

## **FAQ'S ON NEW JERSEY REAL ESTATE**

1. Q. I want to sell my home. Should I get a real estate broker?

A. If you have sufficient time to market and show your property, and you are confident that you can get the best price at the fair market value, then give it a shot. Most people are not qualified to determine the fair market value and do not have the time to spend in marketing the property and showing it. But if you are up to the task, you can save a substantial amount of money.

2. Q. I have a real estate broker, who has found a buyer for my home (or who has found a home for me to buy). Why do I need a real estate lawyer?

A. While a good real estate broker is certainly knowledgeable, he/she may not understand certain legal issues involved in the process and, in any case, is not licensed to act as your representative or agent in negotiating the many legal issues that are involved as you enter into a contract to purchase or sell your property. When you sign a contract, you gain important legal rights and you have significant legal obligations. You need to know what they are and only a lawyer is legally permitted and qualified to explain that to you and to negotiate terms that are best for you. And, for properties bought and sold in North Jersey, an attorney for the Buyer is virtually indispensable due to the customary way that properties are sold in that area of the state (see FAQ #12 , below).

And, in the case of a new Buyer, when you attend the closing of title without an attorney, you will be the only one who has never gone through that process before. The real estate agent, the Seller, the title clerk and the mortgage broker will all be familiar with the process. You will be the only one who has no familiarity at all. Since this will likely be the largest amount of money that you will ever spend in your lifetime, doesn't it make sense for you to have someone there who has been through the process and understands what is going on?

Buying your property may be hectic but it should not be unpleasant. By staying in touch with your attorney throughout the time leading up to the closing, all matters will be easier to handle.

3. Q. I obtained a buyer for my property by myself, without the assistance of a real estate broker (or I am buying a property from a seller who did not list the property for sale with a real estate broker) . Do I need a real estate broker to finish up the details?

A. Absolutely not! As a matter of fact, bringing the real estate broker in at this point will probably cost you more money. However, you should immediately retain a lawyer to negotiate the terms of the Contract and take you through the sales process. Since brokers usually charge anywhere from 3 to 6% of the gross sales price, the charge from your attorney will likely be far less than that amount.

4. Q. Is the Contract final and binding immediately upon the signing of same?

A. A Contract that is negotiated and prepared by lawyers is binding immediately upon signing. However, a Contract prepared by a real estate broker, in New Jersey, must have an "Attorney Review Clause". This allows for a three day period (defined as three non-weekend, non-holiday days) during which lawyers for the parties can review the Contract and reject same for any reason or no reason at all. While not required, the lawyer can recommend changes that may be acceptable to allow for the reinstatement of the Contract. A non-lawyer cannot reject the Contract; this can only be done by a lawyer. If not rejected within the three day period, then the Contract becomes binding.

5. Q. I signed a Contract that was rejected during the three day Attorney Review Period. I found out later that the reason it was rejected is because the Seller found another Buyer who was willing to pay more than I had offered. Is that legal?

A. No one is bound during the attorney review period. Until then, the Seller is able to entertain and agree to any other offer he desires. Unfortunately for you, this is sometimes the result of the requirement for the attorney review period.

6. Q. Can the property be owned in more than one name?

A. Certainly. It is common that a property may be purchased with someone else (spouse, sibling, parent, friend, partner, etc.). I would need to know how you wish to take title early in the process. For example, married people usually take title as "tenants by the entirety," which means that each spouse has a 100% interest in the house, and the surviving spouse receives the entire house upon the death of the other spouse. "Tenants in common" means that you and your co-owner will each have a one-half interest in the property (or such other percentage interest as you may agree on); on the death of each owner, his or her share goes to his or her heirs, and not to the co-owner. "Joint tenants with rights of survivorship" is similar to tenancy by the entirety, except that it is not limited to people who are married to each other. In addition, I would need to know if both spouses will be on the deed and on the mortgage. Please note that most mortgage companies will require that the same people be listed in the Agreement of Sale, the deed, and the mortgage. For example, if both spouses are listed as buyers on the agreement of sale, both must also sign the mortgage and be listed on the deed; if only one spouse is listed on the agreement of sale, only that spouse can be on the mortgage and the deed. Therefore, this must be decided as early as possible.

7. Q. I am buying a house that is relatively new. Do I need a Home Inspection?

A. Unless you have a full understanding of all construction trades, including the manner in which major home systems work, then a home inspection is highly recommended. The inspection should be conducted by a qualified inspector. Ask for his/her credentials before you retain him/her. The inspector will carefully inspect the entire house, from the ground to the top of the roof and everything in between, including all systems, such as electrical, plumbing and heating. A report will be issued with any deficiencies and (assuming you negotiated a clause in your contract which allows for this) you will then be able to negotiate with the seller for repairs to be made and/or a money adjustment.

8. Q. My town requires a "Certificate of Occupancy" before the house is sold. Why would I need a Home Inspection in that case?

A. The Certificate of Occupancy requirement, in most towns, is just an inspection to be sure smoke detectors are present in the premises. Towns do not check all of the areas of the home that the Home Inspector does. Quite frankly, this is merely a "fee generator" for most towns. You cannot rely on this when you are making your decision as to the condition of the home.

9. Q. Am I allowed to go into the house after I sign the Contract?

A. Once the home inspection is completed, and except for a pre-settlement inspection, which generally will occur within 48 hours of the closing of title, there should be no reason for you to be able to go into the house. Some people want to measure rooms (for instance, to be sure furniture will fit) or windows (to prepare curtains or blinds) and most reasonable sellers allow for this with proper notice.

10. Q. What is a "title company" and do I need one?

A. Absolutely! Your attorney will choose the title company, which will assure that you have "clear title". Since the fees for the company are fixed by state laws and regulations, attorneys usually choose the company that they regularly do business with because they feel they get the best service from that company. The title company will conduct a "title search", which is a search of the recorded documents filed in the office of the County Clerk of the county in which the property is located. This is to determine who owns the land, whether there are any liens on the property (such as judgments against the landowner or existing mortgages). An inquiry will also be made of the local municipality to determine whether all taxes, sewer and water bills are paid. Once the title company is satisfied that there are no liens on the property and that the seller is the only one who has the right to sell the property ("clear title"), then they will issue an insurance policy (called a "title policy") which guarantees the buyer's ownership of the property and will provide you with legal representation if anyone ever challenges your ownership.

11. Q. What happens at the closing of title?

A. At the “closing of title” or “settlement”, the official actions that allow for the transfer of the property take place. As a buyer, assuming you are borrowing some or all of the money to buy the property, you will sign all of the documents to allow for this, including but not limited to the Mortgage and Note. The seller will sign the Deed and some other documents to satisfy the title company that no one else has an interest in the property and that you, the buyer, will have “clear title”. You will need to bring picture identification (such as a drivers license) to the closing. Upon the signing of all of the documents, the buyer will have a new home and the seller will have the net proceeds of the sale.

12. Q. I have heard that there is a difference between North Jersey and South Jersey in the way properties are sold. What are the differences?

A. The main difference is attorney involvement. In South Jersey, the title company usually conducts the logistical aspects of the closing, including completion of the HUD-1, which is the document which delineates all payments and credits involved in the sale of the property. In North Jersey, the attorney for the Buyer usually does all of that, although a title company generally does the actual records search. Even though the title company conducts the closing in South Jersey, the title company representative cannot give you legal advice. Accordingly, it is still very important for you to have an attorney whether you are buying or selling real estate, anywhere in the state of New Jersey.

13. Q. I do not have enough money to buy the house without borrowing money. How do I go about that?

A. You will need to contact a bank or mortgage company and ask if you can borrow money to buy the home. You will be required to complete a “mortgage application” and the company will review your “credit report” to determine whether, in their opinion, you will be able to repay the money borrowed, based in some part on the history of your repayments of other debts in your past. You are required to cooperate with the mortgage company and supply them with everything that they request during the application process.

14. Q. What is a Mortgage?

A. A Mortgage is a lien that a lender places on your property when you borrow money. In most cases, people do not have enough money to buy a home without borrowing money from someone. That “someone” is usually a bank or a mortgage company. You borrow the money and pay it back over a period of time (commonly, a monthly payment over a 15 to 30 year period). To secure the loan, the borrower will sign a Note (which is the obligation to repay the money) and a Mortgage, which is a document that is signed by the Borrower and filed with the Clerk of the county where the property is located. That Mortgage then becomes a “lien” on the property, meaning that the Borrower (Buyer) owns the property, but it is subject to the regular payments required by the terms of the Mortgage. When you make a payment, each month, you are paying a little bit of principal and a lot of interest, at the beginning. Each month, you pay a little more principal and a little less interest, until you get near the end of the mortgage term, when you are paying mostly principal and much less interest. Once you pay all of the principal and interest, your obligation will be paid in full and the Mortgage will be discharged on the records of the County Clerk.

15. Q. What happens if I sign a Contract to buy a property but I am unable to qualify for a Mortgage?

A. Most contracts have a “Mortgage Contingency”, meaning that if you do everything you can to try to obtain the mortgage, but are unable to do so, then you get your deposit money back and you are released from all obligations under the Contract. If you did not act in good faith, however, that is if you do something to sabotage your ability to obtain the mortgage, then you may lose your deposit.

16. Q. What does “time of the essence” mean?

A. Where time is made “of the essence” in a Contract, certain things must be done no later than the date specified. When a Contract does not make time of the essence, either seller or buyer may make time of the essence by notice to the other party. If a time of the essence notice is given, and it is reasonable notice, then the failure of either party to perform on that date will be considered a breach of contract. For a notice to be reasonable, it must bear a reasonable relation to the time elapsed after the closing date set forth in the contract of sale. Generally, there is no predetermined number of days that is required for a time of the essence notice; the number of days required is judged on a case by case basis. Where not set in the original contract, notice should not be given until after the date of the closing set forth in the contract.

17. Q. Should I get a survey of the property?

A. Absolutely (almost always)! This is the only way to be sure that you are buying the property that you think you are buying. Your attorney will arrange this. A survey shows where the property lines are and whether things such as fences and sheds are inside or outside the property lines. Also, in order to have the title company insure your interest in the property, they will require a survey to assure your ownership. The sole exception is where a survey has been completed within a short period of time prior to your purchase. In that case, the title company may accept a "Survey Affidavit" which is an affidavit signed by the Seller that states that no changes have been made on the property since the time of the preparation of the survey. In that case, they will also insure the property lines.

18. Q. I am selling my present home and buying a new one. What is the best way to coordinate my move from one home to the other?

A. It is pretty common for people to try to arrange the sale of their existing home at a certain time and the purchase of their new one about two to three hours later. That allows them to take their sale proceeds directly to their second settlement and then buy their new home, without undue delay. The only cost would be an extra hour or two while the personal property remains on the moving truck. The inability to be able to coordinate this would require extra storage charges of personal property or, if required to buy the new home before you sell your old one, a "bridge loan". Especially in the latter case, this usually is problematic and the coordinating of the two closings in close time proximity is usually the best situation.

19. Q. My buyer wants to move in prior to closing. Should I allow this?

A. From a Seller's perspective, this should be avoided because the Buyer may find minor faults with the house and then request major monetary adjustments at the time of closing. On the other hand, sometimes this cannot be avoided; you would not want your Buyer to be "homeless" because he/she was unable to coordinate the buy and sell on the same day. In that case, a carefully worded "Occupancy Agreement" can be obtained which, at a minimum, requires the Buyer to accept the home "as is" as of the time of the occupancy, requires the payment of an "occupancy fee" [not rent!] payable prior to entry into the home, or as an adjustment at the time of closing, and requires the Buyer to obtain homeowners insurance effective at the time of occupancy. In no case should this happen without a carefully drafted and signed Occupancy Agreement.

20. Q. How do I know how much money to bring to the closing?

A. As a buyer, prior to the closing, you and your attorney will figure out how much money you will need to bring to the closing table. The calculation is determined by adding the anticipated closing costs to the cost of the house, subtracting the amount of the loan proceeds, if any, and also subtracting the proceeds that you will be receiving from the sale of your existing home (if that applies to your situation) and the balance is the amount that you will need to bring from your own personal funds. You will give that check to the title clerk who will deposit it into the bank account for the title company and will issue checks to everyone who is entitled to get one, such as the seller (net proceeds), the real estate brokers (their commissions), your attorney (his/her fee) and any other costs that need to be paid at closing. As a buyer, you will probably be the only one who will not be getting a check at closing. On the other hand, you will be getting your new home!