

A background image showing a pair of hands holding a set of keys. The hands are positioned in the center, with the keys hanging from the fingers. The image is faded and serves as a backdrop for the title text.

# THE COMPLETE GUIDE TO NEW YORK REAL ESTATE LAW

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LAW OFFICES OF  
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LET OUR EXPERIENCE WORK FOR YOU



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# THE BUYING AND SELLING PROCESS

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## *What Documents Are Required When Selling a House?*

If you are thinking of selling your house, the first document that you will need to prepare for closing is the abstract of title, sometimes referred to as a title search. The abstract of title is a thick document that is sent to anyone who has interest in a property. Easements, right of ways, and deeds are all reflected in the abstract of title, which has to be fully updated to the time that you are closing on a transaction. The survey shows you the boundary lines of the structure situated on the property, and this second key document allows the buyer's attorney to do a proper examination for the premises.

In addition to those documents, you will need receded tax statements, which constitutes proof of payment that the property taxes have been paid. You are entitled to a reimbursement on property taxes, and these expenses will be prorated at the time of closing. Proof of payment with regard to the water charges will be necessary, and depending on the municipality in which your property is located, you may need a back-walk certificate, a sidewalk certificate, water certificates, and sewer certificates. You may also need to provide self-pump certificates.

It is necessary to have health department certifications for any well or septic system that is on the property. Those certifications are vital in order to transfer the property, and if they are not available, then you will have to hold an escrow at the time of closing to make certain that health department certifications are acquired prior to the transfer of the property.

## *When Can the Seller Turn off the Utilities?*

The seller of a home should never turn off the utilities until such time that the closing has taken place. The reason for this is because the buyer of the property has the right to do an inspection, also called a walk-through, on the day

of closing or up to three days beforehand. The buyer will make sure that the room is swept and that the basic condition of the property is as it was when the seller and the buyer entered the contract, and the utilities have to be in place. It is important to remember to not turn off the utilities until closing has been consummated. The seller will be required to contact the utility companies, the buyer will follow suit, and there will then be a transition from the seller to the buyer and there is no lapse of time.

## *What Is Important to Know About Mortgages and Loans During the Sale?*

If you are selling your house and you have a mortgage or you have equity loan, you will have to provide that information to our office at the onset of the sale. Our office will send you a seller's information letter, and the letter will inform you which financial documentation we require, such as the name of the mortgage company, the account number, and the property's address. We ask you to provide us with the last statement that you have received from the mortgage or home equity loan company, which will contain all of the above information. When the deal is about to close, our office will contact the lender and the home equity company to make certain that we get pay-off statements. Those pay-off statements are going to set for the amount due, and we will calculate the interest so that we are able to pay off the mortgage. Once the mortgage is paid in full, within 30 days, the mortgage company will issue a satisfaction, or a discharge of mortgage, which we file in the local county clerk's office. We will then follow up with the buyer's attorney to make certain that this information is shared.



## *Do I Have to Be out of the House When It Is Closed?*

Standard contracts typically state that the buyer is entitled to occupancy at the time of settlement. If you are going to have any difficulty in vacating the

property by the date that is set forth in the contract, you need to let your attorney know immediately. Our office is sometimes able to work out a post-occupancy arrangement, which can allow you to stay in the house a handful of days or even a couple of weeks after the closing to accommodate your situation.

## *How Long Does the Closing on a House Usually Take?*

You can expect that a closing will occur within 60 days of the time at which you entered into a contract of sale. The contract of sale itself has a period by which the buyer is to acquire the financing, and this period is usually between four and six weeks after the contract is signed. Keep in mind that the date set in the contract for closing is only a target date for closing; you should not make arrangements early in the process to move out on that date, to turn off your homeowners insurance, or to transfer the utilities because that target date may not be reached.

## *How Does a Real Estate Agreement of Sales Protects the Buyer?*

The buyer is protected in that the seller has to provide a Property Condition Disclosure Statement at the onset of the proceeding. That Property Condition Disclosure Statement is part of the contract, and it is enforceable. If you find out after closing that you have been misled, you have recourse against the seller. In addition, there are documents that need to be provided from a title perspective; and our firm will examine these documents to make certain that you are receiving the title to the premises.

## *What Is the Biggest Mistake Made When Buying or Selling Properties?*

Our firm believes that the biggest mistake in acquiring a residence is falling in love with the house before you really know what its value is. It is important that you have a real estate broker or an attorney who will be able to apprise you of

what the market in that area is and to have a general understanding of the conditions of those local properties. If there is an issue with regard to a sinkhole, asbestos, or the education system in the area, you want to know these things as you investigate whether you want to buy the house. Before you fall in love with the house and decide that it is the house for you, find out the answers to those questions so that you can be comfortable with the house for years to come.

## *What Issues Can Arise from a Real Estate Transaction?*

The buyer and the seller must be able to coordinate and communicate transactions. This may sound easy, but there are so many circumstances that can arise. Our firm knows that people have to work to accommodate one another, and every party involved must finish her or his work. Title searches, surveys, and grid requirements all have to be respected, and everybody has to be on the same page in terms of timing. Communication is essential, and it so simple to accomplish this nowadays via email. Each party can communicate where he or she is in the process of the transaction to the other parties so that everyone can coordinate.

## *What Issues Should Be Examined in the Real Estate Agreement of Sales?*

In Erie and Niagara Counties, properties are selling rapidly. People are getting multiple bids for properties. This has created a trend in which, once the bids are put in, an impromptu auction occurs. Our firm believes that sellers should make sure that their realtors are entertaining all the different offers and negotiating the best prices. Conversely, attorneys who represent buyers should not continue negotiating once they have agreed upon or submitted purchase prices with a third party. The goal is to have the property taken off the market as quickly as possible. A wise choice would be to include terms in the real estate agreement that dictated the removal of the property from the market on the date that the agreement were signed.

# HOW TO WORK WITH A REAL ESTATE AGENT

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## *What Are Commissions?*

Commissions are important to real estate agents. After all, it is only through commissions that they are paid. You will likely be told the percentage of commission that the real estate agent will receive in the name of disclosure, but there are some facts that your realtor may not divulge. First, the commission agreed upon for the transaction may be paid by either the buyer or the seller; this depends on whom the real estate agent is representing. If you hired the real estate agent to help you find the home of your dreams, it is likely that you will be the one paying the commission.



In some instances, the real estate agent represents both the buyer and the seller. If this is the case, it is possible that the commission percentage will be split by the buyer and the seller. To illustrate, if the commission were set at 6%, then the buyer and seller would each pay 3%. Some states and real estate commissions frown upon a real estate agent or broker representing both the buyer and the seller at the same time, however, as this can create an ethical problem. Buying a

house includes negotiations on the price as well as repairs that may need to be done before the sale is completed. If the real estate agent is representing both you and the seller, for whose best interest is the real estate agent really advocating?

Your real estate agent may be willing to negotiate her or his commission rate. This is something that your agent may not be willing to tell you. If you have the exact house in mind and an offer that you know will not be refused, the real estate agent may be willing to lower the commission, as it will not take her or him as long to complete the transaction process.



## *How Should I Choose a Real Estate Agent?*

Not all real estate agents are created equal. Before you choose a real estate agent, talk to more than one. Visiting with more than one real estate agent before making a selection is an important process. You will be able to get a sense of who each realtor is as a person and if he or she will listen to you. If you tell an agent that your budget is \$150,000 for a home, and the agent then shows you only \$300,000 homes, the agent is not listening to you. Choosing to buy a home is a big decision. Make sure that you have the right person in your corner.

## *What If My Agent Does Not Know Much About the Area Where I Want to Move?*

Understand this about buying a home: a real estate agent earns her or his money by selling you a home. Unfortunately, this means that the agent may say anything in order to get you interested in a property. If you find a home in which you are interested, the realtor may give you positive information about the neighborhood and hold back a number of negative and potentially deal-breaking facts.

Keep in mind that the real estate agent does not live in that neighborhood. The best way to find out about the area is to do your own research. This could mean talking to your potential neighbors. It could mean calling the non-emergency police dispatcher to ask where you can get crime statistics on a neighborhood. It could mean looking up the address in public records. If you have children, you will want to do research on the area schools to make sure that your children will receive a good education. Always do your own research.

## *What Information Is My Agent Not Obligated to Convey?*

In many states, real estate agents are not legally obligated to tell you about the history of the property. They do not necessarily have to tell you if a murder took place in the home. They do not have to tell you about habitually problematic



neighbors. When you buy a home, you may face some colorful surprises that your real estate agent had absolutely no legal duty to tell you.

Make sure that you know what your real estate agent is and is not obligated to tell you under state law.

## *Is Home Ownership a Good Investment?*

Many people buy a home thinking that ownership, rather than rental, is a good investment. They can sell their home for a higher price in the future or even rent out their first home while they purchase a second. When real estate is approached as an investment in the proper manner, it can be beneficial.

However, home ownership in itself is not always a solid investment.



Homes need repairs, sometimes as soon as they are bought. If you are buying a home, you need to have some money set aside for emergency repairs. One of the main differences between home ownership and renting is that if the hot water tank busts, homeowners may have to replace the tank at their own expense, whereas a landlord rather than a renter would pay to have the tank fixed in a rental home.

Even new homes will eventually depreciate in value. It takes major upkeep and sometimes even major renovations to ensure that a home becomes a good investment. Even if a home is kept in top shape, there is no guarantee of a profit when the owner decides to sell it. Depending on the real estate market, a homeowner could end up settling at a bargain price or barely breaking even.

Buying a home is a serious decision. Make sure that you are truly ready before moving forward.