

Real Estate Transactions

Buying or selling your home might be the most important financial transaction you make in a lifetime. If you own multiple pieces of real estate, correctly navigating the sale process can mean the difference between an overall gain or loss on your investment properties. Therefore, it is very important to retain legal counsel early in the real estate transaction—before any offers have been extended. Once an offer has been accepted, the parties are bound by the contract to proceed to closing, unless special contingencies are triggered. For example, such contingencies may allow the parties to back out of the deal if the buyer cannot secure financing, or if a home inspection report finds structural disrepair problems with the house. An attorney can help draft a Purchase Agreement with built-in protections and safeguards to ensure that you have an exit from the contract if unforeseen issues with the property arise before closing.

Whether you are the seller or buyer, an attorney should review the legal issues affecting a particular piece of real estate before it is even put on the market, such as easements that run with the land or zoning restrictions. By identifying the underlying laws and rules bound to the land, the buyer or seller can put themselves in a better position to make a competitive offer or accept a fair price. For example, some properties have easement restrictions, which permit a third party to use the land temporarily or permanently. Many municipalities have utility easements that allow power companies to enter the property and perform maintenance work from time to time. Other easements may allow the neighboring landowner to share a driveway or exit alley with the property. Easements come in many different forms, but whatever the case, you should be aware of the legal rights that will be inherited with the property upon sale.

Zoning laws can also burden real estate, especially if the buildings will be used for commercial purposes. Most businesses must be operated in special business or industrial zones which have to be a certain distance away from residential zones. A real estate lawyer should analyze potential commercial properties to make sure that the zoning laws will allow the type of business or other activity that the buyer desires. For example, pawn shops, department stores, liquor and tobacco shops, and even restaurants are often segregated into certain zones. A building outside the correct zone will not be able to secure necessary operating permits and licenses, unless an attorney can successfully petition the municipality to allow an exception—which is sometimes an uphill legal challenge.

Almost every real estate sale requires title insurance, which guarantees that the property's title is being transferred via a deed from the seller without any unforeseen encumbrances. Encumbrances are any burden or claim against the property which reduces its value and ties up the title. Common encumbrances may include a deceased owner's name remaining on the property deed, a judgment or subcontractor's lien which must be satisfied, or an imminent foreclosure of the mortgage. The parties should work with a reputable and professional title company to ensure that an appropriate title insurance policy covers the transaction and all encumbrances are either removed or effectively managed.

Prospective real estate owners should also review the environmental and structural status of the property. Protected wetlands, the presence of hazardous chemicals or mold, and flood plains are just a few of the many environmental obstacles that should be identified and addressed

before sale. Parties may need to retain a professional environmental inspector or seek the advice of an environmental attorney to deal with more serious issues.

A real estate lawyer can also assist sellers and buyers with reviewing the Real Estate Condition Report, which is a form that Wisconsin law requires sellers to fill out and give to buyers after accepting an offer. The Real Estate Condition Report discloses defects with property of which the seller is aware. Common issues that must be disclosed include, but are not limited to, water leaks in the basement, foundation, plumbing, and roof, problems with electrical wiring, and faults in the structural, grading, and environmental elements. It is always recommended that buyers purchase an additional, independent home inspection report from a professional inspector to locate any issues the seller may have missed or failed to disclose. For sellers, it is important to carefully review the answers provided on the Real Estate Condition Report with an attorney so that the seller does not accidentally commit a fraudulent act by failing to disclose a known defect. Failing to disclose obvious and clear defects can lead to messy and expensive lawsuits from angry buyers who have moved into a defective home post-closing.

Proceeding to closing, an attorney will assist with tracking the various contingencies that must be met in order to close the sale—such as the buyer securing a loan or other funding, the seller repairing broken or outdated items, or even the buyer selling their prior home. Sometimes the parties will sign an Addendum after they have entered the closing process in order to change aspects of the deal before final payment is made and title is transferred. For example, the buyer might demand a lower purchase price, or the repair of a certain item, because new structural problems were discovered by the buyer's home inspector. At closing, a real estate attorney should review all of the closing documents for accuracy and completeness before the parties finish the transaction and make payment.

Outside of conventional real estate sales, many owners require legal assistance when transferring properties as part of their estate planning or other business goals. An attorney can help select the best method to transfer a property to your family members, heirs, a trust, or other legal entity. Depending on your individual goals, it might even make sense to transfer your real estate into an LLC that is controlled by you. This may help reduce your personal liability if someone is ever injured on your property, especially if you plan to have tenants. You should contact an attorney to discuss your personal goals and set up a real estate structure that reflects your estate or business plans.