

## FACTORS TO CONSIDER IN THE SALE OR PURCHASE OF A HOME

When a home is bought or sold, we are either primarily concerned with buying the most home that we can afford or getting the highest price if we are the seller. As a result, we frequently attempt to save money on the preclosing costs. Not only do we frequently budget all of our money for the purchase and move, the decision to buy or sell a home is generally an emotional one which can cloud our better judgment. Because a home purchase is a long term purchase, it is important to spend that money which is necessary to properly investigate the property prior to completing the purchase.

The obvious economic factors in a real estate transaction are generally well considered prior to the decision to buy or sell. However, once the decision is made, it is important to take those steps necessary to insure that if a transaction is completed, it is one with which all parties are satisfied. Below is a check list of things to consider.

### *When Selling your Property*

**1. Be honest about any known problems or concerns with the property** - The single largest cause of litigation after a sales transaction has been completed, is a claim by the buyer that defects have been concealed. Therefore, make certain you disclose, in writing, all defects of which you are aware. Do not be dissuaded from putting them down by a belief or statement that the problem is not important. Some of the problems or defects which you should consider are: (a) any significant works of improvement which you made as a homeowner, or (b) any significant improvements, remodels, etc. that were made without a building permit or (c) any problems in the construction of the home, or (d) any zoning or other governmental issues.

**2. Make certain that all loans which you have on the house are paid off or assumed by the buyer** - If your loan is not paid off as part of the sale, you could be personally liable to repay the loan if the buyer does not. If the loan is a secondary loan, you may be liable for repaying the loan even if the property is foreclosed upon.

**3. Use a reputable escrow company and title company to complete the transaction**- Do not think you can handle the transaction between yourself and the buyer. An independent escrow company is a professional organization whose job is to see both your rights and those of the buyer will be protected.

### *When Buying a Property*

**1. Hire a professional inspector** - You know that you should have the property professionally inspected. However, frequently the inspector is not licensed and only charges a small fee for the inspection. Do not be misled into believing this is an economic decision. The only reason for the professional inspector is to insure that you have the word of an expert as to all the problems which exist in the property. If you choose the inexpensive or economical report, you will find

that if the inspector misses something, they are only responsible for refunding the inspection fee which you paid. You want an inspector that is competent and insured. One that will stand behind his report and pay for any repairs if he makes a mistake.

**2. Check out the zoning for the property** - Make certain what the zoning is for the property you are buying and for the surrounding neighborhood so that you will know what kinds of uses can be made of your property or those surrounding you.

**3. Know what your title insurance covers** - There are several types of title insurance policies. The economical one is the one most commonly used but does not provide you with very much coverage. Determine what types of insurance are available and what they actually protect you against.

**4. Know what your home warranty covers** - a builder's warranty is generally the broadest, but if buying in a new subdivision, contact neighbors that have moved in and find out how responsive the builder is to their complaints. If you are buying a used home, find out what home warranties are available, what they cover and how long they last.

**5. Take title to the property in the form that is best for your needs** - There are several ways in which you can take title to the property. Find out what these are and how they will affect you in the future. This is particularly important for tax and inheritance issues.

**6. Ask questions** - Do not sign any document unless you thoroughly understand every word. Most people, including lawyers, do not know the meaning of every document they are asked to sign in a real estate transaction. Make certain that you do!

The above list is not a complete list of all of the issues involved in the purchase or sale of real estate. It is meant to be a list of some of the issues that our office commonly encounters as part of a post closing litigation conference with either buyer or seller.

### *The Role of a Lawyer in Real Estate Transactions*

California has been unique in real estate transactions in that the majority of real estate transactions did not have a lawyer involved. In the majority of other states, a lawyer is involved in all real estate transactions. Today, the average home purchase exceeds \$100,000.00 and is the most significant investment that a person makes in their lifetime.

A real estate broker's primary job is to assist you in either marketing your property or helping you find the property that is best for you. The broker also assists in negotiating the price and finding the financing to complete the transaction.

A real estate lawyer's job is not to kill the transaction but only to insure that the client fully understands the transaction and its ramifications. The real estate lawyer can assist you in making certain that the transaction will be what you expect it to be. The lawyer can not guarantee that the transaction will be perfect, but a lawyer, with experience, can be an objective analyst of your

transaction and then can advise you of the particular issues involved in your transaction. The lawyer's only job is to use his experience to educate you about the significant transaction in which you are involved. The legal fees involved in this review will generally be very small in comparison to the investment you are about to make. As a general rule the fees will be less than 1% of the purchase price.

Unfortunately, in today's litigious society it is frequently a prudent step to retain the attorney.

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