

THE COMPREHENSIVE
GUIDE TO
NEW YORK
REAL ESTATE
LAW

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BUYING AND SELLING IN WESTERN NEW YORK

Purchasing or selling property it is often the largest financial investment a person or corporation undertakes. Each transaction offers exciting opportunities as well as risks. Some of this is acceptable risk, the price of a future reward. Other risks are avoidable. Whether you're looking for a bigger house for your growing family, purchasing a fixer-upper to flip, investing in a rental property, selling a piece of inheritance, or moving your business, you owe it to yourself to seek expert help before you make a purchase or a sale. Educate yourself about the timelines, hazards, opportunities, and best practices of typical real estate transactions. Then look for an experienced real estate attorney who can appraise you of your options, draft and review contracts, offer pre-signature counsel, and help protect you in your sale or investment.

Assembling a Trusted Team

As with any serious job, it's important to know you've assembled the right team to help you through your real estate transaction. If you're a young person moving into a new apartment, you might have a group of friends coming over to lift boxes and paint the walls. If you're a newly married couple buying a first home, you're a tight-knit team of two – though you probably have parents, cousins, friends, aunts, and uncles helping in various ways, watching children, bringing over food and housewarming presents, and giving you advice (maybe *too much* advice!) about the joys – and headaches – of homeownership. If you're a real estate investor, regularly buying, refurbishing, and selling properties, your team is probably an extended network – you have a “plumbing guy,” an “HVAC guy,” a “tax guy,” and so on.

If you're moving toward a real estate transaction, you may already have a trusted team assembled – but be sure not to leave out any key players. An experienced attorney will be indispensable in navigating the legal issues of real estate.

If you're a seller, you'll have a:

- » Realtor
- » Attorney
- » Surveyor
- » Title insurance company retained by your attorney

If you're a buyer, you'll have a:

- » Lender
- » Loan broker
- » Realtor
- » Home inspector
- » Attorney
- » Insurance agent

All of these individuals are experts in their respective areas, but don't forget that *you* lead the team. These professionals should be communicating regularly and working together to assist *you*.

>> *How can an attorney help me in a real estate transaction?*

Whether you are a buyer or a seller, your attorney will assist you from the time you enter the contract all the way through the closing and beyond. Once your attorney receives the contract, he or she will reach out to you to discuss the contract and its terms, assess your personal situation – whether you will be selling, buying, or renting a home, and whether you're coming from out of state or moving out of state – to understand how to assist you.

Following that conversation, the attorney can prepare the attorney approval letter under the terms of the contract. The next steps depend on whether you're buying or selling.

If you're the seller, your attorney will ask you to gather certain documents. If you are the purchaser, the next step is the title examination and a discussion about the terms of your mortgage.

Your attorney should advise you about the contract, including the timeline of the transaction, any significant or unusual terms, and your obligations under the terms of the agreement.

>> *What if I sign a contract without an attorney seeing it?*

You can enter a contract without any attorneys seeing it. The Erie County Bar Association contract, which is widely used in Western New York, allows attorneys three business days to review and approve a contract after they receive it. This is called the **attorney approval contingency**.

The essential point is that within the allotted time an attorney can either approve the contract, conditionally approve the contract, or disapprove the contract.

If the attorney disapproves the contract, the transaction is over, but if the attorney approves the contract conditionally, the parties can meet and work through the conditions until the contract has unconditional approval.

>> *Why do I need a real estate broker to buy or sell a home?*

A real estate broker has expertise that you need, either in establishing a sale price or determining a purchase price to offer. If you're a seller, a realtor can help manage your expectations, suggest low-cost improvements to increase curb-appeal, and counsel you away from lowball offers. If you're a buyer, you can save a lot of time, gas money, and dashed hopes by talking with a realtor about your needs and expectations. He or she can direct you to the right price range and neighborhood.

>> *Do homeowners associations need attorneys?*

The board of a co-op, condo, or homeowners association has a lot of responsibility and power. Balancing fiduciary duties with the needs of each member can be quite a struggle, and all board members – generally not legal experts – must follow all the laws and codes governing the residential property. A co-op, condo, or homeowners association may want to retain a lawyer for services including:

- » Handling disputes with and between shareholders and members
- » Financing
- » Modification and preparation of leases and by-laws

GUIDE TO BUYING

If you're buying a house for your family, that's a long-term investment. You're making this purchase to provide a safe, comfortable, pleasant environment for yourself and your loved ones. If you're buying a project-property, you're probably thinking about improvements and short-term gains, with a sale price in mind even as you make an offer to buy. If you're looking for a new office space, a garage or shop, or a rental property, you're making a long-term bet on your business affairs. No matter the reason you're looking to buy, the real estate purchase you hope to make will be a serious investment. Make sure you're prepared for all the steps between you and the closing date, and get the right people to help you through the process.

>> *What are the first steps to purchasing a home?*

As soon as you decide to purchase a home, reach out to a lender and obtain a preapproval or prequalification letter. The lender will perform a cursory analysis of your finances and draft a letter which generally states that you qualify for a mortgage up to a certain dollar amount. When you are ready to make an offer on a specific home, you will use that document to offer the seller a certain level of security that you're able to afford that home.

After you get your prequalification letter, you should ask the loan officer about the additional documents you'll need to complete the application process and when you should get those documents to your lender.

Next, select a realtor with whom you feel comfortable to assist you in viewing various homes, choosing a home on which to make an offer, and preparation of a real estate purchase contract on your behalf, tendering that offer to the seller's listing agent.

Once you have entered a contract, you will retain a real estate lawyer to assist you in completing the transaction. The attorney should speak with you about the details of your transaction and your needs, gather information about where you're presently residing and whether you need to meet any specific deadlines for vacating those premises, and take other precautions to protect you throughout the transaction. He or she will examine the property's title, all sale documents, and all lender documents on your behalf, and then attend the closing with you to complete the transaction.



>> *What should I know before entering a real estate contract as a purchaser?*

Entering a contract as the purchaser means you are making an offer to purchase a piece of property. This isn't binding – until the seller signs. Upon receipt of your offer, the seller has the right to refuse outright, accept outright, or reply with a counter offer. An outright acceptance would make your contract legally binding. Likewise, if you accept the counteroffer, that counteroffer becomes a binding contract.

>> *What happens after I sign a real estate contract?*

Between the signing of a contract and closing, real estate transactions pass through several phases.

Attorney Appraisal – Attorneys for both parties have three days to review the contract. They can accept it outright, reject it outright, or offer a conditional approval, initiating negotiations.

Home Inspection – The buyer's home inspector will find the property satisfactory as-is, or list issues the buyer and seller need to address and negotiate.

Title Examination – The seller gathers certain relevant documents, including a title search, survey, paid tax receipts, and mortgage statements, and provides them to their attorney who will update the title search and survey and send them to the buyer's attorney. Once the buyer's attorney reviews those title documents, he or she will undertake a title examination.

Final Review – As soon as the title examination is completed, the buyer's attorney forwards a title report to the seller's attorney and the attorney for the bank. It will outline the documents required to complete the sale and circulate them back to the buyer's attorney for final review before closing. During that process, the buyer works with the lender to get the loan cleared to close as soon as the title documents have been examined, all title deficiencies addressed, and the loan cleared to close. Then, the parties proceed to the closing table.

>> *What should I know about applying for a mortgage?*

Once you have a property inspection addendum, you can apply for a loan. Typically the contract for sale and purchase specifies a short window after the home inspection within which the buyer must apply for the loan – often five days. Because of this short window, you should immediately bring your application and supporting documents to the loan officer.

Following your loan application, the lender will evaluate your finances to make sure you can repay the amount you're borrowing, and make sure the property value matches the agreed-upon purchase price – this is an **appraisal**. The lender will hire a third-party contractor to provide an honest assessment of

the property's value to support the bank in analyzing the value of the property and the cost of the loan. If the house doesn't appraise at a value high enough to correspond with the purchase price, the lender may not lend you the money to complete your purchase.

Sometimes you will get a **mortgage commitment**. This is a preliminary stage after your application and an initial bank review; the commitment is the lender's promise to lend you money under certain conditions. These might be the completion of an appraisal, an agreement to continue sending financial information to the lender, or the seller tendering clear title to the buyer. The commitment is a binding contract between you and the lender.

>> *What is a title examination?*

Title examination is among the most important elements of a real estate transaction. The buyer's attorney will receive an updated search and survey, tax receipts and a proposed deed from the seller's attorney. The title examiner will prepare the report to ensure that the property is free and clear of any deficiencies in the chain of title or boundaries.

The title will follow the property's ownership back at least 80 years, assuring the title examiner that there are no breaks in the chain of title and that no one from the past can attempt to assert a prior claim of ownership.

The survey is a bird's-eye view of the property showing where the house and any other structures are situated on the lot. It shows the property's boundaries and indicates whether anything owned by others may be encroaching upon your property. The buyer's attorney will address any form of encroachment before closing.

The completed title examination will identify – along with the standard transfer documents such as the deed and its supporting papers – any additional documents the seller's attorney needs to prepare before the transfer of the title.

Those documents may include affidavits relating to an estate, judgments involving people with names similar to that of the seller, or anything that affects the property's boundary, such as a fence that might encroach over a boundary line.

Once those documents are finalized, they're forwarded to the bank's attorney who will prepare the bank's loan package, and the process will progress toward closing.

>> *What happens during the home inspection?*

As a buyer, it's very important to understand the importance of the home inspection. The buyer retains a licensed expert to evaluate the house's mechanicals, structure, and cosmetic features and provide a complete picture of the house, including all its strengths and weaknesses. The buyer, the buyer's realtor, and the buyer's attorney will examine the results of this inspection and decide whether any deficiencies need to be addressed. Any documented flaw that makes the buyer legitimately uncomfortable – such as major foundational issues or the need for a new roof – is an opportunity for him or her to walk away from the transaction, regardless of the contract.

For less severe deficiencies that present health, safety, or code challenges, the buyer may request the seller to address those issues before closing. At that point, the seller is not required to remedy those issues, but will have to take action to move forward. Since the seller is likely to face the same issues with the next potential buyer, he or she will probably repair such defects or give the buyer a credit to cover the cost of such repairs.

Unless you're buying a brand-new house, there are likely to be cosmetic issues or minor flaws. You may not want to bring up every little problem during negotiations with a seller because that could discourage the seller from moving forward with the transaction. You can address small cosmetic issues and minor repairs over time and at your convenience.

GUIDE TO SELLING

Maybe you've inherited a house and you have no need to live there. You have an opportunity to make a significant gain if you sell – but you also have the challenge of appraising the house, learning about the market, and investing serious cash in improvements. Maybe your family has grown, you've advanced in your

career, and you're ready to leave your "starter home." This is a great moment for you, and with the right advice, you can sell your property and pay off much of your new residence – but selling one house and buying another means you'll have to juggle two closing dates and three sets of realtors, lenders, and attorneys. You'll want to make sure *your* attorney has the experience and savvy to make this swap as quick and as clean as possible. Even if you do this regularly – if you're a house-flipper and have a lot of experience with demolition and construction, plumbing and electricity, carpentry and landscaping – you'll have more than enough work on your plate without worrying about the sale as well. When you're ready to sell a house you've improved, you're probably thinking about the next purchase and the next job. No matter the reason you're in the market to sell, you need an attorney you can trust to make the process smooth, and avoid legal and financial hold-ups.

>> *What complications can arise when buying and selling at the same time?*

Selling one home and buying another creates a set of complexities that goes beyond those of a regular real estate transaction because the sale and the purchase must take place concurrently, following a mirrored path that allows both to close on the same day.



To do this you'll need to involve additional people. Your attorney (handling both the purchase and the sale) will have to coordinate with the attorneys of your old home's buyer and your new home's seller, as well as all the other individuals involved in both transactions.

If that is impossible – for example, you're buying in one county and selling in another – you may have to consider obtaining early entry into the home you're purchasing and completing that transaction on a separate day, or delaying your

purchaser's occupancy of the home you're selling so that you can move out a day or two after closing.

Early entry and post-closing occupancy can be tricky because everyone involved must agree. You essentially enter into a short-term lease agreement to cover the days of post-closing occupancy during which you no longer own the home.

One issue that can arise in such a transaction is **sale contingency**. In this case, a person seeking to buy a home is relying on money from the sale of the home in which he or she currently resides to complete the purchase of the new one. This person's attorney can execute a rider setting a specific number of days within which the buyer must enter a bona fide sale contract for his or her residence to keep the purchase contract alive.

A bona fide contract requires the buyer not only to enter a contract for sale of the home, but also to overcome the attorney approval and home inspection contingencies. If both of those items are accomplished within the requisite time, the sale and purchase will proceed – presumably with simultaneous closings. As the buyer, you will complete your sale first, and then immediately take the money from that sale to the closing of your purchase to complete that transaction.

A **closing contingency** is slightly different. If you are already under contract to sell your home but that payment is still pending, then the contract for your purchase will be contingent upon the closing of your sale.

CLOSING

>> *How long does it take to close on a property?*

A traditional real estate closing in Western New York takes approximately eight weeks, and may extend to ten weeks.

Completion of your transaction can extend even further if a complex title issue arises requiring someone to take remedial action or gather documents from third-party sources, such as another bank or law office.

>> *What do I need to know about the closing process?*

The closing is comprised of two basic parts. If you are the buyer, your first part is a meeting with a bank attorney – generally around half an hour in length – during which you will sign a note, which is the bank’s promise to lend you money at a certain interest rate for a certain term. Traditionally, the note will state that you can prepay it without penalty and describe what can happen if you are late in making your payments.

You will also sign a mortgage document that protects the bank’s security interest in the property if you don’t pay your mortgage or taxes, if you fail to keep insurance in place, or if you don’t properly maintain the house.

If you fail to do any or all those things, the bank can either call the note due or foreclose upon the property, although that’s very rare.

The third document is a closing disclosure which gives a complete financial snapshot of the transaction, including the purchase price and a list of the credits that go back and forth between the buyer and the seller for taxes, initial deposits, or credits for repairs the seller needs to undertake based upon the home inspection. It will also identify various costs the buyer owes to the lender to complete their transaction, and to the local government for things like recording costs for the deed and the mortgage.

>> *What should I do to prepare to close on a property?*

Once the bank has examined the property’s title and cleared the loan to close, the seller and buyer have certain responsibilities. The bank, the sellers, and the buyers will schedule the closing, signaling the seller to arrange to vacate the house, leaving it in broom-clean condition, and advise the utility companies of the transfer date.

The seller should also meet with his or her attorney and sign the transfer documents required to complete the transaction, but need not – and usually will not – attend the closing.

The buyer will call the utility companies and arrange for the transfer of utilities into their name and reach out to their realtor to schedule a final walkthrough a day or two before the closing. This gives the buyer an opportunity to inspect the house, assuring that no changes – such as flood damage or broken items – have taken place since he or she entered the contract. Along with the final walkthrough and utility transfers, buyers will contact their lender to learn how much money they should bring to the closing to supplement their mortgage. Those funds will usually need to be in the form of a certified check.

Buyers will also obtain home owner's insurance, naming themselves as an insured and the lender as an additional insured and, once these elements are complete, they will attend the closing.

>> *Is the closing date a firm deadline?*

The date shown in a contract is essentially a target date rather than a firm deadline. Few contracts actually close on the exact date listed in the contract. Banks traditionally begin with the projected date and work backward toward the goal of closing on or around that date – but a host of variables can affect the completion of a real estate transaction.

Flexibility is an important element of working through a real estate transaction because you won't be sure of your actual closing date until days – or perhaps a week – before the closing takes place. You should not schedule movers until you receive an official closing date from the bank, the seller, and the buyer. That's when you should take care of such items as utilities, final walkthroughs, movers, and insurance.

REAL ESTATE LITIGATION

Disputes and disagreements are common in real estate transactions. Take commercial leases, for example. Both parties have to be aware of relevant state and local laws and regulations, and buyers and sellers are not always above exploiting the other party's ignorance. Hundreds of thousands or millions of dollars could be at stake.

The sale or purchase of a home can also land buyer and seller in court. This is one of the most common real estate transactions – and the kind of transaction that most often involves inexperienced clients. The process can be nerve-racking and stressful. If the procedures and paperwork aren't completed properly or on time, a relatively straightforward transaction can cause a lot of headaches – and even the loss of your home.

When something goes wrong in a real estate transaction or agreement, litigation is often the result. Real estate litigation can be because of the money at stake, and because both sides often invest their emotions along with their money. Some common types of real estate litigation are:

Mortgage foreclosures	Commercial lease disputes	Rent control issues, including buy-outs
Zoning and land use issues	Failure to disclose issues	Boundary disputes
Breach of contract	Title and deed issues	Real estate tax assessment issues
Specific performance	Property partitions	Eminent domain
Obtaining necessary regulatory approval	Environmental regulatory matters	

In some cases, landlord-tenant disputes can also end up in court. Landlords and tenants can often resolve disagreements without the help of attorneys. When this doesn't work, both sides are in a difficult position. Tenants may be worried about becoming homeless, losing personal belongings, or protecting their children. Landlords have to worry about their livelihood, being able to repossess important property, and potential legal liability for not following the proper procedures. Some landlord-tenant disputes that could end up in court include:

Eviction proceedings	Regulatory compliance advice
Illegal lockout	Failure to maintain habitable premises
Subletting agreements	Nuisance issues
Obtaining necessary property repairs	Housing discrimination
Collection of nonpayment of rent	Holdover proceedings

While you can represent yourself in court, you'll almost certainly want an attorney. If you're involved in a real estate dispute, you already have enough on your plate – a family, a career, a house to keep up, or other properties to manage. You'll want to leave the filing of motions, preparation for a trial, and all other legal work to an experienced attorney. But more importantly, you can save time and money, and avoid stressful situations, by consulting with an attorney early on to *avoid* litigation.