

FALL 2017 NEWSLETTER-HOME BUYING AND SELLING

Dear Clients and Friends:

Home buying and selling is a complex process. Each state has its own requirements on who and what needs to be involved. That's exactly why you should start your journey with a consultation with an experienced real estate attorney.

In this newsletter, we will show you how you can benefit from having a real estate attorney represent you during the transaction, how fees are charged, and the common pitfalls real estate attorneys can help you avoid.

In most states, it's not mandated that you work with a real estate lawyer. Your real estate agent typically prepares several legal forms, including the initial listing agreement, the purchase and sales agreement, and any bills of sale for personal property. Keep in mind that these forms are generally preprinted forms and may not work for your particular situation or goals. Additionally, real estate agents are not allowed or qualified to offer legal guidance.

Why You Need a Real Estate Attorney

The legal consequences from mistakes or omissions during the buying and selling process can cause you some major headaches. You might have heard differing opinions about whether or not you need a real estate attorney.

The best step you can take is to review the housing and mortgage situations with your agent and mortgage broker, respectively. You will also want to do a thorough review of the mortgage documents prior to signing anything. This will give you an idea of whether there are some unique cases with your purchase that require a professional legal opinion.

Consider the Circumstances

Is there anything unique about the property? For example, if there are any improvements on the lot such as fences, pools, sheds, car ports, or trees, you will want a legal review of the deed and lot survey to ensure that everything was built to code with proper permits.

Be particularly mindful of anything on the property that could be considered to encroach on your neighbor's land, or even public property such as sidewalks or easements encroaching on your land. Do you plan on adding an addition?

PLAN AHEAD: *Local zoning restrictions could prevent you from following through on your plans. Better to find out before you sign anything.*

Real Estate Attorney Fees

Costs for a real estate attorney vary across the country, but can range from a few hundred dollars to a couple thousand dollars, depending on the complexity of your transaction and how involved the real estate attorney is during the process. A typical real estate attorney charges by the hour at a rate of \$200 to \$300. Some simple real estate transactions can be billed on a flat fee basis.

Request a Representation Fee Agreement

The Fee agreement outlines the attorney's charges and responsibilities. Ask your agent to recommend an experienced, attorney who is state-licensed and specializes in residential real estate law. Most lawyers will have a boilerplate agreement that covers the majority of the client's needs, but if you have special considerations be upfront so that it can be added to the agreement.

The Common Legal Pitfalls for Home Buyers and Home Sellers

Only an experienced professional, who is closely familiar with the documents involved in a home purchase, can catch all the problems or mistakes and save you future expenses to correct them.

IMPORTANT: *Don't wait until the closing to bring up issues. Work with your advisors to fix everything beforehand.*

We recommend that an attorney, who specializes in residential real estate, review your purchase contract before you sign it. Excitement and anxiety tend to take over when you buy your first house, which makes it *easy to miss critical terms*.

Your real estate attorney will work with your mortgage loan officer, the purchaser's or seller's attorney and agents to **make sure that dates are set for:** attorney approval, home inspection, mortgage commitment, and other contingencies. This is critical, because many purchase and sales agreements have certain requirements and limitations on the timelines for these events. Missing any of them could add extra fees or prevent you from backing out of a deal if you are the buyer, even if you find something catastrophically wrong with the property.

Review Critical Closing Documents

If you are **buying real estate**, your real estate attorney will review or assist in preparing the purchase and sales agreement in order for it to comply with your purchasing conditions as well as inspect important documents for common mistakes such as typos and misspelled names, including:

- Mortgage Loan Documents
- Plat of Land Survey
- Settlement/Closing (HUD) Statement
- Title Insurance
- Deed
- Real Estate Transfer Tax Forms

Your real estate attorney can also be helpful in negotiating for *unpaid prorated expenses* due to you from the seller, such as: property taxes, condominium assessments, and utilities.

When possible, try to get your real estate attorney to attend the closing as well. You want to make sure all of the documents, revisions, and terms are represented in the actual documents you are signing.

If you are **selling real estate**, your real estate attorney will review the purchase and sales agreement prepared by the buyer

to make sure all of your sale conditions are met, review the settlement statement for correct pro-rations, as well as prepare the following documents:

- Deed and Payoffs
- Real Estate Transfer Tax Forms

Real Estate Attorney Representing Both the Buyer and the Seller

In most circumstances, it is unethical for an attorney to represent two opposing parties (dual representation) to a transaction or dispute. That's because the lawyer has a legal obligation to protect his or her client's interests, and it's difficult-if not impossible-to do that when you're representing two parties whose interests conflict. There are, however, limited circumstances when a real estate attorney can represent both the seller of a property and the buyer.

Conflicts of Interest

According to New Hampshire's Model Rules of Conduct:

"[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."

The rules, however, go on to say:

"[A] lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing."

Should You Have Your Own Real Estate Attorney?

These rules are designed to protect the interests of clients, such as those who are buying or selling real estate. Before deciding to hire the same attorney who's representing the party on the other side of your real estate transaction, ask yourself why you're doing it. Are there no other qualified real estate lawyers in the area? Are you hoping to save money? Are you having difficulty finding a real estate attorney to hire? We don't think the answers to those questions point in the direction of dual representation. Our law firm believes the risks to clients of using dual representation outweigh any benefits and as a result, we have recently stopped the practice of representing both the buyer and the seller.

Key Real Estate terms – in plain English

Bill of Sale – Details any personal property not attached to the home that is part of a transaction. Example: furniture, etc.

Deed – The legal document that transfers and affirms ownership for a property.

Home Inspection – Commonly, an official review of the property by a skilled professional that results in a report detailing any issues discovered on the property. Usually, the home purchase is conditional on the inspection report results.

Improvements – Anything added onto the home or property that is permanent. Example: fence, car port, etc.

Mortgage Broker – A real estate professional specializing in securing mortgage terms for the homebuyer.

Mortgage Loan – A loan that is raised to buy a property. This is a secured instrument, in that if there is a default on the loan the lender can sell the property to settle the debt.

Land Survey – A map which shows the divisions of a piece of land. This is how you learn where your property lines are legally.

Real Estate Agent – A real estate professional that specializes in buying and selling homes on behalf of home buyers and sellers.

Real Estate Attorney (AKA Real Estate Lawyer) – An attorney who focuses their practice in real estate law.

Title Insurance – Insurance against loss due to defects, or mistakes related to the title or deed for a property.

10 Step Process to Buying a New Hampshire Home

1. **Find an attorney:** It's a good idea to find a lawyer early on in the process of purchasing a home. Shop around to find an attorney you feel comfortable with and trust. Attorneys help protect your potential home's equity, while negotiating and representing on your behalf. Not only will a lawyer interpret often-convoluted legal documents, they'll make efficient use of your time and money as well.

2. **Find an agent:** New Hampshire doesn't require buyers to go through a real estate agent, but trained agents are helpful with navigating the home buying process, and keep you from falling into hidden pitfalls along the way.

3. **Application:** Fill out an application for a mortgage at a local bank or credit union.

4. **Mortgage Pre-Qualification:** Your lender will review your employment, credit history, and other assets to determine a mortgage amount within your means. Your income must prove you'll be able to cover all home buying expenses. This step assures real estate agents you are qualified to buy NH real estate.

5. **Find a home:** Browse around on New Hampshire's MLS site, on real estate agent's sites, and in the classified ads in local papers. Be sure to consider homes within your means, and to look for homes with practical amenities and features that suit your lifestyle.

6. **Appraisal:** An appraisal is the process of developing an opinion of your prospective home's value. The lender will use this number to determine if the sales price is supported. After being requested by your lender, an appraiser then visits the property, researches all property and comparable property data, reviews, analyzes, and determines a value before submitting a report to your lender.

7. **Inspection:** An inspection involves a construction professional who can detect defects and can assess profoundly all aspects of the property, including elements that may not be obvious to an untrained eye. Following the inspection, you will make an agreement with the seller regarding repairs (sellers typically agree to make repairs, so long as they are reasonable).

8. **Title:** Your attorney will ensure the seller's title is "Marketable," meaning no issues turned up in his/her search through

county records. You will be asked to choose to "hold title" "individually," as a "tenant in common," or as a "joint tenant with rights of survivorship." Your attorney will explain the implication of these terms before your decision. At this time, the seller's attorney will also prepare a deed for you, which your attorney will ensure accurately represents the property's conveyance to you.

9. Pre-closing: Before the closing, you and your attorney need to settle on the correct amount you'll need to pay the closing attorney. Leave yourself a few days to ensure you have time to get a bank check or certified check. You and your agent will also conduct a walk-through prior to the closing to ensure the seller has maintained the agreed-upon condition of the property. Also, be sure to alert local utility providers, such as water, electric, gas, etc. that you're buying the property.

10. Closing: The closing will most likely take place at the bank's attorney's office, or at the bank itself. Fees you will pay at the closing often include recording fees, title insurance, prorations, agent fees, escrows, prepaid interest, and bank fees. The best insurance of a smooth closing is preparation.

For questions regarding the contents of this newsletter or for assistance with any real estate transaction, please contact our experienced real estate Attorney Anthony J. Lenhart.

Happy Fall!

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