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**BUYING AND SELLING A HOUSE**

The purchase of a house is often the single greatest financial investment made by a person or a couple. A mistake at this time can undo a lifetime of effort. The following outline merely gives the buyer or seller some idea of the problems. The complexities and technicalities involved require the service of an attorney who represents you.

**PURCHASE AND SALE AGREEMENT**

You should engage your attorney before you sign the binder, because it is a binding contract between the buyer and seller and defines the rights and duties of the parties. Those rights and duties may be altered or further defined in the purchase and sale agreement. Preferably, you should consult with an attorney as soon as you know you are going to buy a house or put your house up for sale (before you call in a real estate broker). A buyer should have his or her own attorney even though the buyer will also pay for the bank attorney, because the bank attorney does not get involved until the end of the transaction. Many matters, which buyers and sellers do not recognize as problems, may jeopardize not only their peace of mind, but their pocketbooks as well.

**There is no “standard form” of binder or purchase and sale** agreement that can be used in all transactions. There are in fact dozens of so-called standard forms and each one contains phrases which may be disadvantageous to one or the other party. Among the issues that will be negotiated as part of preparing the purchase and sale agreement are the following:

* Buyer’s loss of deposit if the buyer cannot obtain a mortgage
* Seller’s guarantee to pay the broker’s commission even though the buyer defaults and there is no sale
* Buyer’s obligation to purchase the house even it if is totally destroyed
* Seller’s obligation to pay “his/her share of points, mortgage origination, or discount fee,” which may amount to hundreds of dollars
* Seller’s obligation to vacate the house completely prior to passing papers
* Seller’s right to sue buyer for damages if buyer defaults (in addition to retaining the deposit)
* The buyer’s right to have various inspections done at the premises, including a home inspection, pest inspection, lead paint and water, UFFI, radon and Title 5 issues

Obviously, some of these provisions are necessary in certain situations. The only way you can be fully protected is to have your attorney examine any purchase and sale agreement or binder, or any other instrument before you sign it.

It is extremely difficult, sometimes impossible, for a lawyer to protect his/her client when the client has already bargained away his/her protection in a poorly drawn or disadvantageous agreement.

**ROLE OF ATTORNEYS**

**Legal counsel are indispensable to an orderly real estate sale.**

Depending on what representation the usual parties (seller, buyer, banks) choose and how they elect to share the responsibilities, the lawyer’s functions are critical.

In a traditional sale, here is a capsule summary of each lawyer’s role in a traditional sale:

**Attorney for Seller**

1. Confer with client
2. Review or prepare purchase and sale agreement and negotiate about its terms, including who should hold the deposit
3. Prepare deed and power of attorney, if necessary
4. Deal with title issues raised by the bank attorney
5. Attend closing and review papers which seller is required to sign
6. Escrows and special arrangements to correct title, complete construction or assure possession
7. Transfer of security deposits and notices to tenants
8. Obtain account numbers/phone numbers for existing lien holders
9. Arrange for 6d Certificates/Insurance Certificates/Release of Rights of First Refusal (if any) if condo

**Attorney for Buyer**

1. Conference with client, including issues such as how to take title, information on type of property to be purchased (i.e. single family, multi-family), and financing issues
2. Review offer to purchase
3. Review or prepare purchase and sale agreement and negotiate about its terms, including who should hold the deposit
4. Advise concerning financing and tailoring of purchase and sales terms to lender’s requirements
5. Review the various inspections noted above
6. Review title examination with bank’s attorney
7. Attend closing and review papers which buyer is required to sign
8. Set up escrows and special arrangements to correct title, complete construction or assure possession
9. Arrange title insurance protection for buyer against losses due to title defects, if desired
10. Transfer of security deposits and notices to tenants

**Attorney for Bank**

1. Order and review examination of title (see below)
2. Order and review plot plan
3. Order and review municipal lien certificate
4. Draft note, mortgage, deed and other necessary papers
5. Prepare for the closing, signing all papers, obtaining mortgage, fund, acceptance of the deed, recording
6. Estimate closing costs
7. Pay-off existing mortgage and liens and obtain discharges or releases
8. Set up escrows and special arrangements to correct title, complete construction or assure possession
9. Prepare mandatory reports to IRS
10. Record all documents properly
11. Certify title to the buyer and lender and prepare title insurance policies
12. Discuss and consider a declaration of homestead with the buyers

**EXAMINATION OF TITLE**

After the purchase and sale agreement has been signed and financing arranged, a full examination of the title must be undertaken, covering at least 50 years, since many rights and obligations involving real estate may continue for long periods of time. Some problems that may affect the title are:

* Mortgages
* Taxes
* Mechanics’ liens
* Debts of decedents
* Estate taxes
* Restriction on use
* Bankruptcy
* Estate and federal laws
* Foreclosures
* Divorces
* Attachments and judgments
* Rights of others to use the premises

Title examination requires interpretation of all the deeds, mortgages, court decrees and all other documents affecting the title, considering the time sequence of transactions and events affecting the title, and applying the law and court decisions to the various situations arising in the title examination. Since the cost of correcting title defects is the seller’s obligation, it is important that the title examination be completed and that title defects be corrected by the seller’s attorney, before the buyer takes title and possession of the house.

**PASSING PAPERS AND SETTLEMENT COSTS**

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The closing must follow the exact provisions of the purchase and sale agreement, which is why the attorneys’ prior involvement is so important. The attorneys compute the adjustments for taxes, fuel, etc., and prepare a closing statement showing the amount owed by buyer to seller. The deed, mortgage and other documents are inspected for accuracy and signatures. Both buyer and seller sign agreements to reimburse buyer’s bank for losses in connection with smoke detectors, lead paint, and other substances.

**Seller’s normal expenses include:**

* Attorney’s fee including negotiations, drafting documents, correction of title defects, removal of liens, etc.
* Massachusetts tax transfer stamps
* Recording costs of instruments necessary to clear title
* Real estate broker’s commission

**Buyer’s normal expenses include:**

* Attorney’s fees, including negotiations, drafting documents
* Cost of the examination
* Cost of preparing mortgage documents, including bank attorneys’ fees
* Recording charge for deed, mortgage, and municipal lien certificate
* Miscellaneous expenses, such as certificate of municipal liens, plot plan, title insurance, bank application fee, points and other finance charges, if any of these are required

**TITLE INSURANCE**

The vast majority of lenders require that a lender’s title insurance policy be procured at the closing. This policy is part of the costs paid by the buyer at the closing. At the same time the buyer may elect to purchase for an additional one-time premium an owners title insurance policy which will protect your equity interest against any claims that may arise during the period of time you own your home.

**SUMMARY**

The purchase and sale of a house is often the single largest financial transaction in a lifetime**.**

**It is important that you be represented by the attorney of your choice before you begin the buying or selling process.**

BUYING AND SELLING A HOUSE