

**TORONTO ISLANDS RESIDENTIAL COMMUNITY
TRUST CORPORATION**

GUIDE TO PURCHASES AND SALES OF ISLAND HOMES

January 28, 2013

This Guide provides information about sales and purchases of a house and land lease on Toronto Islands.

How are Island Properties sold?

Island Properties may only be sold under rules that are stated in the *Toronto Islands Residential Community Stewardship Act* of the Province of Ontario and in Regulations under that *Act*.

These rules state

- An Owner of an Island Property can sell only by asking the Trust to sell their Property to someone on the Purchasers' List.
- The price is determined under the rules in the *Islands Act* and Regulations.
- When the Trust receives a request to sell, it sends a Sale Offer to people on the Purchasers' List. It starts with the people who are highest on the List.
- A Sale Offer can be for one Property or can give potential Buyers the choice of more than one Property, if available.
- When a Sale Offer is finalized, as stated in this Guide, the Property is transferred by the Seller to the Trust and by the Trust to the Buyer. The price and terms are explained in this Guide.

In addition to the above, an Owner may also transfer or sell a Property to a spouse, child or joint owner. That is not covered in this Guide.

What is an Island Property?

An Island Property is a land lease and the house on the land. The house and land lease may be sold only as a package.

Who is this Guide for?

This Guide is intended for

- Owners of an Island Property who have requested the Trust sell their Property.
- People on the Purchasers' List who receive a Sale Offer for an Island Property.

Both Sellers and potential Buyers should read all parts of this Guide as all the information may be relevant to them.

What documents should be considered with this Guide?

In addition to this Guide, you should also consider the following material.

BASIC DOCUMENTS

1. Sale Offer.
2. The Trust's Standard Sale Terms. These are legally part of the Sale Offer, although they are a separate document.
3. Chattels and Fixtures (Standard Sale Terms Appendix "A").

ADDITIONAL INFORMATION

4. This Guide to Purchases and Sales of Island Homes. *
5. List of some estimated costs for Seller (attached to this Guide).
6. List of some estimated costs for Buyer (attached to this Guide).
7. The Standard Lease requirements relating to principal residence. *
8. The standard statutory declaration of principal residence required from the Buyer. *
9. The Standard Lease. *
10. The survey of the Property (and nearby properties).
11. The most recent Trust appraisal of the house.
12. The most recent Inspection Report of the house (used in making the appraisal).
13. The Trust Purchasers' List By-law. *
14. Other Trust By-laws.

Where do I go for more information?

These materials can be viewed or picked up at the Trust Office at 102 Lakeshore Avenue, Ward's Island, (the Rectory), between 10:00 a.m. and 4:00 p.m., Tuesday to Friday, or you can order them by phone or e-mail (trust@torontoisland.org). There is a \$5.00 charge for each item listed.

- (a) * Items with an asterisk can be viewed on the internet or downloaded without charge. Go to (links at bottom of page):

<http://www.torontoisland.org/LandTrust/tabid/119/Default.aspx>

SELLER INFORMATION

What happens when I ask the Trust to sell my house?

This is a brief summary of the procedures.

- The Trust will arrange for an appraisal of the house as required under the *Islands Act*.
- The Trust will prepare Sale Offers and send them out to people on the Purchasers' List. The Trust will decide how many people they will be sent to.
- The Trust will arrange for open houses, so people who receive a Sale Offer can inspect the house.
- The Seller has to deliver vacant possession of the house on closing. The Seller has to make any necessary arrangements with any tenants to vacate the house by noon on the closing date.
- When signed Sale Offers are received by the Trust, the Trust will determine who is entitled to the Property based on their priority on the Purchasers' List. The Trust will present the Offer to the Seller.
- Once the Seller has signed the Offer, notice will be sent to the Buyer. The Buyer will have five business days to arrange financing (if required and not already arranged) and to deliver the Additional Deposit referred to later in this Guide.
- The Trust lawyer will prepare the documents to transfer the Property from the Seller to the Trust and from the Trust to the Buyer. These will be sent to the lawyer for the Seller and the lawyer for the Buyer. The lawyers will make arrangements for documents to be signed by the Seller and Buyer.
- Closing will take place thirty days after the Buyer submits the Additional Deposit. If this is not a business day, closing will be on the next business day. Sometimes the Trust's lawyers change this to a different day.

Who decides on the price for the Property?

The price for the land lease and for the house are determined separately. The price of the Property is the total of these two prices.

Who decides on the price for the land lease?

The price is determined under Ontario Regulation 817/93 to the *Islands Act*, as amended. There is no choice and no variability.

Who gets the sale price of the land lease?

Part of the sale price goes to the Seller and the rest goes to the City of Toronto. The amount that goes to the City depends on when the Seller bought the Property and how much they paid. The Trust can give the Seller an estimate of these amounts.

Who decides on the price for the house?

A *maximum* price is determined under Ontario Regulation 817/93. The Seller can decide to ask for a lower price, but so far all sales have been at the maximum price.

Are fixtures included in the sale?

The sale includes all fixtures. No additional charge can be made to the Buyer for fixtures. Things that were specifically mentioned in the appraisal of the house are included, whether chattels or fixtures. No additional charge can be made to the Buyer for such things. No other chattels are included.

If the Seller has a tenant, there could be a dispute with the tenant as to who owns certain chattels and fixtures. The Seller must clarify this with the tenant, since the Buyer is entitled to all fixtures as stated above.

What is a chattel and what is a fixture?

“Chattels” generally means moveable personal property that is not attached to a house and does not form part of the basic systems of a house. “Fixtures” generally means things that are attached or that form part of the basic systems of a house.

See Appendix “A” to the Standard Sale Terms for definitions and examples.

Is there any way the Seller can exclude certain fixtures from the sale?

No. All fixtures that were in the house or on the land at the time of the last appraisal must be included.

Can the Seller substitute fixtures?

No. Anything that was a fixture at the time of the appraisal is included in the sale. The Seller cannot remove or substitute any fixture after the appraisal. If the Seller has removed a fixture, the Seller must return it. It is not enough to substitute a different fixture. The actual fixture that was there at the time of the appraisal is included in the sale.

Should the Seller keep insurance in place until the closing?

Yes. The house remains at the risk of the present owner until closing. If there were a fire or other damage, the present owner would suffer substantially if they did not have appropriate insurance.

What about legal representation on the sale?

The Seller must retain a lawyer to represent them on the sale. Their lawyer will give them any legal advice that they need, check the documents prepared by the Trust’s lawyers and deal with any problems.

The Trust will be charging an administrative fee to cover its lawyer and other costs in connection with the sale. Please note, the Trust’s lawyers will be acting on behalf of the Trust, not on behalf of the Seller. The Seller must be represented by a separate lawyer.

How does the closing work?

Closing will take place thirty days after the Buyer submits the Additional Deposit. If this is not a business day, closing will be on the next business day. Sometimes the Trust lawyers change this to a different day.

Once the Additional Deposit has been received, the Trust will notify the Seller. The Seller should start planning to move. The Seller should arrange for the discharge of any mortgage, moving furniture, having utility meters read, etc.

The Trust lawyers will prepare the papers for the closing and send them to the Seller's lawyer and the Buyer's lawyer. The Seller will meet with the Seller's lawyer shortly before closing to sign the papers.

The Trust lawyers and the Buyer's and Seller's lawyers will exchange money and documents on the day of closing (usually). Registration will occur at the Land Titles Office or electronically. The Seller will be paid their money shortly after.

When does the Seller have to vacate the Property?

The Property must be vacant by noon on the day of closing. If the Seller has tenants, they must be out by that time. The Buyer can inspect the Property and consider the Seller in default if the Property is not vacant by then.

What about tenants?

The Seller must provide vacant possession of the Property. The Property must be vacated by noon on the day of closing.

An Island Property cannot be sold subject to a tenancy. If the Seller has a tenant, the Seller must obtain vacant possession.

The Seller should obtain legal advice about how to deal with any tenancy. The following comments are intended to help, but the Trust is not providing legal advice to Sellers.

- If there is a lease and the tenant will not agree to terminate the tenancy, the Property cannot be sold until the end of the lease.
- The Seller can arrange for vacant possession through private arrangements with the tenant or through the procedures under the *Residential Tenancies Act*.
- It is often a good idea for the Seller to ask the tenant to sign an agreement to terminate the tenancy. A form is available from the Landlord and Tenant Board website.
- If there is no agreement to terminate the tenancy and there is no lease, a landlord can terminate a tenancy if the landlord has signed an agreement to sell the property and the Buyer requires possession to occupy the unit personally. The landlord must give the tenant 60 days notice (ending at the end of a period of the tenancy).
- The *Residential Tenancies Act* allows a landlord to apply to the Landlord and Tenant Board for an eviction order if a tenant defaults under an agreement to vacate or if a tenant does not leave after receiving a notice terminating the tenancy for the Buyer's possession.
- The Standard Sale Terms state that the Seller will take appropriate steps to obtain possession and will bring an application to the Landlord and Tenant Board, if necessary. If the Seller requests, the Buyer will swear an affidavit required under the *Residential Tenancies Act* saying that the Buyer requires the Property for the Buyer's own use. The Seller's lawyer must prepare the affidavit.
- The Seller will have to pay any legal or other costs in connection with evicting any tenant.

- If the Seller does not deal appropriately with any tenant, the Seller could be in default and could be liable for damages to the Trust and/or the Buyer.

Of course a Buyer could lease the Property to the same tenant if they want (subject to the terms of the *Islands Act*, Ontario Regulation 817/93 and the land lease). But they have no obligation to do so.

BUYER INFORMATION

I received a Sale Offer. What happens next?

This is a brief summary of the procedures from a Buyer's viewpoint.

- The Trust prepared Sale Offers and sent them out to people on the Purchasers' List.
- Anyone who may be interested in buying the Property must obtain a copy of this Guide and the Trust's Standard Sale Terms.
- The Trust will arrange for open houses, so people who receive a Sale Offer can inspect the Property. If the time for an open house is impossible for you, special arrangements can be made by calling the Trust office at 416-203-6163.
- When the Sale Offers are received by the Trust, the Trust will determine who is entitled to the Property based on their priority on the Purchasers' List.
- Shortly before closing, the Trust lawyers will prepare the standard documents to transfer the Property. These will be sent to the Seller's lawyer and the Buyer's lawyer.
- Closing will take place thirty days after the Buyer submits the Additional Deposit referred to in this Guide. If this is not a business day, it will occur on the next business day. The Trust's lawyers can change this to a different day.
- The lawyers for the Trust, the Buyer and the Seller will (normally) meet on the closing date and exchange documents and money and the Property will be registered in the name of the Buyer. This may be done electronically.

Do I need to have the house inspected by an inspection company?

This is up to you. An Inspection Report was prepared before the sale and it was used in preparing the appraisal for the house. You may consider that adequate.

Can I sign back the Sale Offer with changes, such as a lower price?

No. Sale Offers must be accepted or rejected as is. No changes are allowed. If a Buyer makes any change, it is considered a rejection.

Can I sign back the Sale Offer with conditions, such as financing or a home inspection?

No. Sale Offers must be accepted or rejected as is. No conditions are allowed. If a Buyer adds a condition, it is considered a rejection. See later in this Guide regarding obtaining financing.

If more than one Property is being offered, do I have to submit separate deposits for each of my choices?

No. One Initial Deposit of \$500 by certified cheque or money order is required at the time you submit your Sale Offer. You should be sure that you are prepared to buy any Property where you indicate a preference on the Sale Offer, even though it may be your last choice. Your deposit will be applied to any Property where you are the successful Buyer.

If I do not get a Property, do I get my \$500 back?

Yes.

When do I have to come up with the Additional Deposit?

After the Sale Offers are received, the Trust will determine who is entitled to the Property by looking at the order of names on the Purchasers' List. They will then present that person's Sale Offer to the Seller. When it has been signed by the Seller, they will notify the Buyer, who must provide the Additional Deposit by certified cheque on or before the fifth business day following notification. Failure to do so will result in their Sale Offer being treated as void. **The Initial Deposit will not be returned.**

What if I want to arrange a mortgage?

The Trust strongly recommends that you obtain pre-approval for your mortgage **before** you return the signed Sale Offer. This will ensure that you qualify for a mortgage, that you have the needed financing and that you and your lender understand the factors that govern lending on Island Properties.

Mortgage financing for the purchase of Island Properties is often available from the Toronto Dominion Bank, King and Bay Streets. Other lenders have also financed the purchase of Island properties. If your lender is not familiar with Island properties, feel free to suggest that they call the Trust office for information.

Do I get my deposit back if I can't get a mortgage loan?

No. Once you have paid the Initial Deposit, you can cancel the Agreement if you do not get financing, but the Initial Deposit will not be returned.

After you pay the Additional Deposit, you will be considered in default if you do not close because you did not get a mortgage loan.

You should make sure you get an actual commitment from the Bank before paying the Additional Deposit.

Do I have to take the Property subject to work orders?

Some Island Properties may have orders to comply (work orders) against them. Historically, in many cases there was no actual problem, but building permits were not obtained when the house was built. In other cases, there were serious problems. Probably most of these have been cleared up.

If there is an order to comply against a house, this should be stated by the Seller in the Sale Offer. The Buyer has to accept the property subject to anything stated in the Sale Offer. This means the Buyer will have the expense of resolving the situation.

What about undisclosed work orders?

If prior to closing the Buyer discovers any new work orders or work orders that were not disclosed in the Sale Offer, then the Buyer can cancel the purchase. The Seller might also be liable for damages.

Will the Buyer need a lawyer before a Sale Offer is signed?

If you are a Buyer, you should get whatever advice you feel desirable to make sure you fully understand everything and you feel your interests are protected.

Will the Buyer need a lawyer after a Sale Offer is accepted?

After a Sale Offer is accepted, you should get a lawyer to check the title, check that taxes are paid, you are aware of any work orders, the documents are correct, etc.

Will the Buyer have to pay for their lender's lawyer?

Usually.

If the Buyer is obtaining a mortgage loan, the lender will want to have a lawyer. Sometimes this could be the same person as the Buyer's lawyer. In any case the borrower usually has to pay the lender's legal fees.

If the lender has its own lawyer, does the Buyer still need to hire a lawyer?

It is still recommended. However, the lender's lawyer will be checking many of the same things as the Buyer's lawyer would check.

Can the Trust's lawyer act for the Buyer or the Buyer's lender?

No. There could be an inappropriate conflict.

Does the Buyer need to get an appraisal?

The Buyer does not need an appraisal when buying, since the appraisal arranged by the Trust governs.

If a Buyer does significant work on improving the Property, it is usually a very good idea to arrange for an appraisal through the Trust. This is because the sale price for a house is based on the appraised value throughout the period someone owned it. If its value is increased, the increase should be documented by a new appraisal as soon as possible as this could result in thousands of dollars of additional value to the Owner when the Owner goes to sell.

LIST OF SOME ESTIMATED COSTS FOR SELLER

Note: These are estimates only. Also, the Trust charges are under review.

ADMINISTRATIVE FEES AND TRUST LEGAL COSTS AND DISBURSEMENTS

Typical Trust Seller base administrative fee:
(includes Trust's legal fees and usual
legal disbursements)

\$3,000 + HST

Trust Appraisal charge

\$1,200 + HST

Trust Inspection Report charge

\$600 + HST

Follow-up on discharge of an existing mortgage

\$125 + HST

Dealing with outstanding executions or
similar-name executions against Seller

\$50 per execution

Payment of outstanding realty taxes,
Trust levies, utilities, etc.

\$50 per item

Conversion fees if not paid on a prior sale

\$75 + HST
\$70 registration cost

Additional costs if Seller is an estate

\$500 minimum
often much higher

PAYMENTS AND ADJUSTMENTS

Taxes

Sewer and Water Levy (if not paid in full)

Unpaid Trust Annual Operating levy

Utilities until closing

PAYMENT TO CITY ON SALE OF LEASE

Varies depending on how long Seller owned Property, and
whether Seller was original leaseholder as qualified senior

SELLER'S LEGAL FEES AND DISBURSEMENT'S

LIST OF SOME ESTIMATED COSTS FOR BUYER

Note: These are estimates only. Also, the Trust charges are under review.

ADMINISTRATIVE FEES AND TRUST LEGAL COSTS AND DISBURSEMENTS

Typical Trust Buyer base administrative fee:
(includes Trust's legal fees and usual
legal disbursements) \$3,000 + HST

Trust fee re Buyer's mortgage \$250 + HST

PAYMENTS AND ADJUSTMENTS

Taxes
Unpaid Trust Annual Operating levy
Utilities until closing

LAND TRANSFER TAX

Ontario Land Transfer Tax on Purchase Price (usually):

.5% up to \$55,000
1.0% from 55,000 to \$250,000
1.5% from \$250,000 to \$400,000
2.0% above \$400,000

Toronto Land Transfer Tax on Purchase Price (usually):

.5% up to \$55,000
1.0% from 55,000 to \$400,000
2.0% above \$400,000

BUYER'S LEGAL FEES AND DISBURSEMENT'S

BUYER'S MORTGAGE COSTS (IF APPLICABLE)