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Tips For Buying Or Selling A Home

Selling or buying a home is the biggest financial transaction for most people and one of the most complex. No wonder home sales are notorious for legal disputes. Here are ways to avoid some of the most common legal problems encountered in buying or selling a home.

Tips for Sellers

- Be sure you have the right listing agreement. Many people use a real estate broker to sell their home. It is important to understand the listing agreement with your broker, since some agreements require you to pay a commission even if the broker does not find the buyer.

There are three main types of listing agreements. An “exclusive right to sell agreement” requires the seller to pay the broker a commission no matter who finds the buyer. An “open listing agreement” gives the broker a commission only if he or she finds a ready, willing and able buyer. The seller can have open listing agreements with more than one broker, and can still sell the property herself or himself without having to pay a commission. Finally, with an “exclusive agency listing,” one listing broker is employed. In most states, the broker gets no commission if the owner finds the buyer. If a different broker finds the buyer, only the listing broker receives the commission.

- Make repairs before selling. This includes plumbing, electrical and many other problems that will need to be fixed in any event. Avoiding the need for the buyer to make these repairs will help avoid some disputes.
- Take steps to protect yourself from the buyer defaulting. Some buyers change their minds and refuse to complete an agreement to buy property. Sometimes this is due to “buyer’s remorse.” Sometimes it’s a ploy to get a better deal.

Sellers can take steps to reduce the chances a buyer will default. One step is to make

the “good faith deposit” nonrefundable by including a contract provision that lets the seller keep the deposit if the buyer does not perform. This encourages the buyer to complete the purchase.

A seller can also obtain protection against a buyer defaulting by making sure the sales contract lets it accept a second offer (called a “backup offer”). This helps assure the seller can sell the property to someone else if the first buyer does not complete the deal.

- Sell the home “as is.” This means the home is sold in its current condition and the seller will not pay for repairs. It does not eliminate the duty, under the laws of most states, to disclose to the buyer known defects.
- Disclose important defects about the home in writing. Encourage the buyer to get a professional inspection. Respond honestly to the buyer’s questions. This will help make sure the buyer knows about any problems and will reduce the risk of the buyer backing out late in the process or suing for a defect.

Tips for Buyers

- Make sure the contract contains provisions to protect you. One common provision is a “financing contingency clause.” This provides that your deposit will be refunded if the sale must be canceled because you cannot get the loan you want. For example, the contract could allow the purchase to be canceled if you cannot obtain financing at or below a certain interest rate.

Another provision to help protect you is a “home inspection clause.” This lets you cancel the deal if an inspection shows there are serious problems with the house which the seller will not fix.

- Hire your own real estate broker. The seller's real estate broker has a legal duty and responsibility only to the seller. Having your own broker can often help you negotiate a better deal and offer you more protection.
- In addition to any disclosures you receive from the seller, ask if there are any other defects or problems.
- Get a complete home inspection before contracting to buy. This will alert you to problems at a time when you can avoid deciding to buy.
- Get a “title search” as soon as possible. A title search shows what rights other people claim in the property, and helps make sure the seller can grant you clear title so you can use the property without interference and later sell it. Doing the title search early helps reveal problems sooner so they won’t jeopardize the deal after you

invest a lot of time and money in it.

Tips for Buyers and Sellers

- Make sure the contract specifies items included in the sale. Sales of homes usually include the land and everything attached to it. Under the law of fixtures, personal property items that are permanently attached to the home (like a chandelier) become part of the real property.

Home buyers and sellers can avoid expensive disputes by knowing the law of fixtures and making sure the purchase agreement states all items included in the sale. Sellers will want to be sure the contract lists fixtures they want to keep, while buyers should make sure the contract lists personal property items (like furniture) they want included.

- Include a home warranty policy in the deal. This is a form of insurance that pays for many repairs that may be needed for a certain time after the sale (usually one year). This benefits a buyer by assuring repairs will be made. It benefits a seller by avoiding disputes over a defect.

- Tax issues. Buying or selling a home involves tax considerations. Properly structuring a deal can save you a lot of money on taxes. Before you complete the deal, ask your lawyer or accountant how to structure the deal to get the best tax results.

- Make sure all agreements and understandings are in writing. Many disputes occur over oral promises the seller or buyer makes to the other party. For example, during negotiations the buyer may ask the seller to fix something and the seller will orally agree to do so, but this is never put in writing. Then problems result when the item is not fixed. It is important to remember that oral promises concerning the sale of real estate are not enforceable in court. To help avoid problems, make sure all promises and agreements from either side are in writing.

- Have a lawyer's help. A lawyer can help buyers and sellers of homes in many ways, including preparing and/or reviewing the broker's agreement and purchase agreement, adding or correcting terms in these agreements to protect your interests, preparing other legal documents needed to close the sale, represent parties at the closing to make sure all documents are in order, and answer questions and provide legal advice during the course of the sale.

Buying or selling a home is often a source of legal disputes. Following these tips can help your sale or purchase go more smoothly and reduce the chances of ending up in a costly dispute.

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