Checking Property Condition

New York's Property Condition Disclosure Act, which took effect in 2002, requires house sellers to give buyers either: (1) a filled out multi-question Property Condition Disclosure Statement (PCDS) based on the seller's actual knowledge or (2) a credit of $500 at closing for not delivering a PCDS. Even if a seller delivers a PCDS, any buyer of a house should perform his or her own inspections, and consider engaging professional inspectors, before signing a contract. In the alternative, the buyer's obligations should be conditioned on receiving satisfactory inspection reports. Home inspectors (other than architects or engineers) are required to be licensed and must provide a written inspection report within five business days after the inspection, clearly identifying the systems and components observed. The buyer should also make appropriate inquiries about the property. For newly constructed houses, buyers receive the benefit of a statutory warranty under General Business Law § 777-a.

Form of Deed

Residential transactions generally use two possible types of deed, the document that actually transfers ownership. The first is a "Warranty Deed", where the seller assures the buyer that the seller owns the property. This form of deed is common upstate. The second type of deed is a "Bargain and Sale Deed With Covenant Against Grantor's Acts," more customary downstate. Here, the seller only assures the buyer that the seller didn't do anything to affect his or her ownership of the property – but the seller doesn't say it has any ownership interest at all. In both instances, if the buyer obtains title insurance, the buyer will usually look to the title insurer for protection against claims even though the buyer might also make a claim against the seller.

Representation

Never forget one important point: the seller, buyer, and bank may each have their own attorney. An attorney representing one of these parties (even if you pay their fee, such as for a bank's counsel) is not your attorney unless you agree otherwise after being properly informed of any potential conflict of interest. It is your own responsibility, as a buyer or a seller, to seek an attorney's professional advice to protect yourself and assure that you receive what you are legally entitled to receive.

Closing

The "closing" of the purchase of a house is the event where the buyer receives title to the house, with all the related documents for that transfer.

At closing, these documents are reviewed to confirm that they comply with the contract. If they do, the buyer must then pay the seller the balance of the purchase price.

Arrangements are also made at closing for the buyer to move into the house. Normally, when the buyer delivers the full purchase price to the seller, the seller will hand over the keys and the buyer can move in immediately. The purchase agreement may, however, give the seller some time to finish moving out.

The buyer needs to remember that buying a house is a major investment. It usually involves making payments over many years. In the long run, it will probably be more economical to have competent professional advice - your own attorney's advice - in making the purchase than to risk the trouble and expense that could result from not having had that advice in the first place.

This pamphlet, based on New York law, is intended to inform, not advise. No one should try to interpret or apply any law without an attorney's help. Produced by the New York State Bar Association in cooperation with the Real Property Law Section.

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Buying and Selling Real Estate

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BUYING AND SELLING REAL ESTATE

Whether buying or selling real estate, you should understand the contract terms and how they affect you.

Buying and Selling Real Estate

Nearly everyone, at some time in life, faces the need to buy or sell real estate. Because the purchase of a house is probably the largest single investment a typical person will ever undertake, any buyer or seller should carefully consider the practical and legal complications of such a transaction before proceeding. This pamphlet describes the real estate purchase and sale process, noting some differences in practice between upstate (north of Sullivan, Ulster and Dutchess Counties and parts of Greene and Columbia Counties) and downstate. Another pamphlet, "The Attorney's Role in Buying or Selling a House," explains the role of the attorneys in the process, as well as dealing with brokers, tax consequences and the condominium, cooperative and homeowners association forms of ownership.

Contracts

As a buyer, once you have found the house you want to buy and have agreed on the price, you will probably be asked to sign some kind of document and pay a deposit. This document may be called a binder, receipt, purchase offer or agreement. The seller's agent usually prepares it (upstate, usually a real estate agent/broker; downstate, usually the seller's attorney). If a real estate agent or broker prepares a contract, it will usually be subject to approval by the parties' attorneys within a specified short time.

Any one of these papers may constitute a binding contract obligating you to purchase the house. Before signing it, you should consider seeking legal advice. Once you sign a contract, your rights and obligations are determined. Your attorney may no longer have the opportunity to structure the contract to meet your objectives.

Whether you are seller or buyer, you should understand the contract terms and how they affect you. Other parties to the contract probably have no obligation to tell you what the contract means. You may not understand the legal meaning of much of the terminology or what must be changed or added to protect you.

So, if you plan to have an attorney represent you in the transaction, the time to consult one is before you sign anything — or immediately after you sign a contract that is subject to attorney approval.

The contract of sale should identify the parties and the purchase price and how it is to be paid. It should adequately describe the property to be sold, the type of deed to be delivered, the quality of the seller's title to the property, a description of personal property included in the sale, and the date the buyer will take possession. It should also cover dozens of other issues about the property and the responsibilities of the parties to each other.

The contract should in most cases let the buyer cancel the contract if the buyer can't obtain a mortgage loan or if the sale falls through for some other reason that isn't the buyer's fault. In each of these cases, the buyer should receive back the deposit.

Sometimes a seller wants to stay in the house after closing while arranging new accommodations. Although this can be risky to a buyer, it does occur, and the attorneys can work out an appropriate arrangement to protect both parties' interests.

These are only a few of the matters that any contract covers. They amply illustrate the range of terms and conditions to consider when you enter into such a transaction.

All contracts and mortgage documents for the purchase and sale of real estate costing $50,000 or less must be written in nontechnical language and in a clear and coherent manner. This requirement applies only to real estate that the seller (or buyer) does (or will) personally use.

Title

The "title" to real estate means the right of the owner to its peaceful possession and use, free from the claims of others. The exercise of that right is, however, often limited by other rights, such as "easements." To obtain electricity, sewer, telephone, and other service, an owner often gives the municipality or public utility the right to run its lines or pipes across his or her property to the house. Other easements and restrictions often encountered relate to drainage of surface water, or access rights of way such as for a jointly used driveway. An owner must comply with these easements and a buyer needs to consider them.

An owner's use of his or her property may also be limited in other ways. Deed restrictions might apply. So might local zoning law. Almost all land is subject to real property taxes. If those taxes are not paid, the owner may lose his or her real property. The property may also be subject to other debts, such as special assessments or levies. If not paid, these obligations may create their own problems.

When you buy a house, you need to know that you have the right to occupy it without interference and that you later will be able to sell or mortgage it without problems.

Title Searches

After you sign a contract as a buyer, you should satisfy yourself that the seller can convey to you title to the property as the contract requires. In different areas of the state, buyers use a range of methods to confirm the seller's title.

Upstate, your attorney may examine the land records and issue a certificate reporting the findings, or give you a written title opinion based on an abstract of title (which is simply a title history) prepared by a commercial abstractor. Downstate, your attorney may have a title insurance company or agent search title and issue a title insurance policy. Sometimes these methods are combined.

Does title insurance eliminate the need for an attorney? Although it may protect you against financial loss and the possible expense of defending your title in court, it does not lessen the importance of your attorney's advice. Your attorney can advise you about whether and how to obtain title insurance and also on its terms, exceptions, and limitations. Title insurance does not cover zoning or environmental issues at all.