

Client Information



Congratulations! You're Buying a Home!

Prepared by the Real Property Section

INTRODUCTION

You are about to buy a house, one of the most significant investments you will ever make. Especially if this is your first house, this purchase signals the beginning of major changes in your life. Over the next month or two, this transaction will require a lot of your time and attention 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 buying a house—from the contract to the closing—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 buyers.

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 buying or selling a house, especially if they are moving 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 purchase of a house will require that you enter into a legally binding contract with the seller of the property. If you are buying a lot from a builder who will build you a house, you may have two contracts: a contract for the purchase of the lot and a much more complex construction contract that will specify what is to be built, how, and when. An experienced real estate 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 do arise over the meaning of the contract, your attorney can protect your interests while helping to negotiate a settlement of any dispute.

Your closing attorney and his or her office staff, along with your real estate agent, will be responsible for keeping track of your transaction and monitoring the progress of your mortgage application 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 attorney's office will also monitor the financial aspects of the sale to be sure your financial interests are protected and your financial obligations under the contract can be met.

Finally, it is generally customary in Connecticut for the buyer's attorney to search the title to the property, or to have it searched, and to review the findings to be certain the seller is able to convey good, marketable title to the property. If problems with the seller's title are found, your attorney can work with the seller's attorney to help resolve them prior to your purchase. Your attorney can then insure the title, through a title insurance company, for your lender and for you, if you so choose.

SHOULD I RETAIN A SEPARATE ATTORNEY OR USE THE LENDER'S ATTORNEY?

This is a decision you will be asked to make almost as soon as you sign a purchase contract and apply for a mortgage. The lender from whom you are seeking a mortgage may have an attorney to represent it in the closing transaction. Often, that lender's attorney will also offer to represent you as the borrower for a small additional fee. You are not obligated to use that attorney, and your mortgage approval will not be affected if you choose not to do so. You may always retain your own attorney to represent your interests.

Often, the lender will not have its own attorney. In that case, the attorney you select to represent you will also represent the lender in the preparation and execution of the mortgage documents.

WHAT DO I HAVE A RIGHT TO KNOW ABOUT THE PROPERTY I'M BUYING?

Connecticut law imposes certain obligations on sellers to disclose the condition of their house to the broker and the buyer. The disclosures must be made before the buyer signs a contract to purchase the house. They will be made in the form of a checklist called a Residential Property Condition Disclosure Report, in which the seller is obligated to truthfully disclose any *known* problems with the structure or systems of the house. If the report is not given to you before you sign a contract making an offer to purchase, you are entitled to receive a \$300 credit or payment from the seller at closing.

The Property Condition Disclosure Report need not be given by all sellers; for example, a lender selling property it acquired by foreclosure or a fiduciary selling property from an estate are not required to complete this form. It is also not intended as a substitute for your own inspections of the property. You should obtain the report and read it, but you should not rely on it too heavily in making decisions about whether or not to have certain inspections done on the property.

If you are buying a residence built before 1978, federal law requires that you receive certain disclosures about the possible presence of lead paint in the house. The seller is also required to give you any information he or she has about any tests done for lead paint on the property and what the results were. You must be given the opportunity under the contract to inspect the property or test it for the presence of lead paint.

You also have the right, under Connecticut's "psychological impact" law, to inquire whether the property you are considering for purchase has ever been the site of a murder, suicide, or other felony. This inquiry must be made **BEFORE** you sign a contract to purchase, and it must be made in writing through the real estate broker. The seller does not have to give you an answer, but if he or she chooses to answer, he or she must do so truthfully.

If you have questions or particular concerns about the disclosures that were made to you, you should discuss them with your closing attorney. If you have not already signed a contract, your attorney may be able to add certain inspection conditions to

the contract that will check for specific problems.

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

As the buyer, you 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, 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 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 deposit be released to the seller as soon as you get a mortgage commitment from a lender.

If you do not do as the contract requires, you risk having the seller terminate the contract and keep the deposit money. Your attorney can advise you when and how that may occur and can help you to avoid those situations.

3. The Mortgage Contingency

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

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

If you do not make a diligent effort to obtain a mortgage or do not obtain a commitment by the date provided in the contract and you don't tell the seller, the seller may terminate the contract and may, in some cases, keep your deposit money.

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

If you have not contacted a bank, credit union, or mortgage company prior to shopping for a house, the real estate agent or broker with whom you are working can often advise you on special mortgage programs, who has the best interest rates, how quickly a loan application can be processed by a particular lender, and so on. You are not obligated to apply to the lender suggested by the real estate agent nor are you obligated to use a mortgage broker or loan broker to obtain financing. You can (and should) do some "shopping around" on your own, and you should consult your closing attorney about his or her experiences with the lenders you are considering. Sometimes the lender with the best interest rate is not the best choice because they may be slow to process your application or to return phone calls, or they may impose many requirements that are difficult to meet. Your attorney may have some valuable insights into the lenders in your community.

4. Other Contract Contingencies

You may want to provide in the contract that you have the right to have a structural inspection, a pest inspection, a septic system inspection, radon and water tests, and the like and that the results of those tests be satisfactory to you before you become obligated to buy this residence. You will be responsible for scheduling those inspections through the real estate agent, who can arrange with the seller to let the inspectors into the house. You will also be responsible for paying any fees they charge. Generally, there will be a date set by which you must disclose to the seller any problems the inspections uncover if you want the seller to fix them or if you want to terminate the contract.

You should be sure that your closing attorney is aware of the inspections you are having done. Any problems uncovered by the inspections should be discussed with your closing attorney immediately.

5. 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 to buy another, you will be expected to move out of the property you are selling by the date of that closing so that the buyers can move in on that date, if they so choose.

If you are renting, you may be required to move at the end of the month or at the end of your rental agreement. You should tell your closing attorney as soon as possible of these or other special considerations that require that you occupy the property you are buying by a particular date. Your attorney will then be better prepared to handle any problems that may arise with setting a closing date or with getting occupancy for you on the date of closing.

6. Fixtures and Personal Property

Fixtures are things that are attached or built in to the house or land you are buying. 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 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.

You should arrange with the real estate agent to inspect the property just before the closing. This pre-closing inspection is called a "walk-through" and is intended to disclose any last-minute problems or changes that have occurred on the property since you signed the contract. The walk-through should be used as a time to be sure that the sellers have removed all of their furniture and other belongings from the house except what they agreed to leave in the contract, that they have *not* removed any items or fixtures they agreed to leave, that all systems and appliances are still in good working order, and that any repairs that were supposed to have been made have been done satisfactorily. You should note any discrepancies and discuss them with your attorney as soon as you arrive at the closing. That way, problems can be addressed immediately so that the closing can proceed as scheduled.

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."

Before the sellers transfer their title to you, your attorney will search the town's land records to be sure your seller's 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 sellers 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 the sellers' attorney, who will work to clear up any problems with the chain of title. He or she will also obtain the amounts of the sellers' mortgages or liens, all of which must be paid in full at the time of the closing.

If your attorney is preparing your contract, he or she may also have a very brief search done of the seller's title, called a "bringdown," at that time in order to determine how the property is described and what permanent restrictions on use or easements should be included in the deed when title is transferred to you. Those matters will be listed in your contract. The seller will be required to clear up all other matters before the closing.

The property you are buying may be subject to certain restrictions on the way it can be used. Those restrictions may specify the type or size of house that can be built, whether or not you may have an above-ground pool, whether you may have a home office, and other such matters. In addition, the property may be subject to certain easements which give others the right to use parts of your property for a specified purpose. These matters are part of the title to the property. Your closing attorney can advise you, once the title search has been done, whether there are any such matters and how they will affect you.

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 buying a condo unit, rents paid in a multi-family house, and any heating oil that may be left in the tank if the house has oil heat. These adjustments are *in addition* to any payments that will be made to anyone holding a mortgage or lien on the 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 the 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 purchase and 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 sometimes make arrangements with your attorney and your lender 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. Your attorney will review the deed and affidavit to be sure there are no problems with either.

You must sign all of the mortgage documents, including the mortgage note and deed. You will also receive and sign a copy of the HUD-1 or RESPA form that discloses all of the financial aspects of the closing. In addition, you will have to bring to the closing the balance of the purchase price that is not covered by the mortgage money you are borrowing and the deposit money the broker is holding. Generally, you will be required to bring certified checks or tellers' checks for this balance.

The condition of the property at the time of the 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 at the closing will be turned over to your attorney. All of your expenses of closing will be paid by your attorney from those funds, and the balance of the purchase price will be paid to the sellers.

Your closing expenses will include some or all of the following:

- your attorney's fee
- the lender's attorney's fee, if there is a separate attorney for the lender
- any fees due to the lender, such as origination "points"
- deposits of money made with the lender to cover future tax and/or insurance payments ("the escrows")
- fees for recording your deed and mortgage with the town
- a title search fee
- the premiums for the homeowner's and title insurance policies

If you have had certain inspections done on the property, there may be additional expenses to be paid in accordance with the contract as well.

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 with your closing date as it is set. If you are trying to coordinate your sale of another property with the purchase of this 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 sale.

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

- You will need to arrange with the appropriate utility companies, including the

home heating oil dealer, for a transfer of service and billing into your name from the name of your seller on the date of closing. You will want a final meter reading by the electric and water companies, where available, so the seller can be billed. Once you have a firm closing date, you can and should schedule this.

- 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.

CONCLUSION

Buying 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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