

THE ROLE OF ATTORNEYS IN OHIO RESIDENTIAL REAL ESTATE TRANSACTIONS

When it comes to residential real estate transactions, attorneys play a vital and unique role in protecting the interests of their clients. All of the contracts that you will be required to sign during the course of the sale or purchase of a home will have significant legal consequences for you. An attorney engaged to represent you in the transaction provides you with an advocate whose sole interest is in protecting your rights and achieving the best possible results given your circumstances. Your attorney is ethically bound to competently and thoroughly represent your interests and your interests alone.

Either the buyer or the seller, or both, may hire an attorney to represent their interests in the purchase or sale of a house. The attorney's role in the transaction can be as broad or as limited as his or her client wishes it to be. The role can include review and/or negotiation of the client's contract with the real estate agent, review and negotiation of the purchase contract and recommendation of other issues that should be considered as part of the transaction, review of the closing documents, including the closing statement that identifies and allocates the various costs associated with the closing, review of the abstract of title, commitment for title insurance, or other evidence of title to ascertain that title to the property is acceptable. At closing, a lawyer can assist in making sure that all necessary documents accurately reflect the terms agreed to by the parties, are properly executed and delivered and that the sale proceeds are properly paid out and accounted for. With telephone and fax technology, attorneys often can participate in the closing without being physically present. Finally, if a transaction fails to close, the attorney can advise his or her client as to the client's rights and remedies.

It is important that buyers and sellers understand their rights with respect to the negotiation of these contracts. As with any contract, you should be careful to review its terms and make sure that you understand the legal effect of each of those terms before you sign the contract. Once you sign the contract, it is generally too late to make any changes. An attorney can help you with all of this and should be consulted before you sign any of the contracts relating to the house purchase and sale transaction.

Both the seller's listing contract and the buyer's agency contract that your real estate agent may ask you to sign have a significant impact on your rights and should be negotiated or at least reviewed by an attorney. While these contracts are usually presented to consumers as standardized forms, many terms can be negotiated. Real estate agents compete for your business and may often be willing to accept concessions in negotiations. Terms you and your attorney may negotiate include:

1. The duration of the agency contract or listing contract.
2. The duties that your agent will owe you. Except when an agent is acting in a dual agency capacity, the agent owes you a duty of loyalty. You should also ask for a duty of full disclosure with respect to referral fees paid to the broker outside of the sales commission.

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3. The amount of commission you will pay to the broker, and the method by which that commission is calculated. For example, is the commission calculated on the listed price or the final sale price, or will the commission be based upon the net proceeds received by seller?
4. Whether you will permit dual agency.
5. When the broker's commission is and is not earned. For example, is the commission earned upon successful closing or when the broker finds a "suitable" buyer and how is this defined. Also, is the commission earned if the sale is to one of your relatives or neighbors?
6. Whether the listing agency is exclusive or whether you have a right to use other brokers' services.

Terms of the purchase and sales contract can likewise be negotiated. Local Boards of Realtors have developed standardized forms of purchase and sale contracts that are commonly used in residential sales, but these forms include many blanks that should be filled in and contains terms and conditions that greatly impact the rights of both buyer and seller. Most transactions require additional terms and conditions to be specified on addenda to the contract, and it is important that these addenda be clearly written to accomplish the legal effect intended by the parties. Some specific terms and conditions to be sensitive to in the purchase and sale contract include:

1. What type of deed and condition of title are you willing to provide to the buyer or accept from the seller?
2. Confirm that the property described in the purchase contract is truly the property you intend to purchase.
3. Make sure there are adequate protections for you against liens and encumbrances on the property.
4. Determine if there are any contingencies to your sale or purchase that need to be included in the purchase contract. If you are considering relocating from out of State, are there any unique contingencies to consider?
5. Determine if the price and terms of your financing contingencies are correct and acceptable.
6. Determine if there is any risk of exposure to environmental liability claims.
7. Determine if the physical condition of the property and the scope of your inspection contingencies is acceptable to you.
8. Determine an acceptable date of closing and date of possession.
9. Determine who should pay the many different categories of taxes and special assessments on the property and when.
10. Determine the length of time that your offer should be left open to the seller.

Cost is always a concern in a home purchase transaction for both buyer and seller, but representation by an attorney in the transaction will add value and can save you money in the long run. We work cooperatively with agents and brokers to achieve your goals. A real estate agent can prepare a draft purchase contract for you, which we can then review and advise you on the legal significance of the terms of your contract and discuss with you additional factors that

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should be considered. An attorney's fees will generally be based on the complexity of the transaction, not the purchase price of the home, and are not dependent upon the successful closing of the transaction. The real estate attorneys of Coolidge Wall understand the need to control costs in residential transactions and can offer flat fees for review and negotiation of the contracts. Regardless of who you hire, engaging an attorney to represent you in buying or selling a house (in which you may have a substantial amount of your net worth at risk) is advisable to ensure that your interests are completely protected.

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