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# CLIENT BULLETIN

A PUBLICATION FROM



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## FOR THE MOST IMPORTANT FINANCIAL TRANSACTION OF YOUR LIFE, CALL YOUR LAWYER

Nothing is further from the truth than the mistaken belief that you don't need a lawyer when you buy or sell a home. A false sense of security surrounds many real estate transactions because the parties are so comfortable with the assistance provided by the real estate salesperson and the lender that they don't consult a lawyer. In today's real estate market, that decision places the transaction at grave risk. Buying or selling a home is not the same as buying or selling a car. Real estate transactions hold complexities that must be addressed by a real estate attorney at every step.

### Salespersons and You

The first critical point in a real estate transaction occurs *before you hire a real estate salesperson, whether you are buying or selling*. The new "Broker Agency" laws create complex legal and contractual relationships between consumers and real estate salespersons from the moment you enter that open house on Saturday morning. These laws attempt to legislatively define who represents whom when consumers and real estate salespersons come together. Do you know what obligations or duties the salesperson showing the home on Saturday morning owes you? Can those obligations and duties expand or become more specific as your conversation

begins to focus on the actual purchase of that particular home? How does Agency law define "clients," "customers," and "consumers"? What are the differences and why is that important?

Did you know that the new laws provide that a salesperson in an office could be working for you while another salesperson in the same office could be working for the folks on the other side of your transaction? Or that your salesperson could represent both you and the other party in the same transaction with appropriate written disclosure and consent? If that were to happen, what would be the significance of your signature on such a disclosure and consent form? By law, as licensed lawyers, we must be completely loyal to you without any competing loyalties to other persons. For the largest financial transaction of your life, spend a few minutes developing a relationship with a real estate lawyer who will discuss these new laws with you and set the stage for retaining your real estate salesperson.

### The Listing Agreement

If you are selling your home, a wise step is to hire a real estate sales professional to help. They are skilled and knowledgeable about the market forces that will affect your transaction. But, did you know that the listing agreement commonly used to hire a real estate salesperson to sell your home is a contract that establishes legally enforceable relationships between sellers and real estate salespersons? The best, and often ignored, advice is to *contact a lawyer before*

*signing anything* Whether it is called a "listing agreement," "offer to purchase," "preliminary binder," or by any other name, if it calls for your signature, let us review it first and advise you on the impact of your signature on that document.

Think about these possible scenarios: What happens if a prospective buyer looks at your home during the listing period and then approaches you to buy your home after the listing period has expired? When does your obligation to pay your real estate listing salesperson take effect... at the closing? What happens if the closing is unsuccessful for some reason? Do you still owe the salesperson's fee or is there some defense you can assert? Can you cancel the listing agreement before the time period expires if you are unhappy with the results? We can answer these questions and discuss with you their legal ramifications. In this changing real estate environment, it is never prudent to execute a legally binding contract involving the listing for sale of your home without first consulting an independent professional real estate lawyer.

### The Real Estate Contract

The second critical event in selling or buying a home is the contract negotiation between buyers and sellers. Most communities use standardized real estate contracts prepared through the cooperative efforts of real estate sales professionals and real estate lawyers. These "fill-in-the-blanks" contracts were designed to aid in the convenient and standardized transfer of real es-

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tate, but the moment the buyers and sellers sign on the dotted line, they are as legally binding and enforceable as any other contract. One of the most common occurrences in a real estate lawyer's practice is a client coming in with a completed real estate contract to ask the lawyer to "look it over" for errors or problems. There may well be errors or matters harmful to the client that need to be dealt with; but, since that contract is signed, it becomes a binding document and there is little or nothing a lawyer can do at that point. Bring in your proposed contract *before* you sign it; or require an attorney approval rider to the contract providing adequate time for you to consult with us before the contract becomes binding.

All contractual language is negotiable and every word has legal significance. What is the legal difference between "as-is" and "as-is with warranties"? What are the effects and consequences of defaults by any party? Real property disclosure laws require that the seller provide a specific legal disclosure of potential defects in the property to buyers. What are the legal consequences to the seller if that document is not in proper form? What happens if facts are incomplete or misrepresented? What effect does the disclosure have on the contract? These legal

considerations, and many more, must be addressed *before* you sign.

### **The Closing**

The third stage where legal representation is critical is at closing. Everything comes down to that single point in time when legal title is transferred from seller to buyer and money is funded from lender to buyer to seller. Dozens of legal documents are passed back and forth across the table between the parties involved. We will advise you as to their effect, purpose, and importance and examine them for errors. Did you know specific legal requirements constitute the actual "transfer of title"? We ensure that those requirements are met.

As a buyer, you may be contractually entitled to receive title free of encumbrances and as a seller you may be required to provide a "clear title." What does that mean? What does the contract and the law specify? If title insurance or an abstract has been obtained, who examines it to determine the legal status of the title being transferred? As agents of a leading underwriter, we can also provide title insurance and related services in addition to legal advice. What type of deed should the seller provide? What are the legal ramifications of taking title as joint tenants as opposed to tenants by

the entirety? When is it more appropriate to take title as tenants in common? Why should you have to escrow funds for something that isn't called for in the contract? What are the legal ramifications of setting up such an escrow? What is the legal significance of the mortgage and note? How do they impact the buyer's title?

We will answer these questions at closing, resolve the myriad and competing interests, and transform those problems into a successful closing. Only a lawyer is authorized to provide the legal analysis that these questions and problems require. Don't place your real estate salesperson in the position of having to decline to answer such legal questions at closing. If a dispute or problem arises at closing, we will protect your interests.

We are experienced and qualified to assist you in your real estate transaction and other matters. Allow us to develop an ongoing professional relationship with you to meet all your legal needs.

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**Legal advice varies depending on the facts; for that reason, the information in *Client Bulletin* should not be acted on without consulting a lawyer. This publication is Advertising Material.**

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