

Legal Issues

Why You Need A Lawyer

Buying and Selling Real Estate

Whether you are a seller or buyer, 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 problems of buying and selling real estate. Because the purchase of a home is probably the largest single investment a person will ever undertake, careful consideration should be given to the practical and legal complications involved in the transfer of real estate before any action is taken. This pamphlet describes the process, noting some differences in practice between upstate (north of Dutchess and Orange Counties) and downstate.

Contracts

Once you have found the house you would like to buy and have agreed on the price, you will probably be asked to sign a paper and pay a deposit. This paper may be called a binder, receipt, purchase offer, or agreement and is usually prepared by the seller's agent (upstate, usually a real estate agent; downstate, usually the seller's attorney). Contracts prepared by brokers are usually subject to the approval of the attorneys for the parties within a short specified period of time.

Any one of these papers may constitute a binding contract requiring you to purchase the house. Before signing it, you should consider seeking legal advice. Remember that once a contract has been signed, your rights and obligations are fixed concerning the transaction and your attorney may not 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. The other parties to the contract may not be under any obligation to tell you what the contract means and you may not understand the legal meaning of much of the terminology or what should be changed or added to protect you.

So, if you are going to have an attorney represent you in the transaction, the time to consult one is before you sign any papers or immediately after signing a contract that is subject to attorney approval.

The contract of sale should state the parties, the purchase price and how it is to be paid, an adequate description of the property being sold, the kind of deed to be delivered, the quality of the seller's title to the property, a description of personal property included in the sale, the date the buyer is to take possession, and other clauses relating to the property and the parties' respective responsibilities to each other.

The contract should also permit the buyer to cancel the contract, if a commitment for financing can't be obtained and provide for the return of the down payment, if the sale falls through for other reasons not the fault of the buyers. Or, perhaps the seller may want to retain possession of the property for some time, in order to find new accommodations. If so, appropriate clauses can be included in the contract defining such rights.

These are only a few matters usually covered in the contract. However, they illustrate the variety of terms and conditions to be considered when you enter into such a transaction.

All contracts and mortgage documents for the purchase and sale of real estate costing \$50,000 dollars or less must be written in a non-technical language and in a clear and coherent manner. This requirement applies only to real estate, which is, or will be, personally used by the buyer or seller.

Title

The "title" to real estate is the rights of the owner to its peaceful possession and use, free from the claims of others. Often, however, the exercise of that right is limited by the existence of other rights, which are, called easements. To obtain electricity, sewers, telephone, etc., the owner gives the municipality or public utility the right to run its lines or pipes across his or her property to the house. Other often encountered easements provide for drainage of surface water, or access rights of way such as for a jointly used driveway. These easements must be recognized by the owner in the use of the property and considered by the buyer who is purchasing the property.

There are other ways in which the use of the owner's property may be limited. One is by restrictions in the deed; another is by local zoning law. Also, almost all land is subject to real property taxes, which if not paid, may result in the loss of title. Other debts owed on the property (for example, special assessments or levies) can also cause problems later on.

When you buy a home, you should be certain 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 the contract has been signed, you should satisfy yourself that the seller can convey title to the property to you as agreed up on in the contract of sale. In different areas of the state, varying methods are used to make sure that the title received from the seller is acceptable under the contract.

Upstate, your lawyer may make his or her own examination of the records and issue a certificate indicating the findings or supply you with 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 offer to order a title search by a title insurance company or agent and a title insurance policy. Or, a combination of any of these methods may be used.

A word about title insurance—while it may give you protection against financial loss and the possible expense of defending your title in court, it does not lessen the importance of your lawyer's advice. Your lawyer can advise you whether and how to obtain title insurance and

also on the terms, exception, and conditions of a title insurance policy. Title insurance does not cover compliance with zoning or environmental laws, among other things.

Buyer's Duty to Inspect

Under New York law, the buyer of a house that is not newly constructed has a duty to inspect the condition of the house and land. The buyer should carefully look over the property and is also urged to consider hiring a home inspector to perform a professional inspection. The buyer also has a duty to ask questions about any conditions observed and to inquire about other matters, such as taxes, zoning, and school district. Buyers of newly constructed houses are protected by a statutory housing merchant implied warranty under General Business Law S 777-a.

Form of Deed

In residential transactions there are two generally used Forms of Deed. The first is called a "Warranty Deed", which assures the buyer that the title is good against anyone who may claim a superior title, which is customarily used upstate. The second Form of Deed is the "Bargain and Sale Deed With Covenant Against Grantor's Acts", which is customarily used downstate. This deed assures the buyer that the seller has done nothing to affect the title to the property through his or her own acts or omissions. In both instances, if the title is insured by a title insurance company, the buyer will usually look to the title insurer for protection against claims even though the buyer may also make a claim against the seller.

Representation

Remember one important point—the seller, broker, and bank in the transaction may each have an attorney representing each of their interests. An attorney representing any of these parties (even though you may be charged with a fee, as in the case of a bank) is not your attorney unless you agree otherwise after being properly informed of the potential conflict of interest. It is your own responsibility, as the buyers, to seek the professional advice of an attorney to protect yourself and to be sure that you get precisely what you are legally entitled to receive.

Closing

The “closing” of the purchase of your home is the transaction in which you receive all the documents required to convey the title of your home.

At the closing these documents are reviewed to be sure that the conditions and promises of the purchase contract are fulfilled. Also at this time, the balance of the purchase price is paid to the seller.

Arrangements are made at the closing for the time when you will occupy the home. Normally, when the full purchase price is paid, the keys to the house are delivered to the buyer, who then has the right to move in immediately. However, your purchase agreement may also specify that you move in at a later date.

The important thing to remember is that buying a home is a major investment. It usually involves making payments over a period of years. In the long run, it’s likely to be more

economical to have competent professional advice—your attorney’s advice—in making the purchase than to risk the trouble and expense that could result from not having that advice in the first place.

First-Time Home Buyer Tax Credit

Up to \$8,000!

- The tax credit is for first-time home buyers only.
- This tax credit **does not have to be repaid.**
- The tax credit is equal to **10 percent** of the home's purchase price up to a **maximum of \$8,000.**
- The credit is available for homes purchased on or after **January 1, 2009** and before **December 1, 2009.**
- Single taxpayers with incomes **up to \$75,000** and married couples with incomes **up to \$150,000** qualify for the full tax credit.

For more information visit:
www.federalhousingtaxcredit.com



www.sefcu.com • 800-727-3328

THE HOME INSPECTION FAQ's
~ From the American Society of Home Inspectors ~

Q: What does a home inspection include?

The standard home inspector's report will review the condition of the home's heating system, central air, interior plumbing and electrical systems, the roof, attic, and visible insulation, walls, ceiling, floors, window and doors, the foundation, basement, and visible structural integrity.

Q: Why do we need a home inspection?

The purchase of a home is probably the largest single investment you will ever make. To minimize unpleasant surprises and difficulties afterwards, you should learn as much as you can about the condition of the property and the need for major repairs before you buy. Having an inspection prior to placing your home on the market is a good idea also. This will give you the opportunity to make repairs that will put the house in better selling condition.

Q: What will it cost?

The inspection fee for a typical one- family varies geographically. Additional services may also add to the cost of the inspection, such as septic, well, or radon testing. In the Binghamton area, typically prices range from \$300- \$500.

Q: Can't I do the inspection myself?

Even the most experienced home owner lacks the knowledge and impartiality of a third party opinion. An inspector is familiar with the many elements of home construction, proper installation, and maintenance. He or she understands how and why systems work and why they fail.

Q: Can a house fail inspection?

No. A professional home inspection is an examination of the current condition of the home. It is not an appraisal or a municipal inspection, which verifies local code compliance. A home inspection describes the physical condition of the home and what may need major repair or replacement.

Q: How do I find a home inspector?

The best sources are referrals from friends or business acquaintances. The Yellow Pages, in your local area phone book are also a great place to start. Real estate agents and brokers are also familiar with the service and can provide you with a list of names from which to choose.

Whatever your referral source , you will want to make sure the home inspector is a member of the American Society of Home Inspectors (ASHI) in order to be assured of qualifications and ethics. A list of ASHI membership in your area is available by calling (800) 743- ASHI.

Q: What is ASHI?

The American Society of Home Inspectors is the oldest and largest non-profit professional association for home inspectors. Since its formation in 1976, ASHI's "Standards of Practice" have served as the home inspector's performance guideline, universally recognized and accepted by professional and government authorities alike. Copies of the Standards are available free from ASHI.

ASHI members subscribe to a professional code of ethics that prohibits them from engaging in conflict of interest activities that might compromise their objectivity.

Q: Who belongs to ASHI?

These professional home inspectors have met the most rigorous technical and experience requirements in effect today. The inspector must pass two written technical exams and have performed a minimum of 250 professional fee-paid home inspections done in accordance with the ASHI Standards of Practice. Members are required to follow the Code of Ethics and to obtain continuing education credits in order to keep current with the latest in building technology, materials, and professional skills.

Q: Do I have to be there?

No, it is not required for you to be present for the inspection. However, it is recommended that you go so you may observe the inspector and ask questions directly as you learn about the condition of the home and how its systems work. You will also find the written report easier to understand if you've seen the property first-hand through the inspector's eyes.

Q: What if the report reveals problems?

No house is perfect. If the inspector identifies problems, it doesn't necessarily mean that you shouldn't buy the house, only that you will know in advance what to expect. As seller may adjust the purchase price or make repairs if major problems are found.

HOMEOWNERS INSURANCE

Homeowners insurance provides financial protection against disasters. A standard policy insures the home itself and the things you keep in it.

Homeowners insurance is a package policy. This means that it covers both damage to your property and your liability or legal responsibility for any injuries and property damage you or members of your family cause to other people. This includes damage caused by household pets.

Damage caused by most disasters is covered but there are exceptions. The most significant are damage caused by floods, earthquakes and poor maintenance. You must buy two separate policies for flood and earthquake coverage. Maintenance-related problems are the homeowners' responsibility.

INSURANCE SAVINGS:

Car/Home Discount: Insuring your car and home with the same company often will give you a package discount. This is a good tool to use when shopping around. Usually the agent can tell you what percent the discount is for insuring your car and home together.

Deductible: Raising your deductible can lead to substantial savings. Furthermore, it is best to have a large deductible to prevent you from using your insurance for small claims since many insurance companies are now adding a surcharge to as little as one claim, and surcharges can range anywhere

from 10-85% depending on how many claims you file during a given time period.

Home Security Systems: Special burglar alarms can prevent losses and therefore make your house less of an insurance risk. Most any type of security system will help give you a discount, but the type that directly responds to local police and fire departments are most likely going to give you the most discount.

Dead Bolt Locks: Most agents will ask you this, but check again to make sure you are not losing a discount if you already have them. If you don't, it is well worth it. Dead bolt locks are very inexpensive compared to the possible insurance savings, but make sure all of your doors have them because usually the discount only applies if there are dead bolt locks on every door.

Smoke Alarms: Preventing a fire loss is important to you and especially to your insurance company. Claims due to fire are very expensive and insurance companies often will give an additional discount for even one fire alarm permanently fixed in the home. Please, even if your company does not offer a discount, take the time to install one anyway.

Sprinkler System: Well, this may come into some additional cost, but if you have considered adding a sprinkler system (the indoor type) this is just another reason to do so. This would also be a something to consider if you are buying a new home or have plans to build or remodel.

Non-Smoking Household: Insurers are trying to cut costs too therefore are looking for people to insure that pose the least risk. Since a lot of accidental fires are caused by smokers, insurance companies are often

giving a discount for non-smoking households. To qualify you would probably need to have a home in which you don't let anyone else smoke in the home in addition to the homeowners being non-smokers.

Organization Affiliation: Many companies offer a discount for being affiliated with certain organizations. These can range from credit unions, college sororities, or just having a certain credit card. Call your service center and ask them for a list of the organization affiliation.

EFT Payments: Many companies are now charging up to \$5.00 or more for mail payments, but sometimes nothing if you choose to have payments automatically deducted. And sometimes the deductions can come from your credit card, so you don't have to worry if the money will be in your bank account when payment time comes.

Credit Rating: Yes, a lot of companies are checking your credit and basing your policy on what is found. Make sure you check to see if your credit is in good shape, and if it is not, you may want to seek out companies who do not do credit checks.

High Risk Property Insurance: Check with your state insurance commissioner if you feel you may be getting turned down for homeowners insurance or are paying ridiculously high premiums because your property may be a high risk such as in a high crime area. Your state may have an insurance plan especially for your high risk property that other insurers may be charging you an extremely high premium because of the higher than average risk.

Additional Discounts: There are many additional discounts that may be available such as a reduced senior rate or being in a gated condo. Make sure to sit down with your agent on a regular basis, preferably right before your policy renews, to see if there are any additional discounts available to you.

Top 10 Facts Every Consumer Needs to Know about the National Flood Insurance Program (NFIP)

- Everyone lives in a flood zone.
- Flood damage is not covered by homeowners policies.
- You can buy flood insurance no matter what your flood risk is.
- There is a low-cost policy for homes in low- to moderate-risk areas.
- Flood insurance is affordable
- Flood insurance is easy to get.
- Up to a total of \$1 million of flood insurance coverage is available for non-residential buildings and contents.
- There is usually a 30-day waiting period before the coverage goes into effect.
- Federal disaster assistance is not the answer.

Tax Savings

Did you know that you will save income tax when you own your own home? Yes, it is true. All the interest that you pay each month is a deductible expense. This means that you can keep more of your paycheck every week.

Typically a worker earning approximately \$25,000.00 a year will pay upwards to 20% of that between state and federal taxes.

$$\$25,000.00 \times 20\% = \$5,000.00$$

A mortgage payment on a \$50,000.00 dollar house, at 8.5% interest for 30 years is broken down as follows:

Principle and interest \$ 384.46

Of that payment initially only about \$31.00 is applied against the loan amount or principle balance. The remaining \$353.00 is all interest (these amounts increase and decrease respectively each month). After 12 months you will have paid approximately \$4,000.00 dollars in interest. This amount plus the Real Estate taxes on the property is deductible from your gross earnings.

Earnings	\$25,000.00	Taxes no deductions	
\$5,000.00		Taxes owed with deduction	- \$3,960.00
Interest Paid \$	4,000.00	Net savings	\$1,040.00
Property Tax \$	1,200.00		
Net Earnings	\$19,800.00		

$$\$19,800.00 \times 20\% = \$3,960 \text{ Income tax owed}$$

(These figures are only an example and will vary depending on actual tax bracket of each taxpayer. For an accurate scenario all taxpayers should consult their tax preparer)

As you can see the net result of home ownership can be a substantial saving. The above figures do not include any closing cost that may be deductible.

STAR

School Property Tax Exemption Questions & Answers



www.orps.state.ny.us

January 2007

Q. How is STAR administered where property is in a life estate?

A. The life tenant is deemed to own the property, so STAR eligibility is based on the life tenant's qualifications. A life estate generally is created by a deed. Often ownership is transferred to another party with life estate use reserved for the prior owner(s) or another party. In other cases, a life estate is expressly granted by one party to another. In either case, in the eyes of the law, as long as the holder of the life estate is alive, he or she "owns" the property.

Q. Where can I get more information about the STAR Program?

A. For information on the STAR property tax exemption, please contact your local property assessor, or call toll-free 1-888-NYSTAR5 (1-888-697-8275) for your local assessor's telephone number and additional STAR information. Please note that this is an 888 number, not an 800 number. Or, contact the County Director of Real Property Tax Services in your county. Information also is available from the internet home page of the State Office of Real Property Services (ORPS) at: www.orps.state.ny.us

Q. Are senior citizens required to prove their age?

A. Yes, but only with the initial application for STAR benefits. The law requires satisfactory proof of age, such as a birth certificate or baptismal certificate. If those documents are unavailable, a hospital birth record, an affidavit of age from the Social Security Administration, marriage record, passport, military record, immigration documents or other reliable records that prove age are acceptable. Remember, for property owned by a husband and wife, or by siblings, only one of them has to be at least 65 years old as of December 31 of the year in which the exemption will begin.

Q. Can the Enhanced exemption be granted to nursing home residents who own their homes?

A. Yes, provided that no one other than the co-owner(s) or spouse resides on the premises.

Q. Can a surviving spouse who is not 65 years old continue to receive the Enhanced exemption?

A. A surviving spouse can retain an existing Enhanced STAR exemption provided that she or he is at least 62 years old as of December 31 of the year in which the exemption will continue. Otherwise, the individual may receive the Basic STAR exemption.

Q. How is STAR administered where property is in a trust?

A. The ownership of property is split when it is placed in trust: the trustee is the legal owner; the beneficiary is the beneficial owner. However, for STAR purposes, the trust beneficiary is treated as the owner. Thus, if senior citizens create a trust and convey their home to their children as trustees, and the seniors remain in the home as the beneficiaries of the trust, then, for STAR purposes, the owners of the home are the seniors, not their children. Therefore, the seniors should be able to get the STAR benefits.

Q. How do I get the Enhanced STAR exemption?

A. You must file an application with your local assessor. Senior citizens applying for the Enhanced STAR exemption must demonstrate that the combined income of all of the owners of the property, and of any owner's spouse who resides on the premises, is no greater than the income standard for the applicable income tax year. You may do this in one of two ways:

Option 1: Traditional method

Submit a copy of your income tax return(s) for the appropriate income tax year to the assessor with your STAR application by the application deadline each year.

Option 2: STAR Income Verification Program

Supply your Social Security Number(s) and authorize the New York State Department of Taxation and Finance to verify your income eligibility each year. If you choose this option, you do not need to submit an application and copy of your tax return(s) to the assessor every year. To choose this option, in the initial year you must complete form RP-425-IVP and submit it to the assessor along with a traditional STAR application and the necessary income tax return(s) by the application deadline.

Q. What is the definition of income for the Enhanced STAR exemption?

A. Income is based on the applicants' second prior year's income tax return. For instance, on the 2007 assessment roll, income was based on the 2005 income tax return. The combined income of all of the owners and of any owner's spouse who resides on the premises may not exceed the STAR income standard (maximum) for the applicable income tax year. Income is defined as federal "adjusted gross income" [AGI] as reported on the applicant's federal or State income tax return, less the "taxable amount" of total distributions from individual retirement accounts or individual retirement annuities, both of which are commonly known as "IRAs". A cost of living adjustment (COLA) is made annually to the STAR income standard; contact your assessor or call 1-888-NYSTAR5 for the current income standard.

STATE OF NEW YORK
Elliot Spitzer, Governor



Donald C. DeWitt, Executive Director

New York State Office of Real Property Services
16 Sheridan Avenue
Albany, NY 12210-2714
Phone: 518-474-2982