

# BARRY MCGUIRE'S FOCUS SERIES

## TAMING YOUR LEGAL BILLS

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November 2010

Anyone buying and selling real estate needs a great team. You carefully select your team members including your realtor, mortgage broker/lender, building inspector, property manager, accountant, and your lawyer. It's in your interest to have the team members giving you the best possible service at the best possible price. This presentation is aimed at making sure you understand what and how your lawyer charges you and how to keep those legal accounts under control.

Let's start with some of the basics. Your legal bill/account is composed of three things: fees, disbursements, and taxes.

- The fee portion is what your lawyer gets paid for doing the work.
- Disbursements are your lawyer's out-of-pocket expenses that s/he pays to get the work done. Disbursements include both internal expenses at the law firm such as couriers, copies, and long-distance, as well as external expenses paid to third parties for things such as searches and government registration costs.
- Taxes are levied on the fee portion of your legal account and on some disbursements via sales tax.

The fee portion of your lawyer's legal account is calculated one of three basic ways; fixed fee, hourly rate, and on a contingency basis.

- Lawyers charge fixed fees when they have a very good idea of how a particular piece of legal work will proceed. Basic real estate transactions fit in this category. Most real estate investors would like to pay a fixed fee so they can calculate their potential profits accurately.
- For custom or complicated legal work where a lawyer has no firm idea of how long it will take or what the issues might be, attorneys charges you by the hour.
- Legal accounts billed on a contingency basis mean that the lawyer gets paid from money s/he collects on your behalf. They depend on the lawyer being almost 100% certain that s/he will collect for you; it's only a question of when. Motor vehicle accidents are a classic type of contingency. Contingency-based real estate matters are very rare.

### 20 TIPS TO HELP YOU SAVE \$\$ ON YOUR LEGAL FEES

Most of your legal accounts for real estate can be done on a fixed fee basis. Your lawyer has figured out a fixed fee on the basis that it's typical transaction with no wrinkles or crinkles or surprises. If your deal turns out to have wrinkles, crinkles, and surprises, your lawyer may charge you an extra fee for the extra time put in to sort out what no-one know was coming.

It's in your very best interest to avoid any extra legal fees. Here are some things you can do to keep your legal account to the fixed-fee deal you thought you were getting.

1. **KNOW YOUR DEAL:** you have to be able to explain your deal and give your lawyer accurate, understandable instructions. If your lawyer can't understand it and you can't explain it, up goes your legal bill.
2. **KEEP IT SIMPLE:** clean and simple is always better than complicated. Complicated means that staff can't handle as much as they usually do and therefore more lawyer time is required. Extra lawyer time equals extra fees.

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3. **ASK ABOUT FEES UPFRONT:** you can ask about fees, after all you are the boss and we, as lawyers, are working for you. Don't be shy! Ask what's included in the fixed fee. Better yet, ask what is excluded.
4. **USE AN EARLY CHECK-IN:** most lawyers like to hear from you just before or right as you remove all your subject-to conditions. That way they know that there is a deal on the way. It's a heads up that most lawyers appreciate. I like to take that one step further, especially when I am working with a new client for the first time. You can call me, introduce yourself, tell me what your plan is and we can have a chat. That gives me a chance to learn your name and a little bit about you. I send confirming e-mails to you as well as my real estate partners and our assistant so that they recognize your name, and then when a deal shows up, we are a step ahead. It goes without saying but I'm saying it anyway, if you have issues, or questions or you just don't understand, call us ASAP, not just before condition removal.
5. **GIVE AS MUCH LEAD TIME AS POSSIBLE:** this might be the most important money-saving tip of all. When deals arrive in a lawyer's office with enough time to close the deal in the normal course of business, that goes a long way to keeping your fixed fee fixed. My strong suggestion is that you **set your closing date no sooner than 30 days after your last condition removal date.**

Once you remove conditions, the seller's realtor sends the seller's lawyer and the buyer's lawyer conveyancing instructions, which are copies of all of the contracts and schedules along with information about the other party. The new lender's administrative department sends mortgage instructions to the buyer's lawyer. The buyer's lawyer needs both conveyancing instructions and mortgage instructions in order to open a file and proceed on behalf of a buyer. To get both often takes a week after all conditions are removed. That week leaves your lawyer about three weeks to close the deal in your behalf.

Do your very best to make sure that you use this timing. Do not listen to sellers or seller's realtors or anybody else who says that their lawyer or their lender can do it so much faster. They would never need 30 days. If you don't give your lawyer enough time, s/he often has to request that staff put in overtime, pull staff off existing files to do your rush file and get more involved himself at his hourly billing rate rather than his staff's much smaller billing rate. You get the idea; a decent amount of time smooths out a lot of administrative bumps.

6. **BE AVAILABLE:** it sounds funny to say this but you actually have to be around and available. There may be questions to be asked, information to be obtained, and problems to be solved. Documents will have to be signed usually during regular working hours. Just make sure that your lawyer and staff can easily reach you by telephone or e-mail.
7. **GET TO KNOW STAFF:** Yes, it's true. Staff usually do most of the work on fixed fee transactions. Relationships are important in any business. You get to know our staff, they get to know you, and everything just runs better.

### WATCH OUT FOR THOSE EXTRAS!

Now let's talk about how to save legal dollars on more complex work, which is usually billed on the basis of time, complexity, and value to client. Your lawyer can't tell you a fixed fee when s/he doesn't know how much time or effort it will take to do the work. But here are some things you can do to keep your costs in line.

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1. **SET A BUDGET.** Have some idea in your own mind how much you want to spend.
2. **ASK FOR AN ESTIMATE.** If your lawyer can't tell you precisely, s/he can usually give you a range of fees. If all or part of the lawyer's estimated legal account is outside your budget, reconsider and discuss again.
3. **ADD A WARNING/REPORTING SYSTEM.** Tell your lawyer that you want a report and updated estimate after s/he has spent a certain amount of money and then perhaps at another money milestone. This will help you decide and control whether or not your legal work is proceeding the way you want it to.
4. **TRY NOT TO CHANGE THE TERMS.** Of course, if you have to change something, then you have to. But changing the terms of what your lawyer is already doing for you or unilaterally amending a contract almost always means a bigger legal bill. Even small changes can add a lot to what your lawyer has to do or re-do.
5. **GET YOUR LAWYER ON BOARD:** For these more complex deals, it is always worthwhile to give your lawyer a call and have a brief discussion. Collectively, you and your lawyer might decide that a face-to-face meeting is required to have more discussion. You may or may get billed for this conversation. These discussions and meetings, however, are aimed at positioning you properly to go ahead (or not) with your more complex transaction.
6. **USE BRIEF, NON-BINDING FACT SUMMARIES.** These briefs help to move your deal forward. The summaries are often referred to as 'letters of intent,' 'deal sheets,' or 'memorandums of understanding.' You write out roughly what the deal is and talk to the other side to see whether or not they agree. If so, then you can proceed with more formal paperwork and have a better chance of success. This is way better than spending a whole bunch of money on legal fees to draft a 25-page document only to have the seller say "this isn't the deal" or, "I changed my mind."

### WHAT ELSE CAN I DO TO SAVE MONEY?

1. **DO YOUR OWN NEGOTIATING:** Absolutely. Donald Trump doesn't fix toilets or collect rent, he negotiates deals. Our most successful clients are really good at negotiating. They look at situations differently and, I think, often do a better job. If possible, negotiating for yourself is certainly less expensive than having your lawyer do it for you.
2. **USE OFF-THE-SHELF CONTRACTS:** Again, absolutely. If it's off-the-shelf, you know what you are doing, you have read and understood the contract, and you know it works, then you're not spending money on lawyer drafting time. For residential real estate transactions, the classic contract to use is the most current offer to purchase/offer of purchase and sale/real estate purchase contract (different provinces call the contract different things) approved by the provincial real estate association. Your realtor will be using that form and will, if you have a good relationship, usually provide you with copies of the form for your own use. It's way easier for us as lawyers to review a contract for you when all we have to do is look at the blanks and the schedules because we know what the rest of the contract says. Self-Counsel Press (available at most bookstores and Staples) produces decent off-the-shelf legal documentation.

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3. **DON'T DRAFT AGREEMENTS FROM SCRATCH.** There's no need to go into this in great detail. Leave this kind of stuff to your lawyer or else it may take twice as long—costing twice as much—to make sure the contract is effective.
4. **DON'T TWEAK, OR BE VERY CAREFUL TWEAKING, OLD AGREEMENTS.** We often see agreements come in where it is just so obvious that someone has taken a piece of this contract and a piece of that contract and a little slice of another contract and put them all together in what we call a 'Frankenstein' contract. Stitched together, just like Frankenstein. There's way too much chance that the parts do not make a whole.
5. **DON'T BE A LAWYER** (with some exceptions): You can probably do some of your own searches at the land titles office or other registries, but be careful with interpretation. Avoid probating a deceased person's will unless you have lots of time on your hands. For bankruptcy matters, you are usually making a bid to a trustee disposing of a bankrupt property. This is generally all right, although you might need help closing the actual purchase. It is generally okay to represent yourself in Small Claims Court. But stay out of the Superior Courts. Be careful acting as your own registered and records office for your corporations. Our experience is that one in 50 clients is able to handle the administrative detail. Then, when you sell a business or get a loan or need to do refinancing, lenders want legal opinions on the state of your corporation. That's when you bring your minute book and other records to us so we can give that legal opinion. Generally, you end up spending twice as much to have us straighten out issues as you would've spent by paying our yearly fee to keep your corporations in good order.
6. **BOOK A CONSULTATION:** For larger fixed-fee deals such as multi-family purchases or corporate planning/reorganization, a consultation with your lawyer can save you a ton on legal fees. Your lawyer may or may not charge for this consultation. The idea here is that for these much more complex situations, you talk to your lawyer about potential problems, diligence, structure, timing, tax issues, etc. before you are in the middle of the deal when it's usually too late.
7. **AVOID LITIGATION:** I can't stress this strongly enough. Litigation is always stressful, expensive, and time-consuming. Even when our clients 'win,' the stress, money, and time spent at the scene doesn't seem to be worth the victory. We think you are way better off spending some money to structure your deal properly to start with. If things go wrong and the battle starts, you are almost always better off doing whatever it takes to make peace and move forward.

Folks, will following these tips guarantee a virtually no-cost real estate transaction? Of course not, but they will certainly help you have a more straightforward, no-stress experience.

**Please consider my office, Field Law, for all your real estate needs!**

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