

A FOOT IN THE DOOR

**A CLASSROOM RESOURCE ON REAL ESTATE
AND HOUSING LAW IN ONTARIO**



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ACKNOWLEDGEMENTS

This resource is a collaboration between the Ontario Justice Education Network (OJEN) and Lawyers' Professional Indemnity Company (LAWPRO®). This study will introduce the basic concepts of real estate and housing law in Ontario. We gratefully acknowledge the contributions of the following people in preparing this guide: Ray Leclair, Andrea Sobko, Benjamin Hutchinson, Mahwash Khan, and Michele Valentini.

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FACILITATOR'S GUIDE

ABOUT LAWPRO

LAWPRO is owned by the Law Society of Upper Canada and is licensed to provide professional liability insurance and title insurance in numerous jurisdictions across Canada. Through its malpractice insurance program, LAWPRO insures over 25,000 lawyers in private practice in Ontario as well as providing them with risk and practice management information under the practicePRO® banner. LAWPRO's TitlePLUS® title insurance program is available to thousands of Canadian lawyers and Quebec notaries to better meet their clients' needs for professional legal advice and superior protection for their real estate transactions.

ABOUT THE ONTARIO JUSTICE EDUCATION NETWORK (OJEN)

The Ontario Justice Education Network (OJEN) is a charitable organization dedicated to promoting public understanding, education and dialogue to support a responsive and inclusive justice system. OJEN's programs bring together leading justice and education sector representatives to collaborate on initiatives designed to foster understanding of the justice system. As a result of the efforts of hundreds of volunteers including judges, justices of the peace, lawyers, court staff, educators and community representatives, OJEN is able to facilitate public legal education opportunities for youth throughout Ontario. All of OJEN's classroom resources are available for free in French and English. To find out more about OJEN's programs and resources, visit www.ojen.ca.

ABOUT THIS RESOURCE

This resource provides an introduction to real estate and housing law in Ontario, including the various considerations and processes involved in purchasing and renting a home. Students will develop their financial literacy and negotiation skills through interactive activities on budgeting, mortgages, and how to rent or purchase a residential property. Students will examine the comparative advantages between buying and renting, and analyze the conflicts that can arise in a real estate transaction. They will learn about the rights and responsibilities of landlords and tenants, and develop the practical skills necessary to navigate these situations through a series of mock negotiation exercises. They will also learn about the protections with respect to housing provided under the *Ontario Human Rights Code*. The aim of this set of activities is to expand students' knowledge of real estate and housing law in Ontario, and to give teachers the tools to build students' capacity to make critical, informed, and responsible housing decisions. Finally, students will examine the intersection of housing and human rights by considering what it means to have "adequate" housing and whether a right to adequate housing should be protected under the *Canadian Charter of Rights and Freedoms*.

GOALS OF THIS RESOURCE

- To build students' financial literacy and negotiation skills in the context of real estate and housing, which is equally applicable to their general growth and development of life skills that are useful in everyday interactions.
- To enhance students' knowledge and understanding of the processes involved in renting and purchasing a residential property.
- To develop students' critical thinking of the potential conflicts and barriers in real estate transactions, and build practical skills to overcome them.
- To provide opportunities for students to develop and demonstrate their advocacy skills and oral and written communication through experiential learning.



USING THIS RESOURCE

Designed for students in grades 9 through 12, this resource is divided into six distinct modules. Each module can be used as a stand-alone resource and the modules do not need to be taught in sequential order. Teachers should note, however, that a more holistic understanding of the concepts will be achieved by doing so.

Within a particular module, teachers may select individual activities based on the prior knowledge, skills and needs of their students. Your expertise as an educator will be an invaluable tool for adapting the content of the activities to correspond to your subject areas, grade levels, and students' backgrounds.

Please note that although the guide refers to teachers and students, the activities are adaptable and would be equally useful in many learning environments, and not only formal learning settings.

MODULE 1 – INTRODUCTION TO REAL ESTATE

FOCUS QUESTION – What is real estate and what is the difference between renting and buying?

Overview: This module introduces students to real estate law, and the terminology used in real estate markets. It invites students to examine the long-time debate between renting and buying a home. Students are asked to look at the comparative advantages and disadvantages of each type of real estate transaction. The module also introduces students to financial literacy in the context of real estate. Students are asked to complete their own budgeting exercise based on a variety of lifestyle choices to see which would be more affordable: renting or buying. This assists with students' understanding of financial planning required for real estate and contributes to their core competencies.

MODULE 2 – DEVELOPING YOUR NEGOTIATION SKILLS

FOCUS QUESTION – What is negotiation and how can different negotiation skills be used strategically?

Overview: This module introduces students to negotiation concepts and skills, which are integral to any real estate transaction. Students are invited to look at different types of negotiation styles, with a particular focus on the differences between interest-based and position-based negotiating. Students are asked to analyze different negotiation scenarios and identify the most appropriate negotiation strategy. This module will prepare students to analyze and resolve conflicts through a multi-perspective approach in future modules. This skill is easily transferable to everyday challenges in all fields.

MODULE 3 – RENTAL HOUSING

FOCUS QUESTION – What important processes, rights, and responsibilities should tenants and landlords be aware of?

Overview: This module introduces students to residential lease transactions and rental housing law in Ontario. Students will look at legislation that governs rental housing law, including the rights and responsibilities outlined in Ontario's *Residential Tenancies Act*. Students will have the opportunity to engage in experiential learning through a mock negotiation of a rental agreement. Students are expected to work in pairs to create a negotiation plan, as either landlords or tenants. Through this activity, students can apply what they learn from this module and use what they learned from Module 2. This will enhance students' advocacy, persuasive, and critical-thinking skills, and reinforce why and how negotiation is a key part of real estate transactions.

MODULE 4 – PURCHASE AND SALE OF A HOME

FOCUS QUESTION – What processes and considerations are involved when buying and selling a home?

Overview: This module introduces students to the three stages of purchasing and selling a home: 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.

MODULE 5 – MORTGAGES

FOCUS QUESTION – What is a mortgage?

Overview: This module asks students to think critically about financial planning in the real estate context by focusing on mortgages. Students will be introduced to the basic concepts and structure of a mortgage, such as amortization and payment schedules. They will build on their financial literacy and budgeting skills, and enhance their understanding of financing a home through a mock mortgage negotiation activity.

MODULE 6 – HOUSING AND HUMAN RIGHTS

FOCUS QUESTION – What human rights protections are there in Ontario with respect to housing, and should access to adequate housing be recognized as a right?

Overview: This module introduces students to the issue of discrimination in the rental housing context, and the protections provided by the *Ontario Human Rights Code (the Code)*. It engages students in a discussion about adequate housing, and asks them to explore how the *Canadian Charter of Rights and Freedoms* could play a role in giving people whose right to adequate housing has been infringed a mechanism by which to claim the right, through sections 7 and 15.



CURRICULUM CONNECTIONS

This resource has been developed for use in courses that deal with issues such as financial literacy, budgeting, conflict resolution, property law, economic issues associated with housing, constitutional rights, human rights, social justice, and ethics, among others.

BUSINESS STUDIES

Introduction to Business, Grade 9 or 10, Open (BBI10/20)

Accounting

Accounting Essentials, Grade 11, Workplace Preparation (BAI3E)

Financial Accounting Principles, Grade 12, University/College Preparation (BAT4M)

CANADIAN AND WORLD STUDIES

Civics

Civics, Grade 10, Open (CHV2O)

Economics

The Individual and the Economy, Grade 11, University/College Preparation (CIE3M)

Making Personal Economic Choices, Grade 12, Workplace Preparation (CIC4E)

Analysing Current Economic Issues, Grade 12, University Preparation (CIA4U)

Geography

Issues in Canadian Geography, Grade 9, Academic or Applied (CGC1DP)

Regional Geography, Grade 11, University/College Preparation (CGD3M)

World Geography: Urban Patterns and Population Issues, Grade 12, University/College Preparation (CGU4M)

World Issues: A Geographic Analysis, Grade 12, University Preparation or College Preparation (CGW4U/C)

History

Origins and Citizenship: The History of a Canadian Ethnic Group, Grade 11, Open (CHE3O)

Law

Understanding Canadian Law, Grade 11, University/College Preparation (CLU3M)

Understanding Canadian Law in Everyday Life, Grade 11, Workplace Preparation (CLU3E)

Canadian and International Law, Grade 12, University Preparation (CLN4U)

Legal Studies, Grade 12, College Preparation (CLN4C)

Politics

Politics in Action: Making Change, Grade 11, Open (CPC3O)

Canadian and International Politics, Grade 12, University Preparation (CPW4U)

SOCIAL SCIENCES AND THE HUMANITIES

Equity Studies

Gender Studies, Grade 11, University/College Preparation (HSG3M)

Equity, Diversity, and Social Justice, Grade 11, Workplace Preparation (HSE3E)

Equity and Social Justice: From Theory to Practice, Grade 12, University/College Preparation (HSE4M)

World Cultures, Grade 12, University/College Preparation (HSC4M)

Family Studies

Exploring Family Studies, Grade 9 or 10, Open (HIF10/20)

Housing and Home Design, Grade 11, Open (HLS3O)

Living and Working with Children, Grade 11, College Preparation (HPW3C)

Managing Personal and Family Resources, Grade 11, College Preparation (HIR3C)

Dynamics of Human Relationships, Grade 11, Open (HHD3O)

Raising Health Children, Grade 11, Open (HPC3O)

Individuals and Families in a Diverse Society, Grade 12, University/College Preparation (HHS4M)

Issues in Human Growth and Development, Grade 12, University/College Preparation (HHG4M)

Parenting and Human Development, Grade 12, Workplace Preparation (HPD4E)

Nutrition and Health, Grade 12, University Preparation (HFA4U)

Nutrition and Health, Grade 12, College Preparation (HFA4C)

Families in Canada, Grade 12, University Preparation or College Preparation (HHS4U/C)

Personal Life Management, Grade 12, Open (HIP4O)

General Social Science

Introduction to Anthropology, Psychology and Sociology, Grade 11, University/College Preparation (HSP3U/C)
Challenge and Change in Society, Grade 12, University/College Preparation (HSB4U)

Philosophy

Philosophy: Questions and Theories, Grade 12, University Preparation (HZZ4U)

GUIDANCE AND CAREER EDUCATION

Career Studies, Grade 10, Open (GLC2O)
Designing Your Future, Grade 11, Open (GWL3O)
Leadership and Peer Support, Grade 11, Open (GPP3O)
Advanced Learning Strategies: Skills for Success After Secondary School, Grade 12, Open (GLS4O/GLE4O/GLE3O)
Navigating the Workplace, Grade 12, Open (GLN4O)

INTERDISCIPLINARY STUDIES

Applied Journalism, Grade 11, Open
Information Management for Successful Living, Grade 11, Open
Building Financial Security, Grade 12, University Preparation
Issues in Human Rights, Grade 12, University Preparation
Utopian Societies: Visions and Realities, Grade 12, University Preparation
Aging and Society, Grade 12, Open

NATIVE STUDIES

Aboriginal Peoples in Canada, Grade 10, Open (NAC2O)
Current Aboriginal Issues in Canada, Grade 11, University/College Preparation (NDA3M)
Aboriginal Beliefs, Values, and Aspirations in Contemporary Society, Grade 11, College Preparation (NBV3C)

ASSESSMENT AND EVALUATION

PERFORMANCE ASSESSMENT

The use of an extensive range of assessment strategies, both reflective and traditional, allows for ongoing feedback to students and teachers to ensure that intended learning outcomes are met. Assessment strategies should reflect the full range of student learning, and therefore must incorporate a variety of assessment activities. In so doing, the diverse backgrounds, needs and learning styles of individual students may be taken into consideration as students are given a variety of opportunities to demonstrate their knowledge and skills.

Performance assessment may include, but is not limited to the following:

- Formal and informal observations
- Teacher-made and other tests
- Oral and written communication tasks
- Self-assessments
- Learning logs or journals
- Reflective writing
- Questionnaires
- Student-teacher interviews
- Peer feedback
- Activity-based tasks/problems
- Anecdotal records or observations of what students do and say
- Development and application of specific criteria to assess student performance (e.g., rubrics, rating scales, checklists)
- Examination of students' work and application of criteria in assessment



ADDITIONAL RESOURCES

LAWPRO

<http://www.lawpro.ca/>

OJEN Resources

www.ojen.ca/resources

ACORN Canada

<https://www.acorncanada.org/>

Advocacy Centre for Tenants Ontario (ACTO)

<http://www.acto.ca/>

Association of Municipalities Ontario

<http://www.amo.on.ca/>

Canada Mortgage and Housing Corporation

<http://www.cmhc-schl.gc.ca/en/index.cfm>

Canada Without Poverty

<http://www.cwp-csp.ca/>

Canadian Housing and Renewal Association (CRHA)

<http://chra-achru.ca/en/>

Centre for Equality Rights in Accommodation (CERA)

<http://www.equalityrights.org/cera/>

Charter Committee on Poverty Issues

<http://www.povertyissues.org/>

Community Legal Education Ontario - What Tenants Need to Know About the Law:

<http://www.cleo.on.ca/en/publications/tenant-saccess>

Co-operative Housing Federation of Canada

<http://www.chfc.ca/index.asp>

Federation of Canadian Municipalities

<http://www.fcm.ca/>

Federation of Metro Tenants' Associations

<http://www.torontotenants.org/>

The Financial Consumer Agency of Canada (FCAC)

<http://www.fcac-acfc.gc.ca>

Get Smarter About Money

<http://www.getsmarteraboutmoney.ca/>

The Homeless Hub

<http://www.homelesshub.ca>

Housing and Land Rights Network

<http://www.hlrn.org/>

Housing and the Human Rights Code – Centre for Equality Rights in Accommodation (CERA)

http://www.equalityrights.org/cera/?page_id=74

Housing, the Charter, and International Law – Centre for Equality Rights in Accommodation (CERA)

http://www.equalityrights.org/cera/?page_id=79

Human Rights in Housing Video Clip - Centre for Equality Rights in Accommodation (CERA)

<https://vimeo.com/31499918>

Journal of Law and Social Policy - Volume 24 (2015) A Road to Home: The Right to Housing in Canada and Around the World

<http://digitalcommons.osgoode.yorku.ca/jlsp/>

Know Your Rights: Housing Discrimination is Against the Law - Centre for Equality Rights in Accommodation (CERA)

<http://www.equalityrights.org/cera/wp-content/uploads/2012/05/CERA-Know-Your-Rights.pdf>

Landlord's Self-Help Centre

<http://www.landlordselfhelp.com/>

Landlord and Tenant Board

<http://www.sjto.gov.on.ca/ltb/>

Landlord and Tenant Board – Information for New Tenants

<http://www.sjto.gov.on.ca/documents/ltb/Brochures/Information%20for%20New%20Tenants.html>

Landlord Connect

<http://www.landlordconnect.ca/>

Ministry of Municipal Affairs and Housing

<http://www.mah.gov.on.ca/index.htm>

Ontario Coalition against Poverty (OCAP)

<http://www.ocap.ca/>

Ontario Human Rights Code

<https://www.ontario.ca/laws/statute/90h19>

Ontario Human Rights Commission – Human Rights and Rental Housing

http://www.ohrc.on.ca/en/social_areas/housing and <http://www.ohrc.on.ca/en/learning/human-rights-and-rental-housing>

Ontario Ministry of Municipal Affairs and Housing

<http://www.mah.gov.on.ca/page11.aspx>

Ontario Non-profit Housing Association

<http://www.onpha.on.ca/onpha/web>

Ontario Real Estate Association

<https://www.orea.com/>

Residential Tenancies Act

<http://www.ontario.ca/laws/statute/06r17>

Residential Tenancies Act: The Basics

<http://yourlegalrights.on.ca/resource/76624>

The State of Homelessness in Canada 2014 – Homeless Hub

<http://www.homelesshub.ca/sites/default/files/SOHC2014.pdf>

TitlePLUS Home Buying Guide – Canada

<https://www.facebook.com/titleplushomebuyingguide/app/195646697137509>

TitlePLUS Real Simple Real Estate Guide

http://www.titleplus.ca/real_simple_real_estate_guide/

United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

<http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>

Your Legal Rights

<http://yourlegalrights.on.ca/>



MODULE 1

INTRODUCTION TO REAL ESTATE LAW

OVERVIEW

This module introduces students to real estate law, and the terminology used in real estate markets. It invites students to examine the long-time debate between renting and buying a home. Students are asked to look at the comparative advantages and disadvantages of each type of real estate transaction. The module also introduces students to financial literacy in the context of real estate. Students are asked to complete their own budgeting exercise based on a variety of lifestyle choices to see which would be more affordable: renting or buying. This assists with students' understanding of financial planning required for real estate and contributes to their core competencies.

Learning Objectives

- To introduce students to the general areas covered by real estate law.
- To introduce students to the terminology used in real estate markets.
- To enhance students' understanding of the advantages and disadvantages associated with renting and buying in Canada.
- To develop students' financial planning competencies, including budgeting.

Materials

- Copies of *Renting vs. Buying* chart (one per student)
- Copies of *Budget Exercise* (one per student)
- Digital projector or computer with internet access (optional)
- Copies of *Real Estate Terminology* (one per student)

Teaching and Learning Strategies

1. Introduce thematic areas of the unit by having students consider what the role and value of real estate and housing is in our daily lives. Activate students' opinions on this topic by having them complete a line up activity with one or more of the following statements. Instruct students to stand in a line, listen to the statement and step forward if they agree and backward if they disagree. Ask students to give reasons for their opinions and discuss as a class.

- Everyone in Canada should have a legal right to have a roof over their head.
- You should be required to have a residential address in order to get a bank account.
- It is better to own a house than rent an apartment.

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 property or 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.

Highlight to students that this particular lesson will focus on the issue of whether buying or renting is better. Explain that there is no right answer, as it depends on the individuals and their circumstances. Buying creates forced savings and equity, and renting provides easier options to relocate for work or lifestyle decisions. Conclude this exercise by asking students to consider which option they would prefer and why.

2. Distribute the *Renting vs. Buying* chart to students. Explain that there are advantages to both renting and buying, and the choice often depends on a person's circumstances and preferences. Ask students to work in pairs to identify three comparative advantages for both renting and buying and record them in the chart provided. Take up the answers as a class.
3. Have students delve deeper into the merits of owning versus renting by showing them the following video clip, which captures this debate: *Is Renting Always a Waste of Money?* – <https://www.youtube.com/watch?v=KAMel4uHAFE>

Discuss the following as a group:

- Were you shocked by the numbers described in the video? If so, why?
- What are some of the advantages of renting and buying? What are the disadvantages of each?
- We often hear that the housing market has become unaffordable in recent years. After watching the video, do you think that home ownership will continue to rise in the long term, or do you think more people will be inclined to rent? Why?



Teacher's Key – Renting vs. Buying

Answers will vary. Some possibilities are as follows.

COMPARATIVE ADVANTAGES OF RENTING VS. BUYING

Renting	Buying
• GENERALLY CHEAPER • Rent payments are typically lower than mortgage payments/taxes/condo fees. • Avoidance of up front purchase costs like down payment, legal fees, and land transfer tax. • Avoidance of ongoing ownership costs like property taxes, repairs, condo fees and utilities, if included in the rent. • Although there is no requirement for home insurance, renters should get tenant insurance, but few do. • Money saved may be invested for higher rate of return than would be gained by buying and selling home.	• INCREASE NET WORTH • Real estate typically appreciates in value over time, and hence an owner's net worth increases. • If the home is the principal residence and is later sold above the original purchase price, the net gain is tax exempt from (capital gains) tax. • Buying a home typically involves a mortgage, and is for most people a forced savings program (on money which would otherwise be misspent assuming it was not invested).
• LESS HASSLE • Usually limited or no responsibility for maintaining and repairing home – e.g. grass cutting, snow removal.	• MORE CONTROL • An owner can decorate or make changes to the home at will (subject to government restrictions like building codes). • Flexibility to have pets, a garden, make noise, etc. (subject to restrictions like condo rules).
• MORE FREEDOM • Feeling of independence. • More discretionary income to spend on dining, travelling, consumer goods, and investing. • Ability to move easily to take a new job or pursue new experiences in different parts of the city, province or world.	• MORE SECURITY AND ATTACHMENT • Feeling of security and pride that comes with ownership and being an established part of a community. • Freedom from eviction and a land owner's choices about the future use of the property.



4. Using a digital projector or computer with online access, review the Investor Education Funds' *Rent or Buy Calculator* with students, available here: <http://www.getsmarteraboutmoney.ca/tools-and-calculators/buy-or-rent-calculator/buy-or-rent-calculator.aspx#.VbF9PIViko>. Explain to students that this calculator helps people decide whether it is better to buy or rent a home, based on the net investment gain that will result.

Emphasize to students that the relative financial benefit of renting versus buying depends on which assumptions a person makes about many elements, such as the annual appreciation of a home, the annual return on money invested (i.e., savings from not buying a house), rate of inflation, and a person's monetary discipline.

Complete the following scenario with students and calculate the results. As an alternative to the online option, distribute print copies to students and review the sample scenario in class.

SCENARIO - RENT OR BUY CALCULATOR

Renting

- **MONTHLY RENT PAYMENT**
 - Depends on location, type of property and the amenities provided – Google average rent for your area.
- **RENTAL DEPOSIT**
 - Typically, the amount of one month's rent.
- **YEARLY RENT INCREASE**
 - **2.0%** in 2016. In Ontario, the annual rent increase may be restricted by legislation. See historical Maximum Rent Increase Guideline: <http://news.ontario.ca/mah/en/2014/06/2015-rent-increase-guideline.html>
- **MONTHLY COST OF RENTER'S INSURANCE**
 - Tenants should have their own insurance, but most do not – use **\$0** for this exercise.
- **INVEST THE BUY-RENT DIFFERENCE:**
 - Choose "YES" for this exercise. If the tenant is not investing the difference, they miss out on the benefit of cheaper housing costs.

Buying

- **PURCHASE PRICE OF HOME**
 - **\$448,862.00**
 - Or Google the average home prices for Canada or the City.
- **DOWN PAYMENT**
 - **5%** is the minimum the government requires for a residential owner-occupied home (non-owner occupied properties - 20%).
- **AMORTIZATION PERIOD**
 - **25 Years**
- **MORTGAGE RATE**
 - **2.69%**
 - Or, Google any Canadian bank website and select the current rate for the purpose of this exercise.
- **LAND TRANSFER TAXES**
 - E.g., **\$5,452.24** Ontario Land Transfer Tax (LTT) + **\$4,702.24** Toronto LTT, if applicable.
 - Or, visit www.landtransfertaxcalculator.ca and calculate the tax using their calculator based on the purchase price being used for this exercise.



SCENARIO - RENT OR BUY CALCULATOR

Renting

- **YEARLY EXPECTED INVESTMENT RETURN**
- Use **2%** for this exercise; however, this fluctuates depending on the markets, and you can Google Canadian bank interest rates on savings.

Buying

- **YEARLY PROPERTY TAXES**
- **\$4,488.00**
- A good rule of thumb is 1% of the market value (i.e., purchase price) of the home, but it varies by municipality, property and tax year.
- **COSTS OF BUYING A HOME**
- Use **1%** for this exercise - All associated fees.
- **COSTS OF SELLING A HOME**
- Use **5.5%** for this exercise -- All associated fees, the most significant being the Real Estate Broker Fees.
- **AVERAGE YEARLY CHANGE IN HOME VALUE**
- Use **2.0%** for this exercise, or Google this information.
- **YEARLY HOME MAINTENANCE COST/CONDO FEES**
- Use **2%** for this exercise, but note it fluctuates based on age and type of property.
- **YEARLY COST OF HOME INSURANCE**
- Use \$1, 200 for this exercise, but note this fluctuates by location, type, and value of property, and the coverage requested.
- **MORTGAGE INSURANCE PREMIUM**
- Calculator automatically calculates this amount based on the amount of the down payment.
- **OTHER COSTS**
- Leave blank.
- **INFLATION**
- Use 2% or Google for the latest rate, different parts of the city, province or world.



5. A lot of people participate in the real estate market, some more aggressively than others. Explain to students that whether they rent or buy, it is advisable to draw up a budget in order to determine how much of a monthly mortgage payment or rent can be allocated to cover housing. Budgeting involves matching monthly take-home income, which is your income after taxes, and monthly expenses. Have students complete the *Budget Exercise* to determine if they will have enough money to balance their budget each month. In doing so, they should select a proposed occupation and location to live in Ontario. Ask students to use 30% of the income suggested as what is available for housing costs. Give them time to research housing prices (rented and owned) in the location they choose using newspapers and websites such as newspapers and/or Kijiji, Craigslist, and Realtor.ca. They should canvass the apartments available now in the area they want to live in and what they can afford. Have them complete the remainder of the budgeting exercise using the charts provided. This can be an individual exercise or, more realistically, a team exercise as it is very likely that for their first foray into the rental market, (for budget reasons) they will likely seek to share the rent and should experience the negotiation of finding suitable accommodation, based on location, tastes, and desires of each roommate.
6. Debrief as a class by discussing the questions provided. As an option, have students present their findings in class and discuss the search process, the availability of housing units acceptable to them, the compromises they made if done as a team/roommate exercise, and any lessons they learned or things that surprised them during the exercise.
7. Have the students gather an appreciation for the real estate market terminology by completing the worksheet *Real Estate Terminology* either in class or for homework. Take up the answers as a class.

Extension

Have students review the following video clip on the importance of calculating one's net worth:

How to Calculate Your Net Worth –

<http://www.theglobeandmail.com/report-on-business/video/calculate-net-worth/article24984924/>



Teacher's Key – Real Estate Terminology

Term	Definition
1. Agreement of Purchase and Sale (APS)	a) The contract which sets out the terms of the purchase and sale and binds the sellers and buyers. It starts as an offer to purchase and once accepted by the seller, becomes the APS. Some think of a counter-offer as a third step in concluding an APS, however, in law it is seen as simply a rejection of the offer and the presentation of a new offer, which can be accepted or rejected by the other party.
2. Appraisal / Appraiser	b) An assessment of the current market value of the property. An individual licensed to provide an opinion as to the market value of a property, although buyers and sellers often only rely on the real estate agent/broker for valuation information. The lenders typically will order an appraisal for financing purposes.
3. Appreciation	c) The increase of a property's value over time.
4. Balance Due on Closing	d) The amount of money that the buyer needs to pay the seller on closing, after the usual adjustments as determined on the Statement of Adjustments, prepared by the seller's lawyer for review by the buyer's lawyer.
5. Bidding War	e) Situation where more than one buyer wants the same property. The seller need not accept the first offer he/she gets and buyers will put in higher offers than other bidders to be the successful bidder. Although price is not the only variable which entices sellers to accept an offer, it often is the one item over which buyers will try to out-bid each other. This scenario is more common in large cities or in desirable areas.
6. Bridge Financing	f) Money borrowed against a homeowner's equity in a property, usually for a short term, to help finance the purchase of another property or make improvements to a property being sold.
7. Buyer / Purchaser	g) The person who is buying a property. Although purchaser is the more common term, buyer is the term used in the APS.
8. Chattels	h) Personal belongings which do not become part of the property, although they might be temporarily affixed to property or safely enjoy them. The seller takes these with him/her when he/she moves, unless the APS provides otherwise. Examples are: window coverings, fireplace grates, furniture, appliances (unless built-in), pumps or other equipment.
9. Closing or Closing Date	i) The date, on which the sale becomes final, the legal title is transferred, the seller delivers vacant possession to the buyer and the buyer takes possession and becomes responsible for the ongoing cost and maintenance of the property.



Teacher's Key – Real Estate Terminology

Term	Definition
10. Commission	j) The money paid to a real estate agent/broker for their efforts to bring a buyer and seller together. The commission is paid at the time of the closing. The seller is contractually obligated to pay the commission but buyers pay it or contribute to it as part of the purchase price.
11. Common Area	k) In a condominium there are three types of property: the units which are individually owned; common area which is jointly owned by all owners and to which they generally equally have access to (i.e. a pool); and, exclusive use common area which are restricted for use by one owner (i.e. balcony off a unit).
12. Conditions	l) An APS is binding on the parties subject to its terms and conditions. If one of the parties wants to provide an option to terminate the agreement, it must be stated in the agreement. We call these conditions. Examples might be a condition to obtain financing for the purchase; to obtain a building inspection satisfactory to the buyer; to sell the buyer's existing home; to confirm that the buyer will be permitted to add to, build or renovate the home as they intend. Failing any of these the buyer can terminate the agreement. It is important to not only state the nature of the condition but also what must be done by whom and by when. For example, a sample condition would be: The Buyer has 10 business days to satisfy herself that she can obtain financing for the purchase and failing her providing written notice to the Seller within the time specified, the Agreement of Purchase and Sale shall be null and void.
13. Condominium	m) A type of ownership which permits individual ownership and the sharing of common resources. In a residential structure, apartments or townhouses (units) are individually owned as pieces of real estate whereas the land and common facilities are jointly owned.
14. Condominium Corporation	n) Company which operates the condominium and manages the land for all the owners.
15. Consideration	o) This is a legal concept that is based on the fact that only bargains are enforceable. Voluntary promises might not be enforced. For an APS to be binding there must be value exchanged, typically an exchange of money. The deposit in an APS is most often the value which makes the APS enforceable. In law, a document under seal is binding and so if you look closely at the APS form provided; it has a "seal". Although this originally was a wax seal impressed on the document, the modern version of the seal is a simple circle or the word "seal".
16. Deed of Land / Transfer	p) The document which is signed by the seller and registered by the lawyer in the Land Registry Office to transfer the title to the property from the seller to the buyer. In actual fact, today, the seller no longer signs the transfer, but rather an Acknowledgement and Direction to authorise and instruct his/her lawyer to record the transfer in the electronic registration system presently used in Ontario.



Teacher's Key – Real Estate Terminology

Term	Definition
17. Deposit	q) The amount of money the buyer gives to the seller, his lawyer or agent when he/she signs the APS. It is said to represent a good faith gesture to show the seriousness of the buyer. If the buyer fails to purchase the property he/she generally loses his/her deposit.
18. Down Payment	r) The amount of money the buyers contribute to the purchase of the property on closing. This may be as little as the deposit, but generally includes further monies paid on closing to be at least 5% of the value of the property.
19. Due Diligence	s) This is the process during which the buyer will seek to satisfy him/herself that what he/she thinks he/she is getting or bargained for, is actually what he/she will get. Part of the process may be done by the buyer personally but generally the lawyer undertakes it on behalf of his/her client. The lawyer will search the title of the property to ensure the buyer gets a good and marketable title, subject only to known and agreed upon exceptions or limitations. The buyer needs to confirm financing is available and that insurance will be available at a reasonable cost. Some issues will need to be discussed to decide who undertakes them, such as possible renovations or additions to the property. These might be for the buyer or the lawyer to investigate.
20. Easement / Right of Way	t) A right held by a third party to use or pass over another person's property. Typically we refer to a right of way for a temporary and intermittent passage (i.e. a road or driveway) and an easement for a permanent use of part of the land (i.e. a cable, pipe or building).
21. Encroachment	u) An intrusion onto an adjoining property – such as a neighbour's fence, storage shed or overhanging roof line that partially (or even fully) intrudes onto another property.
22. Equity	v) The amount of his/her own money a buyer has in the property but over the years becomes the difference between what the property could sell for and how much the owner has left to pay on his/her mortgage(s).
23. Exclusive Listing	w) A listing which is exclusive to the broker and advertised within its own network only and not exposed on MLS.
24. Fees and Disbursements	x) Fees are what the lawyer acting for the seller or buyer is paid to undertake work on their behalf. Disbursements are the out-of-pocket costs the lawyer incurs on the seller's or buyer's behalf and for which the lawyer gets reimbursed by his/her client (i.e. search and registration costs).
25. Fixtures	y) Things which are affixed to the land and become part of the property, such as the house, a furnace, air conditioner, fireplace, light fixtures, etc.
26. Freehold	z) The legal terminology which indicates that a person owns the greatest interest possible in a property. Typically we simply call them an owner. Contrast this to a condominium where one simply owns one or more units and the freehold is owned by the condominium corporation.



Teacher's Key – Real Estate Terminology

Term	Definition
27. FSBO	aa) A term to represent an ever growing trend of “For Sale by Owner” where there is no agent/broker and instead the owner tries to sell the property using their own resources (sign on the lawn or the internet – Kijiji).
28. Guarantor	bb) A person who agrees to be legally responsible for paying another person’s mortgage if the borrower defaults on the payments. A guarantor is only required by the lender in certain circumstances (e.g., the lender may need a guarantor for someone new to the work force and does not have much money saved or has no credit history).
29. Home Insurance	cc) This insures against the damage/destruction of the home because of something unexpected, like fire or other incidents such as burglary, and could be on an all-risks basis or a specified risks basis.
30. Inspection / Inspector	dd) The formal process to review and evaluate the state of the building on the property to estimate the amount and cost of any future work to maintain or repair. There is no licensing requirement as of now for inspectors and although a recommended step in the buying process, the results will depend on the quality and knowledge of the person doing the inspection and the report provided. Often the liability of the inspector is limited in the report to the amount paid for the report, when damages can be substantially more. Buyers often forgo an inspection or rely on family and friends to advise them, neither of which is recommended).
31. Insurance Broker	ee) An individual or agency that a buyer consults to determine the amount and kind of protection a homeowner should acquire. Buyers should consult their broker soon after signing the APS to discuss options, cost and the availability of insurance.
32. Land Transfer Tax	ff) A tax paid to the province on closing by the buyer, being a percentage of the purchase price. In the City of Toronto there is also an equivalent tax collected by the City. The rate depends on the value of the property; see Module 4 for a breakdown.
33. Land, Property, Home, House, Unit	gg) Interchangeable terms to mean a property being purchased or rented. Land and property are generally more generic, home/house more specific to a dwelling, and unit to a condominium property.
34. Lawyer for the Buyer	hh) The lawyer is responsible for assuring that his/her client receives good title. The lawyer searches title to the property, obtains information from the municipality and others, receives a survey of the property (if available), and advises the client as to the state of title before closing. The lawyer typically also acts for the mortgage lender. The mortgage lender is also interested in the state of title because it is advancing monies on the security of the land. The lawyer prepares various closing documents and registers the transfer/deed of land and the mortgage.



Teacher's Key – Real Estate Terminology

Term	Definition
35. Lawyer for the Seller	ii) The lawyer deals with any problems that the buyer's lawyer finds on the title that have to be dealt with before the transaction closes and arranges to pay off the seller's existing mortgage, if applicable. The lawyer prepares various closing documents and delivers the keys and the transfer/deed of land on closing in return for the purchase money.
36. Leasehold	jj) The legal terminology which describes the interest held by a person that is leasing/renting a property, typically from the freehold owner.
37. Lien	kk) A legal claim filed against a property to ensure payment of a debt.
38. Listing	ll) The agreement signed by the seller to authorise the agent/broker to sell the property. It will specify the period of time the property will be up for sale, the amount of the commission and any other terms. The agent/broker will add the details of the property for sale to MLS and the information summary is also called a listing.
39. Listing Agent	mm) Real estate agent who acts for the seller and advertises the property for sale, exclusively or via the MLS. RECO provides a Representation Agreement to be signed by the seller and buyer to confirm that the agent is working for either or both.
40. MLS	nn) The multiple listing system (MLS) is set up by local real estate associations (i.e. Toronto Real Estate Board) to promote the availability of a property. It was formerly periodic printed in books of listings but today is simply part of an online resource. The property must be listed with an agent/broker to be advertised on MLS.
41. Mortgage Broker	oo) An individual or agency which will match up a lender and a borrower. Buyers/borrowers can directly get a loan from a lender (i.e. bank, credit union, caisse populaire, mortgage company) or use this third party to find a loan with the most favourable terms. Although, brokers were only used for borrowers who had difficulty to obtain a mortgage, today, they are used by many, often for the benefit of simplifying the shopping for the best terms.
42. Mortgage Commitment	pp) The agreement that a lender gives to a borrower to commit itself to providing a mortgage. It states the amount of the loan, interest rate, term, amortisation period and other terms of the loan.
43. Mortgage/ Charge	qq) A loan registered on title providing the lender security for repayment with direct rights against the property in the event of non-payment, such that in the event of default the lender can sell the property to recover the money owed. Mortgage is the old terminology and Charge is the new term.



Teacher's Key – Real Estate Terminology

Term	Definition
44. Mortgagee / Chargee	rr) The person or entity lending the money and receiving the mortgage as security for its repayment. Mortgagee is the old terminology and Chargee the new term.
45. Mortgagor / Chargor	ss) The person borrowing money and giving the mortgage. Mortgagor is the old terminology and Chargor the new term.
46. Ontario New Home Warranty Program	tt) A statutory protection program administered by Tarion Warranty Corporation, a private corporation set up by the Ontario government. The <i>Ontario New Home Warranties Act</i> is designed to protect consumers buying new homes by ensuring that they get a quality home. All builders in Ontario must enroll every home in the program. The program provides protects for deposits, construction defects, closing dates and more. More information is available at www.Tarion.com
47. Real Estate Agent	uu) An individual responsible for bringing together a buyer and a seller in a transaction and traditionally was the avenue to expose properties to the market. Licensed by the Real Estate Council of Ontario (RECO) and formally called salespersons.
48. Real Estate Broker	vv) An individual or agency which is licensed to sell a home by bringing together a buyer and a seller for which the real estate agent works. Licensed by the Real Estate Council of Ontario (RECO) (e.g. ReMax).
49. Seller / Vendor	ww) The person who is selling a property. Although vendor is the more common term, seller is the term used in the APS.
50. Selling Agent	xx) Real estate agent who acts for the buyer and introduces buyers to properties for sale and generally drafts the offer to purchase. RECO provides a Representation Agreement to be signed by the seller and buyer to confirm that the agent is working for either or both.
51. Specific Performance	yy) The process by which a seller is forced by the courts to complete the deal which he/she had agreed to. If a seller does not complete a transaction and the buyer is not satisfied that money will compensate him/her adequately, the buyer can ask the court to order the seller to respect his/her deal on the basis that the property is unique and money, as damages, is not a good substitute.
52. Statement of Adjustments	zz) Documents which sets out in two columns the credits to the seller and to the buyer. Once both are totalled, the difference is called the Balance Due on Closing, typically an amount the buyer pays to the seller. This document should be reviewed and understood by both the seller and buyer before closing. Typically adjustments include the purchase price, the deposit, property taxes, rental income, if any, heating oil, if any. Water, gas and hydro are not typically adjusted as they are individually metered and billed to the party in occupation.



Teacher's Key – Real Estate Terminology

Term	Definition
53. Survey	aaa) A plan produced by a surveyor that sets out the boundaries of the land and locates the structures and important features in relation to the boundaries. Without a survey it is impossible to know where or if a structure (i.e. house) is actually within the boundaries of the land being purchased or mortgaged. Every buyer should get an up-to-date survey when they purchase or undertake any improvements to the land in order to ensure its location is in compliance with all municipal zoning by-laws and within the boundaries. Often, because of cost, parties will use an existing survey or obtain title insurance instead.
54. Tax Roll Assessment	bbb) All municipalities in Ontario raise money by taxing properties in their jurisdiction. The municipality maintains a list (tax roll) and each property is given a number (tax roll number). In order to calculate property tax, each property is given a value by the province (tax roll assessment), which value is often not equal to market value. Taxes are calculated by multiplying the tax roll assessment by the property tax rate – a number the city determines in its annual budget exercise.
55. Title Insurance	ccc) An insurance policy that protects home owners and lenders against losses related to the property. It provides coverage for fraud, forgery, missing heirs, unregistered easements and other issues that can affect rights of ownership. Traditionally, a lawyer acting for the buyer would provide his/her opinion to the buyer that he/she was getting a good and marketable title, subject to known and accepted exceptions and limitations. Today, it is more likely that instead of the opinion, the lawyer will purchase a title insurance policy for the buyer and lender as it provides broader coverage and indemnification than a lawyer's opinion would, such as coverage for fraud. Title insurance also provides a direct recourse for the insured instead of having to prove the lawyer's negligence. The policy replaces the lawyer's opinion but not the lawyer's other work.
56. Utilities	ddd) Term for the services provided to the property, such as, hydro, gas and water. Sellers typically close their account with the utility company and the buyers contact the utility company to create their own account.
57. Vendor Take-back Mortgage	eee) When the seller loans the buyer money to complete the purchase. The seller receives a promise to pay instead of cash on closing. This provides the seller with the same security that a traditional lender would have for its loan.
58. Zoning Regulations	fff) Strict guidelines set by municipal governments regulating to how a property may or may not be used, such as use, setback, height, density, etc.



**MODULE 1****INTRODUCTION TO REAL ESTATE LAW****RENTING VS. BUYING**

There are advantages to both renting and buying. The choice is not always a clear one and depends on a person's circumstances and preferences. Identify three comparative advantages for both renting and buying and record them in the chart below.

COMPARATIVE ADVANTAGES OF RENTING VS. BUYING**Renting****Buying**



BUDGETING EXERCISE*

Whether you rent or buy, it is advisable to draw up a budget in order to determine how much of a monthly mortgage payment/rent can be allocated to cover housing. Budgeting involves matching monthly take-home income, which is your income after taxes, and monthly expenses. Complete the budgeting activity below to determine if you will have enough money to balance your budget each month.

Step 1: Select an occupation from the list below and enter the average monthly take-home pay in the relevant section of Step 3. Target using 30% of your take-home pay towards housing costs.

OCCUPATION	AVERAGE MONTHLY TAKE-HOME PAY (after payroll deductions)
Service station attendants	1,546
Food and beverage servers	1,566
Bartenders	1,649
Hairstylists and barbers	1,662
Retail salespersons and clerks	1,762
Bakers	1,833
Outdoor sports and recreational guides	1,905
Receptionists and switchboard operators	2,079
Customer service representatives - financial services	2,173
Bookkeepers	2,401
Motor vehicle body repairers	2,415
Early child educators and assistants	2,421
Dental technologists, technicians & lab workers	2,442
Welders and related machine operators	2,463
Chefs	2,544
Truck drivers	2,588
Audio and video recording technicians	2,716
Secretaries (except legal and medical)	2,848
Paralegal and related occupations	2,936

* This exercise has been adapted from an online learning resource called 'The City: A Financial Life Skills Resource' developed by the Financial Consumer Agency of Canada (FCAC) and the British Columbia Securities Commission (BCSC), available here: <http://www.fcac-acfc.gc.ca/Eng/resources/educationalPrograms/Pages/Thecity-Lazoneun.aspx>.



MODULE 1



OCCUPATION	AVERAGE MONTHLY TAKE-HOME PAY (after payroll deductions)
Insurance agents and brokers	2,943
Graphic designers and illustrators	3,033
Family, marriage and other counselors	3,304
Plumbers	3,327
Web designers and developers	3,375
Authors and writers	3,561
Pursers and flight attendants	3,842
Sales, marketing and advertising managers	3,892
Computer programmers & interactive media developers	3,935
Dietitians and nutritionists	3,971
Secondary school teachers	4,011
Civil, mechanical, electrical and chemical engineers	4,033
Firefighters	4,070
Real estate agents and salespersons	4,117
Social workers	4,168
Industrial electricians	4,199
Registered nurses	4,206
Managers in health care	4,433
RCMP officers (after 36 months of duty)	4,612
Psychologists	4,732
Physiotherapists	4,893
Lawyers	5,106
Financial and investment analysts	5,282
Pharmacists	5,740



Step 2: Choose a location to live in Ontario. Your housing options and expenses will vary depending on which location you decide to live in. Consult newspapers and/or websites such as Kijiji, Craigslist, and Realtor.ca to determine how much your monthly housing expenses will be. Enter the amount appropriate for your area in the housing section. For all of the subsequent sections, estimates for urban and rural areas are provided as a guideline.

EXPENSES	YOUR BUDGET	ESTIMATED AVERAGE COSTS FOR ONTARIO	
		LARGE CITY	REST OF ONTARIO
		COSTS PER MONTH	
HOUSING			
At home with parents		172	170
RENTAL PROPERTIES			
One-bedroom apartment		1,040	597
Share two-bedroom apartment with roommate		586	373
Other:			
OWNED PROPERTIES			
Two-bedroom condo			
Three-bedroom house			
Other:			
TRANSPORTATION			
New car - Toyota Matrix		777	740
Used car - 2002 Chevrolet Cavalier		485	457
Public transit		120	65
FOOD			
Eat at home only		219	225
Eat at home and eat out occasionally		309	322



MODULE 1



EXPENSES	YOUR BUDGET	ESTIMATED AVERAGE COSTS FOR ONTARIO	
		LARGE CITY	REST OF ONTARIO
		COSTS PER MONTH	
UTILITIES			
Electricity		66	66
Heating - electric		110	110
Heating - gas / oil		45	65
TELEPHONE			
Cellphone (local)		45	45
COMPUTER			
Cost of Computer		90	90
Internet connection		35	35
CLOTHING			
Shop a little		43	42
Shop a lot		175	175
HEALTH CARE			
Medications and dental		28	36
Glasses / lenses		10	12



EXPENSES	YOUR BUDGET	ESTIMATED AVERAGE COSTS FOR ONTARIO	
		LARGE CITY	REST OF ONTARIO
		COSTS PER MONTH	
INSURANCE			
Medical premiums (if not under parents' plan)		-	-
New car - Toyota Matrix		30	25
ENTERTAINMENT			
Cable (basic)		32	32
Movies (and popcorn, etc.)		57	48
Rentals: video / DVD / games		30	30
Purchases: music		32	32
Purchases: video / DVD / games		19	19
Concerts and professional sports		45	45
Night clubs / pubs		65	65
RECREATION			
Sports fees / equipment		25	25
Lessons		15	15
Health club membership		45	38



MODULE 1



EXPENSES	YOUR BUDGET	ESTIMATED AVERAGE COSTS FOR ONTARIO	
		LARGE CITY	REST OF ONTARIO
		COSTS PER MONTH	
PERSONAL			
Haircut: man		20	15
Haircut: woman		31	28
Manicures, etc.		20	20
Makeup		25	22
Personal care (shampoo, soap, etc.)		15	15
Dry cleaners		20	15
Laundry at laundromat		20	20
EDUCATION (TUITION, FEES, BOOKS, ETC./ 12 MOS.)			
University		507	507
College / University College		417	-
Technical		200	200
OTHER			
Banking fees		15	15
Newspapers		22	15
Books / magazines		17	17
Religious / charity		5	5
Gifts		25	25
Pets		30	30

EXPENSES	YOUR BUDGET	ESTIMATED AVERAGE COSTS FOR ONTARIO	
		LARGE CITY	REST OF ONTARIO
		COSTS PER MONTH	
OTHER			
New furniture (averaged over year)		254	254
Used furniture (averaged over year)		100	100
Travel: low-cost vacation by car (save per month)		40	40
Travel: vacation including plane fare (save per month)		210	210
Enter any missing expenses directly here:			
TOTAL EXPENSES			

Step 3: Complete the chart below to determine whether or not your estimated income will be enough to cover your estimated expenses.

Your chosen career from Step 1	
Your monthly take-home pay from Step 1	
Total monthly expenses from Step 2	
Monthly Difference (Step 1 – Step 2)	

Discussion

1. Is your proposed income enough to cover your expenses? If so, what will you do with any remaining income? If not, how can you adjust your budget to make sure you have enough money each month? NB: All good budgets would also have provisions for creating a reserve for emergencies and creating a retirement fund.
2. Did you decide to rent or own? Why?
3. What was the price difference in the housing options you researched? Did that affect your decision on which housing option to choose?
4. How did your lifestyle choices influence the housing choices you made?



REAL ESTATE TERMINOLOGY

Match the following terms with the correct definition.

- Conditions • Agreement of Purchase and Sale (APS) • Appraisal / Appraiser • Title Insurance • Lien
- Mortgagee / Chargee • Lawyer for the Buyer • Balance Due on Closing • Lawyer for the Seller
- Bidding War • Real Estate Broker • Seller / Vendor • Selling Agent • Vendor Take-back Mortgage
- Zoning Regulations • Mortgage Commitment • Deed of Land / Transfer • Appreciation • Chattels
- Condominium Corporation • Bridge Financing • Freehold • Specific Performance • Buyer / Purchaser
- Down Payment • Closing or Closing Date • FSBO • Commission • MLS • Mortgage / Charge • Fixtures
- Mortgagor / Chargor • Common Area • Condominium • Utilities • Consideration • Due Diligence
- Easement / Right of Way • Survey • Tax Roll Assessment • Equity • Exclusive Listing • Guarantor
- Home Insurance • Inspection / Inspector • Insurance Broker • Fees and Disbursements • Listing Agent
- Land Transfer Tax • Land, Property, Home, House, Unit • Leasehold • Deposit • Listing
- Mortgage Broker • Ontario New Home Warranty Program • Real Estate Agent
- Statement of Adjustments • Encroachment

Term	Definition
1.	ll) The agreement signed by the seller to authorise the agent/broker to sell the property. It will specify the period of time the property will be up for sale, the amount of the commission and any other terms. The agent/broker will add the details of the property for sale to MLS and the information summary is also called a listing.
2.	tt) A statutory protection program administered by Tarion Warranty Corporation, a private corporation set up by the Ontario government. The Ontario New Home Warranties Act is designed to protect consumers buying new homes by ensuring that they get a quality home. All builders in Ontario must enroll every home in the program. The program provides protects for deposits, construction defects, closing dates and more. More information is available at www.Tarion.com
3.	fff) Strict guidelines set by municipal governments regulating to how a property may or may not be used, such as use, setback, height, density, etc.
4.	d) The amount of money that the buyer needs to pay the seller on closing, after the usual adjustments as determined on the Statement of Adjustments, prepared by the seller's lawyer for review by the buyer's lawyer.
5.	bbb) All municipalities in Ontario raise money by taxing properties in their jurisdiction. The municipality maintains a list (tax roll) and each property is given a number (tax roll number). In order to calculate property tax, each property is given a value by the province (tax roll assessment), which value is often not equal to market value. Taxes are calculated by multiplying the tax roll assessment by the property tax rate – a number the city determines in its annual budget exercise.
6.	n) Company which operates the condominium and manages the land for all the owners.



Term	Definition
7.	rr) The person or entity lending the money and receiving the mortgage as security for its repayment. Mortgagee is the old terminology and Chargee the new term.
8.	h) Personal belongings which do not become part of the property, although they might be temporarily affixed to property or safely enjoy them. The seller takes these with him/her when he/she moves, unless the APS provides otherwise. Examples are: window coverings, fireplace grates, furniture, appliances (unless built-in), pumps or other equipment.
9.	s) This is the process during which the buyer will seek to satisfy him/herself that what he/she thinks he/she is getting or bargained for, is actually what he/she will get. Part of the process may be done by the buyer personally but generally the lawyer undertakes it on behalf of his/her client. The lawyer will search the title of the property to ensure the buyer gets a good and marketable title, subject only to known and agreed upon exceptions or limitations. The buyer needs to confirm financing is available and that insurance will be available at a reasonable cost. Some issues will need to be discussed to decide who undertakes them, such as possible renovations or additions to the property. These might be for the buyer or the lawyer to investigate.
10.	vv) An individual or agency which is licensed to sell a home by bringing together a buyer and a seller for which the real estate agent works. Licensed by the Real Estate Council of Ontario (RECO) (e.g. ReMax).
11.	k) In a condominium there are three types of property: the units which are individually owned; common area which is jointly owned by all owners and to which they generally equally have access to (i.e. a pool); and, exclusive use common area which are restricted for use by one owner (i.e. balcony off a unit).
12.	yy) The process by which a seller is forced by the courts to complete the deal which he/she had agreed to. If a seller does not complete a transaction and the buyer is not satisfied that money will compensate him/her adequately, the buyer can ask the court to order the seller to respect his/her deal on the basis that the property is unique and money, as damages, is not a good substitute.
13.	m) A type of ownership which permits individual ownership and the sharing of common resources. In a residential structure, apartments or townhouses (units) are individually owned as pieces of real estate whereas the land and common facilities are jointly owned.
14.	f) Money borrowed against a homeowner's equity in a property, usually for a short term, to help finance the purchase of another property or make improvements to a property being sold.
15.	o) This is a legal concept that is based on the fact that only bargains are enforceable. Voluntary promises might not be enforced. For an APS to be binding there must be value exchanged, typically an exchange of money. The deposit in an APS is most often the value which makes the APS enforceable. In law, a document under seal is binding and so if you look closely at the APS form provided; it has a "seal". Although this originally was a wax seal impressed on the document, the modern version of the seal is a simple circle or the word "seal".



Term	Definition
16.	p) The document which is signed by the seller and registered by the lawyer in the Land Registry Office to transfer the title to the property from the seller to the buyer. In actual fact, today, the seller no longer signs the transfer, but rather an Acknowledgement and Direction to authorise and instruct his/her lawyer to record the transfer in the electronic registration system presently used in Ontario.
17.	mm) Real estate agent who acts for the seller and advertises the property for sale, exclusively or via the MLS. RECO provides a Representation Agreement to be signed by the seller and buyer to confirm that the agent is working for either or both.
18.	r) The amount of money the buyers contribute to the purchase of the property on closing. This may be as little as the deposit, but generally includes further monies paid on closing to be at least 5% of the value of the property.
19.	i) The date, on which the sale becomes final, the legal title is transferred, the seller delivers vacant possession to the buyer and the buyer takes possession and becomes responsible for the ongoing cost and maintenance of the property.
20.	t) A right held by a third party to use or pass over another person's property. Typically we refer to a right of way for a temporary and intermittent passage (i.e. a road or driveway) and an easement for a permanent use of part of the land (i.e. a cable, pipe or building).
21.	u) An intrusion onto an adjoining property – such as a neighbour's fence, storage shed or overhanging roof line that partially (or even fully) intrudes onto another property.
22.	v) The amount of his/her own money a buyer has in the property but over the years becomes the difference between what the property could sell for and how much the owner has left to pay on his/her mortgage(s).
23.	dd) The formal process to review and evaluate the state of the building on the property to estimate the amount and cost of any future work to maintain or repair. There is no licensing requirement as of now for inspectors and although a recommended step in the buying process, the results will depend on the quality and knowledge of the person doing the inspection and the report provided. Often the liability of the inspector is limited in the report to the amount paid for the report, when damages can be substantially more. Buyers often forgo an inspection or rely on family and friends to advise them, neither of which is recommended).
24.	x) Fees are what the lawyer acting for the seller or buyer is paid to undertake work on their behalf. Disbursements are the out-of-pocket costs the lawyer incurs on the seller's or buyer's behalf and for which the lawyer gets reimbursed by his/her client (i.e. search and registration costs).
25.	y) Things which are affixed to the land and become part of the property, such as the house, a furnace, air conditioner, fireplace, light fixtures, etc.



Term	Definition
26.	z) The legal terminology which indicates that a person owns the greatest interest possible in a property. Typically we simply call them an owner. Contrast this to a condominium where one simply owns one or more units and the freehold is owned by the condominium corporation.
27.	hh) The lawyer is responsible for assuring that his/her client receives good title. The lawyer searches title to the property, obtains information from the municipality and others, receives a survey of the property (if available), and advises the client as to the state of title before closing. The lawyer typically also acts for the mortgage lender. The mortgage lender is also interested in the state of title because it is advancing monies on the security of the land. The lawyer prepares various closing documents and registers the transfer/deed of land and the mortgage.
28.	bb) A person who agrees to be legally responsible for paying another person's mortgage if the borrower defaults on the payments. A guarantor is only required by the lender in certain circumstances (e.g., the lender may need a guarantor for someone new to the work force and does not have much money saved or has no credit history).
29.	cc) This insures against the damage/destruction of the home because of something unexpected, like fire or other incidents such as burglary, and could be on an all-risks basis or a specified risks basis.
30.	w) A listing which is exclusive to the broker and advertised within its own network only and not exposed on MLS.
31.	eee) When the seller loans the buyer money to complete the purchase. The seller receives a promise to pay instead of cash on closing. This provides the seller with the same security that a traditional lender would have for its loan.
32.	ff) A tax paid to the province on closing by the buyer, being a percentage of the purchase price. In the City of Toronto there is also an equivalent tax collected by the City. The rate depends on the value of the property; see Module 4 for a breakdown.
33.	gg) Interchangeable terms to mean a property being purchased or rented. Land and property are generally more generic, home/house more specific to a dwelling, and unit to a condominium property.
34.	a) A term to represent an ever growing trend of "For Sale by Owner" where there is no agent/broker and instead the owner tries to sell the property using their own resources (sign on the lawn or the internet – Kijiji).
35.	ii) The lawyer deals with any problems that the buyer's lawyer finds on the title that have to be dealt with before the transaction closes and arranges to pay off the seller's existing mortgage, if applicable. The lawyer prepares various closing documents and delivers the keys and the transfer/deed of land on closing in return for the purchase money.



Term	Definition
36.	jj) The legal terminology which describes the interest held by a person that is leasing/renting a property, typically from the freehold owner.
37.	ddd) Term for the services provided to the property, such as, hydro, gas and water. Sellers typically close their account with the utility company and the buyers contact the utility company to create their own account.
38.	a) The contract which sets out the terms of the purchase and sale and binds the sellers and buyers. It starts as an offer to purchase and once accepted by the seller, becomes the APS. Some think of a counter-offer as a third step in concluding an APS, however, in law it is seen as simply a rejection of the offer and the presentation of a new offer, which can be accepted or rejected by the other party.
39.	q) The amount of money the buyer gives to the seller, his lawyer or agent when he/she signs the APS. It is said to represent a good faith gesture to show the seriousness of the buyer. If the buyer fails to purchase the property he/she generally loses his/her deposit.
40.	nn) The multiple listing system (MLS) is set up by local real estate associations (i.e. Toronto Real Estate Board) to promote the availability of a property. It was formerly periodic printed in books of listings but today is simply part of an online resource. The property must be listed with an agent/broker to be advertised on MLS.
41.	ee) An individual or agency that a buyer consults to determine the amount and kind of protection a homeowner should acquire. Buyers should consult their broker soon after signing the APS to discuss options, cost and the availability of insurance.
42.	pp) The agreement that a lender gives to a borrower to commit itself to providing a mortgage. It states the amount of the loan, interest rate, term, amortisation period and other terms of the loan.
43.	qq) A loan registered on title providing the lender security for repayment with direct rights against the property in the event of non-payment, such that in the event of default the lender can sell the property to recover the money owed. Mortgage is the old terminology and Charge is the new term.
44.	g) The person who is buying a property. Although purchaser is the more common term, buyer is the term used in the APS.
45.	ss) The person borrowing money and giving the mortgage. Mortgagor is the old terminology and Chargor the new term.
46.	b) An assessment of the current market value of the property. An individual licensed to provide an opinion as to the market value of a property, although buyers and sellers often only rely on the real estate agent/broker for valuation information. The lenders typically will order an appraisal for financing purposes.



Term	Definition
47.	uu) An individual responsible for bringing together a buyer and a seller in a transaction and traditionally was the avenue to expose properties to the market. Licensed by the Real Estate Council of Ontario (RECO) and formally called salespersons.
48.	ww) The person who is selling a property. Although vendor is the more common term, seller is the term used in the APS.
49.	j) The money paid to a real estate agent/broker for their efforts to bring a buyer and seller together. The commission is paid at the time of the closing. The seller is contractually obligated to pay the commission but buyers pay it or contribute to it as part of the purchase price.
50.	xx) Real estate agent who acts for the buyer and introduces buyers to properties for sale and generally drafts the offer to purchase. RECO provides a Representation Agreement to be signed by the seller and buyer to confirm that the agent is working for either or both.
51.	l) An APS is binding on the parties subject to its terms and conditions. If one of the parties wants to provide an option to terminate the agreement, it must be stated in the agreement. We call these conditions. Examples might be a condition to obtain financing for the purchase; to obtain a building inspection satisfactory to the buyer; to sell the buyer's existing home; to confirm that the buyer will be permitted to add to, build or renovate the home as they intend. Failing any of these the buyer can terminate the agreement. It is important to not only state the nature of the condition but also what must be done by whom and by when. For example, a sample condition would be: The Buyer has 10 business days to satisfy herself that she can obtain financing for the purchase and failing her providing written notice to the Seller within the time specified, the Agreement of Purchase and Sale shall be null and void.
52.	zz) Documents which sets out in two columns the credits to the seller and to the buyer. Once both are totalled, the difference is called the Balance Due on Closing, typically an amount the buyer pays to the seller. This document should be reviewed and understood by both the seller and buyer before closing. Typically adjustments include the purchase price, the deposit, property taxes, rental income, if any, heating oil, if any. Water, gas and hydro are not typically adjusted as they are individually metered and billed to the party in occupation.
53.	aaa) A plan produced by a surveyor that sets out the boundaries of the land and locates the structures and important features in relation to the boundaries. Without a survey it is impossible to know where or if a structure (i.e. house) is actually within the boundaries of the land being purchased or mortgaged. Every buyer should get an up-to-date survey when they purchase or undertake any improvements to the land in order to ensure its location is in compliance with all municipal zoning by-laws and within the boundaries. Often, because of cost, parties will use an existing survey or obtain title insurance instead.



Term	Definition
54.	e) Situation where more than one buyer wants the same property. The seller need not accept the first offer he/she gets and buyers will put in higher offers than other bidders to be the successful bidder. Although price is not the only variable which entices sellers to accept an offer, it often is the one item over which buyers will try to out-bid each other. This scenario is more common in large cities or in desirable areas.
55.	ccc) An insurance policy that protects home owners and lenders against losses related to the property. It provides coverage for fraud, forgery, missing heirs, unregistered easements and other issues that can affect rights of ownership. Traditionally, a lawyer acting for the buyer would provide his/her opinion to the buyer that he/she was getting a good and marketable title, subject to known and accepted exceptions and limitations. Today, it is more likely that instead of the opinion, the lawyer will purchase a title insurance policy for the buyer and lender as it provides broader coverage and indemnification than a lawyer's opinion would, such as coverage for fraud. Title insurance also provides a direct recourse for the insured instead of having to prove the lawyer's negligence. The policy replaces the lawyer's opinion but not the lawyer's other work.
56.	kk) A legal claim filed against a property to ensure payment of a debt.
57.	oo) An individual or agency which will match up a lender and a borrower. Buyers/borrowers can directly get a loan from a lender (i.e. bank, credit union, caisse populaire, mortgage company) or use this third party to find a loan with the most favourable terms. Although, brokers were only used for borrowers who had difficulty to obtain a mortgage, today, they are used by many, often for the benefit of simplifying the shopping for the best terms.
58.	c) The increase of a property's value over time.



MODULE 2

DEVELOPING YOUR NEGOTIATION SKILLS

OVERVIEW

This module introduces students to a useful life skill – negotiation. Most students already use this skill every day when they negotiate with their parents to get permission to go out, stay up, get new clothes, etc., or with their friends to decide which activity they will do that day. Of course, business negotiations have greater consequences and for this reason we might think of them differently. Negotiation is a process, which when followed, can improve the odds for great results. This module introduces students to negotiation concepts and skills, which are integral to any real estate transaction. Students are invited to look at different types of negotiation styles, with a particular focus on the differences between interest-based and position-based negotiating. Students are asked to analyze different negotiation scenarios and identify the most appropriate negotiation strategy. This module will prepare students to analyze and resolve conflicts through a multi-perspective approach in future modules.

Learning Objectives

- To introduce students to key negotiation concepts, strategies, and tactics.
- To foster an appreciation and facility in both interest-based and position-based negotiating.
- To cultivate student listening, speaking, reasoning, and persuasive skills.
- To encourage empathetic understanding and a multi-perspective approach to analyzing and resolving conflicts.

Materials

- Copies of *Introduction to Negotiation* (one per student)
- Copies of the *Negotiation Scenarios* (one per student)
- A deck of cards (one deck per class)
- Copies of *Developing Your Negotiation Skills* (one per student)
- Copies of *Additional Negotiation Exercises* (optional)

Teaching and Learning Strategies

1. Introduce the topic of negotiation by presenting the following movie clips, which highlight various types of negotiations, to students:

- *Just Go With It*: <https://www.youtube.com/watch?v=898OUCyBulM>
- *Erin Brockovich*: <https://www.youtube.com/watch?v=5Jdk3riKKwo>
- *Summer School*: https://www.youtube.com/watch?v=LzdoMQL_jR8
- *The Godfather*: <https://www.youtube.com/watch?v=MSa51BOE72Q>
- *Moneyball*: <https://www.youtube.com/watch?v=iV8yuhQZXkE>

Discuss the following as a group:

- Which negotiations were the most successful? Why?
 - Which negotiation tactics did you observe?
 - What kinds of behaviours make someone more or less successful when negotiating?
2. Provide an overview of basic negotiation concepts, types, styles, tactics, and techniques by having students review the handout, *Introduction to Negotiation*. Check for understanding and clarify any points that are unclear.



Teaching and Learning Strategies

3. Once students have a better understanding of negotiation, have them revisit the movie clips and discuss the following for each one:
- Was the negotiation distributive or integrative?
 - Did the negotiators adopt a competitive or cooperative style?
 - What tactics and techniques were used in the negotiation?

Have students watch the following video, which provides an analysis of the negotiation used in the first movie clip:

Analysis of the *Just Go With It* Negotiation

- <https://www.youtube.com/watch?v=BAj2j26kuzo>

4. In pairs or small groups, have students complete the *Negotiation Scenarios* exercise. Students should identify which would be the most appropriate negotiation strategy (i.e., distributive or integrative) and style (i.e., competitive or cooperative), and identify two possible negotiation tactics that could be used in each scenario. Some scenarios may justify using either a distributive or integrative approach, however students should be prepared to provide a rational justification for their choice. Discuss the answers as a class.

Teacher's Key – Negotiation Scenarios

Answers will vary. Some possibilities are as follows.

SCENARIO	NEGOTIATION STRATEGY	NEGOTIATION STYLE	NEGOTIATION TACTICS
1. Purchasing a souvenir from a street vendor while on vacation	Distributive	Competitive	Ultimatum or walkaway
2. Couple deciding on which movie to watch at the theatre: one wants an action flick, the other a romantic comedy	Integrative	Cooperative	Log rolling
3. Consumer visits car dealership to buy a new car	Distributive	Competitive	Early anchoring or splitting the difference or walkaway
4. A married couple tries to decide where to spend their two-week vacation: one wants to go to the mountains, the other wants to go to the seashore	Integrative	Cooperative	Expand the pie or focus on interest or log rolling
5. Owner of rental car agency visits dealership to buy new cars	Distributive or integrative	Cooperative	Focus on interest or open information exchange

Teacher's Key – Negotiation Scenarios

Answers will vary. Some possibilities are as follows.

SCENARIO	NEGOTIATION STRATEGY	NEGOTIATION STYLE	NEGOTIATION TACTICS
6. Two rural communities in discussions about using the only local water well	Distributive or integrative	Cooperative	Focus on interest or objective criteria
7. Company needs to downsize and lay-off workers, but is uncertain about how many to lay-off from each of the different departments	Distributive or integrative	Cooperative	Focus on interest or objective criteria
8. Renting a new apartment	Distributive	Cooperative	Objective criteria
9. New parents deciding on who will wake up to feed the baby in the middle of the night	Integrative	Cooperative	Log rolling
10. Canadian rug seller wants to buy rugs from supplier in Turkey	Distributive or integrative	Cooperative	Ultimatum or walkaway

- Review the handout *Developing Your Negotiation Skills* with students, including the Prisoner's Dilemma and the instructions for the negotiation game. Have students complete ten rounds of the game and record their results in the chart

provided. Discuss the results and the discussion questions as a class. Begin to make connections on how these negotiation skills link to the various situations where negotiation is required in the housing context.

Extension

For additional practice with negotiation, have students complete one or more of the exercises in the handout, *Additional Negotiation Exercises*.





MODULE 2

INTRODUCTION TO NEGOTIATION

BASIC NEGOTIATING CONCEPTS

Positions – Positions are “what” the negotiators say they want. They are really solutions that have been proposed by the negotiators. Positions are based upon the interests of the parties; interests are usually not disclosed, at least not in competitive negotiations. In most negotiations people take and then give up a series of positions. Behind every position lie many interests.

Interests – Interests are “why” the negotiators take the positions they do. Interests lie behind the positions of the negotiators. Interests represent the basic needs to be met. Money and price are not interests in themselves. Money represents purchasing power, the ability to acquire other needs, status, or power itself. Understanding interests is the key to understanding “win-win” negotiating. In many negotiations, the interests are never explicitly discussed. In fact, interests are usually kept secret. Successful “win-win” negotiating requires finding a way to disclose interests without being taken advantage of.

Best Alternative to a Negotiated Agreement (BATNA) – BATNA represents the best result that a negotiator can get somewhere else if an agreement cannot be reached with the other party. In other words, a BATNA is the alternative that the party will select if they must walk away from the negotiation. If the negotiation involves finalizing a deal, the BATNA is to walk away to another party who can offer you a better deal. If, however, the negotiation involves a lawsuit, the BATNA is to go to court.

Bottom Line – The bottom line or reservation price is the position at which the negotiator will walk away from the negotiation. Relative to a purchaser, it is the highest price a purchaser is willing to pay for goods or services. Relative to a seller, it is the lowest price at which a seller is willing to sell the goods or services. The bottom line is also known as the “reservation price.” If the negotiator cannot get at least their bottom line in the negotiation, they will vote with their feet and walk away from the deal.

Zone of Agreement – The zone of agreement represents the difference between the bottom lines of the parties. If there is no overlap in the bottom lines of the parties, no agreement is possible.



TYPES OF NEGOTIATION

People do not realize it but we negotiate every day in multiple situations. Whenever a decision must be made, it could be a negotiating exercise. Which movie do we go see? What restaurant do we eat in? For example, negotiating the purchase of a car is distinct from going to the grocery store. There, we take an item off the shelf, put it in our basket, and pay the sticker price at the cash register. There is no negotiation involved. Buying a stereo or TV, however, could involve negotiating the price or what is included (e.g., the warranty, delivery, installation). Similarly, getting a job and determining salary and employment conditions often involves negotiation. These situations do not have the same ramifications of a negotiation to buy a multi-million dollar business or property. The higher the stakes of the negotiation, the more thought and preparation that should be invested into the negotiation process.

1. DISTRIBUTIVE NEGOTIATION

Distributive negotiation is also sometimes called positional or hard-bargaining negotiation. It tends to approach negotiation on the model of haggling in a market. In a distributive negotiation, each side often adopts an extreme position, knowing that it will not be accepted, and then employs a combination of trickery, bluffing, and brinksmanship in order to give in as little as possible before reaching a deal. This is a “zero sum” negotiation where the negotiator claims as much of the ‘pie’ as possible. Usually there is just one issue for negotiation and more for one party means less for the other. Although the goals of the parties are in direct conflict, a negotiator can adopt either a competitive or cooperative negotiation style in a distributive bargaining situation.

DISTRIBUTIVE NEGOTIATION STRATEGY IDENTIFIERS

A distributive negotiation strategy is generally appropriate where:

- Parties do not know each other very well
- Parties are unlikely to work together in the future
- Negotiation is over a limited number of things or issues (e.g., price only)

NEGOTIATION TACTICS AND TECHNIQUES

- **Early Anchoring:** Anchoring is fixing or establishing the focus of discussion around a certain point, whether it is a figure, a range, or an issue, simply by asserting it. Early anchoring involves being the first party to make an offer that is beyond or at the fair margin of the range of credible or reasonable offers. This tactic has the effect of fixing the apparent bargaining range around this point, which is typically favourable to the person who anchors early.
- **Feinting:** Misleading the other party as to your true interests or objectives by stressing goals or interests that are in fact unimportant to you and then giving them up for concessions from the other side that are important to you. Such feints help to disguise your true bottom line and interests.
- **Misleading Concession Pattern:** It is common to make smaller and smaller concessions as negotiations converge on a negotiator’s bottom line. Knowing this, negotiators can mislead the other side by using a concession pattern that converges at a point above the actual bottom line. The other side, reading the concession pattern, may mistakenly conclude the conceder has reached his/her bottom line and therefore settle in order to save the deal.
- **Splitting the Difference:** When the parties are stuck at different positions, one solution is to each compromise half the difference. For example, with offers at \$600 and \$1000, the compromise would be \$800. This technique gives the “appearance” of fairness.
- **Ultimatum (i.e. Take It or Leave It):** This occurs where a party claims to be submitting their final offer. The other side must take the offer or the negotiation is over. In reality, nothing prevents any party from making another offer at a later time.



- **Walkaway:** This is a classic tactic in bazaars and markets. If you cannot get the price you want, walk away from the deal and maybe the other party will follow you. This tactic is a bluff. To work effectively, you have to be able to truly walk away from the deal and exercise your BATNA.
- **You Will Have To Do Better Than That (YWHTDBTT):** If the other side is told “you will have to do better than that,” often, they will make you a better offer. Some people claim not to even consider the first offer. They just ask for a better offer, no matter what the first offer was. They assume that the person who made the offer made an excessive demand. This is a particularly useful technique when the other side anchors first, forcing them to re-anchor negotiations around a point closer to your own desired result.

2. INTEGRATIVE NEGOTIATION

Integrative negotiation is also sometimes called interest-based or principled negotiation. It is a set of techniques that attempts to improve the quality and likelihood of “win-win” agreements with parties working together to increase the amount of resources to maximize mutual gain. While distributive negotiation assumes there is a fixed amount of value (i.e., a “fixed pie”) to be divided between the parties, integrative negotiation often attempts to create value in the course of the negotiation (i.e., “expand the pie”). Integrative bargaining often requires two or more issues so that trades can be made. The theory is that parties often have different underlying interests that can be integrated or reconciled to create joint gains that improve the situation of both parties. A negotiator can adopt either a competitive or cooperative negotiation style in an integrative bargaining situation.

INTEGRATIVE NEGOTIATION STRATEGY IDENTIFIERS

An integrative negotiation strategy is appropriate where:

- Parties know each other
- Parties are likely to have further interactions in the future

NEGOTIATION TACTICS AND TECHNIQUES

- **Focus on Interests not Positions:** “Positions” are “what” negotiators say they want; “interests” are “why” they take the positions. The interests of the opposing party are discovered by asking questions and putting yourself in the other’s shoes. This creates an opportunity to devise solutions that address these underlying interests. Although problem-solving negotiators may be willing to disclose their interests, be aware that competitive negotiators will try to learn your interests without revealing their own in order to gain an advantage.
- **Expanding the Pie (i.e. Create Value):** Sometimes it is possible to brainstorm and increase the resources to be bargained for. If the resources can be increased then perhaps both sides can get what they want, or at least find a sufficiently satisfying alternative. For instance, a cell phone retailer may not decrease the price but might be willing to throw in voicemail and call display into a plan package for the same cost.
- **Open Information Exchange:** This involves freely and honestly disclosing information to help the other side understand your underlying interests, objectives, and priorities. Sometimes something critical to one side is a minor concession to the other, and vice versa.
- **Log Rolling:** If two or more issues are in dispute, the negotiators may be able to do a series of trade-offs. One side gets their top priority on the first issue and the other side gets their top priority on the second issue.
- **Objective Criteria:** Instead of allowing the negotiation to be determined by a contest of power or to become a battle of wills, negotiators can select one or more objective criteria which can be used as standards for a ‘fair’ settlement (e.g., market price).



NEGOTIATION STYLES

A negotiator can adopt either a competitive or cooperative negotiation style in both distributive and integrative bargaining situations.

1. COMPETITIVE NEGOTIATION STYLE

Competitive negotiators want to “beat” their opponents. They use high demands, threats, and make few concessions. They generally try to undermine their opponent’s confidence and seek the maximum for themselves.

2. COOPERATIVE NEGOTIATION STYLE

Cooperative negotiators want to shift the nature of negotiations and “work with” their counterparts to make it more collaborative. Instead of moving from position to counter-position to compromise, negotiators try to identify their interests prior to the development of solutions. They use reasonable opening offers, show good faith, and initiate the exchange of mutual concessions. Once interests are identified, the negotiators then jointly develop a wide-ranging set of alternatives, and then choose the best alternative. Cooperative negotiators seek a fair and just settlement.



NEGOTIATION SCENARIOS

For each of the following scenarios, identify what would be the most appropriate negotiation strategy (i.e., distributive or integrative) and style (i.e., competitive or cooperative), and identify two possible negotiation tactics that could be used in each scenario. Some scenarios may justify using either a distributive or integrative approach. Provide a short rationale for your choices in each column.

SCENARIO	NEGOTIATION STRATEGY	NEGOTIATION STYLE	NEGOTIATION TACTICS
1. Purchasing a souvenir from a street vendor while on vacation			
2. Couple deciding on which movie to watch at the theatre: one wants an action flick, the other a romantic comedy			
3. Consumer visits car dealership to buy a new car			
4. A married couple tries to decide where to spend their two-week vacation: one wants to go to the mountains, the other wants to go to the seashore			
5. Owner of rental car agency visits dealership to buy new cars			



SCENARIO	NEGOTIATION STRATEGY	NEGOTIATION STYLE	NEGOTIATION TACTICS
6. Two rural communities in discussions about using the only local water well			
7. Company needs to downsize and lay-off workers, but is uncertain about how many to lay-off from each of the different departments			
8. Renting a new apartment			
9. New parents deciding on who will wake up to feed the baby in the middle of the night			
10. Canadian rug seller wants to buy rugs from supplier in Turkey			

DEVELOPING YOUR NEGOTIATION SKILLS

THE PRISONER'S DILEMMA

The prisoner's dilemma is a scenario that helps to demonstrate the tension between the desire to cooperate versus the inclination to act in one's own self-interest. The name "Prisoner's Dilemma" refers to an imaginary situation in which two people have been arrested for committing a crime together. The police are interrogating each of the two suspects in separate rooms; the suspects cannot communicate with one another. The suspects are guilty, but the police do not have enough evidence to convict them. If neither suspect confesses, the police plan to charge them each with a lesser crime that will put them both in jail for one year. In order to get a conviction for the full crime, they will need at least one suspect to confess. However, if either one confesses, implicating their partner, the confessor will get immunity for their part in the crime, and will be released free of charge. Meanwhile, their partner is convicted with the maximum sentence. If both suspects confess, both will get harsh sentences, but not as harsh as if their partner sells them out. The diagram below demonstrates the four possible outcomes of this scenario:

		Criminal A	
		Cooperate (Keep Quiet)	Defect (Confess)
Criminal B	Cooperate (Keep Quiet)	A gets one year B gets one year	A goes free B gets 10 years
	Defect (Confess)	B goes free A gets 10 years	A gets 7 years B gets 7 years

NEGOTIATION IN A REAL ESTATE AND HOUSING CONTEXT

Negotiation is an essential part of a number of real estate and housing law matters, including negotiating a rental lease with a landlord, a mortgage with a lender, and the purchase and sale of a home. You will be playing a game to help you begin thinking critically about the role of negotiation in this context. Unlike the original Prisoner's Dilemma scenario, which looks at incentives to avoid punishment, this game looks at how this same structure of incentives can work when participants are offered rewards. The same dilemma of cooperation versus self-interest applies.

INSTRUCTIONS

Pick a partner and ensure that each one of you has both a red card and a black card. Decide which one will be Player A and which one will be Player B. The card you choose to play represents whether or not you decide to cooperate with your partner. The possible outcomes are shown in the chart below. Black cards represent a decision to cooperate. Red cards represent a decision to act in your own self-interest. When your teacher calls on you or your partner, you must both decide which card to play. To play a card, hold it to your chest, face down and reveal them at the same time. Engage in ten rounds of play with your partner and record the results in the chart provided.

**Player A**

Player B		Cooperate (black)	Compete (red)
	Cooperate (black)	A gets \$3 B gets \$3	A gets \$5 B gets nothing
	Compete (red)	B gets \$5 A gets nothing	A gets \$2 B gets \$2

Results

Round	Your Card	Your Partner's Card	Your Earnings
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
Total			

Discussion Questions

1. Which strategy did you use in the game? Did you adopt a distributive or integrative strategy throughout, or vary the strategy in individual rounds? Why?
2. What was the thought process behind your decisions to either cooperate or compete?
3. What negotiation tactics did you apply in the game?
4. Were there any trends that emerged over time? If so, what?
5. In the card game, we used imaginary money as the incentive. What would be some incentives in a real life real estate situation (e.g., buying a home, renting an apartment, applying for a mortgage, etc.)?



ADDITIONAL NEGOTIATION EXERCISES

THERE AREN'T ENOUGH ORANGES!

Divide students into groups of three (or three larger groups) and assign each person to be Buyer #1, Buyer #2, and the Mediator. Distribute the "Facts Known to All" to each person, and the additional facts according to the relevant role. 15-20 minutes into the negotiations, give the Mediator their Part 2 document. Give students 20-30 minutes to carry out the full negotiation. Debrief as a class.

FACTS KNOWN TO ALL

1. The only orange producing farm within the area has traditionally produced a surplus amount of oranges, enough to supply all who wanted to buy them.
2. The farm's top two buyers each buy and consume 100 oranges each year.
3. This year there has been a drought, insect infestations, and a fire, so the farm will have a total production this year of 100 oranges.
4. The farm knows it must first serve its two top buyers, but in order to choose which one or how to divide the limited supply of oranges, they have called a meeting of their two top buyers to help them decide who gets the crop.
5. In consideration for their top buyers business throughout the years, the farm does not want to choose one over the other and hopes that if both meet, they will come up with a solution.
6. There are no other viable options to obtain oranges beyond the crop produced by this farm. Any other crop is too far away and would not be able to provide the freshness or quality oranges to serve the needs of the two top buyers. They would also be too expensive to produce and therefore not economically viable.

CONFIDENTIAL INSTRUCTIONS TO BUYER # 1

1. You are aware of the "Facts Known to All".
2. You are a major producer of orange juice and require 100 oranges a year to meet your multi-year minimum production sales quota for your customers. You absolutely need to meet your sales obligations, or else you risk losing customers and having to lay off your long time employees. You are the major employer for your community, which would become a ghost town without you.
3. You require the edible flesh of the orange to squeeze out the juice, which you produce in two varieties, with and without pulp.
4. Any reduction in production will have long term negative effects on your business and definitely require layoffs and the delay, if not outright cancellation, of the planned expansion of your business.

**CONFIDENTIAL INSTRUCTIONS TO BUYER # 2**

1. You are aware of the "Facts Known to All".
2. You are a major producer of orange zest for baking, and require 100 oranges a year to meet your multi-year minimum production sales quota for your customers. You absolutely need to meet your sales obligations, or else you risk losing customers and having to lay off your long time employees. You are the major employer for your community, which would become a ghost town without you.
3. You require the rind of the orange to produce the zest, which you produce in two varieties, powder and liquid.
4. Any reduction in production will have long term negative effects on your business and definitely require layoffs and the delay, if not outright cancellation, of the planned expansion of your business.

CONFIDENTIAL INSTRUCTIONS TO MEDIATOR

1. You are aware of the "Facts Known to All".
 2. You are called to the meeting by the farm to assist in the discussion about how the crop of oranges is allocated between the two top buyers. The farm knows that both buyers need the full crop for their production needs, but it does not have enough for both.
 3. You should instruct each buyer to speak about how many oranges they need. Canvass any considerations as to sharing the crop or other solutions each buyer might have.
 4. Advise both parties that the farm, in consideration of their buyers' loyalty throughout the years, will not simply sell to the highest bidder. The farm has decided that the buyers have to share the crop or the farm is going to destroy the crop this year.
5. After about 10-15 minutes of discussion, if no solution is found, ask each buyer to consider why they need the oranges or what they plan to do with them. It is obvious, if they pay attention, that both can share, one needing the rind and the other needing the edible flesh of the orange. Both probably harvest what they need and throw away what the other needs. Encourage the parties to cooperate to both get what they need without telling them explicitly.

HOW LONG IS A MINUTE?

Select three observers (more depending on the size of the class). Have the remaining students all close their eyes. Instruct them not to open their eyes, look at their watches, or count seconds. Ask them to keep their eyes closed and remain silent until instructed otherwise. When you are ready, tell students to wait one minute and then raise their hand once they feel one minute has passed. Have the observers note what time each student raised their hand at (i.e. 20 seconds, 30 seconds, one minute, two minutes). Inevitably students will raise their hands at different times. Debrief with students the concept that just like our perception of time, individuals are ready to negotiate/mediate at different times. Sometimes, you simply need to wait for someone to be ready to settle an issue! A further discussion could be had with the students as to how one could encourage or prepare someone to be ready or in the right frame of mind to negotiate or settle.

WHAT CAN YOU DO WITH A PAPER CLIP?

Distribute a paper clip to each student. Ask them to get into groups and come up with ideas on what they can do with paper clips (e.g., hold paper together, earrings, etc.). Have students list all of the things they can think of to do with a paper clip. After a few minutes, have students discuss their ideas with the other groups in the class. Debrief with students on the important lesson in negotiation to think outside the box! Not everything is how it seems or only has one purpose or one way to be achieved. Explain to students that in negotiation, it is important to consider all of the ways that a problem or dispute can be resolved. Encourage them to use creativity in their negotiation strategies.

MODULE 3

RENTAL HOUSING

OVERVIEW

This module invites students to understand how to rent an apartment and what factors impact the rental process for landlords and tenants. Renting is simply the granting of a right to possession of a space in exchange for money and subject to rules (be they imposed by the government, the community, the building or the landlord). Rental laws in Canada are mostly governed by the provincial laws and although alike, will differ in each province. This module introduces students to residential lease transactions and rental housing law in Ontario. Students will look at legislation that governs rental housing law, including the rights and responsibilities outlined in Ontario's *Residential Tenancies Act*. Students will have the opportunity to engage in experiential learning through a mock rental agreement negotiation where they will create a negotiation plan, as either landlords or tenants.

Learning Objectives

- To expose students to basic concepts relating to residential lease transactions.
- To enhance students' understanding of the rights and responsibilities of landlords and tenants, the Landlord and Tenant Board, and the law related to residential housing law in Ontario.
- To cultivate student listening, speaking, reasoning, and persuasive skills.
- To enhance students' critical-thinking and advocacy skills.

Materials

- Copies of *Rental Housing in Ontario* (one per student)
- Copies of the *Confidential Instructions for Landlord* (one for each landlord)
- Copies of the *Confidential Instructions for Tenant* (one for each tenant)
- Copies of the *Negotiation Timeline* (one per student)
- Copies of the *Negotiation Plan* (one per student)
- Copies of or on-line access to the Residential Tenancy Agreement (Standard Form of Lease); available at [http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/047-2229E~1/\\$File/2229E.pdf](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/047-2229E~1/$File/2229E.pdf) (one per pair)

Teaching and Learning Strategies

1. Activate students' knowledge of this topic by having them complete a line up activity with one or more of the following statements. Instruct students to stand in a line, listen to the statement and step forward if they believe the statement is true and backward if they believe it is false. Ask students to give reasons for their answers and discuss as a class.
 - 1) A rental agreement is not the same thing as a lease.
 - 2) A tenant has the right to negotiate with a landlord to determine the amount of rent and services provided in the rental agreement.
 - 3) A tenant is allowed to change the locks on the rental unit without telling his/her landlord.
 - 4) If a landlord fails to make a repair to the rental unit, the tenant is allowed to withhold rent until the repair is made.
 - 5) In most cases, a landlord must provide a tenant with 24 hours notice before entering the rental unit.
 - 6) A tenant must provide his/her landlord with 30 days notice if they want to move out of the rental unit.
 - 7) A landlord can demand a damage deposit from the tenant when they rent a place.



- 8) A landlord may demand that a tenant leave the rental unit at any time.
- 9) A landlord can increase the amount of the rent at any time.

Teacher's Key

- 1. F – A rental agreement between a landlord and tenant is commonly referred to as a lease or tenancy agreement.
- 2. T – Landlords and tenants are free to negotiate their initial tenancy agreements in the same way two parties negotiate any other contract under the common law. Parties have the freedom to negotiate the amount of rent that is paid, the services included, and the provision of any other services at any time in the landlord-tenant relationship. A landlord is limited in rent increases with an existing tenant.
- 3. F – Tenants cannot change the locks on a door that gives entry to the rental unit unless the landlord agrees. Tenants cannot add locks that might prevent the landlord access in an emergency or for valid reasons.
- 4. F – A tenant is not entitled to withhold rent. If a tenant does, the landlord can give the tenant notice of termination for non-payment of rent and then file an application to evict the tenant. There are other options for dealing with repair issues. For example, the tenant could seek assistance from the Landlord and Tenant Board.
- 5. T – In most cases, before entering the unit, a landlord must give 24 hours written notice. There are some exceptions, however, such as in the case of an emergency or if the tenant agrees to allow the landlord to enter.
- 6. F – If a tenant wishes to terminate a tenancy, s/he must provide the landlord with at least 60 days notice of his/her intention to move out at the end of the tenancy. See "*Terminating a Tenancy*" later in this Module.
- 7. F – Landlords are limited in the security deposits they may request. The last month's rent deposit is strictly for the rent payable on the last month and cannot be applied to other uses.
- 8. F – The landlord may only terminate a rental agreement for limited reasons set out in the *Residential Tenancies Act 2006* (i.e., non-payment of rent) and even when permitted, the landlord must obtain an order to evict the tenant and cannot use self-help remedies.
- 9. F – The government has set strict rules about rent increases once the rental agreement is in place and generally limits increases to once every 12 months and may prescribe the amount of the increase.

Teaching and Learning Strategies

2. Using either a teacher- or student-centred reading strategy, have students review the handout, *Rental Housing 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 residential lease agreement. Organize students into pairs, with one person playing the role of the landlord and the other the tenant. Distribute the *Negotiation Timeline*, *Negotiation Plan*, and *Residential Agreement to Lease* to each pair and review the documents with students, explaining the timeline for the activity as well as important terms such as: monthly rent; occupation date; term of lease; what is included; what is not included, etc. Explain to students that they will complete the *Residential Agreement to Lease* document in pairs once they have negotiated the final terms of the agreement.
4. Distribute the *Confidential Instructions for Landlord* separately to students playing the role of landlord, John Smith, and the *Confidential Instructions for Tenant* to students in the role of tenant, Vera Stevens. You may choose to review the scenario together as a class or have students review it on their own.
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 lease agreement using the strategies, tactics, and techniques they have learned about. Follow the *Negotiation Timeline* and give students about 30 minutes to complete the negotiation and *Residential Agreement to Lease*. 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 difference between groups in terms of final agreements, strategies, and techniques. Optionally, circulate all of the *Negotiation Plans*, and have all students who represented the landlord, and all those who represented the tenant, 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 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 residential housing transactions by having them complete the Landlord and Tenant Board Mock Hearing Scenario: *In the matter of 159 Alexander Street, Unit 5B, Between: John Smith and Vera Stevens*, available at: <http://ojen.ca/resource/2464>.





MODULE 3

RENTAL HOUSING IN ONTARIO

In Ontario, landlord and tenant rights and obligations are governed by the *Residential Tenancies Act 2006* (*the Act*)¹. This legislation gives landlords and tenants specific rights and responsibilities, provides rules for increasing rent and for evicting a tenant, and creates the Landlord and Tenant Board (LTB).

The *Act* applies to most rental housing in Ontario. You are likely to be covered by the *Act* if you:

- Rent an apartment or a house;
- Rent the site that your mobile home or land lease home sits on;
- Are a roomer or a boarder and do not share a kitchen or bathroom with the owner or a close family member of the owner;
- Live in a “care home”, (e.g., retirement home or rest home); or
- Live in public housing, or, if your rent is subsidized or based on your income.

Some rental housing is not covered by the *Act*. For example, you might not be covered if you:

- Live in a place that is used for business;
- Share a kitchen or bathroom with the owner or a close family member of the owner;
- Stay temporarily in a hotel, motel, or seasonal housing;
- Live in certain kinds of student housing;
- Stay somewhere temporarily for rehabilitation; or
- Are a member of a housing co-operative.²

Tenants are also affected by *Ontario's Human Rights Code*, which protects people from discrimination in a number of areas, including when they are looking for an apartment and when they are dealing with their landlord.³

RENTING A NEW PLACE

WHAT IS A RENTAL AGREEMENT?

A rental agreement is a legal contract between a landlord and tenant in which the tenant agrees to pay rent for the right to live in a rental unit provided by the landlord. The rental agreement between a landlord and tenant is commonly referred to as a “lease” or “tenancy agreement.” It outlines how much rent will be paid for the unit and the landlord and tenant may also promise to do certain things for each other, and to follow certain rules.

The *Act* states that a tenancy agreement can either be oral or written.⁴ However, it is generally better to have a written agreement because it creates a record of the things agreed to by the landlord and tenant. If there is a dispute later on, the written agreement may clarify the obligations held by the tenant and landlord and help to settle the dispute.

¹ *Residential Tenancies Act*, SO 2006, c 17 [Act]. A copy of the Act and regulations can be found here: <<https://www.ontario.ca/laws/statute/06r17>>.

² “Renting a Place to Live” (May 2014), online: Community Legal Education Ontario <http://www.cleo.on.ca/sites/default/files/book_pdfs/rent-en.pdf>.

³ For more information, refer to Module 6: Housing and Human Rights.

⁴ *Act*, *supra* note 1, s 1(2).



WHAT SHOULD BE INCLUDED IN A RENTAL AGREEMENT?

As of April 30, 2018, the government requires that all rental relationships be evidenced by a standard lease document.⁵

The government created a standard form of lease for all landlords and tenants to use, which can be accessed at <http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?OpenForm&ACT=RDR&TAB=PROFILE&SRCH&ENV=WWE&TIT=2229E&NO=047-2229E>.

If another form of lease is used for a tenancy created after April 30, 2018, the tenant may ask for the standard form of lease and the landlord has 21 days to provide a lease on the standard form. If the landlord does not deliver the standard lease with 21 days of the request, the tenant may withhold one month's rent. If the landlord fails to provide the standard lease with 30 days after the tenant has begun withholding the rent, the tenant does not have to pay the one month's rent, but no further rent may be withheld. Although the tenant must then continue to pay rent, the tenant may give 60 days' notice to terminate a yearly or fixed-term tenancy early.

Any rules that are included in the lease must also be permitted under the *Act* or they will not be enforceable by the LTB if there is a dispute between the landlord and tenant.⁶ If the rental unit is part of a condominium, the rules of the condominium corporation must also be observed by the landlord and tenant.

If the rental agreement is in writing, it is important to read it carefully and ensure that you understand all of the terms of the agreement before signing it.

RIGHTS AND RESPONSIBILITIES

Under the *Act*, both landlords and tenants have rights and responsibilities. A landlord must provide all new tenants with information about the rights and responsibilities of landlords and tenants, the role of the LTB and how to contact the LTB.⁷ The LTB produces a brochure called *Information for New Tenants* that landlords must provide to new tenants on or before the day the tenancy begins.⁸

⁵ "Information for New Tenants" (April 2018), online: Landlord and Tenant Board <<http://www.sjto.gov.on.ca/documents/lrb/Brochures/Information%20for%20New%20Tenants.html>>.

⁶ *Act*, *supra* s 4.

⁷ *Ibid*, s 11(1).

⁸ *Ibid*, s 11(2).



TENANTS

Rights	Responsibilities
• Security of Tenancy – Tenants are allowed to live in the rental unit until they provide the landlord proper notice that they intend to move out, come to an agreement with the landlord that the tenant can move, or the landlord gives the tenant a notice to end the tenancy for a reason allowed by the <i>Act</i>. A tenant does not have to immediately move if the landlord gives them notice to end the tenancy. The landlord must apply to the LTB to get an order to evict the tenant. The tenant has the right to attend a hearing and explain why the tenancy should not end. • Privacy – A landlord can only enter the rental unit for the reasons allowed by the <i>Act</i>. In most cases, before entering the unit, the landlord must give 24 hours written notice. There are some exceptions, however, such as in the case of an emergency or if the tenant agrees to allow the landlord to enter. • Negotiate with Landlords – Landlords and tenants are free to negotiate tenancy agreements in the same way two parties negotiate any other contract under the common law. Parties have the freedom to negotiate the amount of rent that is paid,⁹ the services included, and the provision of any other services at any time in the landlord-tenant relationship.¹⁰	• Paying Rent on Time – Rent is considered late if not received by the end of the day that it is due.¹¹ If rent is not paid on time, the landlord may give the tenant a Notice to End a Tenancy Early for Non-Payment of Rent (Form N4). This notice gives the tenant who pays rent monthly 14 days to pay rent or to move out.¹² If the rent is not paid and the tenant has not vacated the unit, the landlord can make an application to the LTB for an order requiring the payment of the arrears and evicting the tenant if the entire payment is not received by a specified deadline.¹³ If a tenant is repeatedly late paying rent, the landlord may give a Notice to Terminate a Tenancy at the End of Term (Form N8) for persistently paying rent late. Daily or weekly tenants must be given 28 days' notice and in all other cases, the tenant must be given 60 days' notice.¹⁴ The landlord can apply to the LTB for an order to evict the tenant after giving the tenant the notice.¹⁵ If a tenant's rent cheque is returned Non-Sufficient Funds (NSF), the landlord may ask the tenant to pay for the charges the landlord's bank has invoked, plus an administrative charge of up to \$20.¹⁶

⁹ Although the parties are free to set the amount of rent, they cannot agree to a higher amount than any maximum outlined by legislation.

¹⁰ As provided by section 17, other than as provided for in the *Act*, landlords and tenants are free to negotiate tenancy agreements in the same way two parties negotiate any other contract under common law. Section 113 of the *Act* stipulates that lawful rent for a new tenant is whatever the two parties agree upon. Section 123 provides the parties with freedom to negotiate the provision of any other services at any time in the landlord-tenant relationship.

¹¹ The *Act* does not define when rent becomes due. Rather, this is determined by the terms of the tenancy agreement, which is interpreted according to the laws of contract.

¹² *Act*, *supra* note 1, s 59(1)(b).

¹³ "If a Tenant Does not Pay Rent" (1 July 2015), online: Landlord and Tenant Board <[http://www.sjto.gov.on.ca/documents/ltb/Brochures/If%20a%20Tenant%20Does%20Not%20Pay%20Rent%20\(EN\)%20Revised_Bill140_June15_2015.pdf](http://www.sjto.gov.on.ca/documents/ltb/Brochures/If%20a%20Tenant%20Does%20Not%20Pay%20Rent%20(EN)%20Revised_Bill140_June15_2015.pdf)>.

¹⁴ *Act*, *supra* note 1, s 44.

¹⁵ *Ibid*, s 69(1).

¹⁶ *Ibid*, s 87(5); O Reg 516/06, s 17 at para 5 [ON Regulation].



TENANTS

Rights	Responsibilities
	• Keeping the Rental Unit Clean – The <i>Act</i> is vague on what constitutes clean,¹⁷ however common sense prevails. A tenant is responsible for repairing damage and failing to clean might, in fact, result in damages to the unit. • Repairing any Damage to the Rental Property Caused by the Tenant or their Guests – A tenant is not responsible for “normal wear and tear” to a unit (e.g., carpet usage), however if the floors are never cleaned causing the carpets to be replaced sooner than normally required would be considered damage for which the tenant is liable. TENANTS ARE NOT ALLOWED TO: • Withhold Rent – A tenant is not entitled to withhold rent.¹⁸ If a tenant does, the landlord can give the tenant notice of termination for non-payment of rent¹⁹ and then file an application to evict the tenant.²⁰ There are other options for dealing with problems. • Change the Locks – Tenants cannot change the locks on a door that gives entry to the rental unit unless the landlord agrees.²¹ Tenants cannot add locks that might prevent the landlord access in an emergency or for valid reasons.

¹⁷ *Act*, *supra* note 1, s 33.

¹⁸ This rule is not explicitly stated in the *Act*. Rather, sections 58 and 59 simply state that non-payment of rent is due cause for the landlord to give the tenant notice of termination. The *Act* doesn't create any exceptions to this rule.

¹⁹ *Ibid*, s 58(1) at para 1.

²⁰ *Ibid*, s 59(1).

²¹ *Ibid*, s 35(1).



LANDLORDS

Rights

- **Set the Rental Amount** – When the unit is vacant, the landlord can set the rental amount. The landlord can negotiate with the new tenant, including deciding what the rental amount is and what services are or are not included (e.g., hydro, parking, etc.).
- **Ask for Personal Information** – When a tenant applies to rent a unit, a landlord can ask the applicant to provide information such as current residence, rental history, employment history, personal references, and income information (if credit references and rental history information are also requested).²² The *Ontario Human rights Code* has special rules about asking for information about the income of a prospective tenant, and landlords must follow them.²³
- **Collect a Rent Deposit** – A landlord is only permitted to collect a rent deposit if it is requested on or before they enter into the tenancy agreement.²⁴ The deposit cannot be more than one month's rent or the rent for one rental period, whichever is less.²⁵ A rent deposit can only be applied to the last month's rent before the tenancy ends and cannot be used to pay damages or anything else.²⁶ The landlord must pay interest on the deposit every 12 months equal to the rent increase guideline that is in effect when the interest is due.²⁷ The landlord can request that the tenant update the deposit amount after a rent increase in order that the deposit is the same as the amount of the new rent.²⁸

Responsibilities

- **Maintenance and Repairs** – Landlords are obligated under the *Act* to keep the rental property in a good state of repair and obey health, safety, and maintenance standards. This could include repair and maintenance of items such as electrical, plumbing or heating systems, appliances, carpets in the unit or common areas, walls, roofs, ceilings, windows, doors, locks, lighting, garages, laundry rooms, patios, walkways, or pools. If something no longer works because of normal “wear and tear,” the landlord must repair it so that it works properly, or replace it. When something is replaced, however, the landlord does not have to supply a new or better model.²⁹
- **Providing Tenants with the Tenancy Agreement** – Landlords must provide a copy of the written tenancy agreement within 21 days of the tenant signing the agreement. If the tenancy agreement is not in writing, landlords must give written notice of their legal name and address within 21 days of the tenancy commencing.
- **Heating Requirements** – If a landlord provides heat, the *Act* requires the landlord to keep the heat to at least 20 degrees Celsius from September 1 to June 15.³⁰ In addition, many municipalities have their own property standards or by-laws that set minimum standards for heat.

²² *Ibid*, s 10.

²³ See “Human Rights for Tenants” (2011), online: Ontario Human Rights Commission <<http://www.ohrc.on.ca/en/human-rights-tenants-brochure>>.

²⁴ *Act*, supra note 1, s 106(1).

²⁵ *Ibid*, s 106(2).

²⁶ *Ibid*, s 106(10).

²⁷ *Ibid*, s 106(6).

²⁸ *Ibid*, s 106(3).

²⁹ This is a complex matter. See generally “Maintenance and Repairs” (31 January 2007), online: Landlord and Tenant Board <[http://www.sjto.gov.on.ca/documents/lrb/Brochures/Maintenance%20and%20Repairs%20\(EN\).pdf?20b805](http://www.sjto.gov.on.ca/documents/lrb/Brochures/Maintenance%20and%20Repairs%20(EN).pdf?20b805)>.

³⁰ *ON Regulation*, supra note 17, s 4(1)-(3).



LANDLORDS

Rights	Responsibilities
• Collect a Key Deposit – A landlord is allowed to get a key deposit provided: (1) the deposit is refundable, and (2) the amount of the deposit is not more than the expected cost of replacing the key(s) if they are not returned to the landlord.³¹ The key deposit is refunded at the end of the tenancy on the return of the key(s).³² • Change the Locks – A landlord can change the locks while the tenant is living in the unit provided they give the tenant a key for the new lock.³³ Once a tenant is evicted, the landlord can change the lock, even if the tenant has left property in the unit and is not required to give the tenant a key.³⁴ • Increase the Rent – There are special rules that limit how often a landlord can increase the rent and by how much. In most cases, a landlord can increase the rent only once a year by the guideline that is set by the Minister of Municipal Affairs and Housing.³⁵ A landlord must give a tenant at least 90 days notice in writing of any rent increase and this notice must be on the proper form. New units, non-profit and public housing units, residences at schools, colleges and universities, and certain other accommodation are not covered by all the rent rules.	• Enter the Unit without Notice – The Act only allows a landlord to enter a tenant's unit under specific circumstances.³⁶ In most cases, the landlord must first give the tenant 24 hours written notice, stating when they will enter and for what reason. There are exceptions, such as in case of an emergency or if the tenant agrees to allow the landlord to enter the unit. The tenant is not allowed to refuse if the Act permits the entry or the landlord may give a notice of termination.³⁷ • Shut Off or Deliberately Interfere with the Supply of a Vital Service – Landlords cannot shut off or interfere with vital services such as heat, electricity, fuel, gas, or hot or cold water that the landlord must provide under the tenancy agreement. However, a landlord is allowed to shut-off services temporarily if this is necessary to make repairs. • Take a Tenant's Personal Property – A landlord cannot take a tenant's personal property for refusal to pay rent while the tenant is still living in the unit. • Lock out a Tenant – A landlord can only lock out a tenant if they have an eviction order from the LTB and the Sheriff comes to the rental unit to enforce it. • Insist that Rent is Paid by Post-Dated Cheque or Automatic Debit – A landlord can suggest a preferred method of payment, but a tenant cannot be refused a rental unit or evicted for refusing to pay rent by that means. • Collect a Damage Deposit – The landlord cannot collect a deposit to satisfy any damages caused to the unit during the tenant's tenure, nor apply the rent deposit.³⁸ If damage is caused to the unit, the landlord can give the tenant a notice asking that the damages be paid. If the tenant does not pay, the landlord may apply to have the LTB determine if there are damages and what should be done about them.³⁹

³¹ ON Regulation, *supra* note 17, s 17 at para 3.

³² *Ibid.*

³³ Act, *supra* note 1, s 24.

³⁴ If a landlord recovers possession the rental unit, he or she may change the locks and deal with any abandoned property according to the directions in the Act, *supra* note 1. Section 39 governs recovering possession of a unit; sections 41 and 42 deal with abandoned property.

³⁵ Act, *supra* note 1, ss 116-117.

³⁶ Act, *supra* note 1, ss 25-27.

³⁷ *Ibid.*, s 36.

³⁸ *Ibid.*, s 106(1). See also "A Guide to the Residential Tenancies Act" (31 January 2007), online: Landlord and Tenant Board <[http://www.sjto.gov.on.ca/documents/Ltb/Brochures/Guide%20to%20the%20Residential%20Tenancies%20Act%20\(EN\).pdf?20b805](http://www.sjto.gov.on.ca/documents/Ltb/Brochures/Guide%20to%20the%20Residential%20Tenancies%20Act%20(EN).pdf?20b805)> (see the "About Rent" section).

³⁹ Act, *supra* note 1, s 89(1).



TERMINATING A TENANCY

The *Act* has rules on how both tenants and landlords can end a tenancy.

TENANTS⁴⁰

If a tenant wishes to terminate their tenancy, they must provide the landlord with at least 60 days notice of their intention to move out at the end of the tenancy.⁴¹ A tenant cannot terminate the tenancy prior to the end of their lease without the landlord's consent.⁴² If the landlord does not consent, the tenant may assign the unit to a new tenant with the landlord's consent. Here, the tenant would have two options: they could either *sublet* or *assign* the tenancy to another tenant. Under a **sublet**, the original tenant remains fully liable to the landlord whereas in an **assignment** all of the tenant's obligations remain the same and are passed on to the new tenant. Although a landlord cannot reject the idea of subletting, the landlord can refuse to consent to the new tenant if they have a good reason.⁴³ If the tenant sublets or assigns the unit without the landlord's consent, the landlord may file an application with the LTB to evict both the tenant and the unauthorized occupant. If the landlord does not file within 60 days of discovering the unauthorized occupant, the unauthorized occupant will become a tenant.⁴⁴

LANDLORDS

Generally, before a landlord can apply to the LTB to evict a tenant, they must provide the tenant with a Notice of Termination that tells the tenant what the problem is.⁴⁵ For some termination notices, the landlord must wait a specific number of days to see if the tenant corrects the problem before they can file an application with the LTB. The number of days the tenant has to correct the problem is set out in the notice. If the tenant does not correct the problem or move out, the landlord can file an application with the LTB and, in most situations, a hearing will be scheduled for the parties to appear and explain themselves. Some types of applications can be made without notice to the tenant and the LTB may issue an order without holding a hearing. Contrary to popular belief, there is no restriction against evicting a tenant during the winter or any other time of the year. The landlord may evict a tenant at the end of the term, even if the tenant has done nothing wrong, or during the term where the tenant has breached a provision of the tenancy agreement.

WHEN CAN A LANDLORD EVICT A TENANT?

- **Eviction for Having a Pet** – A tenant cannot be evicted simply for having a pet.⁴⁶ However, a tenant may be evicted for having a pet in their unit if the pet is making too much noise, damaging the unit, or causing an allergic reaction, or the animal or species is considered to be inherently dangerous.⁴⁷ Furthermore, a condominium that has a "no pet" rule can force the tenant to remove the pet from the unit or move out.⁴⁸

⁴⁰ How a Tenant Can End Their Tenancy" (31 January 2007), online: Landlord and Tenant Board <[http://www.sjto.gov.on.ca/documents/lrb/Brochures/How%20a%20Tenant%20Can%20End%20Their%20Tenancy%20\(EN\).pdf](http://www.sjto.gov.on.ca/documents/lrb/Brochures/How%20a%20Tenant%20Can%20End%20Their%20Tenancy%20(EN).pdf)>.

⁴¹ *Act*, *supra* note 1, s 44(1)-(4). 28 days' notice is required in the case of a daily or weekly tenancy. The termination date must be the last day of the tenant's rental period or their lease, even if more than the notice period required.

⁴² *Ibid*, s 47.

⁴³ *Ibid*, s 95(5).

⁴⁴ *Ibid*, s 100(2).

⁴⁵ See different types of Notices available online at: <http://www.sjto.gov.on.ca/lrb/forms/>

⁴⁶ *Act*, *supra* note 1, s 14.

⁴⁷ "How a Landlord Can End a Tenancy" (1 July 2015), online: Landlord and Tenant Board <[http://www.sjto.gov.on.ca/documents/lrb/Brochures/How%20a%20Landlord%20Can%20End%20a%20Tenancy%20\(EN\)%20Revised_Bill140_June15_2015.pdf?20b805](http://www.sjto.gov.on.ca/documents/lrb/Brochures/How%20a%20Landlord%20Can%20End%20a%20Tenancy%20(EN)%20Revised_Bill140_June15_2015.pdf?20b805)>.

⁴⁸ Under the *Condominium Act*, SO 1998, c 19, s 58, a condominium board may pass rules as long as they are reasonable and for the purpose of protecting the property, security, and welfare of residents and guests. Generally, this section allows condominiums to pass rules restricting pets so long as they are reasonable and consistently applied. See also *Durham Standard Condominium Corp No 187 v Morton*, 2012 ONSC 161, 14 RPR (5th) 300 and *Niagara North Condominium Corp No 125 v Kinslow*, 2007, 2007 CanLII 49188 (ONSC), CarswellOnt 7444 (Ont Sup Ct J).



- **Eviction for Having a Roommate** – A tenant cannot be evicted simply for having a roommate.⁴⁹ However, a tenant may be evicted if the roommate is causing a problem for the landlord or for other tenants (e.g., excessive noise, damaging the unit, overcrowding).⁵⁰ Landlords may seek enforcement of overcrowding rules and have persons who are not on the lease removed or the rental agreement terminated early if there are too many people living in the apartment.⁵¹ Also, condominiums may provide in their Declaration to renters that the unit may only be used for “Single Family Use.” Such Declarations may prohibit renting to unrelated parties, and these restrictions are often determined by Courts not to infringe the *Ontario Human Rights Code* (which you will learn about in Module 6).
- **Eviction for Landlord’s Own Use** – A tenant can be evicted at the end of their tenancy if the landlord “in good faith” requires the unit for a period of at least one year for:
 1. Their own use,
 2. The use of an immediate family member, or
 3. The use of a person who will provide care services to the landlord or a member of the landlord’s immediate family, if the person who will be receiving the care services lives in the same building or complex.⁵²

As of September 1, 2017, only a landlord who is an individual may evict for this purpose. Tenants in units owned by a corporation cannot be evicted. In addition, a landlord must compensate the evicted tenant in the amount of one month’s rent or offer the tenant another unit acceptable to the tenant.
- **Eviction to Sell the Unit** – A tenant can be evicted at the end of their tenancy if the landlord has agreed to sell the rental property that contains no more than three residential units and the purchaser requires the rental unit for: (1) their own use, (2) the use of an immediate family member, or (3) the use of a person who will provide care services to the landlord or a member of the landlord’s immediate family, if the person who will be receiving the care services lives in the same building or complex.⁵³
- **Abandoned Unit** – A landlord should make reasonable efforts to contact the tenant to determine if they have in fact left the unit (e.g., write or call them). If the landlord believes the tenant has abandoned the unit, the landlord may apply to the LTB for an order terminating the tenancy.⁵⁴ If the landlord rents the unit to another tenant without the order, the tenant who has not abandoned the unit may take legal action against the landlord.⁵⁵ There are special rules that a landlord must follow before disposing of any property a tenant has left in an abandoned unit.⁵⁶

⁴⁹ The term “roommate” is not used in the Act, *supra* note 1. However, having guests and other occupants visit or stay in a unit may be categorized as a tenant’s right to reasonable enjoyment of the rental unit. See “Guideline 21: Landlords, Tenants, Occupants and Residential Tenancies” (6 January 2012), online: Landlord and Tenant Board <<http://www.sjto.gov.on.ca/documents/Ltb/Interpretation%20Guidelines/21%20-%20Landlords,%20Tenants,%20Occupants%20and%20Residential%20Tenancies.pdf>>.

⁵⁰ The tenant’s right to reasonable enjoyment must be balanced with the landlord’s and other tenants’ rights. Therefore, the Act, *supra* note 1, s 64(1) permits a landlord to give a tenant notice of termination if the tenant or another occupant is interfering with the “lawful right, privilege, or interest of the landlord or another tenant.”

⁵¹ The landlord may give a “N5 Notice,” i.e., a notice to end tenancy, if the number of people living in the rental unit is more than permitted by health, safety or housing standards. See “Notice to End Tenancy For Interfering with Others, Damage, or Overcrowding” (form), online: Landlord and Tenant Board: <<http://www.sjto.gov.on.ca/Ltb/forms/>>.

⁵² Act, *supra* note 1, s 48(1).

⁵³ *Ibid*, s 49(1).

⁵⁴ See the Landlord and Tenant Board, online: <<http://www.sjto.gov.on.ca/Ltb/faqs/>> (see the “Abandoned Unit” section).

⁵⁵ Act, *supra* note 1, s 41(6); *Ibid*.

⁵⁶ Act, *supra* note 1, s 42; “Property Left Behind When a Tenant Moves Out” (4 January 2010), online: Landlord and Tenant Board <[http://www.sjto.gov.on.ca/documents/Ltb/Brochures/Property%20Left%20Behind%20When%20a%20Tenant%20Moves%20Out%20\(EN\).pdf?20b805](http://www.sjto.gov.on.ca/documents/Ltb/Brochures/Property%20Left%20Behind%20When%20a%20Tenant%20Moves%20Out%20(EN).pdf?20b805)>.



WHAT SHOULD A TENANT DO AFTER RECEIVING A NOTICE OF TERMINATION?

The tenant should first read the Notice to see why and when the landlord is asking him/her to vacate. The Tenant may:

- Talk to the landlord to see if he/she can correct the problem by any other means;
- Leave the unit as directed in the Notice;
- Call the LTB's call centre to learn more about the eviction process and/or get some legal advice from a lawyer or legal clinic;
- Attend the LTB's mediation session to attempt to mediate a solution with the landlord; or
- Stay in the unit and see if the landlord files an application with the LTB. If an application is filed, the tenant can attend the hearing and explain his/her situation to the LTB and follow any order it renders.⁵⁷

⁵⁷ See *Act, supra* note 1, ss 80-85 for rules about eviction and the Board's orders.



MOCK RENTAL AGREEMENT NEGOTIATION

CONFIDENTIAL INSTRUCTIONS FOR LANDLORD

You will work in pairs to complete a mock negotiation of a residential tenancy agreement. One student will play the role of the landlord and the other will play the role of the tenant. Review the scenario and 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 residential tenancy agreement and record the details in the *Residential Agreement to Lease*.

SCENARIO

Mr. John Smith is the owner and landlord of a townhouse complex at 159 Alexander Street that contains multiple apartments. His last tenant moved out one month ago and he has since completely cleaned and refreshed Unit 5B, a three-bedroom apartment, and posted a 'FOR RENT' sign in the window. He has also posted the rental unit online and on the bulletin boards at the local supermarket and community centre. The unit is advertised for \$1600 per month including outside parking, plus utilities.

Ms. Vera Stevens needs to find a new apartment for her and her three sons. She contacted a real estate agent to help her identify appropriate places for her. Her friend, Naomi Trainer, has found the listing online and recommends that Ms. Stevens go view it. Although this is not a listed apartment, the agent agrees to go with Ms. Stevens to see it.

SPECIAL FACTS

- Your name is John Smith.
- You have been the owner of a complex of ten townhouses for the past 10 years.
- You make a decent income from renting nine of the units out to various tenants, while keeping one of the units as your home and office.
- During the past 10 years, you have negotiated many leases with various people for your units.
- You have advertised the three-bedroom unit for \$1600 per month, including parking for one vehicle and water. For a good tenant, you are prepared to rent the unit for as little as \$1500. Heating and electricity are additional costs, which the tenant must pay directly. Your experience is that the heating and electricity cost is \$425 per month on average.



MOCK RENTAL AGREEMENT NEGOTIATION

CONFIDENTIAL INSTRUCTIONS FOR TENANT

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SPECIAL FACTS

- Your name is Vera Stevens.
- You are 39 years old and a single mother of three boys ages 12, 15, and 17.
- Following your divorce, you and your sons decided to move into a bigger place that gave your teenage boys more space.
- You wish to find a new apartment that is closer to your work and the boys' school.
- Upon seeing the three-bedroom unit, you are happy that it will suit your purposes and that it is in a convenient location for your transportation requirements.
- You cannot pay more than \$1500 per month in rent and more than \$500 in utility payments.
- You need to move in within one month's time.
- You have a car and need a parking space.



NEGOTIATION TIMELINE*

Preparing for the Negotiation		
Develop Your Negotiation Plan	Each student (landlord and tenant) individually completes their Negotiation Plan.	10 mins
Landlord & Tenant Negotiation		
Step 1	The landlord and tenant should set out the issues to be discussed and negotiated.	5 mins
Step 2	The landlord and tenant meet to discuss the available unit and the rental details. The students negotiate the terms under which they will agree to rent the unit. 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	Put the agreed points for the rental of the unit into the Residential Agreement to Lease for the parties to sign. Have both the landlord and the tenant sign the agreement 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.



NEGOTIATION PLAN

OBJECTIVES/ISSUES:

OVERALL STRATEGY:

TACTICS AND TECHNIQUES:

OFFERS:

Opening Offer	Target	Bottom Line

FINAL NEGOTIATION AGREEMENT:





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* (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-in-these-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



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:



“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



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 price 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.

**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.



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.



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:

Buyer:

Seal

Witness:

Buyer:

Seal

this ____ day of _____, 20____.

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

Witness:

Seller:

Seal

Witness:

Seller:

Seal

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.






MODULE 5

MORTGAGES

OVERVIEW

This module invites students to understand how a home purchase is financed or an existing home is refinanced. Financing a new home or refinancing an existing home is very similar, if not the same process. Because the term of a mortgage is shorter than what is required to pay off the amount mortgaged completely, an existing home must be refinanced at the end of the term to come up with what is left to be paid, commonly called a balloon payment. Students will be introduced to critical concepts and the terminology used in the financing world. A mortgage, also known as a “Charge”, is an agreement to borrow money, typically from a bank; however, a lender can be anyone who has money to lend, including a family member or business person. This agreement is a negotiated one although there is an old maxim that says: “the one who has the money makes the rules.” Borrowers should nonetheless research what is available in the marketplace. Understanding what is available will put you in a better situation to negotiate.

Learning Objectives

- To introduce students to key financial literacy issues in the real estate context, particularly mortgages.
- To enhance students’ understanding of the essential concepts related to mortgages, such as down payments, interest rates, amortization periods, and payment schedules, as well as the factors considered in qualifying for a mortgage.
- To provide students with a participatory and experiential learning opportunity.
- To enhance students’ critical-thinking and advocacy skills.
- To introduce, expand, and enhance the students’ financial literacy skills.

- Copies of the *Negotiation Plan* (one per student)
- Copies of the *Mortgage Agreement* (one per pair)

Teaching and Learning Strategies

1. Introduce the topic of mortgages by having students view the video *What is a Mortgage?*, available here: https://www.youtube.com/watch?v=CBIJwb37O_4.
2. Provide an overview of basic mortgage concepts, the factors considered in qualifying for a mortgage and the terms typically addressed when negotiating a mortgage by having students review the handout, *Understanding Mortgages*. Check for understanding and clarify any points that are unclear. Consider having students explore the Mortgage Qualifier Tool (go to *Mortgage Qualifier Tool: Financial Consumer Agency of Canada* - <http://itools-ioutils.fcac-acfc.gc.ca/MQ-HQ/MQ-EAPH-eng.aspx>) either online or by printing some of the sample scenarios and reviewing them as a class.
3. Have students complete the worksheet *Understanding Mortgages - Terminology exercise* either individually or in pairs. Take up the answers as a class.

Materials

- Copies of *Understanding Mortgages* (one per student)
- Copies of *Mortgage Math: Payment Types, Amortization, and Amortization Schedules* (one per student)
- Copies of the *Confidential Instructions for Mortgagor* (one for each mortgagor)
- Copies of the *Confidential Instructions for Mortgagee* (one for each mortgagee)
- Copies of the *Negotiation Timeline* (one per student)



Teacher's Key – Understanding Mortgages - Terminology

Term	Definition
1) Amortization Period	n) The period of time it will take to pay off a mortgage in full.
2) Blended Mortgage	z) A combination of two mortgages, one with a higher interest rate than the other, to create a new mortgage with an interest rate somewhere between the two original rates. Often seen when buying a new home and an existing mortgage remains.
3) Blended Payments	v) Payments made up of principal and interest components.
4) Closed Mortgage	g) A mortgage that you cannot prepay or change before the end of the term.
5) Collateral Mortgage	j) A loan, often for something other than the purchase of your main home (e.g., home renovations, the purchase of a second home, or a business venture) that is secured against your home. Often, a collateral mortgage is registered to secure a line of credit.
6) Conventional Mortgage	cc) A first mortgage issued for up to 80% of the property's appraised value or purchase price, whichever is lower.
7) Debt Service Ratio	e) Measure used by lenders to qualify a borrower for a mortgage, being the percentage of a borrower's gross income that can be used for housing costs, including mortgage payment and taxes (and condominium fees, where applicable).
8) Discharge of Mortgage	aa) Once the mortgage has been completely paid, the lender must register evidence that it has been paid on title to the property. The registration has the effect of removing the lender's registered interest in the property.
9) Down payment	r) The amount of money the buyers contribute to the purchase of the property on closing. This may be as little as the deposit, but generally includes further monies paid on closing to be at least 5% of the value of the property.
10) Equity	w) The current market value of a home or property minus the amount remaining on any mortgages.
11) Fixed Interest Rate Mortgage	b) A mortgage with an interest rate that does not change during the term.
12) Fixed payments	f) Payments that do not change even if the mortgage interest rate changes.
13) Foreclosure	i) A legal process by which the lender takes possession and ownership of a property when the borrower defaults on the mortgage obligations – this is a court process.
14) High Ratio Mortgage	c) A mortgage for more than 80% of a property's appraised value or purchase price. Many lenders are prohibited from lending over 80% of value, unless the mortgage is insured.
15) Interest	k) The amount you pay a lender for the use of the lender's money.
16) Line of Credit	bb) A loan that is usually used for something other than the purchase of a home (e.g., home renovations). It may be secured (e.g., with a "collateral mortgage") or unsecured. You can "withdraw" the full amount at one time or use smaller amounts up to the full amount of the loan. The lender charges interest on the total amount withdrawn and not yet repaid.



MODULE 5



Term	Definition
17) Maturity Date	d) The date when the mortgage must be either paid in full or another term negotiated through a renewal agreement. Also called Balance Due Date.
18) Mortgage / Charge	x) A loan registered on title providing the lender security for repayment with direct rights against the property in the event of non-payment, such that in the event of default the lender can sell the property to recover the money owed. Mortgage is the old terminology and Charge is the new term.
19) Mortgage Approval	o) Written approval from the mortgage lender, indicating how much money will be advanced under the mortgage and what conditions must be met for the mortgage. Also called Commitment Letter.
20) Mortgage Insurance	dd) Government-backed or private-backed insurance protecting the lender against the borrower's default on high ratio (or other types) of mortgages, issued by Canada Mortgage and Housing Corporation (CMHC), Genworth Financial Inc., or Canada Guaranty Mortgage Insurance Company).
21) Open Mortgage	h) A mortgage that you can prepay at any time during the term, without charge/penalty.
22) P.I.T.	u) Principal, interest and taxes. If property taxes are included in your mortgage payments, these three components will make up the regular payment on your mortgage.
23) Power of Sale	p) A legal process by which the lender can sell a property when the borrower defaults on the mortgage obligation – this is called a self-help process as it does not involve the courts.
24) Pre-payment Penalty	m) A penalty imposed in accordance with the terms of the mortgage when a mortgage is paid off before it comes due (i.e. end of the term), often representing three months interest or the interest differential between the rate in the mortgage being paid off and the then existing rates.
25) Pre-payment Privilege	y) A mortgage feature that allows the borrower to repay a portion or all of the principal balance with or without penalty. This privilege is frequently restricted to specific amounts as a percentage of the principal and when it can be exercised (e.g., 10% once per year).
26) Principal	s) The amount of the loan.
27) Second (and Third) Mortgages	q) A mortgage registered on title after the first mortgage, so the second mortgage lender's rights are secondary to the rights of the first mortgage lender.
28) Term	t) The length of time your mortgage agreement will be in effect.
29) Variable Interest Rate Mortgage	l) A mortgage with an interest rate that can change during the term.
30) Variable Payments	a) Payments that may change as interest rates change.



4. Introduce students to the different mortgage payment types and how they impact on the amortization by having students review the handout, *Mortgage Math: Payment Types, Amortization, and Amortization Schedules*. Have a general discussion to canvass the advantages or disadvantages that each payment method presents and circumstances in which would one choose one payment method over another. The goal is for students to appreciate that they may need or want different payment methods

over the life of a loan, depending on the reason or circumstances in which they are borrowing the money. There is no correct method, simply one that better suits the borrower in his/her circumstances at that time. Have students complete the “Mortgage Math” calculations and answer the questions. Consider modelling the initial calculation of monthly interest and principal breakdown for the entire class to ensure that students understand how to complete the calculations. Take up the answers as a class.

Teacher's Key – Mortgage Math: Payment Types, Amortization, and Amortization Schedules

1) Calculations

PAYMENT	INTEREST	PRINCIPAL	PRINCIPAL BALANCE
0	-	-	\$150,000.00
1 (\$709.87)	\$375.00	\$334.87	\$149,665.13
2 (\$709.87)	\$374.16	\$335.71	\$149,329.42
3 (\$709.87)	\$373.32	\$336.55	\$148,992.88
4 (\$709.87)	\$372.48	\$337.39	\$148,655.49
5 (\$709.87)	\$371.64	\$338.23	\$148,317.26
6 (\$709.87)	\$370.79	\$339.08	\$147,978.18
7 (\$709.87)	\$369.95	\$339.92	\$147,638.26
8 (\$709.87)	\$369.10	\$340.77	\$147,297.48
9 (\$709.87)	\$368.24	\$341.63	\$146,955.86
10 (\$709.87)	\$367.39	\$342.48	\$146,613.37
11 (\$709.87)	\$366.53	\$343.34	\$146,270.04
12 (\$709.87)	\$365.68	\$344.19	\$145,925.84



Total Annual Paid:	\$8,518.44
Total Interest Cost:	\$4,444.28
Total Principal Paid:	\$4,074.16
Outstanding Principal Owing:	\$145,925.84
Total Interest Cost as Percentage of Total Annual Paid:	52.2%
Total Principal Paid Off as Percentage of Total Annual Paid:	47.8%

2) In what ways are the terms of Mortgage 2 different from Mortgage 1? What might be the reasons for this difference?

- Interest Rate. Mortgage 2 is 3% instead of 5%. Reasons could include that it is the going market rate and/or that the borrower has excellent credit rating and history.

- Monthly Mortgage Payment: Mortgage 2 is \$709.87 instead of \$876.00. Reasons could include that a lower interest rate means more money goes to pay off principal each month meaning less money is needed in order to pay off the entire loan over the same 25 year period of time.

3) Compare and contrast Mortgage 2 and Mortgage 1. Which mortgage is the better deal for the borrower? In what way(s) is it a better deal?

Mortgage 2 is the better deal based on the following:

- Lower monthly/annual mortgage payments: less money used to pay the mortgage meaning the borrower has more money to

save/invest/use to purchase other items.

- Lower interest costs/more principal paid off after 1 year: less money going to the bank and more going to reduce the principal meaning more money for the borrower.
- Lower remaining principal owing after 1 year (even though lower monthly payments): less debt is always a good thing.



4. Explain to students that they are going to be completing a mock negotiation of a mortgage. If needed, have them review the “Negotiating a Mortgage” section of the *Understanding Mortgages* handout. Organize students into pairs, with one person playing the role of the mortgager and the other the mortgagee. Distribute the *Negotiation Timeline*, *Negotiation Plan*, and *Mortgage Agreement* to each pair and explain to students that they will complete this document in pairs once they have negotiated the final terms of the agreement. They will need to complete the same calculations as they did for the amortization exercise.
5. Distribute the *Confidential Instructions for Mortgagor* separately to students playing the role of the borrower and the *Confidential Instructions for Mortgagee* to students in the role of the lender. Provide students with time to review the instructions and facts outlined in their memos.
6. Before beginning the negotiation. Give them 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.
7. Have students negotiate the mortgage agreement using the strategies, tactics and techniques they have learned about. Follow the *Negotiation Timeline* and give students about 30 minutes to complete the negotiation and the *Mortgage Agreement*. Once they are finished, they should also complete the final portion of the *Negotiation Plan*.
8. Have students review their agreements with other pairs and compare their calculations. Take up the activity as a class, noting points of similarity and difference between groups in terms of final agreements, strategies and techniques.
9. As an additional exercise, in class or as homework, have students research what mortgages are available and at what terms. They simply need to go online at bank, credit union, and mortgage broker websites and see what offers are available for residential mortgages. When presenting in class, students should discuss the options (open vs. closed mortgages; variable rate vs. fixed rate; etc.) and the advantages and disadvantages of each as they see them. They should also compare the rates and terms available for the same amount of money from the various sources. A good discussion would centre on how this exercise would benefit them if they had to negotiate a mortgage now, or in the near future.

Extension

Have students review the article, *Nine Ways to Power-Save Your Way to a Down Payment*, available here: <http://www.theglobeandmail.com/globe-investor/personal-finance/mortgages/power-save-your-way-to-a-down-payment/article19699274/>, and write a reflection of the strategies that they would use to save a down payment to put towards a house.



MODULE 5

MORTGAGES

UNDERSTANDING MORTGAGES

ESSENTIAL CONCEPTS

Mortgage – A mortgage (also called a “charge”) is a type of loan registered on title providing the lender security for repayment with direct rights against the property in the event of non-payment or other breach of the mortgage terms, such that in the event of default, the lender can sell the property to recover the money owed. A mortgage is a promise to repay together with the grant of security in real estate. Under a mortgage, the borrower (“mortgagor”) is responsible for making regular payments to the lender (“mortgagee”). The payments are known as “blended” in that they cover the interest on the loan plus part of the principal (i.e., the total outstanding amount of the loan). Payments may also include property taxes, insurance, and similar charges.

A mortgage is a unique kind of loan because it allows a lender to sell or take over ownership of the property if the borrower does not pay on time (i.e., “default”). Because the lender enjoys this right, we say that the property is “security” since it gives the lender peace of mind that if the borrower fails to pay, the lender will be able to recoup most if not all of its money (e.g., by taking possession and selling the house).

Mortgagor – The borrower is called the “mortgagor” because he/she borrows the money and gives the mortgage to the lender (“mortgagee”). Although this is the popular term, legally a mortgage is now known as a charge and the mortgagor, the chargor.

Mortgagee – The lender is called the “mortgagee” because it lends the money and receives the mortgage from the borrower (“mortgagor”). Although this is the popular term, legally a mortgage is now known as a charge and the mortgagee, the chargee.

Down payment – Most people cannot purchase a home without financial assistance, such as a mortgage. Lenders generally insist that the homeowner has equity in the property. This equity, commonly known as the “down payment”, is contributed by the buyer partly as the deposit in the agreement of purchase and sale and the balance of personal funds delivered on closing. The down payment is often described as a percentage of the purchase price. In Canada, the minimum down payment for residential properties is 5% but some lenders require more. The down payment is essentially the “cash” which the buyer pays out-of-pocket to purchase the property. The rest of the money comes from the “bank” in the form of a loan (“mortgage”). The larger the down payment you pay, the less interest you will pay over the life of the mortgage. Also, if your down payment is less than 20% of the purchase price, you will have to purchase mortgage insurance, which is a kind of insurance which protects the lender in case you can’t pay. Mortgage insurance can be a significant additional cost; generally the premium is added to the capital and paid as part of the entire mortgage.

Principal/Interest – The actual money which is borrowed in a mortgage is called the “principal”. “Interest” is what the lender charges the borrower for borrowing this money. You can think of interest as rent on the use of someone else’s money. When you make a mortgage payment, the lender uses it first to cover the interest. Then anything left over goes to the principal and in some cases to taxes and insurance. At the beginning of the term, generally only a small amount goes to the principal, but gradually more of the payment goes to the principal until the mortgage is fully paid off. The key to saving money on your mortgage is to pay off the principal as



fast as possible. If you can make extra payments under the terms of your mortgage, the lender will apply them directly to the principal. By reducing the principal, you can save thousands, or even tens of thousands, of dollars in interest charges.

Equity – “Equity” is what the borrower actually owns in a mortgaged property. The rest is effectively the bank’s money. Equity is calculated by subtracting the outstanding amount of the loan owed under the mortgage from the market value of the property at a given date. Equity consequently increases as the principal is reduced (via each monthly payment) and as the property appreciates (via market-driven increases in value). Equity can also diminish such as when property values shrink.

Mortgage Term – In Canada, lenders are not prepared to lend their money on the same rate and terms for the period of time it would take to fully repay it.¹ The “mortgage term” is the length of time of the agreement between the borrower (“mortgagor”) and lender (“mortgagee”). Both the borrower and lender agree to live with the same terms for that period of time (e.g., a mortgage amortized over 25 years may only have a term of five years). At the end of the term, the borrower has to repay the balance of the mortgage, which is called a “balloon payment”. However, when the term is up, lenders will often extend the option to renew the mortgage for a new term at the best interest rate then available. Alternately, you can look for a better deal from other lenders, get a new mortgage loan, and then use this money to pay off the previous mortgage through the arrangement with the new mortgage lender.

Mortgage Principal Amount	\$100,000
Term	5 years
Number of Payments/Payment Frequency	60/Monthly
Interest rate	5%
Amortization Period	25 years
Total Interest Paid Over Five Year Term (Paid to the ‘Bank’)	\$23,404
Total Principal Paid Over Five Year Term (Owned by Borrower as ‘Equity’)	\$11,493
Principal Balance After Five Year Term (Outstanding Debt Owed to the ‘Bank’)	\$88,507

¹In Canada, terms are typically for 1, 2, 3, 4, 5, 7 or 10 years, although different lengths might be occasionally available. In the United States mortgage terms can be the same as the amortization period.



Amortization Period – The “amortization period” is the length of time it would take to pay off the mortgage in full, based on regular payments at a certain interest rate. A longer amortization period means you will pay more interest than if you got the same loan with a shorter amortization period. However, the benefit is that the mortgage payments will be lower, so some buyers prefer longer amortization periods to make the payments more affordable. Usually, the amortization period is 25 years but can be shorter, say 15 or 20 years. It is generally advantageous to choose the shortest amortization period—that is, the one with largest mortgage payments—that you can afford. This way you can pay off your mortgage faster and save thousands or even tens of thousands of dollars in interest.

Mortgage amount	\$100,000	\$100,000	\$100,000
Amortization period	15 years	20 years	25 years
Number of Payments/ Payment Frequency	180/monthly	240/monthly	300/monthly
Interest rate	5%	5%	5%
Monthly blended payment	\$788	\$657	\$582
Total interest paid After 25 Years	\$41,862	\$57,710.01	\$74,482

Open/Closed Mortgages – Lenders frequently offer two types of mortgages: open and closed.

- **Open Mortgage** – With an “open mortgage”, you can make extra payments (known as prepayments) at any time. You may even be able to pay the mortgage off completely before the end of the term without having to pay any prepayment charges whatsoever. However, the interest rate on an open mortgage is usually higher than on a closed mortgage with similar terms.
- **Closed Mortgage** – A “closed mortgage” is one that you cannot prepay or change before the end of the term without penalties being charged. If you want to make changes to the mortgage during the term (for example, to take advantage of lower interest rates), you will usually have to pay a prepayment charge. The mortgage lender may let you make extra payments (known as prepayments) without charge but usually with limitations. The interest rate on a closed mortgage is usually lower than the rate on an open mortgage with similar terms. A pre-payment penalty is often equal to three months interest or the difference in interest which would have been paid on the existing mortgage to maturity and the interest the lender can get lending that sum at the then current rates. The higher the rates when the mortgage is paid off, the higher the interest differential penalty. Often it is said to be the higher of either calculation.



Interest Rates – Fixed vs. Variable – The interest rate in a mortgage may be fixed or variable.

- **Fixed Interest Rate** – With a “fixed interest rate mortgage”, the borrower agrees to a certain fixed rate of interest for the duration of the mortgage term. Because the interest rate does not change, the borrower knows exactly how much interest he/she will have to pay and how much of the original loan principal amount will be paid off during the term. The benefit of a fixed interest rate mortgage is that it provides security and a predictable budget.
- **Variable Interest Rate** – With a “variable interest rate mortgage”, the interest rate can change during the term in accordance with changes in open market interest rates. These market rates generally track the Bank of Canada Bank Rate. Between 2000 and 2009, the Bank of Canada Bank Rate varied from 6.0 percent to 0.5 percent. The interest rates on variable-rate mortgages are often lower than on fixed interest rate mortgages with the same term length, so variable interest rate mortgages may be attractive and reduce interest charges in the long term. However, it is very difficult to predict which will be the lower-cost option over the term of the mortgage. Although variable interest rate mortgages are riskier and less predictable than fixed interest rate mortgages, they do offer greater potential interest cost savings.

Payments – Fixed vs. Variable – Like interest rates, mortgage payments can also be fixed or variable. Note, however, that fixed interest rate mortgages always have fixed payments, whereas variable interest rate mortgages can have fixed payments, variable payments or a combination of both.

- **Fixed Payments** – With “fixed payments”, you pay a fixed periodic (traditionally, monthly but can also be semi-monthly, biweekly or weekly) payment amount which does not change regardless of changes in the interest rate. If combined with a variable interest rate, when the interest rate goes down, more of the payment applies to the principal and you pay off the mortgage faster. However, if the interest rate goes up, more of the payment applies to interest, and less to principal. This extends the length of time it will take to pay off your mortgage. Because the variable interest rate affects how much of each payment is applied to cover interest, you cannot know in advance how much of the principal will be paid off by the end of the term.
- **Variable Payments** – With “variable payments”, your monthly payment amount changes if the interest rate changes. If the interest rate rises, your payments also rise. Because it is more difficult to plan your mortgage payments over the term of the agreement, a borrower needs to be sure he/she can adjust his/her budget to make higher payments. However, because the amortization period stays the same, you can determine in advance how much of the mortgage will be paid off by the end of the term.

Payment Frequency – Most lenders allow borrowers to choose from a variety of payment schedules (e.g., monthly, semi-monthly (24 payments/year), biweekly (26 payments/year) or weekly). If you choose a more frequent schedule, you save money because more of your money will be applied to the principal sooner, and less interest will accumulate in total. If you can afford an “accelerated” schedule, you can get significant savings on your mortgage interest. An accelerated schedule divides your monthly payments over a weekly or biweekly schedule so that you pay an extra monthly payment each year.



MODULE 5



MORTGAGE PRINCIPAL AMOUNT		\$100,000	
TERM		25 YEARS	
INTEREST RATE		5%	
AMORTIZATION PERIOD		25 YEARS	
PAYMENT FREQUENCY	DESCRIPTION	PAYMENTS	INTEREST COST (25 YEARS)
Monthly	One payment per month for a total of 12 payments each year.	\$582/mo.	\$74,482
Semi-Monthly	- Two payments per month for a total of 24 payments each year. - The monthly payment is halved and first half applied sooner hence shrinking the interest cost.	\$291/twice per mo.	\$74,391
Biweekly	- One payment every two weeks for a total of 26 payments each year. - With this payment option, the total amount paid annually is identical to the total paid annually with the monthly payment option (monthly payment x 12 months / 26)	\$268/ every 2 weeks	\$74,384
Accelerated Biweekly	- One payment every two weeks for a total of 26 payments each year. - With this payment option, the biweekly payment amount is exactly half the monthly payment, payable every two weeks, resulting in payment of the equivalent of one extra monthly payment per year	\$291/every 2 weeks	\$62,395
Weekly	- One payment per week for a total of 52 payments each year. - With this payment option, the total amount paid annually is identical to the total paid annually with the monthly payment option (monthly payment x 12 months / 52)	\$134/week	\$74,342
Accelerated Weekly	- One payment per week for a total of 52 payments each year. - With this payment option, the weekly payment amount is exactly one-quarter of the monthly payment, payable every week, resulting in payment of the equivalent of one extra monthly payment per year	\$145/week	62,257



GETTING A MORTGAGE

FACTORS IN QUALIFYING FOR A MORTGAGE

Employment/Income – The rule of thumb is that most borrowers can afford and hence most lenders are willing to lend money for a home that runs about two and a half to three times the borrower's annual salary.

Credit Rating – Before banks extend credit, they assess the borrower's credit rating. Lenders use the credit rating to decide whether to lend money, how much, and at what interest rate. The credit rating consists of a credit report and a credit score. A credit report is a report of a person's credit history. A credit score is a number that represents the creditworthiness or the lending risk that the person represents for lenders, compared with other consumers, on a scale from 300 to 900. High scores on this scale are good. The higher the score, the lower the likelihood the person will "default" on his/her mortgage (i.e., not pay), and hence the more likely lenders will extend credit at lower rates. This score is based on an assessment of the person's character, income, economic history (e.g., duration and type of employment), debt payment history (e.g., timeliness of payments), and assets (e.g., savings or other property).

To get the best possible mortgage rate, lenders recommend a person keep his/her credit history healthy and accurate. Aim to raise a credit score above 750 in order to qualify for the best interest rates. Independent agencies, known as credit bureaus, collect and provide this information to prospective lenders whenever borrowers apply for credit. The two main credit bureaus in Canada are Equifax Canada Inc. (www.equifax.ca) and TransUnion Canada (www.transunion.com). Each offers a free copy of their credit report on request.

Loan-to-Value Ratio (LTV) – LTV is a financial measure used by lenders that helps to assess the risk of not recovering the total amount of the loan in the event the borrower defaults. It is one of the key risk factors lenders consider when qualifying borrowers for a mortgage. LTV quantifies the amount of the loan relative to the value of the asset being purchased. To calculate the LTV, divide the loan amount by the property's value. If the LTV is above 80% (in other words, less than a 20% down payment) the rates may increase significantly. Moreover, the borrower will also likely have to purchase mortgage default insurance to protect the lender from his/her defaulting, which increases the cost of the mortgage. Alternately, one can find a less expensive home or save up for a larger down payment to lower the LTV below the 80% threshold. Lenders prefer not to loan out more than 80% of an asset's value for the simple reason that doing so might result in lenders having to suffer a loss in the event the asset decreases in value on the open market. By getting borrowers to front 20% of the cost means the lender will not likely suffer any loss due to depreciation in value.

Debt-to-Income Ratio (DTI) – DTI is a financial measure used by lenders to assess the burden of an individual's debt obligations relative to his/her income. DTI is the percentage of income that goes toward paying all monthly debts. DTI is another key risk factor lenders consider when assessing borrowers for mortgages. Mortgage lenders use DTI to determine how large a mortgage the borrower can afford after all his/her monthly debts are paid. To calculate DTI, add up all monthly debts (not only mortgages) and divide by the monthly income. A DTI between 20-39% is usually considered good and will help a person be perceived as financially stable.

The Financial Consumer Agency of Canada (FCAC) has an online Mortgage Qualifier Tool² to help prospective buyers get an idea about how large a loan they would likely be approved for based on formulas lenders regularly use to evaluate mortgage loan applications. The site can give someone a realistic sense of his/her ability to pay for a mortgage. Note that when someone buys a home, he/she will also have to be ready to pay for a variety of additional expenses and taxes.

²See: <http://itools-ioutils.fcac-acfc.gc.ca/MQ-HQ/MQ-EAPH-eng.aspx>



NEGOTIATING THE TERMS OF A MORTGAGE

The following terms are typically addressed when negotiating a mortgage:

- The amount of the down payment you can pay (determines whether mortgage insurance must be obtained);
- The amortization period that will best fit your monthly budget (e.g., 15, 20 or 25 years);
- The mortgage term (e.g., 1, 3 or 5 years);
- An open or closed term mortgage;
- A fixed or variable interest rate;
- Fixed or variable payments;
- Payment frequency (e.g., monthly, weekly, biweekly or accelerated payment schedule);
- Pre-Payment option (e.g., 10% or 20% annually, double-up payments, skip a payment, etc.).

The **key factor in choosing a mortgage is what you can afford in your monthly budget**. A mortgage calculator can help you compare the costs of different mortgage options.

Traditionally, banks will post information of their mortgage for borrowers to see and consider. This is their offer. Depending on the negotiating strength of the borrower, a borrower can negotiate better conditions than posted by the banks in their windows, website or campaign. Often borrowers will simply accept the conditions offered much as we buy an item at the grocery store. However, lenders are often prepared to negotiate the conditions (i.e., the interest rate, payment schedule, term, amortization period, pre-payment, or other rights, etc.). Anyone looking to negotiate a mortgage should inquire not only of his/her regular financial institution but also of others, as only then can he/she discover if he/she is getting the best conditions. Mortgage conditions are personal to each borrower; depending on his/her risk level, income, financial situation, and life plans.

In addition to approaching a bank for a mortgage, a borrower could approach a mortgage broker to determine what conditions are available. A broker typically deals with many lenders, banks, trust companies, and private lenders. They often are a centralized option to quickly and efficiently canvass the market. There is no need to use a broker, but many find it beneficial or easier to do so.

A borrower might also shop for a mortgage based on the options that best serves him/her. For example, if someone anticipated selling his/her home, he/she would opt for a shorter term (e.g., 1 year) or an open mortgage to minimize or avoid paying any pre-payment penalties to the lender. A borrower who knows his/her income will likely increase in the years ahead will seek a mortgage with options to increase his/her payments (e.g., double-up) or offer him/her the ability to make lump sum payments (e.g., 10% of the original principal once a year, whether on a calendar year or anniversary of the mortgage), in addition to seeking a fixed term and interest rate to ensure stability in the early years.

Caution - Line of Credit

It has become very desirable and common to be approved by a lender for a line of credit. Contrary to a mortgage, which only has a declining balance (i.e., only pay off the loan and once paid, it ends), a line of credit, also called a revolving loan, permits new borrowing that can be paid off many times during its existence. The principal amount may go up or down over the years as new money is borrowed and payments are made. A line of credit may be secured or unsecured. A secured line of credit is most often a mortgage on a home. It is possible to have a regular first mortgage and if there is sufficient equity in the home, a line of credit secured as a second mortgage. Many homeowners will sign up at their bank for a line of credit and not appreciate that they are in fact giving the bank a mortgage on their home. This mortgage to secure the line of credit is often called a "collateral mortgage" and can be problematic as it might in fact be providing security for the bank to not only the line of credit but also any other indebtedness of the borrower to the bank, existing or in the future, including credit cards. When providing a mortgage or collateral mortgage to a lender it is advisable to consult with a lawyer to have the loan and mortgage documentation reviewed and explained.



UNDERSTANDING MORTGAGES - TERMINOLOGY

Match the following terms with the correct definition. Refer to the handout *Understanding Mortgages* as needed.

- **Line of Credit** • **Fixed Interest Rate Mortgage** • **Pre-Payment Privilege** • **Maturity Date**
- **P.I.T.** • **Amortization Period** • **Open Mortgage** • **Power of Sale** • **Blended Mortgage**
- **Mortgage Approval** • **Blended Payments** • **Variable Interest Rate Mortgage** • **Principal**
- **Foreclosure** • **Closed Mortgage** • **Down Payment** • **Term** • **Collateral Mortgage**
- **Discharge of Mortgage** • **Mortgage Insurance** • **Debt Service Ratio** • **Mortgage / Charge**
- **Conventional Mortgage** • **Fixed Payments** • **Variable Payments** • **Interest** • **Equity**
- **Second (and Third) Mortgages** • **Pre-Payment Penalty** • **High Ratio Mortgage**

TERM	Definition
	a) Payments that may change as interest rates change.
	b) A mortgage with an interest rate that does not change during the term.
	c) A mortgage for more than 80% of a property's appraised value or purchase price. Many lenders are prohibited from lending over 80% of value, unless the mortgage is insured.
	d) The date when the mortgage must be either paid in full or another term negotiated through a renewal agreement. Also called Balance Due Date.
	e) Measure used by lenders to qualify a borrower for a mortgage, being the percentage of a borrower's gross income that can be used for housing costs, including mortgage payment and taxes (and condominium fees, where applicable).
	f) Payments that do not change even if the mortgage interest rate changes.
	g) A mortgage that you cannot prepay or change before the end of the term.
	h) A mortgage that you can prepay at any time during the term, without charge/penalty.
	i) A legal process by which the lender takes possession and ownership of a property when the borrower defaults on the mortgage obligation – this is a court process.
	j) A loan, often for something other than the purchase of your main home (e.g., home renovations, the purchase of a second home, or a business venture) that is secured against your home. Often, a collateral mortgage is registered to secure a line of credit.
	k) The amount you pay a lender for the use of the lender's money.
	l) A mortgage with an interest rate that can change during the term.



UNDERSTANDING MORTGAGES - TERMINOLOGY

Match the following terms with the correct definition. Refer to the handout *Understanding Mortgages* as needed.

- **Line of Credit** • **Fixed Interest Rate Mortgage** • **Pre-Payment Privilege** • **Maturity Date**
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- **Second (and Third) Mortgages** • **Pre-Payment Penalty** • **High Ratio Mortgage**

TERM	Definition
	m) A penalty imposed in accordance with the terms of the mortgage when a mortgage is paid off before it comes due (i.e. end of the term), often representing three months interest or the interest differential between the rate in the mortgage being paid off and the then existing rates.
	n) The period of time it will take to pay off a mortgage in full.
	o) Written approval from the mortgage lender, indicating how much money will be advanced under the mortgage and what conditions must be met for the mortgage. Also called Commitment Letter.
	p) A legal process by which the lender can sell a property when the borrower defaults on the mortgage obligation – this is called a self-help process as it does not involve the courts.
	q) A mortgage registered on title after the first mortgage, so the second mortgage lender's rights are secondary to the rights of the first mortgage lender.
	r) The amount of money the buyers contribute to the purchase of the property on closing. This may be as little as the deposit, but generally includes further monies paid on closing to be at least 5% of the value of the property.
	s) The amount of the loan.
	t) The length of time your mortgage agreement will be in effect.
	u) Principal, interest and taxes. If property taxes are included in your mortgage payments, these three components will make up the regular payment on your mortgage.
	v) Payments made up of principal and interest components.



UNDERSTANDING MORTGAGES - TERMINOLOGY

Match the following terms with the correct definition. Refer to the handout *Understanding Mortgages* as needed.

- **Line of Credit** • **Fixed Interest Rate Mortgage** • **Pre-Payment Privilege** • **Maturity Date**
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- **Conventional Mortgage** • **Fixed Payments** • **Variable Payments** • **Interest** • **Equity**
- **Second (and Third) Mortgages** • **Pre-Payment Penalty** • **High Ratio Mortgage**

TERM	Definition
	w) The current market value of a home or property minus the amount remaining on any mortgages.
	x) A loan registered on title providing the lender security for repayment with direct rights against the property in the event of non-payment, such that in the event of default the lender can sell the property to recover the money owed. Mortgage is the old terminology and Charge is the new term.
	y) A mortgage feature that allows the borrower to repay a portion or all of the principal balance with or without penalty. This privilege is frequently restricted to specific amounts as a percentage of the principal and when it can be exercised (e.g., 10% once per year).
	z) A combination of two mortgages, one with a higher interest rate than the other, to create a new mortgage with an interest rate somewhere between the two original rates. Often seen when buying a new home and an existing mortgage remains
	aa) Once the mortgage has been completely paid, the lender must register evidence that it has been paid on title to the property. The registration has the effect of removing the lender's registered interest in the property.
	bb) A loan that is usually used for something other than the purchase of a home (e.g., home renovations). It may be secured (e.g., with a "collateral mortgage") or unsecured. You can "withdraw" the full amount at one time or use smaller amounts up to the full amount of the loan. The lender charges interest on the total amount withdrawn and not yet repaid.
	cc) A first mortgage issued for up to 80% of the property's appraised value or purchase price, whichever is lower.
	dd) Government-backed or private-backed insurance protecting the lender against the borrower's default on high ratio (or other types) of mortgages, issued by Canada Mortgage and Housing Corporation (CMHC), Genworth Financial Inc., or Canada Guaranty Mortgage Insurance Company).



MORTGAGE MATH: PAYMENT TYPES, AMORTIZATION, AND AMORTIZATION SCHEDULES

Recall that mortgage payments can be fixed or variable. **Amortization** refers to the paying off of debt in regular installments over a period of time, and is about how long it takes to “kill” off debt (“mort” means “death” in French). An **amortization schedule** is a table or chart showing how each payment on an amortized loan (like a mortgage) goes to pay off interest and how much goes to pay down principal.

SCENARIO

Martin and Cindy have decided to buy a home. They find a quaint starter home for \$200,000 in a nice neighbourhood. Together they have saved up \$50,000 for the down payment (25% of the purchase price). They go to the bank which offers them the following mortgage terms (i.e. Mortgage 1):

MORTGAGE NO. 1:

Mortgage Principal Amount	\$150,000
Term	5 years
Number of Payments/Payment Frequency	60/Monthly
Interest rate	5%
Amortization Period	25 years (300 payments)
Monthly Mortgage Payment	\$876.00

- **Note** – 5% is the **annual** interest rate. However, mortgage lenders charge interest on the basis of the corresponding **monthly** interest rate amount. Monthly Interest Rate = 0.00416% per month (5% = 0.05 per year divided by 12 months)
- **Calculations** – To create an amortization table, multiply the principal balance by the monthly interest rate to get the monthly interest cost; subtract the monthly interest cost from each monthly payment to determine how much principal will be paid off each month, then subtract the monthly principal amount from the previous principal balance to determine the new principal balance for the next payment period.
 - Principal Balance * Monthly Interest Rate = Monthly Interest Cost
 - Monthly Payment – Monthly Interest Cost = How Much Principal is Paid Each Month
 - Previous Principal Balance – Monthly Principle Amount = New Principal Balance



PAYMENT METHODS

In order to make their monthly mortgage payment, Cindy and Martin can choose from a variety of different payment methods. These include:

1. **Traditional fixed blended payment (principal and interest);**
2. **Interest only payment;**
3. **Variable interest rate mortgage with fixed or variable payments;**
4. **Monthly, bi-monthly or weekly mortgage payments;**
5. **No interest mortgage.**

How much Martin and Cindy will spend on mortgage payments in the first year will depend on the payment type they choose. Depending on the chosen payment method, Cindy and Martin will pay more or less interest and as such the principal will be paid down at different rates. The following charts will demonstrate how much Martin and Cindy will owe to the bank after making a year of mortgage payments using various methods of payment.

TRADITIONAL FIXED BLENDED PAYMENT

The following chart demonstrates how a fixed payment on a \$150,000 mortgage is first applied to pay the interest on the outstanding balance of the mortgage and then the remaining amount is applied to pay down the principal owing to the bank. This calculation is repeated for each payment during the term of the mortgage.

PAYMENT	INTEREST	PRINCIPAL	PRINCIPAL BALANCE
0	-	-	\$150,000.00
1 (\$876.00)	\$624.00	\$252.00	\$149,748.00
2 (\$876.00)	\$622.95	\$253.05	\$149,494.95
3 (\$876.00)	\$621.90	\$254.10	\$149,240.85
4 (\$876.00)	\$620.84	\$255.16	\$148,985.69
5 (\$876.00)	\$619.78	\$256.22	\$148,729.47
6 (\$876.00)	\$618.71	\$257.29	\$148,472.19
7 (\$876.00)	\$617.64	\$258.36	\$148,213.83
8 (\$876.00)	\$616.57	\$259.43	\$147,954.40
9 (\$876.00)	\$615.49	\$260.51	\$147,693.89
10 (\$876.00)	\$614.41	\$261.59	\$147,432.30



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PAYMENT	INTEREST	PRINCIPAL	PRINCIPAL BALANCE
11 (\$876.00)	\$613.32	\$262.68	\$147,169.62
12 (\$876.00)	\$612.23	\$263.77	\$146,905.84

Total Annual Paid:	\$10,512.00
Total Interest Cost:	\$7,417.84
Total Principal Paid:	\$3,094.16
Outstanding Principal Owing:	\$146,905.84

INTEREST ONLY PAYMENT

In this scenario, the borrower only pays interest on the outstanding amount and nothing to reduce the outstanding balance. The advantage is lower regular payments; however, the amount owed always remains and will eventually have to be paid. Many lenders offer this option and it might be advantageous to opt for this method for short term debt, especially if the borrower anticipates having a large influx of funds to pay off the entire amount (i.e., sale of an asset or bonus from work).

\$150,000 X 5% / 12 MONTHS = \$625.00/MONTH

PAYMENT	INTEREST	PRINCIPAL	PRINCIPAL BALANCE
0	-	-	\$150,000.00
1 (\$625.00)	\$625.00	\$0.00	\$150,000.00
2 (\$625.00)	\$625.00	\$0.00	\$150,000.00
3 (\$625.00)	\$625.00	\$0.00	\$150,000.00
4 (\$625.00)	\$625.00	\$0.00	\$150,000.00
5 (\$625.00)	\$625.00	\$0.00	\$150,000.00
6 (\$625.00)	\$625.00	\$0.00	\$150,000.00
7 (\$625.00)	\$625.00	\$0.00	\$150,000.00



PAYMENT	INTEREST	PRINCIPAL	PRINCIPAL BALANCE
8 (\$625.00)	\$625.00	\$0.00	\$150,000.00
9 (\$625.00)	\$625.00	\$0.00	\$150,000.00
10 (\$625.00)	\$625.00	\$0.00	\$150,000.00
11 (\$625.00)	\$625.00	\$0.00	\$150,000.00
12 (\$625.00)	\$625.00	\$0.00	\$150,000.00

Total Annual Paid:	\$7,500.00
Total Interest Cost:	\$7,500.00
Total Principal Paid:	\$0.00
Outstanding Principal Owing:	\$150,000

VARIABLE INTEREST RATE MORTGAGE WITH FIXED OR VARIABLE PAYMENTS

In this scenario, the interest rate is not fixed for the duration of the term, but rather goes up and down with the market conditions. This is advantageous in a market where interest rates remain constant or are declining. However, in a market where interest rates rise, the payments increase over time and may be problematic for a person with limited cash flow. With a variable regular payment, the amount dedicated to pay down the principal may remain the same, but the complete payment changes to meet the varying interest rate component of the payment. With a fixed rate regular payment, the regular payment will remain the same with more or less being applied to pay down the principal after the interest portion is paid. In mortgages, lenders always apply any payment first to interest and then to principal.

VARIABLE PAYMENT

VARIABLE PAYMENT	INTEREST	PRINCIPAL	PRINCIPAL BALANCE
0	-	-	\$150,000.00
1 (\$1,041.00)	\$625.00 ³	\$416.00 ⁴	\$149,584.00
2 (\$1,039.27)	\$623.27	\$416.00	\$149,168.00
3 (\$1,037.53)	\$621.53	\$416.00	\$148,752.00
4 (\$1,023.40)	\$607.40	\$416.00	\$148,336.00

³Assuming an interest rate starting at 5% and decreasing every three months by .01%.

⁴Assuming a fixed contribution to pay off the loan amount in 30 years.



MODULE 5



VARIABLE PAYMENT	INTEREST	PRINCIPAL	PRINCIPAL BALANCE
5 (\$1,021.71)	\$605.71	\$416.00	\$147,920.00
6 (\$1,020.01)	\$604.01	\$416.00	\$147,504.00
7 (\$1,006.02)	\$590.02	\$416.00	\$147,088.00
8 (\$1,004.35)	\$588.35	\$416.00	\$146,672.00
9 (\$1,002.69)	\$586.69	\$416.00	\$146,256.00
10 (\$988.84)	\$572.84	\$416.00	\$145,840.00
11 (\$987.21)	\$571.21	\$416.00	\$145,424.00
12 (\$985.58)	\$569.58	\$416.00	\$145,008.00

Total Annual Paid:	\$12,157.59
Total Interest Cost:	\$7,165.59
Total Principal Paid:	\$4,576.00
Outstanding Principal Owing:	\$145,008.00

FIXED PAYMENT

FIXED PAYMENT	INTEREST	PRINCIPAL	PRINCIPAL BALANCE
0	-	-	\$150,000.00
1 (\$1,041.00)	\$625.00 ⁵	\$416.00	\$149,584.00
2 (\$1,041.00)	\$623.27	\$417.73	\$149,166.27
3 (\$1,041.00)	\$621.53	\$419.47	\$148,746.80
4 (\$1,041.00)	\$607.40	\$433.60	\$148,313.20

⁵Assuming an interest rate starting at 5% and decreasing every three months by .01%.



FIXED PAYMENT	INTEREST	PRINCIPAL	PRINCIPAL BALANCE
5 (\$1,041.00)	\$605.71	\$435.29	\$147,877.91
6 (\$1,041.00)	\$604.01	\$436.99	\$147,440.92
7 (\$1,041.00)	\$590.02	\$450.98	\$146,989.93
8 (\$1,041.00)	\$588.35	\$452.65	\$146,537.28
9 (\$1,041.00)	\$586.69	\$454.31	\$146,082.97
10 (\$1,041.00)	\$572.84	\$468.16	\$145,614.81
11 (\$1,041.00)	\$571.21	\$469.79	\$145,145.01
12 (\$1,041.00)	\$569.58	\$471.42	\$144,673.59

Total Annual Paid:	\$12,492.00
Total Interest Cost:	\$7,165.59
Total Principal Paid:	\$5,326.41
Outstanding Principal Owing:	\$144,673.59

MONTHLY, SEMI-MONTHLY, BIWEEKLY OR WEEKLY MORTGAGE PAYMENTS

Mortgage payments are normally calculated with a monthly payment; however, many lenders now allow borrowers to pay more frequently. The advantage generally is the more often you pay, the less interest overall you pay. In fact, depending on how the payment is calculated, a payment every two weeks will act as one extra payment a year and reduce the overall debt quicker. Many people will choose their payment frequency to match up with their pay from work or to pay off the mortgage as quickly as possible. There is no right way.



NO INTEREST MORTGAGE

Although unusual for lenders to charge no interest, it is most commonly seen when a parent lends a child money to purchase a house. In Japan, the rate of interest is presently often quoted to be 0%. Under Sharia Law (a body of Islamic Law), lenders are not allowed for religious purposes to charge interest. Loans are often prepared with no interest payment although there is usually a sum paid as consideration for the loan.

VARIABLE PAYMENT	INTEREST	PRINCIPAL	PRINCIPAL BALANCE
0	-	-	\$150,000.00
1 (\$416.00)	\$0.00	\$416.00 ⁶	\$149,584.00
2 (\$416.00)	\$0.00	\$416.00	\$149,168.00
3 (\$416.00)	\$0.00	\$416.00	\$148,752.00
4 (\$416.00)	\$0.00	\$416.00	\$148,336.00
5 (\$416.00)	\$0.00	\$416.00	\$147,920.00
6 (\$416.00)	\$0.00	\$416.00	\$147,504.00
7 (\$416.00)	\$0.00	\$416.00	\$147,088.00
8 (\$416.00)	\$0.00	\$416.00	\$146,672.00
9 (\$416.00)	\$0.00	\$416.00	\$146,256.00
10 (\$416.00)	\$0.00	\$416.00	\$145,840.00
11 (\$416.00)	\$0.00	\$416.00	\$145,424.00
12 (\$416.00)	\$0.00	\$416.00	\$145,008.00

Total Annual Paid:	\$4,992.00
Total Interest Cost:	\$0.00
Total Principal Paid:	\$4,992.00
Outstanding Principal Owing:	\$145,008.00

⁶Assuming a fixed contribution to pay off the loan amount in 30 years.



Discussion

1. What are the advantages or disadvantages of each payment method?
2. What circumstances would lead you to choose one payment method over another?

MORTGAGE MATH

In addition to Mortgage No. 1 outlined above, Martin and Cindy decide to consider a mortgage with the following terms (i.e., Mortgage No. 2):

MORTGAGE NO. 2:

Mortgage Principal Amount	\$150,000
Term	5 years
Number of Payments/Payment Frequency	60/Monthly
Interest rate	3.0%
Amortization Period	25 years (300 payments)
Monthly Mortgage Payment	\$709.87

- **Note** – 3% is the **annual** interest rate. However, mortgage lenders charge interest on the basis of the corresponding **monthly** interest rate amount. Monthly Interest Rate = 0.0025% per month (3% = 0.03 per year divided by 12 months)
- **Calculations** – To create an amortization schedule, multiply the principal balance by the monthly interest rate to get the monthly interest cost; subtract the monthly interest cost from each monthly payment to determine how much principal will be paid off each month, and then subtract the monthly principal amount from the previous principal balance to determine the new principal balance for the next payment period. That is:
 - Principal Balance * Monthly Interest Rate = Monthly Interest Cost
 - Monthly Payment – Monthly Interest Cost = How Much Principal is Paid Each Month
 - Previous Principal Balance – Monthly Principle Amount = New Principal Balance

**1. Calculate the following:**

- How much Martin and Cindy will spend on mortgage payments in the first year.
- How much of this amount will go to pay off interest.
- How much will go to pay down principal.
- How much Martin and Cindy will owe to the bank after making a year of mortgage payments.
- As a percentage, how much of their annual payments will go to pay off interest/pay down principal.

PAYMENT	INTEREST	PRINCIPAL	PRINCIPAL BALANCE
0	-	-	\$150,000.00
1 (\$709.87)	\$375.00	\$334.87	\$149,665.13...
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			



Total Annual Paid:	
Total Interest Cost:	
Total Principal Paid:	
Outstanding Principal Owing:	
Total Interest Cost as Percentage of Total Annual Paid:	
Total Principal Paid Off as Percentage of Total Annual Paid:	

2. In what ways are the terms of Mortgage No. 2 different from Mortgage No. 1? What might be the reasons for this difference?

3. Compare and contrast Mortgage No. 2 and Mortgage No. 1. Which mortgage is the better deal for the borrower? In what way(s) is it a better deal?



MOCK MORTGAGE NEGOTIATION

CONFIDENTIAL INSTRUCTIONS FOR MORTGAGOR (“BORROWER”)

You will work in pairs to complete a mock negotiation of a mortgage agreement for the purchase of a home. One student will play the role of the mortgagor and the other will play the role of the mortgagee. Review the facts below. Before beginning the negotiation, take time to develop your negotiation strategy and tactics and record the details in the *Negotiation Plan*. Complete all portions of the *Negotiation Plan* with the exception of the section on the final agreement. 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 mortgage agreement and record the details in the Mortgage Agreement, including completing the payment plan for a one-year term.

FACTS

- Purchase price is \$250,000.00.
- You have paid a \$5,000.00 deposit to the seller in the agreement of purchase and sale.
- You have a further \$20,000.00 to apply towards the purchase price of the home.
- The bank's posted interest rate is 5.0%. You have heard that banks will accept to lend at a discount of up to .75%.
- You want the longest amortization period available and a term of 5 years.
- You want the right to make pre-payments of at least 5% per year.
- You are scheduled to buy your home 45 days from today.
- You want the right to make semi-monthly payments, which coincides with your payroll deposits.
- You have been a client of the bank for the last 15 years, having taken various loans for cars and other significant purchases and always paid on time and in full.



CONFIDENTIAL INSTRUCTIONS FOR MORTGAGEE (“LENDER”)

You will work in pairs to complete a mock negotiation of a mortgage agreement for the purchase of a home. One student will play the role of the mortgagor and the other will play the role of the mortgagee. Review the facts below. Before beginning the negotiation, take time to develop your negotiation strategy and tactics and record the details in the *Negotiation Plan*. Complete all portions of the *Negotiation Plan* with the exception of the section on the final agreement. 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 mortgage agreement and record the details in the *Mortgage Agreement*, including completing the payment plan for a one-year term.

FACTS

- Purchase price is \$250,000.00.
- The Borrower has paid a \$5,000.00 deposit to the seller in the agreement of purchase and sale.
- The Borrower has a further \$20,000.00 to apply towards the purchase price of the home.
- The bank's posted interest rate is 5.0%. You are prepared to offer a discount of up to 1.0% for good clients.
- The bank has no preference regarding the amortization period, term of the mortgage, or payment schedule, however it is limited to issue mortgage with a maximum amortization of 30 years and offers terms of 6 months, 1, 2, 3, 5, 7 and 10 years.
- The bank offers the right to pre-payment up to 10% per year.
- The Borrower is scheduled to buy the home 45 days from today.
- The Borrower has been a client of the bank for the last 15 years, having taken various loans for cars and other significant purchases and always paid on time and in full.
- The loan amount and other credit scores are within the tolerances of the bank for similar mortgages.



NEGOTIATION TIMELINE*

Preparing for the Negotiation		
Develop Your Negotiation Plan	Each student (borrower and lender) individually complete their <i>Negotiation Plan</i> .	10 mins
Borrower & Lender Negotiation		
Step 1	The borrower and lender should set out the issues to be discussed and negotiated.	5 mins
Step 2	The borrower and lender meet to discuss the availability and details of a possible mortgage loan. The students negotiate the terms under which they will agree to lend/borrow the funds. 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	Put the agreed points for the mortgage into the <i>Mortgage Agreement</i> for the parties to sign. Typically the lender offers the loan at the terms to be agreed to and the borrower accepts if they are satisfied with the loan details. Have the lender sign to offer the loan and the borrower sign to accept the term sheet.	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' negotiation 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.



NEGOTIATION PLAN

OBJECTIVES/ISSUES:

OVERALL STRATEGY:

TACTICS AND TECHNIQUES:

OFFERS:

Opening Offer	Target	Bottom Line

FINAL NEGOTIATION AGREEMENT:



MORTGAGE AGREEMENT

Mortgage Principal Amount	
Term	
Number of Payments/Payment Frequency	
Interest rate	
Monthly Interest Rate	
Amortization Period	
Monthly Mortgage Payment	
Prepayment Privilege	

Signature, Borrower

Signature, Lender





MODULE 6

HOUSING AND HUMAN RIGHTS

OVERVIEW

This module introduces students to the issue of discrimination in the rental housing context, and the protections provided by the *Ontario Human Rights Code* (the *Code*). It engages students in a discussion about adequate housing, and asks them to explore how the *Canadian Charter of Rights and Freedoms* could play a role in giving people whose right to adequate housing has been infringed a mechanism by which to claim the right, through sections 7 and 15.

Learning Objectives

- To introduce students to the protections provided by the *Ontario Human Rights Code* in the rental housing context.
- To introduce students to the concept of adequate housing.
- To introduce students to how the *Canadian Charter of Rights and Freedoms* could recognize access to adequate housing.
- To enhance students' critical thinking skills by asking them to explore theoretical perspectives.

Activity 1: Discrimination and Rental Housing

Materials

- Copies of *Human Rights and Rental Housing Quiz* (one per student)
- Copies of *Human Rights and Rental Housing in Ontario* (one per student)
- Copies of *Writing a Fair Rental Housing Ad*, available here: http://www.ohrc.on.ca/sites/default/files/Writing%20a%20fair%20rental%20housing%20ad_accessible.pdf (one per student)
- Copies of *For Rent! – Drafting a Rental Housing Advertisement* (one per student)

Teaching and Learning Strategies

1. Distribute the *Human Rights and Rental Housing Quiz* to students and give them time to complete the "Before" column. Explain that throughout the lesson they will be watching a series of videos and reading handouts that will increase their knowledge and understanding of human rights in the rental housing context. Invite them to add answers to the "After" column throughout the lesson, and explain that they will also be given time later on to fill in any remaining answers.
2. Provide students with an overview of human rights and rental housing by having them watch a 15-minute video from the Centre for Equality Rights in Accommodation (CERA) called *Human Rights and Housing in Ontario*, available here: http://www.equalityrights.org/cera/?page_id=74. For a deeper understanding of the topic, have students read CERA's self-advocacy toolkit called *Human Rights and Rental Housing in Ontario*, available in the student handouts section. Check for understanding and clarify any points that are unclear.
3. Introduce students to specific examples of discrimination in the housing context by having them review two short videos, *Discrimination in Rental Housing* and *Patterns of Discrimination*, available from the *Ontario Human Rights*



Commission (OHRC) website here:

<http://www.ohrc.on.ca/en/learning/human-rights-and-rental-housing>.

4. Give students time to review their answers to the *Human Rights and Rental Housing Quiz*, and fill in any remaining blanks in the “After” column. Take up the answers as a class.

Teacher’s Key – Human Rights and Housing Quiz

1. I can’t live in adult-only apartments because of my children.	FALSE “Adult-only” buildings are not allowed in Ontario, unless it’s a care facility or residence for seniors.
2. I’m 72, so it’s all right for the building manager to keep asking me if I’m ready to move into a retirement home.	FALSE Repeated, unwanted questions about age could be harassment
3. I’m 16 and because I’m on my own, the <i>Code</i> protects me from discrimination if I want to rent my own apartment.	TRUE If you are 16 or 17 and living on your own, you have a right under the <i>Code</i> to sign a rental agreement or lease.
4. The woman who lives in the main floor unit doesn’t hide her dislike for tenants who receive social assistance. She says they should move away. If I complain to the co-op, they could evict me instead of her.	FALSE The co-op is responsible for providing its tenants with an environment that is free from discrimination. The <i>Code</i> does not allow the co-op to take actions or threaten to take actions, also known as reprisal, against you for being a witness to discrimination.



Teacher's Key – Human Rights and Housing Quiz

5. A landlord can't refuse to show me and my boyfriend the apartment because we are a gay couple.	TRUE Landlords have a responsibility to provide housing accommodation that is free from discrimination. The <i>Code</i> covers the process from applying for an apartment up to and including eviction.
6. I'm a student with a young child. The landlord said he wants to rent to a couple. Is this discrimination?	YES There are assumptions that come with "preferring a couple." Is the reason for not renting the unit because of the age of the mother or father, or because the parent is not married (marital status) but has a child (family status), or the parent is lesbian, gay or bisexual (sexual orientation)?
7. I rent an apartment in a low-rise building with 3 floors. I live on the top floor, but now use a walker. I asked to transfer to a unit on the 1st floor, but the property manager said there's a long waiting list. Is this discrimination?	YES Housing providers have a duty to accommodate tenants short of undue hardship. A waiting list that doesn't consider <i>Code</i>-related factors may discriminate against people with, for example, disabilities or families with young children.
8. Nobody wants noisy neighbours. The tenants upstairs work at night and sleep during the day. So when they come home, I can hear the TV or music playing in the morning. Is this discrimination?	NO It is not a concern that comes up in the <i>Code</i>. The noise is not based on a ground under the <i>Code</i>. However, tenants may have rights under the RTA if neighbours' are engaging in unreasonable behaviours and activities that are interfering with the reasonable use and enjoyment of their tenancy.



Teacher's Key – Human Rights and Housing Quiz

9. The hall lights in Building A are dark and the common area is never cleaned. When new Canadians apply for an apartment, they are shown new units in Building B, but are given units in Building A instead. The landlord says the new building is for “Canadians”. Is this discrimination?	YES Streaming of tenants based on race-related grounds, including language and culture, is discrimination under the <i>Code</i>. “Canadian” is often wrongly used to refer to people who are Canadian-born and usually white.
10. The manager of a local motel automatically gives Aboriginal guests rooms at the back. These are smoking rooms with no view of the lake. Is this discrimination?	YES Equal treatment in rental housing includes renting a room in a hotel, motel, or bed and breakfast. This is another example of streaming based on <i>Code</i>-related grounds.
11. What questions can you ask on a rental application form? Write down all that apply.	• Income • Credit check • Current address
12. Which of the following may screen out tenants based on <i>Code</i> grounds? Write down all that apply.	• Proof of income in the form of pay stubs • Credit profile and criminal check • Minimum 6 months steady work history NB: Landlords can deny a tenant if they have bad credit and this decision would not be discriminatory. However, if they deny a tenant because of a <i>Code</i> protected ground and because of bad credit, then the entire decision would be discriminatory and the Landlord would be opening herself up to an application under the <i>Code</i>. Criminal background is only a protected ground as it relates to employment. However, if the person’s criminal history is related to a <i>Code</i>-protected ground (such as a mental health disability) then any decisions made based on this are arguably discriminatory.



Teacher's Key – Human Rights and Housing Quiz

13. Which of the following may screen out tenants based on <i>Code</i> grounds? Write down all that apply.	• Broken leases or evictions from the past 3 years • Co-signers must be employed
14. My boyfriend works out of town and stays with me on the weekend. The superintendent says that it's not good for my kids to have a man around who isn't their father. This is an example of... based on the <i>Code</i> grounds of sex, family status, and marital status.	• Discrimination by association • Harassment • Poisoned environment
15. The office manager in my building always stops by the swimming pool when I'm there and tries to talk to me. He's asked me out a couple of times and I told him I'm not interested. He knocked on my door and said the neighbours were complaining about the noise, but I've been away for the last week. This is an example of:	• Reprisal • Sexual harassment
16. What wording may screen out tenants on <i>Code</i> grounds in rental ads?	• A. Two-bedroom condo. Ideally suited for mature couple. • C. Available now. Smoke-free apartment on main floor. • D. Must sign 1-year lease and provide verifiable source of income. NB: The issue of how to accommodate smoking as a disability is complicated. There are some conflicting decisions from the Ontario Human Rights Tribunal regarding whether or not addiction to nicotine (i.e. smoking) is a disability and therefore protected by the <i>Code</i>. Additionally, there are often competing rights at play – for example, neighbours who have health conditions that may be aggravated by second hand smoke. In these cases, the landlord must balance the rights of all tenants involved.



5. Explain to students that protection from discrimination in housing also involves ensuring that rental advertisements comply with the *Code*. To provide an overview of how rental advertisements should be drafted, have students view the OHRC video, *Landlords and Rental Housing*, available here: <http://www.ohrc.on.ca/en/learning/human-rights-and-rental-housing>, as well as the handout, *Writing a Fair Rental Housing Ad*, available here: http://www.ohrc.on.ca/sites/default/files/Writing%20a%20fair%20rental%20housing%20ad_accessible.pdf.
6. Distribute the *For Rent! – Drafting a Rental Housing Advertisement* exercise and have students complete it on their own or in pairs. Once complete, ask for volunteers to present their ad to the class. Debrief and clarify any questions students might have.



HUMAN RIGHTS AND RENTAL HOUSING QUIZ*

QUESTION	BEFORE	AFTER
1. I can't live in adult-only apartments because of my children. • True • False		
2. I'm 72, so it's alright for the building manager to keep asking me if I'm ready to move into a retirement home. • True • False		
3. I'm 16 and because I'm on my own, the <i>Code</i> protects me from discrimination if I want to rent my own apartment. • True • False		
4. The woman who lives in the main floor unit doesn't hide her dislike for tenants who receive social assistance. She says they should move away. If I complain to the co-op, they could evict me instead of her. • True • False		
5. A landlord can't refuse to show me and my boyfriend the apartment because we are a gay couple. • True • False		

*This quiz was produced by the Ontario Human Rights Commission and is available online here: <http://www.ohrc.on.ca/en/learning/human-rights-and-rental-housing/review>.



HUMAN RIGHTS AND RENTAL HOUSING QUIZ

QUESTION	BEFORE	AFTER
6. I'm a student with a young child. The landlord said he wants to rent to a couple. Is this discrimination? • Yes • No		
7. I rent an apartment in a low-rise building with 3 floors. I live on the top floor, but now use a walker. I asked to transfer to a unit on the 1st floor, but the property manager said there's a long waiting list. Is this discrimination? • Yes • No		
8. Nobody wants noisy neighbours. The tenants upstairs work at night and sleep during the day. So when they come home, I can hear the TV or music playing in the morning. Is this discrimination? • Yes • No		
9. The hall lights in Building A are dark and the common area is never cleaned. When new Canadians apply for an apartment, they are shown new units in Building B, but are given units in Building A instead. The landlord says the new building is for "Canadians". Is this discrimination? • Yes • No		



HUMAN RIGHTS AND RENTAL HOUSING QUIZ

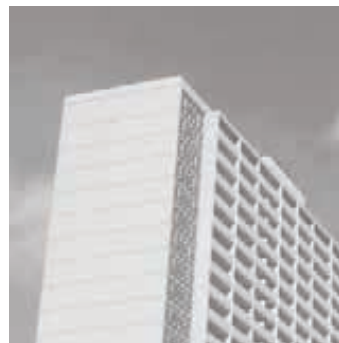
QUESTION	BEFORE	AFTER
10. The manager of a local motel automatically gives Aboriginal guests rooms at the back. These are smoking rooms with no view of the lake. Is this discrimination? • Yes • No		
11. What questions can you ask on a rental application form? Write down all that apply. • Birthdate • Religion • Social insurance number • Employment • Income • Credit check • Current address		
12. Which of the following may screen out tenants based on <i>Code</i> grounds? Write down all that apply. • Proof of income in the form of pay stubs • Current address and phone number • Credit profile and criminal check • Minimum 6 months steady work history		
13. Which of the following may screen out tenants based on <i>Code</i> grounds? Write down all that apply. • Broken leases or evictions from the past 3 years • Co-signers must be employed • Names of references • Emergency contact		



HUMAN RIGHTS AND RENTAL HOUSING QUIZ

QUESTION	BEFORE	AFTER
14. My boyfriend works out of town and stays with me on the weekend. The superintendent says that it's not good for my kids to have a man around who isn't their father. This is an example of: • Discrimination by association • Harassment • Sexual harassment • Poisoned environment • Systemic discrimination • Not In My Back Yard (i.e. NIMBYism)		
15. The office manager in my building always stops by the swimming pool when I'm there and tries to talk to me. He's asked me out a couple of times and I told him I'm not interested. He knocked on my door and said the neighbours were complaining about the noise, but I've been away for the last week. This is an example of: • Negative attitudes, stereotypes, bias • Discrimination by association • Reprisal • Sexual harassment		
16. What wording may screen out tenants on Code grounds in rental ads? • A. Two-bedroom condo. Ideally suited for mature couple. • B. Pet friendly building. Close to parks and schools. • C. Available now. Smoke-free apartment on main floor. • D. Must sign 1-year lease and provide verifiable source of income.		
Score / 16		

HUMAN RIGHTS & RENTAL ... HOUSING IN ONTARIO



A Self-Advocacy Toolkit

Centre for Equality Rights in Accommodation

Working with you to realize
your housing rights.



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What We Do

CERA's public education, outreach, and advocacy activities are focused on fighting discrimination faced by low-income and marginalized tenants in the rental housing market. We work to remove barriers that prevent people from accessing and maintaining housing.

Our Eviction Prevention and Human Rights Hotline provides callers with information and assistance when they are having problems accessing or keeping housing. We can also assist tenants with advice, guidance, and in some cases, representation on applications to the Ontario Human Rights Tribunal.

Contact Us

CERA - Centre for Equality Rights in Accommodation
164 - 215 Spadina Avenue
Toronto, Ontario Canada M5T 2C7

Tel: 416-944-0087

Toll Free: 1-800-263-1139

Email: cera@equalityrights.org

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About CERA

The Centre for Equality Rights in Accommodation (CERA) was established in 1987 as an independent not-for-profit legal advocacy organization. CERA has a provincial mandate and our services are free and available to all Ontarians.

We are the only organization in Canada primarily dedicated to fighting discrimination in housing and using human rights principles to challenge housing insecurity and homelessness.

This Toolkit

This guide was written to help people who face discrimination in housing to assert their rights. The goal of this resource is to promote tenants' rights by sharing information and providing guidance for self-advocacy.

Effective self-advocacy begins with knowing your rights; CERA is always available to support you as you realize your rights.

1

Navigating the Code

What is the Ontario *Human Rights Code*?

Ontario's *Human Rights Code* (the Code) is one of the most important laws in Ontario. The Code overrules other laws in the province unless those laws specifically say otherwise. The Code promotes equality of opportunity and creates a climate of understanding and mutual respect for the dignity and worth of each person in Ontario.

Where does the Code apply?

The Code says that all Ontarians have the right to freedom from discrimination in five areas:

- 1) Employment
- 2) Services (including education and healthcare)
- 3) Trade Unions and Vocational Associations
- 4) Contracts
- 5) Occupancy of Accommodation (Housing)

This toolkit focuses on your rights as they relate to housing, but the principles discussed in this resource also apply to the other four areas described above.

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What is protected by the Code?

The Code says that every person has a right to equal treatment without discrimination in housing.

The Code has sixteen "Prohibited Grounds":

- Race
- Ancestry
- Place of Origin
- Colour
- Ethnic Origin
- Citizenship
- Creed
- Sex (including pregnancy)
- Sexual Orientation
- Age
- Marital Status
- Family Status
- Disability
- Receipt of Social Assistance
- Gender Identity
- Gender Expression

If you are treated differently because of a characteristic related to one or more of these grounds, it is against the law. For example, if a landlord tells you that they do not accept tenants with children, they have discriminated against you based on your Family Status. If a landlord says they do not rent to people on social assistance, they have discriminated against you based on your Receipt of Social Assistance.

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When this happens, CERA can help.

Discrimination has happened when a person is treated differently, denied a benefit, or had additional obligations imposed on them because of one of the sixteen prohibited

grounds. For example, if you have been treated differently because you are pregnant, have a physical disability, or are a newcomer to Canada, this is discrimination.

Direct discrimination is what most people think of when they think of discrimination. Direct discrimination occurs when behaviours, actions, policies or practices prevent a person from a Code-protected group from fully participating in society or fully enjoying a benefit.

Indirect discrimination (also called adverse effect discrimination) is often harder to identify. This type of discrimination occurs when a seemingly neutral policy, rule, or practice disadvantages a member of a Code-protected group. Even if unintentional, indirect discrimination is still discrimination under the Code.

Discrimination in Housing

The Code covers just about every kind of rental housing in Ontario. Private market units, social housing units, condominiums, co-ops, supportive housing, retirement homes, rooming houses, and basement apartments are all covered under the Code. It is important to know that if you are required to share a kitchen or bathroom with the

owner of the apartment or a member of their family, you are NOT protected by the Code.

The Code says that all people must be treated equally when they apply to rent a place to live. This means a landlord has to look at each applicant as an individual and not make decisions based on stereotypes.



Harassment is repeated comments or behaviours related to a prohibited ground that are known, or should be known, to be unwelcome.

It is illegal to harass a person because of a characteristic related to the prohibited grounds under the Code.



It is illegal for a landlord, his employee, or another tenant in the same building to harass you on the basis of a prohibited ground. When one tenant is harassing another because of a prohibited ground, it is the landlord's responsibility to make sure the harassment stops.

For example, if a neighbour is harassing you because of your sexual orientation and you report this to the landlord, he needs to take steps to stop the harassment. The landlord might write the tenant a letter telling them what they are doing is illegal and informing them that it must stop.



Reprisal is negative behaviour directed towards a tenant because they have made a human rights complaint. Everyone in Ontario has the right to claim and enforce their human rights without the fear or threat of reprisal. It is illegal for a landlord to try to "get revenge" or "get even" with a tenant who has tried to claim or enforce their human rights.

For example, if a tenant complains to their landlord that another tenant is harassing them based on their race, some landlords might view the complaining tenant as the problem. If the landlord stopped making repairs for the tenant who was complaining or tried to evict them, this could be an instance of reprisal.



Disability is any degree of physical disability, a condition of mental impairment or a developmental disability, a learning disability, or a mental disorder. Disability should be

interpreted **b r o a d l y**. Disability under the Code includes both present and past conditions, as well as society's perception of a disability.

Disabilities can be visible or "hidden" from others. Tenants have the right to the same opportunities and benefits whether their disabilities are visible or not. Mental health issues and/or addictions are defined as disabilities that are protected under the Code.

For example, the Code protects people who have anxiety disorders, panic attacks, depression, schizophrenia, or addictions to alcohol or drugs.

The Code says that people with mental health issues and/or addictions have the same right to be free from discrimination as anyone else with a disability. Discrimination in housing happens when a person is treated in a negative way because of their mental health or addiction disability. Often discrimination is the result of stigma, negative stereotypes or prejudice around visible or "hidden" disabilities.

For example, a landlord may refuse to rent an apartment to someone with a mental health disability because they think the person will not take care of their apartment or pay their rent. This is a stereotype and is untrue, and is discriminatory.



The Duty to Accommodate

The duty to accommodate is a very important part of the Code. It says that structures, rules, policies or practices may have to be changed so that all people enjoy equal benefit, equal treatment, equal rights, and equal access in their housing. A common reason that tenants invoke the duty to accommodate is to request physical changes to the building to accommodate a physical disability. But accommodation can be required in other circumstances as well, including when a tenant needs accommodation due to a mental health disability or addiction.

What are the obligations of the person requiring the accommodation?

A tenant who requires accommodation should provide a written request to the landlord explaining the need for accommodation and how it relates to a prohibited ground under the Code. CERA can assist by writing letters related to accommodation requests on the tenant's behalf. Once the request has been made, the tenant should cooperate with the landlord as they discuss accommodation solutions.

A person who requires an accommodation for a medical reason will likely need to provide a doctor's letter supporting their request.

What is "undue hardship"?

Landlords are required to take accommodation requests seriously and respond to them in a timely manner. Landlords are only able to deny an accommodation request if they can prove "undue hardship."

A landlord can only claim undue hardship if accommodating a tenant would seriously threaten the financial viability of their business or endanger the health or safety of other tenants. Both the landlord and the tenant should look into whether any outside sources of funding, such as government grants, are available to help pay for the cost of accommodation. It is the responsibility of the landlord to prove undue hardship. The threshold for undue hardship is high.

The Duty to Accommodate is comprised of three principles:

- 1) Respect for dignity,
- 2) Individualization, and
- 3) Integration and full participation

How to File a Human Rights Application

If you have been discriminated against and cannot resolve the issue informally with your landlord, you may wish to file an application with the Ontario Human Rights Tribunal. To make a claim with the Tribunal, you must complete a formal application.

Step 1: Collect the information and evidence you need for your application (ie. any correspondence with your landlord, medical evidence, photographs, etc.)

Step 2: Fill out an application. To get an application form, you can contact the Tribunal directly or download a copy from their website:

1-866-598-0322 or TTY: 1-866-607-1240

<http://www.sjto.gov.on.ca/hrto/forms-filing/>

Step 3: Once your application is complete, you can send it to the Human Rights Tribunal by mail, email or fax.

Mail: Registrar - Human Rights Tribunal of Ontario, 655 Bay St. 14th Floor Toronto, ON M7A 2A3

Email: HRTO.Registrar@ontario.ca

Fax: (416) 326-2199

How does Ontario's human rights system work?

Ontario's human rights system is made up of three separate agencies:

The Human Rights Tribunal is where human rights applications are filed and decided.

The Human Rights Legal Support Centre gives free legal help to people who have experienced discrimination under the Code.

The Ontario Human Rights Commission works to promote, protect, and advance human rights through research, education, and policy development.

Contact information for these agencies can be found in the "Where Can You Go for Help?" section of this resource.

Be Your Own Best Advocate!

Example: You are a tenant and you think your landlord is discriminating against you.

You immigrated to Canada three years ago and have lived in your unit since arriving in Canada. Several times during your tenancy, your landlord has told you that you have too many children. The landlord has also complained about the “smell” when you cook. Recently, you have noticed that while other tenants have repairs made to their units quickly, your requests are always ignored. You think you are being treated unfairly because of your family status and place of origin.

What should you do?

- 1) Keep a written record of events. The dates and times of the incident(s) can be useful evidence if there is a disagreement. Often a log or a calendar is a helpful way to record this information.
- 2) Write down everything that you can remember about the incident(s). Names, dates, and what was said by whom. If you are able to take notes about your conversation while you are talking or soon afterwards, you will have more information to refer to later.

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- 3) Don't forget that email and text communications can be helpful because they create a dated record of your conversations. Keep a copy of any email or texts sent to your landlord. But, remember not to send emails or texts in haste! They could be used against you.
- 4) Write a letter to your landlord detailing your concerns and, if appropriate, request accommodation. Remember to keep a copy!
- 5) Call CERA. Staff or volunteers can contact the landlord to advocate on your behalf.
- 6) You may wish to file an application with the Human Rights Tribunal. You have one year from the date of the last incident of discrimination to file the application.
- 7) Be prepared. The Tribunal process can take time. You may have to wait several months or even a year before your case is resolved.
- 8) The Human Rights Legal Support Centre (HRLSC) may be able to provide assistance. You can contact the HRLSC at 1-866-625-5179 or TTY: 1-866-612-8627. You can also go to the HRLSC website at www.hrlsc.on.ca.

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Be Your Own Best Advocate!

Example: You are apartment hunting and think you have been denied a unit for a discriminatory reason.

You found an apartment listing that you are interested in online. You called the landlord and had a positive conversation. You set up an appointment to view the unit the next day. Once you arrived at the appointment, the landlord looked at you and said "Sorry, it's already rented." You believe the landlord was judging you because of your race.

What should you do?

- 1)** Write down everything that happened including dates, times, and what was said by whom.
- 2)** Check to see if the apartment is still listed online. If so, print and date the advertisement. You can have a friend call to ask for an appointment to view it. You can also call CERA to have a staff member call the landlord.

3) If the landlord says it is still available, call CERA. Staff can contact the landlord to encourage them to reconsider your application if you are still interested in the apartment.

4) If the landlord refuses your application after they have been confronted about the discrimination, you may wish to file an application at the Human Rights Tribunal. You have one year from the date of the incident of discrimination to file the application.

5) Be prepared. The Tribunal process can take time. You may have to wait several months or even a year before your case is resolved.

6) The Human Rights Legal Support Centre (HRLSC) may be able to provide assistance. You can contact the HRLSC at 1-866-625-5179 or TTY: 1-866-612-8627. You can also go to the HRLSC website at www.hrlsc.on.ca.

The Basics of Letter Writing

Writing a letter detailing your concerns to the landlord is often a good first step to resolve a conflict. Even if you feel angry or upset, your letter should be polite and clear.

Remember to date and sign your letter. You should also keep at least one copy of the letter for yourself. If the landlord doesn't properly deal with the issue, your letter will be important evidence if you file an application at the Human Rights Tribunal.

If you're unable to write a letter yourself, you should ask a friend or family member for help. You can also call CERA for assistance.

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- Step 1:** Explain the facts of what happened from your perspective. Be as detailed and precise as possible, with dates (or approximate dates), places, and a description of the incidents and everyone that was involved.

Step 2: Remind the landlord of your rights, which are found in the Code.

Step 3: Tell the landlord what you would like to have happen next. For example, request that the landlord contact a tenant who is harassing you, or make a request for accommodation.

Step 4: If your request for accommodation is related to a disability, attach a medical note from your doctor supporting your request.

Remember:
Effective self-advocacy begins with knowing your rights.

Step 5: Ask your landlord to reply to your letter in writing.

Step 6: Sign and date your letter!

Step 7: Keep a copy of the letter in a safe place.

Sample Letter # 1

A letter to your landlord requesting accommodation for a disability.

Scenario: Narmeen lives in an apartment in a 10-storey building that has a communal laundry room. She requires a wheelchair due to a physical disability. Narmeen is unable to access the building's laundry room because there are three steps and a heavy door at the entrance.

What can Narmeen do?

Narmeen can ask her doctor to write a letter explaining that she can't access the laundry room because she requires a wheelchair as a result of her disability. The doctor should explain that Narmeen needs a ramp and an automatic door in order to access the laundry room. Next, Narmeen should write her landlord a clear letter asking for a ramp and an automatic door to the laundry room as an accommodation for her disability. In the letter, she should be as clear and specific as possible. When she sends the letter, she should include a copy of the doctor's letter with it. Narmeen should keep a copy of both letters for her records.

**If the landlord does not respond to a letter,
or refuses an initial written request, call
CERA and we can help.**

Date

Name of Landlord
Address of Landlord

Dear **Name of Landlord**,

I live at **Address**. I cannot access the laundry room on the main floor of the building due to a disability. I am unable to open the door or climb the three stairs at the entrance of the laundry room because I require the use of a wheelchair due to my disability. I'm asking **Name of Property Management Company or Landlord** to install a ramp and an automatic door to the laundry room so that I can access the facilities. I am making this request as an accommodation for a disability under Ontario's *Human Rights Code* (the Code):

s. 2(1) – Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of social assistance.

Under the Code, housing providers have a duty to accommodate tenants' disabilities in a way that meets individual needs, promotes integration and full participation, and ensures confidentiality. If you are unfamiliar with your obligations as a landlord under the Code, the policy on human rights and rental housing can be found on the Ontario Human Rights Commission's website: <http://www.ohrc.on.ca/>.

I have included a letter from my doctor supporting my request for accommodation.

Thank you for your attention to this matter. I would appreciate a written response to this letter within the coming week.

Sincerely,
Narmeen



Sample Letter # 2

A letter to your landlord regarding harassment based on sexual orientation.

Scenario: Enrique has lived in an apartment in a not-for-profit housing complex for ten years. Recently, a new neighbour has been making derogatory comments about Enrique's sexual orientation every time he sees him. The neighbour uses offensive language, puts him down, and threatens to "beat him up." Enrique feels threatened in his own home.

What can Enrique do?

Enrique should keep track of the dates and times of the incidents. He should write down what was said and who said it. Enrique should then write his landlord a clear letter explaining that he is being harassed because of his sexual orientation. Enrique should be sure to include details about the incidents. Enrique can ask the landlord to tell the other tenant what they are doing is against the law and must stop. The landlord should inform the other tenant of the building's human rights policy (if they have one).

If the landlord does not respond to a letter,
or refuses an initial written request, call
CERA and we can help.

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Date

Name of Landlord**Address of Landlord****Dear Name of Landlord,**

I live at **Address**. Recently, **Name of other Tenant** who lives at **Address** has been harassing me because of my sexual orientation. Here is a list of some of the most recent incidents:

1. Date and time: What happened**2. Date and time: What happened**

...

As a result of this harassment, I do not feel safe in the building and I am asking you to help stop this harassment. As a landlord, Ontario's Human Rights Code (the Code) obligates you to ensure that occupants of your buildings are not subjected to discriminatory harassment:

s. 2(2) – Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of social assistance.

In line with your obligation under the Code, I am asking you to inform **Name of other tenant** that what they are doing is against the law and will not be tolerated in the building. I am asking that you provide **Name of other tenant** with a copy of the building's human rights policy.

If you are unfamiliar with your obligations as a landlord under the Code, the policy on human rights and rental housing can be found on the Ontario Human Rights Commission's website: <http://www.ohrc.on.ca/>.

Thank you for your attention to this matter. Please take immediate action regarding this issue, and I would appreciate a written response to this letter within the coming week.

Sincerely,

Enrique

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Where else can you go for information and help?

The Human Rights Legal Support Centre

Tel: 416-597-4900
 Toll Free: 1-866-625-5179
 TTY: 416-597-4903
 TTY Toll Free: 1-866 612-8627
 Monday, Tuesday, Wednesday and Friday: 9 am to 5 pm; Thursday: 2 pm to 6 pm. Consider visiting the website before calling: <http://www.hrlsc.on.ca>

The Human Rights Tribunal of Ontario

General Inquiries can be made by:
 Tel: 416-326-1312
 Toll-free: 1-866-598-0322
 TTY: 416-326-2027
 TTY toll-free: 1-866-607-1240
 Email: hrto.tdpo@ontario.ca
 Web: <http://www.sjto.gov.on.ca/hrto>

The Ontario Human Rights Commission

Information Line: 416-326-9511
 TTY: 416-314-0503
 Web: <http://www.ohrc.on.ca/>
 Email: info@ohrc.on.ca

*See page 14 of this resource for information about these three organizations.

Housing Help

Housing Help Centres can assist you in finding a unit that meets your needs. Find your local Centre at <https://findhousinghelp.ca>

Landlord and Tenant Board (LTB)

The LTB provides information on residential rental units and resolves disputes between most residential landlords and tenants. Staff can answer questions about: legislation that governs tenants, tenants' rights and responsibilities under the law, specific applications, rules on maintenance and repair of rental properties, rules on automatic rent reductions, and other issues addressed in the *Residential Tenancies Act (RTA)*.
 Toll Free: 1-888-332-3234
<http://www.ltb.gov.on.ca/en/>

Tenant Duty Counsel Program

When tenants have a hearing with the Landlord and Tenant Board, Tenant Duty Counsel are available to provide legal advice and assistance on the day of the hearing at most LTB locations in Ontario. Should tenants require in depth legal services, they should contact a community legal clinic.

Community Legal Clinics

Find your local community legal clinic online at: <http://www.legalaid.on.ca/en/contact/>

Call Us!

If you are facing discrimination in housing,
contact CERA:

Toll Free: 1-800-263-1139
In Toronto: 416-944-0087
Web: www.equalityrights.org/cera
Email: cera@equalityrights.org

CERA will try to negotiate with your future or current landlord to make sure the discrimination stops. If it does not, we may provide advice or assist you with filing a human rights application. Your call and anything you tell CERA is completely confidential.

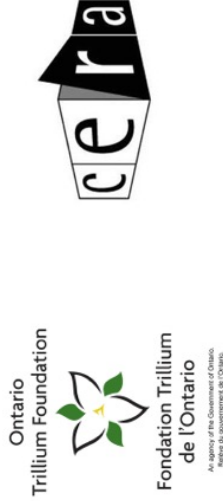
CERA also offers training on human rights in housing. If you, your fellow tenants, or your organization is interested in a training session or education materials, please contact us.

Disclaimer

This toolkit does not necessarily reflect the views of the funders of this project. The content of this resource is for information purposes only. The information provided is not a substitute for legal advice. If you need legal advice please contact a lawyer. CERA, its funders, and the authors of this toolkit will not be held responsible for any loss or damage caused by reliance on any statement, made negligently or otherwise, contained in this toolkit.

Acknowledgements

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We would also like to thank our partners across Ontario for their support in developing this resource:



FOR RENT! – DRAFTING A RENTAL HOUSING ADVERTISEMENT

Using the Ontario Human Rights Commission's *Writing a Fair Rental Housing Ad* handout as a guide, draft a fair and non-discriminatory ad based on the description of the rental property below.

PROPERTY FOR RENT

- The rental property is a condominium located in a major Canadian city (the city is your choice)
- It is a high-rise building with 30 floors – the rental property is on the 10th floor
- It is a one-bedroom, one-bathroom apartment, but relatively small in size; there is a communal laundry service on the main floor
- The rent is \$900 per month, not including heat and hydro
- There is a communal party room in the condominium on the 3rd floor as well as a communal gym
- There are two bus routes within walking distance of the condominium
- The area is both commercial (i.e., filled with businesses) and residential (i.e., housing); the residential area is comprised mostly of young couples
- There is a hospital, community centre, daycare, and elementary school accessible by bus routes
- There are two parks within walking distance of the condominium

In your ad, you might want to mention that you require your tenant's proof of income. Refer to the *Writing a Fair Rental Housing Ad* guide to see what types of information you can ask for.

[illegible]



Activity 2: The Right to Adequate Housing and the Canadian Charter of Rights and Freedoms

Materials

- Copies of *Adequate Housing, Positive Rights, and the Charter* (one per student)
- Copies of *Debating the Issue – Adequate Housing and the Charter* (one per student)

Teaching and Learning Strategies

1. In small groups, have students create a mind map around the phrase 'Right to Housing'. Take up as a class by creating a larger mind map on the board. Discuss with students whether they think there should be a right to housing in Canada and what they think 'adequate housing' would look like.
2. Have students watch CERA's 12-minute video called *Housing and the Canadian Charter of Rights and Freedoms*, available here: <https://vimeo.com/38812738>.
3. Using a teacher- or student-centred reading strategy, have students review the handout, *Adequate Housing, Positive Rights, and the Charter*. Clarify any questions and check for understanding.
4. Using the structure in the handout *Debating the Issue - Adequate Housing and the Charter* as a guide, hold a class debate on whether ss. 7 and 15 of the *Charter* should be interpreted to include a right to adequate housing, and in turn, if there should be a positive obligation on the government to provide access to adequate housing. Use the fact scenario in the handout as the basis for the debate. This can be done in small groups or by dividing the entire class in half. In advance of the debate, give students some time to prepare their arguments and anticipate those of the opposing side. Encourage them to draw on the case law and information they have learned. At the end of the debate, invite students to give their own opinion on whether they think adequate housing should be guaranteed by the *Charter*.
5. Debrief the debate by having students consider the *Tanudjaja v Attorney General (Canada)* case, which the fact scenario is based on. *Tanudjaja* brought a *Charter* challenge to Canadian courts, arguing that the government's failure to address homelessness and inadequate housing issues violated the rights to life, liberty, and security of the person under s. 7, and equality rights under s. 15. Have students discuss the questions in small groups or as a class.

Extension

Screen for your students the National Film Board of Canada documentary, "*No Place Called Home*," available here: https://www.nfb.ca/film/no_place_called_home. This documentary provides an intimate look inside one Canadian family's struggle with poverty as the family of eight move from town to town in search of affordable housing.



ADEQUATE HOUSING, POSITIVE RIGHTS, AND THE CHARTER

In Canada, the right to adequate housing is a complex issue. Canada has recognized a right to adequate housing through international human rights instruments; however homeless Canadians are not being afforded this right and, in light of recent case law, they do not have access to a mechanism to claim this right. Many people remain homeless, or if they do secure rental housing, it may not be under the best conditions. As such, whether housing should be protected under the Constitution is a hotly debated issue in Canada.

CANADA'S INTERNATIONAL COMMITMENT TO ADEQUATE HOUSING

The *International Covenant on Economic, Social, and Cultural Rights (ICESCR)* is a document that the United Nations created in 1966. Article 11 of the document recognizes that a right to adequate housing does exist, and this right must be respected by the countries that ratified (i.e., signed) the *ICESCR*. Article 11 states,

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and **housing**, and the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right...”¹

Canada is one of the “States Parties” mentioned in the above provision. Therefore, when Canada ratified the *ICESCR*, it committed itself to the document’s mandate. However, the right to adequate housing has yet to be realized in Canada.

WHAT DOES “ADEQUATE” HOUSING MEAN?

The right to **adequate** housing is broader than a right to be housed (i.e., simply to have a roof over your head). In fact, Article 11 of the *ICESCR*, specifies the need for “adequate” housing for all people. So, what’s the difference? The United Nations’ Committee on Economic, Social, and Cultural Rights (CESCR) outlined principles that make housing “adequate.”² The principles that the CESCR identified include³:

Security of Tenure – This gives people legal protection against forced eviction, harassment, and other threats. It is available to renters, people living in co-operative housing, people who lease, and in emergency housing/informal settlements.⁴

Availability of Services, Materials, Facilities, & Infrastructure – This means that an adequate house must have facilities essential for health, security, comfort, and nutrition. Examples include safe drinking water, energy, sanitation and washing facilities, garbage disposal, emergency services, etc.

Affordability – This means that household and housing financial costs should be at a level that does not compromise other basic needs in a person’s life. Renters should not be subjected to unreasonable rent levels/increases.

Habitability – This means that housing should be habitable and livable, with adequate space and protection from the cold, damp, heat, rain, wind, or other threats to health.

¹ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 art 11 (entered into force 3 January 1976, accession by Canada 19 May 1976) [ICESCR].

² Committee on Economic, Social and Cultural Rights, *General Comment No 4: The right to adequate housing (art 11(1) of the Covenant*, 1 January 1992. The full document is available here: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en>.

³ *Ibid* at 8(a)-(g). The above have been slightly modified for the purposes of this module.

⁴ *Ibid*, at 8(a).



Accessibility – This means that everyone must be given full and sustainable access to adequate housing, and it should secure peace and dignity.

Location – This means that housing must be located with available access to employment options, health-care services, schools, child-care centres, and other facilities. Also, housing should not be built on polluted sites or be overly-exposed to contaminants.

Cultural Adequacy – This means housing should be built with appropriate materials and in a way to allow expression of cultural identity and diversity of housing, and should not be sacrificed during any development.

THE ONTARIO HUMAN RIGHTS COMMISSION (OHRC) AND THE ONTARIO HUMAN RIGHTS CODE

In Ontario, the OHRC is a strong proponent of the right to adequate housing. It has submitted several demands to the provincial and federal governments to recognize an adequate housing right. Additionally, the OHRC has voiced many concerns over Canada's failed commitment to respect Article 11 of the *ICESCR*.

The legislation that the OHRC relies on in its work is called the Ontario *Human Rights Code* (the *Code*). While the *Code* does not guarantee a right to adequate housing, it strives to offer protections to people in the rental housing market. For example, the *Code* guarantees the following to renters:

"Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance."⁵

Also, the OHRC has its own policy on human rights and rental housing that expands on the protections in the *Code*.⁶ While the policy is not law, it is considered to be a very credible document relied on by the Ontario Human Rights Tribunal when it hears cases about human rights violations in the rental housing context.

BACKGROUND ON THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The *Charter* was enshrined in Canada's Constitution with the passage of the *Constitution Act, 1982*. It governs the relationship between individuals and the government, ensuring that governments cannot pass laws or enact policies that infringe unfairly upon our rights and freedoms. The *Charter*, therefore, acts as a restraint on government power. Prior to the *Charter*, there was no guarantee in Canada that rights and freedoms would not be taken away by legislation. We had the *Canadian Bill of Rights*, but as a statute, it could be amended or repealed by Parliament. In other words, if a given government was opposed to a particular right or freedom, it could simply vote in Parliament to have it changed or removed. By enshrining these rights and freedoms in the Constitution, they cannot simply be repealed by ordinary acts of Parliament or provincial legislatures.

⁵ *Human Rights Code*, RSO 1990, c H.19, s 2(2) [the *Code*].

⁶ Ontario Human Rights Commission, *Policy on Human Rights and Rental Housing*, (Toronto: Ontario Human Rights Commission, 2009). The full document is available here: <<http://www.ohrc.on.ca/en/policy-human-rights-and-rental-housing>>.



The Constitution is the highest law in all of Canada, and any law or government action must comply with all of its parts, including the *Charter*. As you can imagine, this is particularly important in the right to adequate housing debate. If access to adequate housing is recognized by rights enshrined in the *Charter*, all levels of government, its actions, and laws must respect that.

SECTIONS 7 AND 15(1) OF THE CHARTER

Housing rights advocates have argued that sections 7 and 15 of the *Charter* are opportunities to recognize access to adequate housing as a right. Sections 7 and 15(1) of the *Charter* read as follows:

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Equality before and under law and equal protection and benefit of the law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

It is argued that the right to access adequate housing should be protected through “security of the person” under s. 7 and that poverty should be recognized as a ground of discrimination alongside race, colour, sex, etc.

WHAT ARE POSITIVE RIGHTS?⁷

Positive rights demand that the Canadian government act in a particular way, or do something, for individuals. Such rights compel the government to take a positive action in order for individuals to exercise and realize their rights and freedoms (as opposed to refraining from doing something). There are very few positive rights in Canada’s *Charter*. One example is section 23, which demands that provincial governments provide access to education in English or French in locations where such minority language communities exist, or in places where there is high demand for English or French language instruction.

Negative rights, in contrast, protect individuals from the government over-stepping its bounds and acting in particular ways. Such rights prevent the government from intervening and violating individuals’ rights and freedoms. As noted, the *Charter* acts as a restraint on government power, and this captures what is meant by negative rights. Negative rights differ from positive rights because the government usually respects negative rights by doing nothing at all. An example of a negative right found in the *Charter* is section 15, which prohibits the government and its laws from discriminating against people based on their particular characteristics. Section 7 of the *Charter* is another example of a negative right in that it prohibits the government and its laws from interfering with individuals in ways that endanger their life, liberty, and security (unless it is done in a way that is consistent with the principles of fundamental justice).

⁷ This section on positive and negative rights is adapted from The Centre for Constitutional Rights (2013-2015), online: University of Alberta: <<http://ualawccsprod.srv.ualberta.ca/ccs/index.php/pr/534-positive-and-negative-rights>>.



HOW DO POSITIVE RIGHTS RELATE TO THE ACCESS TO ADEQUATE HOUSING DEBATE?

The recognition of positive rights under section 7 of the *Charter* is vital in the access to adequate housing debate. If the law recognized that access to adequate housing was required to ensure a person's right to life, liberty, and security of the person, the government would have a positive obligation to ensure that access to adequate housing is available. In other words, if life, liberty, and security of the person is also a positive right, then the government would have to act to ensure this right is met for all individuals.

Canadian courts have been hesitant to characterize section 7 as a positive right. Historically, the courts have characterized "positive right" issues (i.e., demanding that the government to do something) as policy matters. Canadian courts have stated that policy issues are for the government and policymakers to decide—not the courts.

Although section 7 of the *Charter* has continued to be characterized as a negative right, some cases have pushed Canadian courts to consider whether the *Charter* should also protect positive rights. While these cases are not always successful, and often very complex, they represent key developments in the law on access to adequate housing.

LANDMARK POSITIVE RIGHTS CASES

Gosselin v Quebec (AG) (2002)⁸

Louise Gosselin brought an action against the province of Quebec to challenge a social assistance plan that she thought was unfair to welfare recipients under 30 years old. In the 1980s, Quebec's social assistance plan paid welfare recipients under 30 less than half of what was paid to older recipients. Gosselin argued that this plan violated her section 7 *Charter* right to security of the person. More specifically, she argued that "security" **must include the right for a person to receive a particular level of support from the government to meet basic needs.**⁹

Gosselin's legal challenge was unsuccessful. The Supreme Court of Canada (SCC) stated that although section 7 does protect life, liberty, and security of the person, the section **does not place an obligation on governments to provide for these rights.** However, Chief Justice Beverly McLachlin made an important proclamation in the *Gosselin* case; she said that **one day**, section 7 **may include positive rights**, at which point governments will have positive obligations to ensure that the right to life, liberty, and security of the person are met.

⁸ *Gosselin v Quebec (Attorney General)*, 2002 SCC 84, [2002] 4 SCR 429 [*Gosselin*].

⁹ In *Gosselin*, Louise Gosselin also argued her equality rights under s. 15 of the *Charter* were infringed because the social assistance plan discriminated based on age.

LANDMARK POSITIVE RIGHTS CASES

Chaoulli v Quebec (AG) (2005)¹⁰	Dr. Chaoulli—a private health care doctor—challenged a Quebec law that prohibited people from obtaining private health insurance for services already available in the public health care system.¹¹ Chaoulli argued that the prohibition violated the rights to life and security of the person under both the <i>Quebec Charter of Human Rights and Freedoms</i> and the <i>Canadian Charter</i> because it subjected people to the long and inevitable wait times of the public health system. In turn, people could die while waiting on the public list and their security would be affected because of added stress and physical suffering. In a four to three decision, the SCC held that the laws violated Quebecers' right to life and security of person under the <i>Quebec Charter</i>. Only three of the seven judges also found that the laws violated section 7 of the <i>Canadian Charter</i>. As such, this ruling is binding in Quebec only. The trio of judges concluded that the Quebec laws allow only the “very rich” to obtain private health care in order to avoid delays in the public system. The comments of the three judges suggest that a similar change might be possible in the rest of Canada in a future case. This case has been very controversial, especially because many people consider Canada's public health care system to be a defining characteristic of our nation.
Victoria (City) v Adams (2008)¹²	The City of Victoria, British Columbia brought an injunction (i.e., a remedy from the court to force people to act/refrain from doing something) against homeless people living in a space called Cridge Park. The injunction prohibited homeless people from making temporary structures and shelters in the park because it would violate City bylaws. Natalie Adams, a homeless person living in Victoria, argued that the City's bylaws violated her section 7 <i>Charter</i> rights. Adams' legal challenge was successful. In a landmark decision, Madam Justice Ross stated that the prohibition on makeshift structures imposes on homeless people severe health and safety risks that violate the life, liberty, and security of the person. She also noted that shelter [is] a necessary precondition to security and liberty of the person. This case is instrumental in recognizing that the need for basic shelter is connected to one's life, liberty, and security of the person under section 7 of the <i>Charter</i>.

¹⁰ *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 SCR 791 [*Chaoulli*]. It is important to know that *Chaoulli* is a case about the *Quebec Charter of Human Rights and Freedoms* and not the *Canadian Charter of Human Rights and Freedoms*. The *Quebec Charter* mirrors the *Canadian Charter* in terms of its rights.

¹¹ The phonetic pronunciation of “Chaoulli” is “shy-u-lee.”

¹² *Victoria (City) v Adams*, 2008 BCSC 1363, 299 DLR (4th) 193.



DEBATING THE ISSUE - ADEQUATE HOUSING AND THE CHARTER

Hold a class debate on the issue of whether adequate housing should be protected under ss. 7 and 15 of the *Charter*, and in turn, if there should be a positive obligation on the government to provide access to adequate housing. Use the fact scenario below as the basis for the debate. This can be done in small groups or by dividing the entire class in half. Use the chart below to help prepare your arguments and anticipate those of the opposing side. Prepare questions and rebuttals accordingly.

FACT SCENARIO

Jen, Ben, Ansa, and Jan argue that the *Charter* imposes a positive obligation on the government to ensure access to adequate housing (i.e., affordable, accessible, etc.). They argue that inaccessibility to adequate housing and homelessness issues have worsened in Ontario and Canada for two reasons:

- (1) The negative changes made to laws, programs, and services that have limited funding, social assistance, and overall access to adequate housing; and
- (2) Both the provincial and federal governments' failure and inaction to implement and monitor effective housing-based strategies.

The four applicants want a Canadian court to declare that these changes and failures that affect access to adequate housing and homelessness violate:

- Their section 7 *Charter* right to life, liberty, and security of the person; and
- Their section 15(1) *Charter* equality right, because the changes and inaction have sustained issues of inequality and discrimination toward homeless and poor people in Canada.

Applicants Profiles

- Jen is a young, single mother on social assistance who lives in precarious housing with her two children. She has been on the waiting-list for subsidized housing for over two years.
- Ben was diagnosed with cancer and as a result was no longer able to work. He lost his apartment because he could not pay the rent. He lives on the streets and in shelters, and has been on the waiting-list for subsidized housing for four years.
- Ansa was severely disabled in a work accident. Two of his children are also disabled; one is in a wheelchair. He and his family of six live in a two-bedroom apartment that is inaccessible and unsafe. He has been on the waiting-list for subsidized housing for four years.
- Jan and her two young children became homeless when her spouse died suddenly. She has lived in several shelters over the years, and even on the street. She was forced to place her children in her parents' care. She has finally obtained housing, but spends 64% of her small monthly income on rent and is in danger of becoming homeless again.

DEBATE PROPOSITION

Adequate housing should be protected under ss. 7 and 15 of the *Charter*, and in turn, there should be a positive obligation on the government to provide access to adequate housing.



DEBATE PREPARATION

ARGUMENTS IN FAVOUR	ARGUMENTS AGAINST



DEBATE STRUCTURE

One team argues in support of the proposition and one team against it.

- 1. The supporting position presents their arguments (5-7 minutes)**
 - Give a good introduction that gets the opposing team's interest and attention
 - State your main points, giving evidence and reasoning for your arguments
 - Give a strong conclusion
- 2. The opposing position questions the supporting position (3-5 minutes)**
 - Ask questions about the supporting team's position
 - Prepare questions to challenge them in advance
- 3. The opposing position presents their arguments (5-7 minutes)**
 - Give a good introduction that gets the supporting team's interest and attention
 - State your main points, giving evidence and reasoning for your arguments
 - Question the supporting position
 - Give a strong conclusion
- 4. The supporting position questions the opposing position (3-5 minutes)**
 - Ask questions about the supporting team's position
 - Prepare questions to challenge them in advance
- 5. The supporting position presents their rebuttal (5 minutes)**
 - Restate and strengthen your position
 - Identify how your argument is stronger than the opposing position
 - Summarize your case and give a strong conclusion
- 6. The opposing position presents their rebuttal (5 minutes)**
 - Restate and strengthen your position
 - Identify how your argument is stronger than the supporting position
 - Summarize your case and give a strong conclusion

DEBRIEF

THE TANUDJAJA CASE¹

The fact scenario you used in your debate is based on a real Canadian case called *Tanudjaja v the Attorney General (Canada)*.

Jen, Ben, Ansa, and Jan are pseudonyms for the real people in the *Tanudjaja* case: Jennifer Tanudjaja, Brian DuBourdieu, Ansar Mahmood, and Janice Arsenault. These four people, with the Centre for Equality Rights in Accommodation (CERA), submitted an application to have their case heard before the Ontario Superior Court. They wanted the court to declare that changes to legislation, programs, and services, plus the inaction and failure of the provincial and federal governments to implement a housing-based strategy has led to an increase in homelessness and inadequate housing. The applicants argued that these changes and failures violated their *Charter* rights to life, liberty, and security of the person under s. 7 and their equality rights under s. 15 because of sustained discrimination against them as homeless and poor people.

The Governments of Ontario and Canada brought a motion to strike the application before any evidence could be heard by the court. The motion to strike was granted by the Superior Court and the application was dismissed. The applicants' case was deemed to be outside of the court's jurisdiction. The court took the view that the issue was a policy decision best made by elected government officials and policymakers, rather than a question of law.

The applicants appealed the decision to the Ontario Court of Appeal. The Court of Appeal upheld the lower court's decision to not hear the case. The majority judges emphasized that "There is no positive obligation raised by the *Charter* that requires Canada and Ontario to provide for affordable, adequate, accessible housing..."

The applicants applied for leave to the Supreme Court of Canada, which was denied in June 2015. With no further recourse in the courts, the *Tanudjaja* case will not be heard in a domestic court in Canada. Despite this, the *Tanudjaja* case sparked a critical public dialogue about whether access to adequate housing should be recognized by the *Charter*.

Discussion Questions

- Do you think the four applicants had a strong case? Why or why not?
- Do you think access to adequate housing is more of a policy issue than a legal issue? Why?
- Do you think Canadian courts should hear cases when governments and policymakers fail to address pressing social policy issues? Why or why not?
- Do you think that section 7 *Charter* rights, especially security of the person, supports a positive obligation for access to adequate housing? What about the right to life?
- Do you think poverty and/or homelessness should be recognized as a grounds of discrimination under section 15 of the *Charter*?

¹ *Tanudjaja v Attorney General (Canada)*, 2013 ONSC 1878; *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852.





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