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## **The Art of the Smooth & Predictable Real Estate Closing**

*Information for our buyers and sellers of residential real estate to help navigate the process.*

We represent buyers and sellers of residential real estate in hundreds of transactions each year, guiding our clients from the moment an offer is accepted through the closing. We've honed our process over thousands of transactions. Real estate law is our livelihood and we practice it as a form of art. We love what we do and give every client our very best to make sure they get the deal they bargained for and keep them safe above all else.

Buying and selling a home can be a stressful experience, but it doesn't have to be. We leverage our extensive experience and relationships throughout the real estate industry to make sure our clients get every possible advantage and a smooth and predictable experience.

In our experience, our clients do best when they understand the process and have the professionals working in their best interests. To assist in that end, we've compiled this guide to help our clients make the most of the experience.

### **Who Are the People Involved in This Process and What Are Their Roles?**

1. **Realtor.** This could include the listing agent, the selling agent and/or the buyer's agent. The realtors' role is to bring a Purchaser and Seller together, and make sure the deal closes. Realtors are licensed by the New York State Department of State.
2. **Loan Officer.** Get the buyer sufficient funds to close the deal. Loan officers gather the information needed for you to get a mortgage and coordinate internally with the lender to make sure the money is there when you need it, but they do not have the ability to approve the loan.
3. **Loan Underwriter.** These are the people at your lender who will approve or deny your loan. They also have the power to impose additional requirements upon you before you are clear to close. The underwriters usually don't deal directly with the Purchaser, but rather they deal with the loan officer, who will then communicate their requirements to you.

4. **Seller's Attorney.** Put the Seller's terms of sale in writing, deliver good title to the Property, and make sure the Purchaser delivers the agreed funds before releasing the deed to the Property.
5. **Purchaser's Attorney.** Make sure the Seller's written terms are acceptable to Purchaser, and provide enough flexibility to provide for contingencies if things don't go as planned. Make sure the Seller delivers the Property on the agreed terms. Make sure title to the Property is insured. Make sure the funds are not delivered to the Seller until the Seller delivers the deed to the Property.
6. **Title Company.** Issues a title insurance policy to insure the deed and title being delivered by the Seller to the Purchase. The title company identifies potential defects in title so that the Seller's attorney can fix them and make sure that the Purchaser receives good title at closing.
7. **Homeowner's Insurance Broker.** Issues an insurance policy to the Purchaser to insure against fire, flood, liability or other catastrophes after the Purchaser is the Owner.
8. **Seller.** Deliver the Property on the terms provided in the Contract,
9. **Purchaser.** Obtain the funds to buy the Property, and deliver the funds. Make sure the Property meets his/her specifications.

### **Where Each Participant's Loyalties Lie.**

Every participant in the deal is motivated to get it done, but for different reasons. Keeping these reasons, the duties of loyalty and the obligations of each participant in mind will put things into perspective that are otherwise difficult to explain. Trust the people who have a duty of loyalty to you, look critically at the actions of the others.

### **Your Attorneys' Professional Obligation.**

Your attorney has a duty of confidentiality to you. The realtors and everyone else involved with the transaction do not. So be careful what you say! The Seller and Purchaser are considered "opposing parties." The attorneys can't speak directly to an opposing party. Communication by an attorney to the other side is only permitted through the other attorney.

### **Experience of the Participants.**

Most of the people involved in your real estate transaction will have years of experience. Some with hundreds or even thousands of deals completed. They get paid to do what they do in the

deal. They get paid because they are good at what they do. Leverage that experience, let them do their job.

### **Flow of the Deal.**

Every deal is different, but there are certain steps, or milestones that need to happen before others can happen. The professionals involved with the deal can be very efficient if these things happen in order and follow these tried and true processes. ***Go with the flow.***

### **What About Surveys?**

A survey is a map of the boundaries of the Property as well as the location of any structures on the Property. Sometimes we can close on a property using an old survey, but if the existing survey is too old, or if there is no existing survey, you will need to get one. The cost of a survey is additional and will be paid by you, directly to the surveyor. We can order this for you if you need to get a survey.

### **Acceptance of the Contract, Acceptance of the Deed.**

Once you sign the Contract, you're agreeing to buy the Property on the terms of that Contract. If you don't go through with it, then you will risk losing your deposit. When you accept the deed to the Property, the Property is your problem – defects and all. So, it is your responsibility to make sure the Property is in the condition required by the Contract. **Make sure the Property is everything and anything you hoped for before signing the Contract, and make sure the Property is in the condition required by the Contract before you accept the deed.**

### **The Final Walk-Through.**

The final walk-through is your last chance to make sure the home is in the condition that the Seller promised in the Contract. During the walk-through look at EVERYTHING, try all of the appliances, systems, faucets, light switches etc. Make sure it all works. If there is a problem, write it down, inform the realtor and inform your attorney. If it is an issue Seller was supposed to address then it will need to be addressed before the closing is done. If it isn't possible to address the issue before the closing is done, then your attorney has the ability to demand that the Seller's attorney hold some amount in escrow post-closing to secure that the Seller will fix the problem. Alternatively, you can get an estimate of the cost to fix the problem, and the Seller might opt to give you a credit on the purchase price so you can fix the problem yourself. The final walk-through is important. Take with your time with it and do it right.

### **Unexpected Closing Costs.**

Your loan officer has an obligation to make sure the purchaser can afford the house, including the closing costs before they're approved for the loan. Part of this will be to give the Purchaser an estimate of your closing costs. Keep in mind that this is only an estimate and is subject to change. Some unexpected costs such as title charges can vary this amount by a few

hundred dollars, others, such as tax adjustments can vary your out of pocket by thousands. Discuss this with your loan officer, and make sure you have adequate reserve funds to get the deal done.

### **Getting the Mortgage.**

Nailing down your funding is often the most time consuming and stressful part of the deal. The lender you choose and the loan officer you are working with can make or break this. If you have a lender you like, go with it, but if you need a second opinion or would like to speak to other lenders, please let us know. We work with loan officers and lenders all day long (both good and bad) and would be happy to refer you to someone good!

### **Knowing the Difference Between a Mortgage Approval, a Mortgage Commitment, a Clear to Close, and Funding Approval.**

1. "Mortgage Approval" is a fairly easy thing to get and is freely given by a loan officer after a Purchaser provides some basic financial information, but it hasn't been reviewed by an underwriter, which will ultimately approve or deny your mortgage.
2. "Mortgage Commitment" is an affirmative promise by the Lender to give you the loan after underwriter review, but a Mortgage Commitment has conditions. Until the conditions are met to the satisfaction of the underwriter, you will not be able to schedule the closing.
3. "Clear to Close" means that all of the conditions outlined in the Mortgage Commitment and any new conditions have been met.
4. "Funding Approval" means that the lender's attorney has the approval to issue the loan proceeds at the closing. Funding Approval won't happen until all loan documents have been signed and the deed has been executed by the Seller.

### **Dates that Matter and Dates that Don't Really Matter.**

There are a lot of dates in every real estate deal. Here are some of the key dates and notes about their importance:

1. Contract Date. This is the date by which all other dates in the deal are timed. There is no deal, and the Seller doesn't have any obligation to you, until the date the seller signs the Contract and accepts your contract deposit. At that moment you have bound yourself to buy the home, and the Seller has bound themselves to sell to you, the house is off the market, and you are what is known as the "equitable owner" of the Property. This means you have an equity interest in the Property, and once you pay the balance of the price, it is yours.

2. Mortgage Commitment Date. This is the date by which you must have received a mortgage commitment. If you have not received a mortgage commitment by this date, you need to communicate that to us so that we can preserve your right to withdraw from the deal and still get your contract deposit back. **Bottom Line: Be diligent in the application for your mortgage; get the loan officer what they need when they need it. If it looks like you will not have a commitment by this date, tell us, so we can reserve your rights to your contract deposit.**
3. Termite Inspection Date. This is the date by which you must have completed a termite inspection and provided the seller with evidence that the Property has a termite problem. If you don't do a termite inspection, then you waived the right to back out of the deal if the seller refuses to remedy a termite problem. This is important because if the property has a termite problem, your lender will not fund a mortgage secured by that Property. So it is an inspection you won't want to waive. The time periods to do this inspection are limited so it is best to get this done before entering the contract, if at all possible.
4. Closing Date. The closing date in the Contract is a target date when the parties would like to close. **This is not a date that anyone is setting their calendar to, just a target date.** So don't take off work or schedule movers for the date listed in the Contract as the closing date. The actual closing date is almost always some other day that is most convenient for the parties who will conduct the closing, the day that your lender will be ready to fund, the day that the seller is able to deliver the house, and of course, the day that you are able to be there to sign the loan documents and deliver your funds. Since the closing will involve the transfer of bank checks and will require funding approval from your mortgage lender – closings most often occur on a business day and during business hours. While this is a work day for everyone else, for the Purchaser and Seller it usually means taking a day off work.
5. Rate-Lock Date. When you lock in a rate on your mortgage, you are paying your lender to hold a rate on your loan for a limited time. If the closing doesn't happen by the time the rate lock expires, that will be money lost, and you may have to pay your lender again in order to extend the rate lock. Before you lock in a rate, you need to be absolutely certain that you will be able to close in time. As mentioned above, there are a lot of variables outside of our control that can delay a closing date, so closing dates in Contracts are merely target dates, not dates that anyone is setting their calendar to. So how can you be absolutely certain of a closing date? **You really can't. So if you lock in a rate, and the deal doesn't close in time, the risk is all yours.**

*Do you need an attorney to represent you in your residential real estate transaction? Blodnick Fazio & Clark has decades of experience guiding clients through successful residential real estate purchase and sales. **For more information, contact Jim Clark by email at [jclark@clarkslaws.com](mailto:jclark@clarkslaws.com) or by phone at 631-669-6300.***