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## **THE IMPORTANCE OF DILIGENCE WHEN BUYING A HOME**

### **ONE OF LIFE'S LARGEST INVESTMENTS**

A buyer of a home is in a very unique and crucial juncture in his or her financial and personal life. The purchase of a home is an incredible opportunity to make an investment that can benefit a buyer's financial strength and living condition, which can ultimately have tremendous impacts on the buyer's family life, wealth, and happiness. Since the purchase of a home is very often the single largest—and most important—investment most individuals will make, it is crucial for a buyer to carefully and diligently make decisions regarding this critical purchase. It is also vital that buyers make this decision with the best information available regarding the transaction and the property.

While the purchase of a home presents a buyer with an incredible investment opportunity, it is a complicated investment because a home's value is affected greatly by matters that are often not easily apparent, particularly to those who are not professionals in the real estate industry. Therefore, the purchase of a home requires the exercise of significant diligence. In my experience, most homebuyers "go through the motions" of diligence that are typically built into the process of purchasing a home without fully appreciating the important opportunities they have to investigate whether the transaction and property fits their needs and goals, and many homebuyers never even exercise many of the legal rights the buyer has available to them to confirm the vision he or she has for the home, the investment and the transaction before it is too late.

### **TITLE COMMITMENT**

For example, potential buyers typically look very carefully at the inspection report for the home because they understand the benefits of identifying the general physical condition of the property and problems with its maintenance and upkeep. However, many buyers do not understand the importance of the title review commitment and its impact on the quality of the title in the real estate the buyer is purchasing—which is one of the most important aspects of an investment of this nature. Every title commitment for the sale of a home is unique, and essentially, the title company issuing the title commitment is committing to issue a contract of indemnity (insurance) against loss caused by the title to the home being different than how it was specifically insured in the title commitment, which often identifies meaningful exceptions to what the policy covers. Unless a buyer fully understands how the home's title is insured in the title commitment, a buyer really does not know what he is buying, under what terms, conditions or restrictions the buyer owns the home, and what the buyer can do with the home. Thus, it is crucial for a buyer to understand what the particular terms of the title commitment are for his or her home as part of the buyer's due diligence. Often, a real estate attorney can be of great assistance in providing

legal advice regarding the title commitment and may be able to negotiate with the title company for the removal of certain exceptions in the title insurance policy to better protect the buyer's title.

In addition, it is also vital for a buyer to fully understand a title commitment because in many situations there are options available to the buyer to protect him or her against unacceptable title conditions, objections, endorsements, etc. For example, it is very typical in Colorado for a home to be sold subject to a common interest community (often an HOA) which may impose rules or restrictions on the property and its use. Furthermore, the title commitment may only disclose that the HOA has the power to impose additional restrictions on the property, which restrictions are not even specifically disclosed in the title commitment. Are you going to be able to park your truck from work in your own driveway? Do you want to fix your car in your garage? Do you want to put up a swing set or basketball hoop? In many instances, activities or objects that most people think are acceptable and compatible with a residential use may be strictly prohibited in common interest communities and subject to significant fines and liens against the title to your home. The assistance of a real estate attorney can allow the buyer to engage in meaningful diligence about these kind of issues before committing to the purchase of a home. Therefore, it is crucial for a potential buyer to know about these restrictions before making an offer to buy a home.

#### **ADDITIONAL DILIGENCE**

Buyers should also investigate if their intended use of the home is allowed under applicable zoning laws, municipal ordinances and building codes before making an offer to purchase. Furthermore, potential buyers often fixate on the physical condition of the home, its appearance and potential upcoming maintenance issues when engaged in the process of buying home, but buyers often overlook survey and property boundary line issues. If you are buying a home with another individual who is not your spouse, you should consider entering into legal arrangements for ownership of the home, maintenance expenses, mortgage payments and arrangements governing sale of the home or transfer to one person should a change in living circumstances occur. Based on your specific circumstances and intended use for the property, it may be advisable to purchase a property through a corporation, limited liability company, partnership or other entity. Buyers should also carefully consider and investigate the terms of your financing (mortgage). The recent financial crisis revealed that many borrowers enter into mortgages without understanding the most basic terms of the mortgage and that lenders may at times mislead borrowers about a mortgage's terms. Therefore, just like the real estate contract, buyers should ensure they fully understand the terms of their mortgage and the full-range of the obligations they are committing to under the mortgage and seek legal advice to provide them with a full understanding of the terms of their mortgage and financing.

#### **OPTIONS IF DILIGENCE REVEALS PROBLEMS**

The purpose of diligence in the home-buying process is to make sure you know everything you can about the property and the transaction before moving forward and uncover any potential problems as soon as possible so they can be addressed. In almost every situation, problems or issues can be much more easily resolved before closing. In many circumstances, problems found after closing will be more difficult or costly to address, and in some circumstances, your opportunity to address them may have passed after closing.

If a buyer encounters issues during his or her diligence, there are often legal options available to the buyer to cancel the contract and receive the return of the full amount of his or her earnest money (deposit) so long as the objections are properly documented, timely and made in accordance with the terms of the contract. Also, there are often options for the buyer to receive concessions from the seller to address these objections (such as reducing the sale price, amongst others), or alternatively, actions the seller can take to cure the objectionable condition in accordance with the contract and maintain the contract. Since a home is often the single largest investment many individuals make in their life and since the purchase of a home involves the exercise of considerable diligence on many different, yet crucial, issues, legal advice and representation from a real estate attorney is the best way to ensure your legal rights are protected, all crucial matters of due diligence are addressed and that your investment in your home is successful on both a financial and personal level.

### **HOW CAN I GET HELP WITH A REAL ESTATE TRANSACTION?**

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

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