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For most of us, buying a home is the largest investment we will make and it is often extremely stressful all on its own. That is why it is important to grasp the basic information needed for a successful transaction. Of course, this article does not cover every scenario. For this reason, you should have a real estate attorney, such as Attorney David Lebwith, on your side.

Real estate attorneys add great value to the transaction for all parties: Lenders, Buyers, and Sellers. Initially, real estate attorneys assist Buyers and Sellers in understanding an Offer to Purchase, the Purchase & Sale Agreement, and all addenda to both documents. Real estate attorneys also assist in negotiating terms prior to signing, determining whether title to the property is marketable as well as insurable, preparing documents requested by Lenders for closing and reviewing final closing figures. Real estate attorneys assist with creative resolutions to last minute issues which may arise near or on the day of closing and we explain to Buyers everything Buyers should know about the documents they are signing as well as the title to the property being purchased.

Title Facts: What You Should Know

Mass. Gen. Laws Ch. 93, §70 requires that an attorney who is acting on behalf of a Lender loaning money to anyone buying a one to four family dwelling must certify the quality of the title to the property to both the Lender and Borrower.

A title examination must stretch backward in time at least 50 years. The certifying attorney must state that the Buyer/Borrower, at the time of recording the deed, holds good and sufficient record title. The certifying Attorney must also state that Lender holds a good and sufficient first mortgage.

Transfer of title is evidenced by a written document called a deed. Deeds are recorded at the time of purchase at the Registry of Deeds in the County in which the land lies. All documents affecting real property such as mortgage instruments, mechanic's liens, municipal lien certificates, etc. are also recorded at the Registry of Deeds.

How should you hold title?

There are many options you may choose from depending on your situation. One person may own the property individually. When the owner dies the property passes to the owner's heirs. Property may also be owned by "tenants by the entirety." This option is available when the owners are married. When one spouse dies, the surviving spouse continues to own all of the whole of the property. The tenancy cannot be severed. Another option is "joint tenants with rights of survivorship." This is available for two or more people who obtain the property at the same time. If one of the owners dies, the remaining owners absorb the interest of the deceased owner. The tenancy can be severed. Yet another option is "tenancy in common." This is available to two or more people (whether married to one another or not). When one of the owners dies, the deceased owner's share passes to the deceased owner's heirs and not to the surviving owners unless the surviving owners are heirs of the deceased owner. There are other ownership structures such as Trusts, Nominee Entities, and Life Estates.

Security Instrument

A mortgage instrument is a document which transfers title from the Borrower or Buyer to the Lender. The Borrower or Buyer retains possession of the home and has the right to reclaim the title by repaying Lender in full. The mortgage, together with the promissory note, control Borrower's or Buyer's arrangement with Lender. It is security for Borrower's or Buyer's repayment of loan to Lender.



Declaration of Homestead

A Homestead is any house, outbuildings and surrounding land that is owned and used as a dwelling by the head of the family. Real Property, if designated as a homestead, is exempt from execution and sale by creditors. The protection extends automatically in the amount of (up to) \$125,000 to every homeowner who lives in his/her primary residence. A written Declaration of Homestead offers the owners residing in a principal residence up to \$500,000 in protection against creditors. A Declaration of Homestead does not protect owners from mortgages, Probate Court Orders for Spousal or Child Support, or federal, state, or local taxes. It is often used in bankruptcy situations, and it protects the owner from creditors other than those mentioned above. This means that a creditor cannot force the owner to move or sell in order to satisfy a judgment.

The Closing Process

The best attorney-client relationships begin even before an offer is made. There are many preprinted offer forms in circulation by various realtors. However, these forms are often dangerous because they do not take into consideration the particular circumstances of your transaction. It is never a good idea to make an offer or sign a contract without legal input or review by an experienced real estate attorney.

As a real estate attorney, Attorney Lebwith advises clients as to the proper forms the Realtor should be using to make an offer. Not all counties in Massachusetts have the same practices regarding offers. Generally speaking an offer is just a prelude to the Purchase & Sale Agreement. The Purchase & Sale Agreement should set forth the full understanding of the parties. It is important to confirm that the terms contained in the offer are correct before it is signed and submitted to the Seller or Seller's Realtor.

Purchase and Sale Agreement and Addenda

Experienced real estate attorneys, such as Attorney Lebwith, will typically review the contract provided by Seller's Realtor on your behalf for content, discuss its contents with you as the buyer making sure you understand the terms you are agreeing to, comment on and/or revise the Purchase and Sale Agreement accordingly, and speak with the Seller's Attorney regarding revisions and issues, if any, with the proposed terms. It is also important to note that the buyer's Lender will require a fully signed copy of the Purchase & Sale Agreement. Attorney Lebwith also emphasizes being available to answer any questions you may have regarding the closing process and documents. Her clients are free to email or call her whenever a question arises.

Title Examination, Plot Plan, and Municipal Lien Certificate

After the Purchase & Sale Agreement has been signed by all parties, it is Attorney Lebwith's practice to begin the title examination with a search of the record title and obtain a plot plan as well as a Municipal Lien Certificate. A title examiner will search the title to the property backwards in time for at least 50 years prior to your expected date of purchase. A title examination includes a search of the records at the Registry of Deeds, a search of Bankruptcy Court records, a search of Probate Court records. A plot plan is obtained from a surveyor to determine whether the property to be purchased is subject to any boundary line issues with any neighboring property. A Municipal Lien Certificate is ordered from the Tax Collector of the City or Town where the property is located that contains all information as to current and any outstanding real estate taxes, water and sewer bills and gas and electric bills, if applicable. The title report, plot plan, and municipal lien certificate will be reviewed for potential issues which will be identified and addressed prior to closing. A Title Commitment is also provided to the Lender upon request.

Closing Disclosure

Attorney Lebwith works closely with the Lender and the Seller's Counsel to finalize all of the closing figures that will be listed on the Closing Disclosure. She also provides the final numbers to you as the Buyer in time for the scheduled closing.

Title Insurance and Homeowner's Insurance

The Lender will require the Buyer to purchase a Lender's Policy of Title Insurance for the amount of your loan at the time of closing. For a discounted price, you can also purchase an Owner's Policy of Title Insurance. Attorney Lebwith takes time to explain to his clients what these different policies do and how they benefit the client. Homeowner's Insurance is also required. Most policies typically cover the homeowner for loss and damages to the home itself, for property within the home, and cover the owner against liability if someone is injured on your premises, among other features.

Walk-Through, Closing, and Post-Closing

On closing day, Attorney Lebwith will explain to you every document that a Lender has presented for signature. Once the deed has been recorded, Attorney Lebwith will notify the buyer that he/she is the official owner and may now enter the property.