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DO I NEED A LAWYER WHEN BUYING OR SELLING A HOME?

DO I NEED A LAWYER?

Generally, buying or selling a home is the largest financial transaction of one's life. These real estate transactions give rise to a number of legal questions that a **lawyer with real estate background and experience** is best equipped to answer. **ONLY** a lawyer and **NOT** a lender, title company, or a real estate broker or REALTOR® can give you legal advice. This pamphlet is intended to assist the homebuyer and seller in assessing the need for a lawyer and to foster the broker/REALTOR®/lawyer roles and relationships.

HOW MUCH WILL A LAWYER COST?

There are no set fee schedules for lawyers, and individual lawyers charge different fees (which may include hourly or flat fees) for different services. Before you hire a lawyer, you should ask the lawyer to explain to you what fees you can expect. You may also wish to discuss limiting the lawyer's involvement in the transaction to specific tasks such as reviewing the contract, reviewing the title commitment and related title documents, and reviewing the closing documents. Any such limitations should be reflected in a written agreement with the lawyer.

WHAT IF I DON'T HAVE A LAWYER?

If you don't have a lawyer, there are many ways to find one. You can ask your friends, your associates at your job, your broker or REALTOR®, consult with a lawyer referral service in the Colorado Bar Association, or confer with a member of the Real Estate Section of the Colorado Bar Association.

CAN I RELY ON OTHERS?

Lenders - Since a lender wants primarily to protect its loan and security, the lender's position is mostly compatible with that of the buyer. However, the lender's and the buyer's interests may differ. For example, lenders receive different types of title insurance coverage and documentation than buyers. Also, a lender often orders and receives for its own records such important items as a survey, environmental report (if appropriate), and appraisal on the property being bought. Frequently, these items are not delivered to the buyer unless requested. A lender's evaluation of these documents quite often is not as stringent as a buyer's

The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibility vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

review should be. The important thing to remember is that lenders cannot give the legal advice, which may be necessary to protect the buyer's interests, and a buyer cannot rely on the lender for protection.

Title Insurance Companies - Title insurance is not strictly speaking insurance. It is a contract which agrees to indemnify the holder of the insurance policy, within the policy limits, for loss sustained by reason of certain defects in the title, provided the loss does not result from a defect excluded by the policy provisions. However, title insurance policies contain many exclusions and exceptions, which leave gaps in the buyer's protection. It is extremely important for buyers to understand what these exclusions and exceptions are, to review the actual documents, and to evaluate their effect on a buyer's title (and the scope of title insurance coverage). A lawyer can often help a buyer or seller understand these important documents and to negotiate for the elimination of some of these exclusions and exceptions from the title policy.

Typically, as a service to (and for a small fee paid by) the real estate brokers, title companies prepare the deed and bill of sale conveying title to the real estate and inclusions. A lawyer can review these documents and ensure their compliance with the contract terms. Furthermore, title companies prepare numerous other documents which parties are asked to sign at closing, many of which protect just the title company. Buyers and sellers should understand these documents before signing them. A lawyer can help with this review as well.

Real Estate Brokers/REALTORS® - In transactions where real estate brokers act as agents or transaction brokers and receive only a commission, the Colorado Supreme Court allows contracts to be prepared by brokers/ REALTORS® under specific circumstances. (Note that those brokers who are members of the Colorado Association of REALTORS® are also known as REALTORS®, who are governed by a Code of Ethics). These must be prepared on standard contract forms approved by the Colorado Real Estate Commission generally by filling in the blanks with information obtained from the usual sources. Real estate brokers/ REALTORS® are not lawyers, and cannot give legal advice. The buyer should always remember that in real estate transactions, several forms of brokerage relationships exist. These include exclusive seller or buyer agent, dual agent, and transaction broker. Sometimes due to circumstances arising during a transaction, these relationships can change. Therefore, each person working with a broker/ REALTOR® should clearly understand the relationship that the broker/ REALTOR® has in the transaction. This includes such important things as confidentiality of that party's negotiating considerations and motives. Parties should request and review the Brokerage Relationship Disclosure forms with the broker/ REALTOR® before proceeding. A lawyer **with** real estate background and experience can be helpful to parties in understanding these forms before they are signed.

WHEN SHOULD I CONSULT A LAWYER?

In General - When making the decision about whether or not to consult a lawyer, remember the advice printed on the Colorado Real Estate Commission approved real estate contracts, (which contracts are used in many real estate transactions):

This form has important legal consequences and the parties should consult legal and tax or other counsel before signing.

Always check the top left corner of the document to determine if it has been so approved. Examples of contracts, which usually have not been approved, include builder contracts, construction contracts, most contract addenda and leases (including attachments and exhibits). Whether approved forms or not, these are all legally binding documents which have important legal consequences that a lawyer can help you understand before you sign.

Sellers - Sellers who decide to consult a lawyer should do so before signing the Listing Contract with the broker/ REALTOR® to sell their home.

Buyers - Buyers who decide to consult a lawyer should do so before or as part of preparing an offer to purchase. The purchase offer contains the terms of the home purchase, as well as the rights and obligations of both the buyer and the seller. The purchase offer signed by the buyer becomes a legally binding contract when accepted and signed by the seller. Once the contract is signed, it is typically too late to make changes. Buyers should also consider consulting a lawyer before signing an Exclusive Right to Buy Contract with a buyer broker or transaction broker.

FROM LISTING OR PURCHASE CONTRACT TO CLOSING

The brokerage or purchase contract sets the scene for the remainder of the transaction. Many issues need attention in the purchase or sale of a house. These issues may impact your legal rights and responsibilities. A lawyer can help you address these issues during preparation or review of the listing contract and the Contract To Buy And Sell Real Estate. A lawyer can also help in the review and analysis of the title commitment and related title documents. These title documents are very important. Furthermore, a lawyer can aid in preparation for closing or settlement. Although the following list is not exhaustive, it highlights some of the areas in the transaction in which a lawyer can assist you (in alphabetical order, not in order of importance).

- 1031 exchange
- access and road issues
- appraisals
- assumption and modification agreements
- closing documents
- common interest community documents (homeowner associations, declarations of protective/restrictive covenants, articles, bylaws, rules/regulations, etc.)
- construction agreements and addenda
- contingencies
- deed types
- default remedies
- ditch and agricultural rights
- easements
- environmental issues and risks (such as lead-based paint, radon gas, other site conditions and indemnities)
- escrow agreements
- financing and payment terms
- improvement location certificates
- inspections
- leaseback agreements
- listing or agency agreements
- loan documents (deeds of trust, promissory notes, and other documents)
- indemnity agreements
- liens
- personal property inclusions
- proration (taxes, insurance, utilities, homeowners assessments, etc.)
- releases of deeds of trust
- seller financing terms and documentation
- septic tanks

- settlement sheets
- special taxing districts
- subdivision issues
- subordination provisions
- surveys
- tax agreements, real estate taxes, tax certificates
- tax considerations of the transaction
- tenancy and co-ownership choices (joint, in common, preserving community property rights, etc.)
- title documents and conditions of title
- title insurance
- transfer taxes
- utility agreements
- warranties on new homes
- water rights and well permits
- zoning and use restrictions
- and many other issues

COMMUNICATE

Clear communication among all parties and their representatives is the key to a trouble-free real estate transaction. Although there are occasions (such as with brokers acting as dual agents or transaction brokers) where confidentiality issues should be understood and closely examined before doing so, generally speaking complete sharing of all information and pertinent documents will help the broker/REALTOR® and lawyer do a better job for you and help you avoid later disputes.

CONTRIBUTING ORGANIZATIONS

Colorado Bar Association - The Colorado Bar Association is a voluntary membership association of Colorado attorneys, although not inclusive of all licensed practitioners. The Association's purposes include advancing the legal profession's service to the public through high professional standards and ongoing educational programs. Cooperation with the real estate brokerage industry and regulatory agencies include the kinds of activities that further those goals.

Colorado Association of REALTORS® - The Colorado Association of REALTOR® is a voluntary trade association. It is important to note that the terms real estate licensee, broker, salesperson, agent and REALTOR® are not the same. The term REALTOR® refers to a voluntary member of the National Association of REALTOR® who agrees to follow a 17 article Code of Ethics. During membership orientation, REALTOR® are advised to limit misunderstandings and conflicts by repeating verbally the printed advice on contracts to seek legal counsel if the documents are not understood.

Colorado Real Estate Commission - The Real Estate Commission, as a division of the Department of Regulatory Agencies, is charged with regulating the real estate industry in Colorado. The primary objective of the Commission is protection of the public through licensing of real estate brokers, salespeople and subdivision developers and enforcement of the License Law and Subdivision Developers Act. The Real Estate Commission should not be confused with the Colorado Association of REALTORS®, a private organization composed of industry members.

*This information is provided as a service to the
home buying and home selling public by the*

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<http://www.cobar.org/group/index.cfm?EntityID=REALES>

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EQUAL HOUSING OPPORTUNITY

This information is available at the Colorado Bar Association website: www.cobar.org.