

Client Information

Congratulations! You're Selling a Home!

Prepared by the Real Property Section



INTRODUCTION

You are about to sell a house, one of the most significant investments you have. For most sellers, the sale of a house is also the sale of their home and signals the beginning of major changes in their lives. It is often a very stressful time. Even if you are selling property you rent to tenants or if you are the executor or administrator of an estate, this transaction will require a lot of your time and attention over the next month or two and will be the source of many questions and concerns for you. The purpose of this pamphlet is to help answer many of your questions and address your concerns so that this transaction will go as smoothly and be as worry-free as possible for you. It is intended to help you understand the entire process of selling a house—from the listing agreement with the broker to the closing with the buyer—to familiarize you with some of the terminology used by lawyers and real estate brokers, and to eliminate some of the mystery and surprises that can await unsuspecting sellers.

Of course, if you still have questions or concerns after reading this (and you *will!*), you should discuss them with your closing attorney or the law firm's real estate paralegal or secretary, all of whom will be happy to make their experience and knowledge available to you.

WHY DO I NEED AN ATTORNEY?

This is a question most people ask when they are selling or buying a house, especially if they are moving to or from another state where attorneys are not usually used for the purchase or sale of a residence. In Connecticut, it is customary for *all* parties to the transaction to be represented by an attorney.

The sale of your house will require that you enter into legally binding contracts with your real estate broker and, eventually, your buyer. An experienced closing attorney can help you to understand how those contracts affect your rights and what legal obligations they impose on you. Often, that understanding can help you to avoid problems that could cost you money and time. If misunderstandings over the meaning of the contract do arise, your attorney can protect your interests and help to negotiate a settlement of any dispute.

Your closing attorney and his or her office staff, along with your real estate broker, will be responsible for keeping track of your transaction, and monitoring the buyer's efforts to obtain a mortgage and the outcome of any inspections the contract calls for. If problems arise, your attorney can advise you on your legal rights and remedies so that you can make an informed decision on how to proceed.

Your closing attorney and his or her office staff will also see to it that you can meet your obligation under the purchase contract to transfer good title to the property to your buyer. To do so, he or she will obtain the amounts of any mortgages or liens on your property that you need to pay in full. Your attorney's office will also monitor all of the financial aspects of your sale to be sure your financial interests are protected and your financial obligations can be met with respect to this transaction.

Finally, your attorney will prepare the documents you need to complete the sale of the property, including the deed transferring title and the conveyance tax return that must be filed with the state.

WHAT IS A LISTING AGREEMENT?

This is probably the first legal document you will encounter when you decide to sell your house. It is a contract between you, as the seller, and your real estate broker in which you agree that the broker, and the agents who work with him or her, may advertise and show your property to potential buyers or allow other agents and brokers to do so, and you will pay a fee, called a commission, for their efforts. The commission is usually a percentage of the selling price of your property.

There are several important things you should know about the listing agreement:

- It is a binding contract that obligates you to pay the broker the specified commission if a buyer is found for your property. In many cases, you will owe the commission even if you find the buyer. In some cases, you will owe the commission even if there is a change in circumstances and either you or your buyer cannot complete the sale of the property. If you don't pay, the broker has the right to place a lien against your property in the amount of the commission due.
- The listing agreement will often contain a list of items you are including in the sale of the property, such as appliances, pool equipment, patio furniture, and the like, as well as a general description of the house and land you are selling. Since prospective buyers will review the listing agreement and will often base their decision to buy in part on what it says, you should review it carefully to be sure it is accurate and does not contain items you do not wish to sell.

If you have already signed a listing agreement, you should make a copy of it available to your closing attorney as soon as possible. If you have not yet signed a listing agreement but have a copy of the one your broker wants you to sign, you may want your attorney to review it with you before you sign it.

WHAT DO I NEED TO TELL BUYERS OR MY AGENT ABOUT MY PROPERTY?

Connecticut law imposes certain obligations on sellers to disclose the condition of their house to the broker and the buyer. These disclosures must be made before a potential buyer signs a contract to purchase. At the time you list your property, your real estate broker will have you complete a checklist called a Residential Property Condition Disclosure Report. You should complete the report truthfully, disclosing any knowledge you have of problems or disclosing that you have no knowledge of problems. If you are unsure of how to complete the form, you may want to discuss it with an attorney first.

If you do not complete the form or it is not given to a potential purchaser before a contract is signed, Connecticut law requires you to pay a \$300 penalty to your buyer at closing.

If you are selling a residence built before 1978, federal law requires that certain disclosures be given to the buyer about the possible presence of lead paint. In addition, your contract must contain certain language permitting the buyer to inspect the property for lead paint prior to closing. If you are aware of the presence of lead paint and/or your property has been tested for it, you must make such information available

to the buyer.

Finally, if it is important to a potential buyer to know, he or she may make a written inquiry through the real estate agent or broker, asking whether the property has ever been the site of a murder, suicide, or other felony. Connecticut law permits such a question to be asked; however, the law also allows the seller of the property to refuse to answer the question without any penalty (other than the possible loss of a potential buyer). This is called a “psychological impact” inquiry. The law does NOT require that you voluntarily disclose these matters to a buyer nor does it allow a buyer to terminate a signed contract because of your failure or refusal to disclose that information.

If you have concerns about your disclosure responsibilities, you should discuss them with your closing attorney. If you have made disclosures about your property to the buyer, you should also make that information available to your closing attorney as soon as possible.

WHAT DO I NEED TO KNOW ABOUT THE CONTRACT?

1. The Contract Is Binding

In most real estate transactions in Connecticut, the contract between buyer and seller will be prepared by a real estate agent or broker and signed by both buyer and seller before either consults an attorney. If you have entered into such a contract, you should understand that, in most cases, it is a legally binding agreement that cannot be changed by you or your attorney without the consent of the other party to the contract. In some cases, the contract will give you a very short time—usually three business days—to seek the advice of an attorney and to change or cancel the contract within the specified time. If you have not yet signed a contract, you may want to insist that the real estate agent or broker include such a provision in any contract you sign so that you can seek independent legal advice before the contract becomes binding on you.

If you are selling or buying in Fairfield county, the real estate broker or agent will prepare a contract binder for seller and buyer which the parties must then take to their attorneys to have a more detailed contract prepared. You should be aware that, in some cases, the binder will become the contract if no more specific contract is prepared. If you have entered into such a binder, you should seek an attorney’s advice and representation as soon as possible.

2. The Deposit Money

The buyer will be expected to make a deposit of money with the real estate broker upon the signing of the contract offering to buy. The initial deposit is usually about one percent of the purchase price. The contract will require that a further deposit be made by the buyer, if the contract is accepted by the seller, to bring the total deposit up to ten percent of the final contract price. Once the seller signs the contract, the buyer must make the balance of the deposit by the date specified in the contract or the seller may terminate the contract.

The buyer’s deposit money will usually be held by the seller’s broker until the closing, when it will become part of the purchase money. In some cases, the contract may provide that the buyer’s deposit be released to the seller as soon as the buyer gets a mortgage commitment from a lender.

If the buyer does not do as the contract requires, the buyer risks having the seller terminate the contract and keep the deposit money. Your attorney can advise you on when and how that may occur.

3. The Mortgage Contingency

Most contracts will be contingent on the buyer obtaining a specified type of mortgage financing. The buyer usually has to obtain a commitment for the mortgage by a date specified in the contract.

If the buyer is turned down for such a mortgage or cannot obtain a mortgage commitment after diligent efforts to do so, the buyer may terminate the contract and get the deposit money back.

If the buyer does not make a diligent effort to obtain a mortgage or does not obtain a commitment by the date provided in the contract, the seller may terminate the contract and may, in some cases, keep the buyer’s deposit money.

Your attorney can more fully explain your rights and responsibilities with regard to the mortgage contingency clause.

4. The Moving Date

Your contract will contain a date for the closing. *This date should be considered to be approximate.* The *actual* date of the closing will be set by the attorneys for the buyer, the seller, and the lender as soon as the buyer has a mortgage commitment. The actual date of closing may be a week or two earlier or later than the date set out in the contract. If it is essential to you to close ON the date specified in the contract, you must tell your closing attorney immediately and seek his or her advice on what, if anything, can be done to assure a closing on that date.

If you are selling the residence you occupy, you will be expected to move out of the property by the date of closing so that the buyers can move in on that date if they so choose. If, for any reason, you think you will not be able to move by the date of closing, you must tell your closing attorney immediately. He or she can advise you on your alternatives and can try to negotiate a change in the contract or a separate agreement that will allow you to occupy the property after the closing upon payment to the buyers of a certain amount of money. If such efforts are not successful, however, you must make alternative living arrangements in order to comply with your contract.

5. Fixtures and Personal Property

Fixtures are things that are attached or built in to your house or land. Examples of fixtures are built-in cabinets or bookcases, built-in appliances, garage door openers, closet shelves and poles, shower doors, light fixtures, curtain rods, and shrubs and trees.

Personal property is moveable property that is not attached to the house or land. Personal property includes your furniture, appliances that are not built in, lawn and garden equipment, curtains or drapes, and area rugs.

The contract will usually provide that all fixtures remain with the property unless the contract specifies otherwise, and all personal property will be removed by the seller unless the contract otherwise specifies.

In addition, at the time the seller signs a listing agreement with the broker, the broker will usually ask whether there are fixtures the seller is NOT going to leave with the house (such as the dining room chandelier) and/or items of personal property the seller IS going to leave (such as the washer and dryer or the microwave oven). Unless the seller and buyer have otherwise agreed, the contract should reflect what is in the listing agreement.

You should go over this portion of the contract and the listing agreement with your attorney to be sure you understand what is and is not included in the sale of the property.

There are other provisions of the contract that are also important to you. These provisions will be covered separately in the following sections.

WHAT IS MEANT BY “TITLE TO THE PROPERTY?”

Your title is your ownership of the property as it is reflected in the land records kept by the town clerk of your town. When you buy a piece of real property, you receive a deed, signed by your seller, that describes the property you are buying. A copy of that deed is filed in the town’s land records, as is a copy of the deed that was given to your seller when he or she bought the property and to the owner before that and so on. All together, the deeds transferring ownership of the property from one person to the next are called the “chain of title.”

While you own the property, you may give other people rights to use it. You may give a mortgage to a bank or mortgage company as security for money lent to you. If you owe money to someone they may put a lien on your property to secure payment of the money you owe. All of those rights or interests in your real property will be recorded in the town’s land records and make up part of your “chain of title.”

When you sell the property, the buyer’s attorney will search the town’s land records to be sure your title deed and the deeds of all of the previous owners of the property are properly recorded. The attorney will also look at the land records to determine what mortgages and liens have been recorded against your property and need to be paid and released at the time of the sale. That information, and information about any problems with the chain of title, will be given to your attorney. He or she will work on your behalf to clear up any problems with the chain of title and obtain the amounts of any mortgages or liens on your title you need to pay in full.

If your attorney is preparing your contract, he or she may also have a search done of your title at that time to determine how your property is described and what per-

manent restrictions on use or easements should be included in the deed when you transfer title to the buyer. Those matters will be listed in your contract.

WHAT ARE ADJUSTMENTS AND HOW DO THEY AFFECT ME?

“Adjustment” is the term used to refer to additions to and subtractions from the purchase price for periodic, recurring monetary charges that are paid or will be paid in connection with the ownership of the property. Such monetary charges usually include real property taxes, water and sewer use charges, trash pick-up, monthly condominium fees if you are selling a condo unit, rents paid to you in a multi-family house, and any heating oil you may be leaving in the tank if your house has oil heat. These adjustments are *in addition* to any payments that will be made to anyone holding a mortgage or lien on your property, or to pay any other expenses of your closing, and they directly affect the amount of the purchase price. Your attorney’s office will calculate the adjustments for your property once a closing date has been set and can explain to you what adjustments are needed and how they are calculated.

The way adjustments are calculated for the same type of periodic payment may vary somewhat from one town to another. If you are selling property in one town and buying property in another, you may notice a difference in the method of calculation. Your closing attorney can explain any differences to you.

WHAT WILL HAPPEN AT THE CLOSING?

The “closing” is the actual sale of the property. Unless arrangements are made well in advance of the closing date, both seller(s) and buyer(s) are expected to be present at the closing, along with their attorneys. The buyer’s lender may also have an attorney present. Usually the real estate agents or brokers who brought the buyer and seller together will also attend. The closing will usually be held in the office of either the buyer’s or seller’s attorney but may be at the lender’s or lender’s attorney’s office.

Usually, all the documents necessary to transfer the title from seller to buyer and to put the buyer’s mortgage in place are signed at the closing. Some attorneys prefer to have their clients sign the closing documents ahead of time so they only have to exchange the signed documents and the money at the time of closing. If you cannot be present at the closing, you can usually make arrangements with your attorney to do this.

The seller must sign the deed and a conveyance tax return to the state of Connecticut, as well as an affidavit disclosing whether any repair or construction work has been done on the property and whether the seller knows of any disputes over the location of the boundaries or title to the property. The seller will also receive a disclosure form, called a HUD-1 or RESPA form, that sets out all of the financial aspects of the closing. A copy of that form must be signed by the seller as well. In addition, there may be other documents the buyer’s lender will require the seller to sign.

The buyer must sign all of the mortgage documents, including the mortgage note and deed. The buyer must also sign a copy of the HUD-1 or RESPA form. In most cases, the buyer will also have to bring to closing the balance of the purchase price that is not covered by the mortgage money the buyer is borrowing.

The condition of the property at the time of the buyer’s final inspection will also be discussed. The contract requires that the property be in substantially the same condition at closing as it was at the time the contract was signed. If anything that is being transferred with the house, such as appliances, has stopped working or any damage was done to the property during the seller’s move, those matters should be brought to the attention of both the seller’s and buyer’s attorneys immediately so that they can be resolved at closing.

All of the money due to you from the buyer at the closing will be turned over to your attorney, and all of your closing expenses will be paid by your attorney from those funds. Your expenses of closing will include at least the following:

- any real property taxes or water and sewer bills that are due and payable at the date of closing
- the real estate broker’s commission
- your attorney’s fee
- the conveyance taxes due to the state and town on the sale of your property
- the recording fees for releases of any mortgages or liens on your title
- the amounts needed to pay in full your mortgage(s) and any other liens

There may be additional expenses to be paid in accordance with your contract as well.

Once all of your expenses have been deducted, you will receive the balance of the sales price by an attorney’s check payable to you.

WHAT ELSE DO I NEED TO KNOW?

There will be many questions that arise over the period of time your closing is being put together. This pamphlet can’t answer all of those questions or even anticipate what they might be. Fortunately, your attorney’s office *can* address your questions and concerns as they arise. You need to communicate with them and rely on their advice, especially if problems arise.

Closings take time to put together. In a busy real estate market, it takes lenders longer to process mortgage applications and grant commitments to buyers, and buyers usually can’t close without the mortgage funds to pay the purchase price. Attorneys and lenders often have busy closing schedules and scheduling conflicts can occur. That can be frustrating when you are trying to coordinate with a moving company and plan your move. Again, you need to communicate to your attorney’s office any problem that arises, either because you will be moving out of state before the closing date or you cannot move until after the closing. If you are trying to coordinate your sale of this property with the purchase of another property, you must make your closing attorney aware of that. Your closing attorney can help with the coordination, even if he or she will not represent you in the purchase.

There are a few other considerations which may apply to you:

- If you have an equity line of credit or consumer revolving loan with your bank that is secured by a mortgage on your property, it may be prudent to stop using it and give your bank written instructions to close it as soon as you have a firm contract. (If you don’t know whether or not it’s secured by a mortgage, call your bank and ask.) Failing to close an account of this kind can create a delay when your closing attorney’s office tries to obtain a statement from the lender of the amount due on the sale of the property. Some lenders require a thirty-day waiting period after the account has been closed before they will give such a statement. If you have such a line of credit, you may want to discuss the timing of its closure with your attorney.
- You will need to arrange with the appropriate utility companies for a transfer of service and billing from your name to the name of your buyer on the date of closing. The electric company will want a final meter reading and will send you a final bill. In some towns, the water company will do the same. Once you have a firm closing date, you can and should schedule this. If you have oil heat and are on an automatic fill plan, you will want to notify your oil dealer as well.
- You should file a change of address with the post office and notify newspapers, magazines you subscribe to, credit card companies you use, and others of your address change. Don’t forget to give your new address and telephone number to your closing attorney!

CONCLUSION

Selling a house can be a very stressful and hectic time but also an exciting one, as you look forward to new places and new challenges. Your real estate broker and your attorney can help and support you through this process. Understanding the process and knowing when to use their expertise and experience can help to reduce the stress and make your closing more enjoyable.



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