



## The Transaction of Buying a Used Sailboat.

Once you decide that you are in the market to buy a sailboat, make sure you are prepared to make an offer and conclude the necessary agreement when the right deal comes along.

In order to be ready, you should obtain an "Offer to Purchase and/or Agreement of Purchase and Sale" with blank spaces that can be filled in with the appropriate information. Alternatively, you may want to consider drafting your own document. It could be saved as a word processing file where it can be completed when you want to make an offer or conclude an agreement to purchase a boat. Another option would be to print out a couple of copies with the necessary blank spaces so that you can take them with you when out on boat hunting excursions. Whatever the case, using such a draft is preferable to quickly scrawling out an agreement at the last minute.

Preparing the necessary document doesn't have to be complicated, but if you are unsure of your drafting skills, have a lawyer look over your work. If you do draft your own document, make sure it covers all the essentials. For example, you may wish to consider the following points:

### **Drafting an "Offer to Purchase and Agreement of Purchase and Sale".**

- The document should clearly identify "the Buyer(s)" and "the Seller(s)". It should indicate their name(s) and addresses, and it won't hurt to include phone numbers, fax numbers, and even e-mail addresses.
- The document should clearly describe "the Boat" and all of its equipment and accessories. It should indicate the licence or registration number, any hull and serial numbers, the make and model name, the hull length, and the name and location of the boat. It is important to list all the equipment and accessories that are supposed to be included with the boat. *(This last point is often handled by referring to the sheet of paper that Sellers hand out to prospective buyers, and which lists the equipment that comes with a boat. This list could be referred to as "Annex A" and made an integral part of the agreement.)*
- The document should clearly indicate that the Buyer offers to purchase the Boat for "x" amount of dollars, subject to the terms and conditions set out in the agreement.

### **Some terms and conditions:**

- The document should indicate that the Offer to Purchase is only valid until a certain hour and date, after which time, if not accepted, the Offer to Purchase shall be null and void. *(Note that if the two parties live some distance away from each other, the document could indicate that the Offer to Purchase must be accepted and returned to the Buyer by registered mail and be postmarked on or before a specified date. Also note that since the period during which the offer remains valid effectively ties up the Buyer, it should be kept as short as possible - depending on the circumstances, anywhere from a few hours to a few days.)*
- The document should indicate that the Seller warrants that the boat is being sold with clear title, and that the boat is free of any liens, chattel mortgages, or encumbrances of any nature.
- The document should indicate that the Offer to Purchase and the purchase and sale of the Boat shall be conditional on the Buyer being satisfied with the condition of the Boat as described by a

Surveyor on or before a specified date. The document should also indicate that the Boat will be surveyed at the Buyer's expense, by a Surveyor of the Buyer's choice, and that the Seller shall make the Boat available for the survey. *(Note that Sellers will not want to keep their boat tied up in a conditional sale longer than necessary, and that a 10 to 14 day period is usually long enough to have the boat surveyed and for the buyer to decide if he or she is satisfied with its condition.)*

- If the boat is licenced (*which is likely the case*), the document should indicate that the Seller shall give notice of the change of ownership of the Boat by signing the Vessel Licence to that effect, and shall provide this Vessel Licence to the Buyer.
- The document should indicate that the completion of the purchase and sale shall occur when the Buyer takes possession of the Boat and its equipment on or before a specified date. The document should also indicate that when taking possession of the Boat, the Buyer shall pay the purchase price (or the balance of the purchase price) in the form of a certified cheque made out to the Seller, and the Seller shall provide the Buyer a "bill of sale" and receipt. *(The date of closing should come sometime after the deadlines for meeting the various conditions in the Agreement, and, if necessary, it should allow enough time for the buyer to arrange to have the Boat stored, launched, or transported. The bill of sale should clearly indicate that boat and its equipment have been paid in full, and that they have been sold with clear title and are free of encumbrances of any nature.)*
- The document should indicate that until the completion of the purchase and sale of the Boat, the Seller will be responsible for its storage, care, and insurance, and in the event that the Boat is damaged or destroyed before the Buyer takes possession of it, the Buyer shall have the option of cancelling and nullifying the purchase and sale of the Boat.
- If it is not clear where the Agreement is being executed (e.g. the Buyer and Seller live in different provinces), the document should indicate that the Offer to Purchase and the Agreement of Sale and Purchase shall be interpreted according to the laws of one particular province.

#### **Other possible terms and conditions:**

- If the purchase of the Boat is going to be financed, the document should indicate that the Offer to Purchase and the purchase and sale of the Boat is conditional on the Buyer being able to obtain the necessary financing at competitive rates on or before a specified date. *(Again, Sellers will not want to keep their boat tied up in a conditional sale longer than necessary, so you may want to speak to your banker or lending institution ahead of time.)*
- If the Buyer intends to try out the Boat, the document should indicate that the Offer to Purchase and the purchase and sale of the Boat shall be conditional on the Buyer being able to conduct a test sail (sea trail), and on the Buyer being satisfied with the performance of the Boat, on or before a specified date. *(For obvious reasons, this condition may only be practical if the Boat is already in the water, or if it's about to be launched.)*
- There may be situations where it is necessary to make an offer on a Boat sight unseen. If this is the case, the document should indicate that the Offer to Purchase and the purchase and sale of the Boat is conditional on the Buyer being able to view and inspect the Boat, and being satisfied with the Boat by a specified date. *(Since this condition means the deal hinges on the preferences of the buyer, the period for its fulfilling should be the minimum time required for the Buyer to travel to the Boat and inspect it. This period could include the next available weekend if the Buyer has to travel out of town to view the Boat. Note that this condition is in addition to the requirement for a professional survey.)*
- If there is no means of testing the engine because the Boat is stored on land, the document could indicate that the Seller warrants that the motor that is being sold with the Boat is in working order at the time of the sale, and that the working order of the motor shall be verified by the Buyer at the first realistic opportunity to launch the Boat. *(i.e. at the beginning of the next boating season.)*
- If there is to be a deposit for the boat, the document should indicate that the Buyer provides the Seller with a deposit towards the purchase of the Boat in the form of cheque in the amount of "x" dollars, and in the event that the Buyer cancels and nullifies the purchase of the Boat in accordance with the terms of conditions of the Agreement, the deposit shall be promptly returned to the Buyer without interest or deduction. *(Note that a 10% deposit is often made out "in trust" to a third party such as a broker. However, a deposit is not always part of the deal when the Buyer and Seller are dealing with each other directly, and if there is a deposit, it will probably be less than 10% of the purchase price.)*
- If the Boat is located some distance away from the Buyer, and if there is a need to have it

transported by truck, the document could indicate that the Seller shall ensure that all of the boat's equipment and gear in on board the Boat and that the Boat is ready and accessible for transportation.

**Signature lines:**

- The signature lines at the end of the document should provide spaces to write in the date when, and location where the Buyer and the Seller each signed the Agreement. For added security, a witness for each the Buyer's and Seller's signatures could also sign the document. Moreover, the line preceding the signature of the Seller should indicate that the Seller accepts the offer, and agrees to sell the Boat to the Buyer according to the term and conditions of the Agreement of Purchase and Sale.

It's possible to add terms and conditions to meet all sorts of contingencies, but it is important not to get carried away when drafting the document. Strong arguments can be made in favour of keeping the document as simple as possible and with fewer than a half dozen terms and condition. But you should remember that some clauses are far more essential than others. This is true of a clause ensuring that the boat is being sold with clear title versus one about testing the engine at some later date.

People who put their boats on the market like to get the sale over and done with as soon as possible, and may be put off by a document which seems to impose an unnecessary number of conditions and demands. Most sellers accept that the buyers will want to have the boat surveyed, but they will expect that the deal will be complete shortly afterwards. In other words, if you're in competition with another buyer for a boat, you may be at a disadvantage if you make your offer with a long and arduous document. From this perspective, you are better off keeping the terms and conditions to a bare minimum. On the other hand, if the deal goes sour, you may be happy that your agreement has additional provisions to clarify some contentious points. It's a balancing act between two competing needs, and you'll have to be the judge of what's in your best interest.

One way of increasing the acceptability of your Offer to Purchase is to is to keep the time frame for meeting certain conditions as short as possible. For example, if you did your homework and already have a competent surveyor lined up, you'll probably be okay with a relatively short period in which to obtain a survey report. Likewise, you may be able to agree to an early closing date if your have some idea of where you will be keeping the boat and who will be transporting it. And if you have enough cash on hand, or have set up a line of credit ahead of time, there should be no need to make the offer and purchase conditional on your being able to obtain the necessary financing.

It is also worth noting that if you are buying a boat through a broker, you will be expected to use their documents to make your offer and conclude an agreement of purchase and sale. These documents will cover the essence of a deal, but they are often loaded with wording about commission fees and the fact that the brokerage is not giving any assurances, warrantees, or guarantees about the condition of any boat (though individual sales agents rarely miss the opportunity to affirm that certain boats are in excellent condition). Nevertheless, their documents can be expanded to include additional terms and conditions, and good brokers can come up with acceptable wording. However, you may be more comfortable inserting your own wording into these agreements.

Note that the article and material on this web page are provided only for general information purposes. If you decide to act on any of it, or if you rely on any of the material when drafting your own Offer to Purchase and/or Agreement of Purchase and Sale, you do so entirely at your own risk. Please see the [disclaimer statement](#) for this web site for more details. Consult a lawyer to ensure that you are using a correctly worded document and that you have adopted a proper course of action in relation to the purchase and sale of a boat.

by Michael McGoldrick, 2001.

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