

BUYING AND SELLING REAL ESTATE

against anyone who may claim a superior title, which is customarily used upstate. The second Form of Deed is the "Bargain and Sale Deed With Covenant Against Grantor's Acts," which is customarily used downstate. This deed assures the buyer that the seller has done nothing to affect the title to the property through his or her own acts or omissions. In both instances, if the title is insured by a title insurance company, the buyer will usually look to the title insurer for protection against claims even though the buyer may also make a claim against the seller.

Representation

Remember one important point - the seller, broker, and bank in the transaction may each have an attorney representing each of their interests. An attorney representing any of these parties (even though you may be charged with a fee, as in the case of a bank) is not your attorney unless you agree otherwise after being properly informed of the potential conflict of interest. It is your own responsibility, as the buyer, to seek the professional advice of an attorney to protect yourself and to be sure that you get precisely what you are legally entitled to receive.

Closing

The "closing" of the purchase of your home is the transaction in which you receive all the documents required to convey the title of your home.

At the closing these documents are reviewed to be sure that the conditions and promises of the purchase contract are fulfilled. Also at this time, the balance of the purchase price is paid to the seller.

Arrangements are made at the closing for the time when you will occupy the home. Normally, when the full purchase price is paid, the keys to the house are delivered to the buyer, who then has the right to move in immediately. However, your purchase agreement may also specify that you move in at a later date.

The important thing to remember is that buying a home is a major investment. It usually involves making payments over a period of years. In the long run, it's likely to be more economical to have competent professional advice - your attorney's advice - in making the purchase than to risk the trouble and expense that could result from not having that advice in the first place.

This pamphlet, which is based on New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney. Produced by the New York State Bar Association Committee on Public Relations in cooperation with the Real Property Law Section.

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Whether you are seller or buyer, you should understand the contract terms and how they affect you.

Buying and Selling Real Estate

Nearly everyone, at some time in life, faces the problems of buying and selling real estate. Because the purchase of a home is probably the largest single investment a person will ever undertake, careful consideration should be given to the practical and legal complications involved in the transfer of real estate before any action is taken. This pamphlet describes the process, noting some differences in practice between upstate (north of Dutchess and Orange Counties) and downstate.

Contracts

Once you have found the house you would like to buy and have agreed on the price, you will probably be asked to sign a paper and pay a deposit. This paper may be called a binder, receipt, purchase offer or agreement and is usually prepared by the seller's agent (upstate, usually a real estate agent; downstate, usually the seller's attorney). Contracts prepared by brokers are usually subject to the approval of the attorneys for the parties within a short specified period of time.

Any one of these papers may constitute a binding contract requiring you to purchase the house. Before signing it, you should consider seeking legal advice. Remember that once a contract has been signed, your rights and obligations are fixed concerning the transaction and your attorney may not have the opportunity to structure the contract to meet your objectives.

Whether you are seller or buyer, you should understand the contract terms and how they affect you. The other parties to the contract may not be under any obligation to tell you what the contract means and you may not understand the legal meaning of much of the terminology or what should be changed or added to protect you.

So, if you are going to have an attorney represent you in the transaction, the time to consult one is before you sign any papers or immediately after signing a contract that is subject to attorney approval.

The contract of sale should state the parties, the purchase price and how it is to be paid, an adequate description of the property being sold, the kind of

deed to be delivered, the quality of the seller's title to the property, a description of personal property included in the sale, the date the buyer is to take possession, and other clauses relating to the property and the parties' respective responsibilities to each other.

The contract should also permit the buyer to cancel the contract, if a commitment for financing can't be obtained and provide for the return of the down payment, if the sale falls through for other reasons not the fault of the buyer. Or, perhaps the seller may want to retain possession of the property for some time, in order to find new accommodations. If so, appropriate clauses can be included in the contract defining such rights.

These are only a few matters usually covered in the contract. However, they illustrate the variety of terms and conditions to be considered when you enter into such a transaction.

All contracts and mortgage documents for the purchase and sale of real estate costing \$50,000 or less must be written in non-technical language and in a clear and coherent manner. This requirement applies only to real estate, which is, or will be, personally used by the buyer or seller.

Title

The "title" to real estate is the right of the owner to its peaceful possession and use, free from the claims of others. Often, however, the exercise of that right is limited by the existence of other rights, which are, called easements. To obtain electricity, sewers, telephone, etc., an owner gives the municipality or public utility the right to run its lines or pipes across his or her property to the house. Other often encountered easements provide for drainage of surface water, or access rights of way such as for a jointly used driveway. These easements must be recognized by the owner in the use of the property and considered by the buyer who is purchasing the property.

There are other ways in which the use of the owner's property may be limited. One is by restrictions in the deed; another is by local zoning law. Also, almost all land is subject to real property taxes, which if not paid, may result in the loss of title. Other debts owed on the property (for example, special assessments or levies) can also cause problems later on.

When you buy a home, you should be certain that you have the right to occupy it without

interference and that you later will be able to sell or mortgage it without problems.

Title Searches

After the contract has been signed, you should satisfy yourself that the seller can convey title to the property to you as agreed upon in the contract of sale. In different areas of the state, varying methods are used to make sure that the title received from the seller is acceptable under the contract.

Upstate, your lawyer may make his or her own examination of the records and issue a certificate indicating the findings, or supply you with a written title opinion based on an abstract of title (which is simply a title history) prepared by a commercial abstractor. Downstate, your attorney may often order a title search by a title insurance company or agent and a title insurance policy. Or, a combination of any of these methods may be used.

A word about title insurance - while it may give you protection against financial loss and the possible expense of defending your title in court, it does not lessen the importance of your lawyer's advice. Your lawyer can advise you whether and how to obtain title insurance and also on the terms, exceptions, and conditions of a title insurance policy. Title insurance does not cover compliance with zoning or environmental laws, among other things.

Buyer's Duty to Inspect

Under New York law, the buyer of a house that is not newly constructed has a duty to inspect the condition of the house and land. The buyer should carefully look over the property and is also urged to consider hiring a home inspector to perform a professional inspection, preferably prior to signing a contract of sale. Alternatively, the contract of sale should be conditioned on receipt of a satisfactory inspection. The buyer also has a duty to ask questions about any conditions observed and to inquire about other matters, such as taxes, zoning and school district. Buyers of newly constructed houses are protected by a statutory housing merchant implied warranty under General Business Law § 777-a.

Form of Deed

In residential transactions there are two generally used Forms of Deed. The first is called a "Warranty Deed", which assures the buyer that the title is good