

The Attorney's Role in a Successful Real Estate Closing

By Peter Birnbaum

The big day has arrived. It's the closing on your new home – the day when you expect to complete the biggest transaction of your life, get the keys and pop the cork on the champagne to celebrate the deal.

But not all closings go as planned. Common problems that may delay a closing include surprises during the “walk through” prior to closing, unforeseen issues with the title or the survey, real estate tax prorations, unpaid bills, a problem with loan documents (or funding) and the seller's refusal to give up possession.

These are just some of the reasons why it is critical to have an experienced real estate attorney involved in the process. Savvy buyers hire an attorney early on, to assist in every stage of the real estate transaction. But the attorney's role at the closing is particularly important.

Following are a few facts you should be aware of to successfully close on a home:

Let's start with the timing. If you're a first-time buyer who has been renting, you'll need to coordinate the closing with the end of your lease. If you already own a home, juggling two closing dates is even trickier. Most people need cash from the first home to pay for the second, so it's important to schedule closings in the right order. We recommend avoiding two closings back-to-back. Give yourself a few hours, or a day (or two) if you can, between closings to avoid stress if a problem arises.

Ensure the closing is scheduled prior to the expiration of any mortgage interest rate. And, you should plan on two hours or more at each closing. A caveat: The end of the month is the peak period for closings. This is when delays and errors most frequently occur. Scheduling your closing at a time other than at this peak period can save you time and aggravation.

The closing itself is fraught with paperwork and fine print that is best handled by an attorney. You are essentially involved in two closings: one for the purchase itself and the other for the mortgage loan.

Among documents you will review and/or sign are the HUD-1 Settlement Statement, warranty deed, truth-in-lending statement, itemization of the amount financed, monthly payment schedule, the note evidencing that you're actually borrowing the money, and the mortgage itself. Other documents could include but are not limited to proration agreements, tax and utility receipts, name affidavits, acknowledgment of reports and title insurance.

Unfortunately, most homebuyers don't read the fine print. Even if they did, it would be difficult to understand some of the terminology. Here's where the attorney plays a crucial role. The attorney explains in layman's terms each document you are signing, checks for math and other errors on the loan documents, checks the legal description of the property and the exact wording of the parties' names and how they are taking title, ensures the interest rate is correct, and provides the attention to detail that is so necessary for a successful home transfer.

In addition to the certified check to close, proof of paid home owner's insurance and a valid photo ID, buyers should bring a list of questions to the closing. These may include confirming that the seller terminated service with the utility companies, obtaining names of contacts for various services, and any other specific home- or property-related inquiries.

The closing concludes when the “closer” (a title company representative who closes the transaction on behalf of the lender) authorizes the disbursement of funds, so the sellers walk away with the check and the buyer receives the keys. Afterward, the closing agent makes certain that documents are recorded and checks are properly forwarded.

A circumstance may occur in which the buyer or seller is unable to attend the closing. That doesn't necessarily mean that the closing cannot occur as planned. With an attorney's help, the party can execute a power of attorney, which enables someone else (often the attorney) to sign for the absent party. The documents can be sent ahead of time to the other party for signing.

Yes, a home closing can be daunting. But, with good planning and good counsel, the process will proceed smoothly.

Officially, buyers should bring three things to the closing table:

- A certified check to close (the attorney will inform you the day before what the amount will be)
- Proof of paid homeowners' insurance
- A valid photo I.D.



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