



Real Estate

Steps to Buying or Selling a Home

Long Island Office:

6901 Jericho Turnpike, Suite 100
Syosset, New York 11791

Phone:

516-801-6363

www.kaplanrealestatelawyers.com

Buying or selling a home can be one of the most important financial and lifestyle-changing decisions in your life. Where you choose to live affects your family, children and work patterns. The past several years have seen many changes in the New York real estate market, including falling prices and more stringent lending practices. Foreclosures and short sales have had a tremendous impact on the market. These transactions can be complex and need to be handled properly in order to protect your interests and make your dream of owning a home a reality.

It is important to work with trusted and trained professionals, including realtors, mortgage brokers, and legal counsel to help guide you through the process and to help you avoid many of the pitfalls that could impact your transaction.

This guidebook seeks to provide you with an overview of the steps in a standard real estate transaction. If you are purchasing a foreclosure or short sale, it is advised that you seek legal counsel at the earliest possible stages. As you read through its contents, please contact us with any questions you may have.

Attorney Advertising. Prior results do not guarantee a similar outcome. This guidebook is for informational purposes. Since individual situations and legal issues vary, it is important to contact an attorney to discuss your specific legal situation.



8 Steps to Buying or Selling a Home

1 Deciding to Purchase a Home

A prospective buyer must first determine where and what type of home they want to purchase and what they can afford. One of the first steps in this process is to contact a bank or mortgage broker to review your finances and provide you with a mortgage commitment or pre-approval letter. Real estate agents and sellers typically require this letter prior to showing you a home.

2 Using a Real Estate Agent

Unless provided otherwise in a buyer-broker agreement, it is important that prospective buyers know that a real estate broker or agent works for the seller of the home with whom they have contracted to sell on their behalf. The goals of the real estate agent are to present the buyers and to sell the home. The agent will receive a commission on the sale of the home which, while negotiable, typically ranges from 2-5% of the purchase price.

When a buyer finds a home on which they wish to make an offer, the broker usually serves as an intermediary to negotiate the price and other items of the sale. At a minimum, from a buyer's perspective, it is imperative that binders are made "subject to attorney approval" or state that "this is not a contract for the sale of the property." At this time, a buyer should be provided with a New York State Property Condition Disclosure Statement under New York State law. If one is not provided to a buyer, in most cases, the seller is to be given a \$500 credit at closing.

3 The Inspection

It is imperative that the buyer have the home inspected prior to signing a contract. The engineer will examine the structure, plumbing, wiring, appliances, heating and other systems for defects and needed repairs. The inspector should also provide a termite and pest inspection and report. The buyer can use this information to decide if they want to proceed or to negotiate terms prior to signing a contract.

4 The Real Estate Contract

The next step in a home purchase is to sign a formal contract of sale. Typically, the seller's attorney prepares a contract that includes the description of the property, as well as any personal property included in the sale.

This document is then reviewed by the buyer's attorney, who will work with the seller's attorney to negotiate any changes. One important condition that a buyer might want to include in the contract is making the purchase contingent upon obtaining financing. Upon execution of the agreement, the buyer will also be required to provide a deposit. While negotiable, this is usually at least 5% of the purchase price. The terms of the deposit should be covered in the contract. From a buyer's perspective, the contract should provide that, in the event that the transaction fails to close, the deposit will be returned, unless the actions of the buyer were "willful" in not meeting one of the contingencies required for closing.

5 Obtaining Financing

Most homebuyers finance 80% or more of their purchase price. Many types of mortgages are now available, including fixed- and adjustable-rate mortgages. Perhaps one of the most important issues in considering a mortgage, other than the interest rate and term, is the closing costs. These costs will affect the amount you decide to finance and the funds needed by your attorney prior to the closing. You may want your attorney to review the terms of the mortgage prior to the closing. However, it is often standard practice that the attorney explains the documents to the buyer during the closing. Some of the important questions raised are whether and when a mortgage can be prepaid, what happens if you make a late payment, how is interest calculated and how are real estate tax payments calculated and handled.

6 Title Insurance

The buyer's attorney will order a title search from an abstract or title company. The title company has three major functions. The first is to search the seller's title to the property, including any liens or encumbrances that have been placed on the property. The title company will either order a new survey or endorse a pre-existing one, if accepted by the lender. Some of the issues determined by the title company include whether or not the deed correctly

describes the property; problems with adjoining owners or prior owners; and the existence of — and whether the prior owner agreed to — any easements, covenants, or other restrictions. The title company will create a title report that will describe what is included and excepted from the title insurance.

Title insurance is the second function handled by the title company. In New York State, title insurance rates are fixed. Title insurance is required by the lender.

Finally, the title company also serves an important function at closing. The title closer will clear any objections to title, make arrangements to pay off any existing mortgages and file any required documents, including mortgage satisfactions, deeds, and tax documents.

7 Zoning

An attorney should also be knowledgeable about zoning restrictions and requirements. For instance, you may want to build an in-ground pool, or want to know if a Certificate of Occupancy is required for a shed. You may also want to know if part of the home can be rented, or if it can be converted to a commercial property. Your attorney will know what types of permits are required and what other legal requirements must be met.

8 The Closing

Once the mortgage company has provided its commitment, title objections are cleared, and the buyer and the sellers are able to close — in accordance with the terms of the contract — the sale is ready to be closed. At the closing, in addition to the buyers and sellers and their attorneys, an attorney representing the lender will be present and the real estate agents will also likely be present. Typically, at the closing, the title closer will clear final objections to the title insurance, determine payoff amounts and prepare documents for filing.

Meanwhile, the buyer's attorney and the seller's attorney will determine any credits due the parties. The lender's attorney will complete a closing statement, including closing costs, and make funds available to the purchaser. The buyer's attorney will often explain mortgage documents while the buyer executes them. The seller's attorney will prepare the deed and real estate tax documents.