refer to Figure 24.4. If a property owner pays the taxes on July 1, the property owner is paying for the period January 1 to December 31.

FIGURE 24.4: Taxes Due for Year 1



Note: A property owner usually pays the taxes for the entire year part way through the year. In the example above the property owner would be paying the taxes 6 months in arrears and 6 months in advance.

In Vancouver and in a few other municipalities, taxes are billed in two instalments; however, they still represent the calendar year's taxes. Because this further complicates calculation, it is only necessary, for the purposes of this course, to calculate tax adjustments based on a July 1 payment date.

Taxes Previously Paid by Seller. In this case, the buyer should reimburse the seller for that portion of the year from and including the adjustment date. (Note clause 6 of the contract that provides that “the Buyer will assume and pay all taxes as of the adjustment date). The buyer’s share will be a debit to the buyer and will increase the amount of cash the buyer will owe. This same amount will also be a credit to the seller and will increase the amount due to them; thus, the same amount will appear on both statements. If the adjustment date was September 1 and the seller had paid the taxes for the year, then the seller would receive a “refund” from the buyer for the taxes from September 1 to December 31.

Returning to our previous example, we add the following facts:

The seller has paid the annual taxes for the property in the amount of \$1,650.00. The adjustment date is October 6.

The statements will appear as follows:

BUYER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Purchase price	\$100,000.00	
Deposit paid		\$10,000.00
Assumption of first mortgage		47,000.00
Conveyancing fees	550.00	
Buyer's share of taxes (Oct. 6 to Dec. 31 – 87/365 × \$1,650)	393.29	
Balance due to complete	<u>\$100,943.29</u>	<u>43,943.29</u>
		<u>\$100,943.29</u>

SELLER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Sale price		\$100,000.00
Assumption of first mortgage	\$47,000.00	
Real estate commission	5,000.00	
Discharge of second mortgage	22,000.00	
Legal fees for discharge	130.00	
Buyer's share of taxes (Oct. 6 to Dec. 31 – 87/365 × \$1,650)		393.29
Cash proceeds of sale	<u>26,263.29</u>	<u>\$100,393.29</u>
		<u>\$100,393.29</u>

Notes:

1. The taxes are calculated on a per diem (daily) basis. The contract provides for the buyer to accept responsibility for the day of adjustment. Accordingly, the buyer must pay for 26 days in October, 30 in November and 31 in December. In a leap year, the conveyancer will use 366 days per year.
2. Since the seller has already paid the taxes from January 1 to December 31, the seller must be credited with the buyer's share from October 6 to December 31. Similarly, the buyer must be debited for that amount because the seller has paid for the buyer's share.

Taxes to be Paid in the Future by Buyer. In this case, the same amount will appear on both statements. The seller's share from January 1 to the adjustment date will be a debit on the seller's statement and will reduce the cash proceeds due to them. The same amount will be credited to the buyer and will thereby reduce the amount required to complete due from the buyer. In this way, the seller pays the buyer, in advance of the tax payment, for the portion of the year prior to the adjustment date. If the amount of taxes is not yet known, it must be estimated, either by reference to the previous year's taxes or (if the assessments and tax rates are known) by a calculation.

The facts of our previous example are altered as follows:

The taxes are not yet due, but last year's taxes were \$1,276 and it is expected that they will increase by 20%. The adjustment date is March 17.

The calculation of property taxes was discussed in Chapter 19

The statements will read as follows:

BUYER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Purchase price	\$100,000.00	
Deposit paid		\$10,000.00
Assumption of first mortgage		47,000.00
Conveyancing fees	550.00	
Seller's share of estimated taxes (Jan. 1 to Mar. 16 – 75/365 × \$1,531.20)		314.63
(\$1,276 + 20%)		
Balance due to complete	<u>\$100,550.00</u>	<u>43,235.37</u>
		<u>\$100,550.00</u>

SELLER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Sale price		\$100,000.00
Assumption of first mortgage	\$ 47,000.00	
Real estate commission	5,000.00	
Discharge of second mortgage	22,000.00	
Legal fees for discharge	130.00	
Seller's share of estimated taxes (Jan. 1 to Mar. 16 – 75/365 × \$1,531.20)	314.63	
(\$1,276 + 20%)		
Cash proceeds of sale	<u>25,555.37</u>	<u>\$100,000.00</u>
		<u>\$100,000.00</u>

Notes:

1. The taxes are estimated by adding 20% to last year's figure.
2. Because the buyer is responsible for the date of adjustment, the seller must pay for 31 days in January, 28 days in February, and 16 days in March.
3. When the actual tax bill is received, the parties may "readjust", i.e., if the taxes are higher, the seller will owe more; if they are lower, the buyer must pay some money back. The conveyance will have a note on the adjustments stating that this adjustment will be made directly between the seller and the buyer.

Taxes Due But Not Yet Paid. In these circumstances, the taxes will usually be paid out of the proceeds at the time of completion by the conveyancer.

There are two ways to make the adjustments in this situation. (See note 1 of seller's statement of adjustments below for the second method). The method which seems the most straightforward is first to charge the whole year's taxes and any penalty to the seller. This amount would be a debit on the seller's statement. Once the taxes have been charged against the seller and notionally "paid", the adjustment proceeds exactly as if the taxes had actually been paid previously by the seller. The portion of taxes for the period from the adjustment date on is a debit to the buyer, and a credit to the seller. Note, however, that the seller is responsible for the full amount of any penalty; it is not adjusted because only the seller was liable to pay and failed to do so in a timely manner. The conveyancer would then proceed to pay the outstanding taxes plus penalty.

Our previous example can now be altered as follows:

The taxes in the amount of \$1,651 are due but have not been paid. A penalty of \$65.00 is owing. The adjustment date is August 13.

BUYER'S STATEMENT OF ADJUSTMENTS		
	Debits	Credits
Purchase price	\$100,000.00	
Deposit paid		\$10,000.00
Assumption of first mortgage		47,000.00
Conveyancing fees	550.00	
Buyer's share of taxes (Aug. 13 to Dec. 31 – 141/365 × \$1,651)	637.78	
Balance due to complete		44,187.78
	<u>\$101,187.78</u>	<u>\$101,187.78</u>

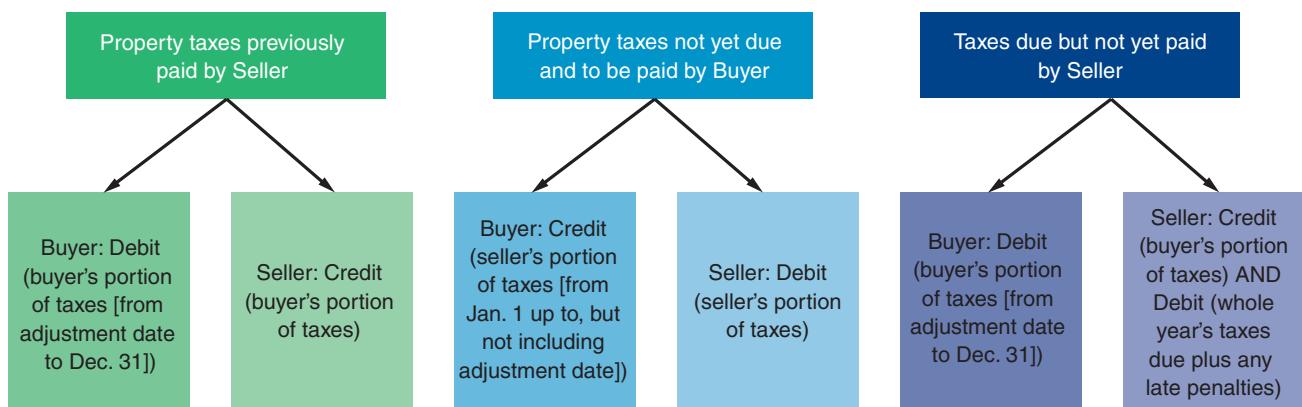
SELLER'S STATEMENT OF ADJUSTMENTS		
	Debits	Credits
Sale price		\$100,000.00
Assumption of first mortgage	\$47,000.00	
Real estate commission	5,000.00	
Discharge of second mortgage	22,000.00	
Legal fees for discharge	130.00	
Annual taxes and penalty (\$1651 + \$65)	1,716.00	
Buyer's share of taxes (Aug. 13 to Dec. 31 – 141/365 × \$1,651)		637.78
Cash proceeds of sale	<u>24,791.78</u>	<u>\$100,637.78</u>
		<u>\$100,637.78</u>

Notes:

- It is also acceptable to make this adjustment by charging the seller with the penalty plus the taxes from January 1 to August 12, and charging the buyer for the taxes from August 13 to December 31. The seller's statement would record a single debit and the buyer's statement would also record a single debit.

The following figure summarizes the treatment of property taxes on statements of adjustments.

FIGURE 24.5: Treatment of Property Taxes on Statements of Adjustments



Home Owner Grants

The *Home Owner Grant Act* (the “Act”) establishes a basic home owner grant of \$570 for eligible property owners, subject to amendment. For seniors, those with disabilities, and recipients of war veteran allowances, the amount of the grant is \$845. The Act also provides a formula for relief from school taxes in certain circumstances and is discussed further in Chapter 19.

Where the tax due date falls before the adjustment date, the actual taxes paid will be the figure adjusted. Where the tax due date falls after the adjustment date, the usual practice for adjusting home owner grants is set out below:

1. Where either the seller or buyer or both are not eligible for the grant, the gross taxes should be adjusted.
2. Where both are eligible for the basic grant, but one or both are not eligible for the seniors/disabilities grant, taxes net of the basic grant should be adjusted.
3. Where both are eligible for the seniors/disabilities grant, the taxes net of the seniors/disabilities grant should be adjusted.

Rent

Where the property being sold is revenue property, it will be necessary to adjust the rent. Rent is normally paid on the first day of a month, in advance, unlike interest under a mortgage, which is paid in arrears. Assuming that the seller has previously received the rent for the whole of the month in which the adjustment date falls, the number of days for which the buyer is entitled to the rent is calculated from and including the adjustment date through to the end of the month, and that share of the rent is credited to the buyer and debited from the seller.

If a security deposit has been paid with respect to a residential tenancy, the obligation to repay it with accrued interest, by law, will belong to the new owner, even if the owner did not receive the security deposit from the previous owner. It is therefore necessary to ensure that any security deposits are adjusted between the seller and buyer. The amount of any security deposits, plus accrued interest up to, but excluding, the adjustment date, will be credited to the buyer and debited from the seller. Since the interest rate on security deposits taken under the *Residential Tenancy Act* varies from year to year, the conveyancer may have some detailed calculations to perform.

Property Transfer Tax

The *Property Transfer Tax Act* requires that a land transfer tax be paid to the provincial government by the buyer or transferee of property upon application for registration of the transaction at the Land Title Office. This tax is shown as a debit on the buyer's statement of adjustments and does not appear on the seller's statement. The tax is calculated as 1% on the first \$200,000; 2% on the portion of the fair market value greater than \$200,000 and up to and including \$2,000,000; 3% on the portion of the fair market value greater than \$2,000,000; and if the property is residential, a further 2% on the portion of the fair market value greater than \$3,000,000 (effective February 21, 2018). A property transfer tax return showing the calculation of the tax payable must accompany each application to register a taxable transaction at the Land Title Office (even if an exemption is being claimed).

The *Property Transfer Tax Act* outlines two primary exemptions that are available for Canadian citizens or permanent residents:

1. the First Time Home Buyers' Program; and
2. the Newly Built Home Exemption Program.

For a full discussion of the Property Transfer Tax (which includes a discussion on the First Time Home Buyer's Program and Newly Built Home Exemption Program), see Chapter 19.

Foreign Buyers' Tax

Effective February 21, 2018, the Foreign Buyers' Tax increased from 15% to 20%. This tax applies in the Greater Vancouver Regional District, Capital Regional District, Fraser Valley, Central Okanagan, and Nanaimo Regional District. The Foreign Buyers' Tax applies in addition to the general property transfer tax discussed previously. Both the general and foreign buyers' transfer taxes are payable on application for registration of the transaction with the Land Title Office. Foreign entities, in the context of the additional property transfer tax, are transferees that are foreign nationals (as defined in section 2(1) of the *Immigration and Refugee Protection Act*), foreign corporations, and taxable trustees (either the trustee or beneficiary is a foreign national or foreign corporation).

Real estate professionals should advise their clients to seek independent professional advice to determine whether any of the described exemptions applies to their transaction and if their transaction will be subject to the additional foreign buyers' tax.

Returning to our previous example, we add the following facts:

As the buyer is not a first time home buyer and is not otherwise exempted, they will be responsible for paying the property transfer tax upon the registration of the transfer. As well, the buyer is NOT a foreign entity for property transfer tax purposes.

The buyer's statement of adjustments would be as follows:

BUYER'S STATEMENT OF ADJUSTMENTS		
	Debits	Credits
Purchase price	\$100,000.00	
Deposit paid		\$10,000.00
Assumption of first mortgage		47,000.00
Conveyancing fees	550.00	
Buyer's share of taxes (Aug. 13 to Dec. 31 – 141/365 × \$1,651)	637.78	
Property Transfer Tax (\$100,000 × 0.01)	1,000.00	
Balance due to complete	<u>\$102,187.78</u>	<u>45,187.78</u>
		<u>\$102,187.78</u>

Notes:

- Because the purchase price of the property is under \$200,000, the calculation of the property transfer tax consists of only one step. If the price were over \$200,000 the calculation would involve more steps. For example, for a purchase price of \$300,000, the property transfer tax would be \$4,000, calculated as follows:
 - Step 1: \$300,000 – \$200,000 = \$100,000
 - Step 2: 1% of the first \$200,000 = \$2,000 ($200,000 \times 0.01$)
 - Step 3: 2% of the remaining \$100,000 (calculated in Step 1) = \$2,000 ($100,000 \times 0.02$)
 - Step 4: \$2,000 (Step 2) + \$2,000 (Step 3) = \$4,000

Conveyancing and Legal Fees

The seller is responsible for clearing the title of any encumbrances not set out in the contract: any fees for this are the responsibility of the seller. The practice in British Columbia is that the buyer is responsible for preparing the documents for the transfer of title from the seller and therefore, the fees for the transfer are borne by the buyer. Costs of arranging financing would normally be charged to the buyer, unless the offer specifies otherwise. The amount of the conveyancing fees can vary with the circumstances and the value of the property being transferred. The fees that are to be paid by the seller will be shown as a debit to the seller, thereby reducing the amount of cash due to them. The fees to be paid by the buyer will be shown as a debit to the buyer, thereby increasing the amount of the balance due to complete owing from the buyer.

Items Excluded from the Statements

Certain payments are usually settled between the parties outside the statements. For instance, furnace oil left in the storage tank is usually paid for by the buyer separately, according to the quantity measured on a date agreed to between the parties. As the statements are normally drawn up and settled in advance of this date, the exact amount would not be known earlier.



ALERT

A seller's listing agent (brokerage) and salesperson (representative) were held by the BC Supreme Court to be 15% liable to the seller for economic loss incurred by them as a result of their negligence. The listing licensee failed to alert the seller to a mortgage fraud scheme perpetrated by the buyers. The fraud scheme was apparent in the statements of adjustments which had been reviewed by the listing licensee and which showed a cash balance payable to the buyers! In addition, the statements did not concur with the terms of the contract of purchase and sale. The seller had agreed to take back a first mortgage of \$56,000 but received only a second mortgage for this amount. There was a first mortgage granted by the buyers for \$56,000. The sale price of the property was only \$70,000.

Source: [1979] 4 WWR 577 (BCSC).

PREPARING STATEMENTS OF ADJUSTMENTS

The following cases are provided as further examples of how adjustments are calculated and recorded.

Case 1

Ms. Chan has contracted to sell her home to Mr. Singh for \$100,000.00. The buyer has paid a deposit of \$2,000.00 to his brokerage, and he will be providing the balance of the purchase price from his own resources. Conveyancing fees are \$630.00. The completion date is September 12 and possession is to be given on September 19. Taxes were paid in the net amount of \$1,200.00 on July 3, and a 5% commission is payable. The possession date is the same as the date of adjustment. No property transfer tax exemptions apply to this transaction and Mr. Singh is NOT a foreign entity for property transfer tax purposes.

CASE 1 BUYER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Purchase price	\$100,000.00	
Tax adjustment – Buyer's share of taxes (Sept. 19 to Dec. 31 – 104/365 × \$1,200.00)	341.92	
Conveyancing fees	630.00	
Property Transfer Tax (\$100,000 × 0.01)	1,000.00	
Deposit paid		\$2,000.00
Balance due to complete		<u>99,971.92</u>
	<u>\$101,971.92</u>	<u>\$101,971.92</u>

CASE 1 SELLER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Sale price		\$100,000.00
Tax adjustment – Buyer's share of taxes (Sept. 19 to Dec. 31 – 104/365 × \$1,200.00)		341.92
Real estate commission	\$5,000.00	
Cash proceeds of sale	<u>95,341.92</u>	
	<u>\$100,341.92</u>	<u>\$100,341.92</u>

Case 2

Consider the same transaction between Ms. Chan and Mr. Singh. This time, the buyer does not have sufficient cash resources and the seller has neglected to pay her taxes. Accordingly, Mr. Singh has arranged a mortgage loan from the Crown Life Company in the sum of \$70,000.00. The lender's costs of the mortgage (including registration fee) are \$380.00 and will be paid by Mr. Singh. The conveyancer will pay the outstanding taxes

(\$1,200.00) plus a penalty (\$150.00) for late payment. As well, Mr. Singh is NOT a foreign entity for property transfer tax purposes.

CASE 2
BUYER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Purchase price	\$100,000.00	
Tax adjustment – Buyer's share of taxes (Sept. 19 to Dec. 31 – 104/365 × \$1,200.00)	341.92	
Conveyancing fees	630.00	
Cost of new mortgage	380.00	
Property Transfer Tax (\$100,000 × 0.01)	1,000.00	
Deposit paid		\$2,000.00
Mortgage proceeds		70,000.00
Balance due to complete		30,351.92
	<u>\$102,351.92</u>	<u>\$102,351.92</u>

CASE 2
SELLER'S STATEMENT OF ADJUSTMENTS

	Debits	Credits
Sale price		\$100,000.00
Tax adjustment – Buyer's share of taxes (Sept. 19 to Dec. 31 – 104/365 × \$1,200.00)		341.92
Real estate commission	\$5,000.00	
Unpaid taxes and penalty	1,350.00	
Cash proceeds of sale	93,991.92	
	<u>\$100,341.92</u>	<u>\$100,341.92</u>

In preparing a statement of adjustments, always set out the information provided in the description of the case, accounting for each item separately. Then decide whether the item will:

- i. affect the amount of cash due *from* the buyer – in which case the item must appear on the buyer's statement of adjustments;
- ii. affect the amount of cash due *to* the seller – in which case the item must appear on the seller's statement of adjustments; or
- iii. affect both (i) and (ii) – in which case the item must appear on both statements, but on opposite sides (i.e., if an item is to appear on both parties' statements, and the item is a debit on the buyer's statement, the item will appear as a credit on the seller's statement).

Case 1 deals with the simplest of real estate transactions - an all-cash deal. Case 2 shows how to account for new mortgage loans from third parties and the payment of overdue taxes for which the seller is liable.

CONCLUSION

This chapter dealt with two important and related topics: the closing procedures involved in a transfer of real estate in British Columbia, and the use of statements of adjustments as part of the closing procedures. As mentioned earlier, while the bulk of a licensee's involvement will be complete by the time the contract of purchase and sale is entered into and the subject clauses are removed, a number of things must happen for the title to transfer from the seller to the buyer. The majority of these tasks will be performed by the conveyancer, a lawyer or notary public (usually) hired by the buyer to complete the transaction. The conveyancer will rely on the contract of purchase or sale (and any addendums), among other things, to setup the closing, which makes it extremely important for licensees to be competent when drafting contractual terms and explaining them to their clients. While licensees do not play a direct role in the conveyance,

their clients will often ask them a variety of questions related to the conveyance, from logistical questions to financial or tax questions. Having a familiarity with the conveyancing process will allow the licensee to direct the client to the appropriate professional. The administrative person reviewing your contract in your brokerage, the paralegal in the conveyancer's office, and perhaps even the lawyer or notary responsible for the transfer of title, may not be as invested in the transaction as you, as a licensee, are. The contract represents your professionalism; you become known by the contracts you write - put a good face on it!

In a variety of places within this chapter, references are made to earlier chapters in this manual. The hope is that you will see how the earlier chapters relate and converge in the closing procedures leading up to the completion date. You should also see how crucial an understanding of the earlier topics is in preparing the contract of purchase and sale.

Statement of adjustments are important closing documents which inform the buyer how much they will be required to provide to the conveyancer to complete the sale (the balance due to complete) and the seller how much they will be receiving from the conveyancer once the deal completes (the cash proceeds of sale). In the excitement of document signing, buyers and sellers should be reminded to check the math. Mistakes are made, even by those who prepare statements regularly. Much of this chapter was spent working through example fact patterns to create the necessary statements of adjustments. It is important to note that there is not only one way of preparing statements of adjustments. This chapter used a side-by-side approach to prepare the statements, which is common in many conveyancing offices. However, a number of conveyancing offices use a top-to-bottom approach, whereby the debits are shown on top of the credits, rather than beside them. Appendix 24.2 demonstrates how the statements of adjustments would look for Case 2 if they were prepared using the top-to-bottom approach. If you see such statements, do not be alarmed, as the principles used to prepare them are exactly the same as in the side-by-side approach.

APPENDIX 24.1

Building Location Survey

BC Land Surveyor's Building Location Certificate On:

*Lot 1, Section 2, Range 3 East, Victoria District, Plan 12345.
(P.I.D. No. 123-456-789)*

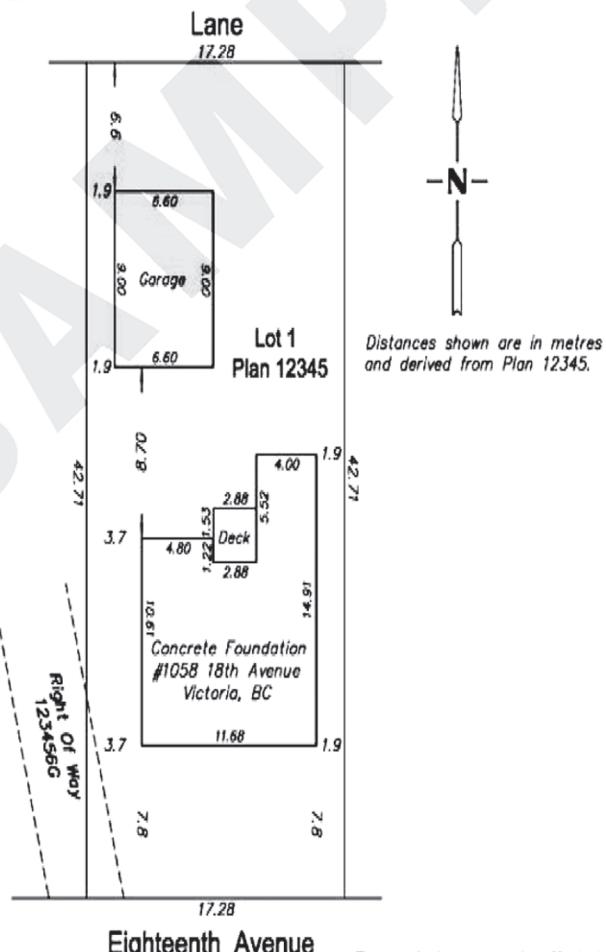
*This document was prepared for mortgage and municipal purposes
and is for the exclusive use of our client, John Smith.*

*This document shows the relative location of the surveyed structures
and features with respect to the boundaries of the parcel described above.
This document shall not be used to define property lines or property corners.*

*The signatory accepts no responsibility or liability for any damages that may
be suffered by a third party as a result of any decisions made, or actions
taken based on this document.*



Scale = 1:250



Certified Correct this _____ day of _____, 2008.

The subject property is affected by
the following registered documents:
123456G, EH456789, EV1928J7.

B.C.L.S. (Not valid unless originally signed & sealed)

© ALL RIGHTS RESERVED

ABCLS Land Surveying Inc.
#301-2400 Bevan Avenue
Sidney, BC V8L 1W7
Telephone (250) 655-7222
File: ABCLS CERT

APPENDIX 24.2

Statement of Adjustments

CASE 2
PURCHASER'S STATEMENT OF ADJUSTMENTS

DEBITS CHARGED AGAINST YOU:

Purchase Price	\$100,000.00
Tax adjustment – Purchaser's share of taxes (Sept. 19 to Dec. 31 – 104/365 × \$1,200.00)	341.92
Conveyancing fees	630.00
Cost of new mortgage	380.00
Property Transfer Tax (\$100,000 × 0.01)	1,000.00
	TOTAL DEBITS:
	\$102,351.92

CREDITS IN YOUR FAVOUR:

Deposit paid	\$2,000.00
Mortgage proceeds	70,000.00
	TOTAL CREDITS:
	\$72,000.00

AMOUNT REQUIRED FROM YOU TO COMPLETE TRANSACTION:

Payable to:	\$30,351.92
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CASE 2
VENDOR'S STATEMENT OF ADJUSTMENTS

CREDITS IN YOUR FAVOUR:

Sale Price	\$100,000.00
Tax adjustment – Purchaser's share of taxes (Sept. 19 to Dec. 31 – 104/365 × \$1,200.00)	341.92
	TOTAL CREDITS:
	\$100,341.92

DEBITS CHARGED AGAINST YOU:

Real estate commission	\$5,000.00
Unpaid taxes and penalty	1,350.00
	TOTAL DEBITS:
	\$6,350.00

FUNDS DUE TO YOU ON COMPLETION OF TRANSACTION:	\$93,991.92
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