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**UNDERSTANDING YOUR RIGHTS IN REAL ESTATE TRANSACTIONS,**  
**CONTRACTS AND CLOSINGS**

**DO I NEED AN ATTORNEY IF I AM BUYING OR SELLING A HOME OR OTHER REAL ESTATE?**

This largely will depend on your knowledge about real estate transactions. Few individuals who are not realtors or attorneys can ensure the successful outcome of a real estate transaction without the assistance of an attorney specializing in real estate law. It is crucial to understand your legal rights and make sure a contract is properly drafted to maximize and protect your legal rights. In many instances, a well-drafted contract can help secure a successful closing and avoid future problems stemming from the transaction. Often, a small investment in an attorney at the onset of a real estate transaction can save you from significant expenses and problems down the road.

For most people, the purchase of a home is their largest single investment in their life. Given the amount of money involved in a real estate transaction, either as buyer or seller, the cost of an attorney to advise you on the transaction is usually a small fraction of the amounts involved in the transaction and is money well-spent. Realtors, lenders and title companies all have a financial stake in closing a real estate transaction, but a real estate attorney has no financial stake in the transaction and, thus is in the best position to advocate for and protect your best interests because an attorney is not compensated based upon whether a transaction closes. If you are not familiar with real estate transactions or do not have a complete understanding of all of the paperwork involved in buying or selling a house, it is advisable to consult with an attorney as only an attorney can give you legal advice.

**WHAT ARE THE STEPS INVOLVED IN BUYING OR SELLING A PROPERTY?**

There are a number of steps involved in the process of buying or selling property. Initially, there are negotiations and the drafting of a contract and counteroffers. While Colorado realtors utilize a standard Contract to Buy and Sell Real Estate approved by the Colorado Real Estate Commission, many individuals do not realize that this document is structured to provide a number of different options for the terms and provisions of the contract even though it is a standardized form. After signing, a contract can provide numerous obligations for the parties as well as various procedures and deadlines for physical inspections of the property, disclosure of property defects, appraisals, surveys, title work, loan approval and environmental compliance. The contract may likely also provide the parties with the right to terminate a contract under certain case-specific circumstances. Therefore, it is crucial to understand the obligations, deadlines, and procedures in a real estate contract and ensure a contract is drafted in a manner that protects your interests and is consistent with your expectations for and understanding of the transaction.

You should understand that the terms of even a standardized real estate contract can be altered significantly to greatly increase or decrease your rights or obligations under the contract, including, but not limited to, grounds on which the parties may terminate the contract, the ramifications of a terminated contract, who is responsible for closing costs and title insurance, what happens if problems arise before closing, the amount of earnest money (deposit) that may be retained if a contract is terminated, etc.

Thus, a well-drafted contract is a vital part of protecting your interests in a real estate transaction and securing a successful outcome, and legal advice from a real estate attorney can be invaluable in ensuring that a contract is drafted in a fashion that best protects your interests and results in an outcome consistent with your goals and expectations.

#### **CAN I RELY ON OTHERS TO ASSIST ME WITH A REAL ESTATE TRANSACTION?**

The only person involved in a real estate transaction who is looking out for your best interests, does not have a financial stake in seeing a transaction to a closing, and can give you legal advice is your attorney. Realtors cannot offer legal advice and in nearly all transactions, they will receive a significant commission if the sale of the property closes. Lenders are primarily concerned with protecting their loan, cannot offer legal advice and do not have any motivation to look after the buyer's interests. In addition, the representative of the lender will likely receive a commission for the mortgage if the sale closes. Similarly, title companies are primarily concerned with their own financial interests in the transaction, and while the title insurance policy will require the title company to indemnify you for defects in the title to the property, title insurance policies contain many exceptions which leave uninsured gaps in the buyer's title, and, the insurance company will make any possible attempt provided by the policy to later avoid coverage of a claim. Therefore, it is advisable to have a real estate attorney review your title insurance policy and the exceptions to the policy as in many cases an attorney can negotiate the title company's removal of coverage exceptions in the title insurance policy to increase the policy's coverage and afford better protection of the property's title.

#### **DO I NEED AN ATTORNEY TO REVIEW THE REAL ESTATE CONTRACT OR OTHER PAPERWORK?**

Since the contract will define the terms and conditions under which a parcel of real estate will be sold, it is crucial to ensure the contract contains the terms you want, contains terms to cover unexpected problems, and protects your legal rights as best as it possibly can. While many real estate transactions in Colorado utilize a standard form Contract to Buy and Sell Real Estate, it is important for all parties in a real estate transaction to understand that this standard contract provides different options for how it will operate. There are many choices for the contract terms, the rights/obligations of the parties, and deadlines. Therefore, if you do not fully understand the terms of the contract or the different options available, you should consult an attorney. Even if you do fully understand the contract terms and options, an attorney can provide considerable expertise and input on additional terms to further protect your interests based on the circumstances specific to your transaction and allow you to plan for unforeseen problems and contingencies you may have not considered. Thus, whether or not you utilize a standardized contract form, it is advisable to have an attorney review any real estate contracts before you enter into them. In addition to the contract, a real estate transaction also involves numerous other documents and given the amount of money at stake in these transactions, it is also advisable to have your attorney review all of the paperwork associated with your real estate transaction. These documents, such as title work, deeds, homeowners' association documents, loan documents, surveys and property disclosures, can greatly impact the value of the property, how the property can be used and can result in future problems and headaches after closing.

#### **WHEN IS IT BEST TO HIRE AN ATTORNEY?**

If you are a buyer, it is crucial to involve an attorney before submitting an offer to purchase or signing a purchase contract. Once a contract is signed by both parties, it is too late to alter the terms of the contract without the consent of all parties to the contract. It is important to understand that if you make an offer to purchase, in most instances, a valid and binding contract is created as soon as the offer is accepted. For sellers, it is best to involve an attorney before signing a listing contract with a real estate agent, as the terms of this contract will often be binding and it is advisable to ensure the contract contains fair terms that are not significantly skewed to the realtor's favor.

## **HOW CAN I GET HELP WITH A REAL ESTATE CONTRACT, CLOSING, OR LEASE?**

If you have further questions about real estate transactions or need representation, please contact The Law Firm of Jessica H. Miller, LLC at (303) 443-0568 or [jessica@jhmillierlaw.com](mailto:jessica@jhmillierlaw.com).

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