



# Assignments of Agreements of Purchase and Sale - Resale

Dec 2013

- **Assignee/Buyer is not buying a property from Assignor – Assignee is buying the “right” to acquire property from a 3<sup>rd</sup> party**
- **Situations:**
  - **Assignor entered into an Agreement to buy a house – has a change of heart/circumstances**
  - **Assignee lost house in bidding war to Assignor and makes Assignor a better offer**

- **Assignor assigns its interest and rights in the Original Agreement with the original seller**
- **Assignor assigns its interest in the original “deposit”**
- **Assignee “assumes” and agrees to perform all of the Assignor’s obligations under the Original Agreement**
- **Assignee steps into the shoes of the Assignor – usually pays all adjustments at closing (property taxes)**

- **Under common law, if a contract does not prohibit assignment (and it is capable of being assigned, eg a well known band couldn't assign its contract to perform to another band), then the contract is assignable, without the other party's consent.**
- **The Standard OREA Agreement of P&S does not prohibit assignment, so it may be assigned without the Seller's consent.**
- **(Builder Agreements are usually NOT assignable without Builder's consent)**

- **OREA Form of Assignment Agreement – Form 145**
- **Customized (lawyer drafted) Assignment Agreement**
- **Normal OREA form of Agreement of Purchase and Sale with a detailed “Schedule A” explaining the true nature of the transaction (ie an Assignment vs a Purchase)**
  - **Assignee should get a copy of the underlying (original) Agreement of P&S and it should be attached as a Schedule**
  - **Assignee may want to take time to review the original Agreement or lawyer’s review**

- **Original Agreement is in good standing and Assignor is not in breach of any of its obligations to the Original Seller**
- **Assignor has the right to assign the Original Agreement**

- **Risks for Assignor**
  - Offer/Agreement may not assignable without Original Seller's consent (have to review the Original Agreement of P&S)
  - Original Seller may NOT cooperate
  - If Assignee does not close, generally Assignor is still obligated to complete the purchase
- **Risks for Assignee**
  - Underlying Agreement may not be assignable (have to review the Original Agreement of P&S)
  - Original Seller won't co-operate – all documents addressed to Assignor, Original Seller will only work with Assignor's lawyer. (Assignor can "direct" title into Assignee's name at closing).

- **The Amount to be paid to the Assignor usually equals**
  - Price paid to Assignor
  - Minus the original purchase price to be paid to the Original Seller
  - Plus the deposits paid by the Assignor to the Original Seller
- **Assignor may want to receive an amount equal to the deposit it paid to the Original Seller – since the Assignee now gets the benefit of that deposit – this is more typical in condo assignments, where deposits can be 20% of the purchase price, with a long closing date**
- **Balance of Purchase Price to be paid to Assignor should be paid at final closing, when title transfers to the Assignee from the Seller**
- **The Assignor’s “profit” likely subject to HST**



- **Make sure that the Purchase Price INCLUDES HST**
- **Assignee to indemnify Assignor from any losses or costs if Assignee fails to close with the Seller (probably of limited value)**

- **Assignor entered Agreement of P&S to buy a house in Toronto**
- **Assignor was non-resident of Canada – emotional impulse purchase on trip home**
- **Assignor had a change of heart and decided not to return to Canada at that time**
- **Assignee lost bid for house – agreed to assume the Original Agreement at same price. Assignor made no profit. Assignee agreed to pay its own agent (who also worked at the Listing Brokerage)**
- **When notified, the Seller became furious and refused to co-operate. When her lawyer finally agreed that the Buyer could assign without her consent – she fired her lawyer!**
- **New lawyer co-operated right away – BUT refused to pay the balance of commission to the listing brokerage. Result – Agents did not receive their full commission.**

- Assignee hereby purchases and assumes, and Assignor hereby assigns, sells, transfers and conveys all of Assignor's right, title and interest in and to an Agreement of Purchase and Sale between Assignor and **[Seller]** (the "Original Seller") dated on or about **[Date]** (the "Original Purchase Agreement"), together with the Assignor's right, title and interest, in and to any deposits made by the Assignor thereunder (collectively the "Deposits") to the Original Seller.
- Assignee agrees to pay all of the adjustments on closing pursuant to the Original Purchase Agreement.
- This Agreement of Purchase and Sale is conditional upon Assignor delivering to the Assignee or its representative, a true copy of the Original Purchase Agreement, together with any amendments thereto and Waivers, within three (3) business days of execution by the Assignor. Assignee shall have three (3) business days to review the Original Purchase Agreement and be satisfied with the terms and conditions thereof, in his sole and absolute discretion. Unless the Assignee gives notice in writing delivered to the Assignor not later than 5:00 p.m. on ... .. that this condition is fulfilled, this Agreement of Purchase and Sale shall be null and void and the deposit shall be returned to the Assignee in full without deduction. This condition is included for the benefit of the Assignee and may be waived at the Assignee's sole option by notice in writing to the Assignor within the time period stated herein.

- At the time of closing, Assignee hereby covenants and agrees to perform Assignor's obligations and complete the purchase of the Property contemplated in the Original Purchase Agreement as if it were the original buyer thereunder, and hereby indemnifies and saves harmless, except as otherwise set forth herein, the Assignor from any damages, losses or claims it may suffer as a result of Assignee's breach of its obligations hereunder or under the Original Purchase Agreement.
- On the closing date, the Assignee shall pay the balance of the Purchase Price hereunder to the Assignor plus (i) all deposits paid by the Assignor to the original Seller, less (ii) the purchase price under the Original Purchase Agreement, and less (iii) all deposits paid by the Assignee to the Assignor hereunder.

# COHEN

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