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Selling A Home

When and how you sell your home may be the largest and most important investment decision of your life. Working with a knowledgeable Real Estate Attorney will help ensure that you protect your investment and ensure that the process of selling your home goes smoothly. For example, did you know that every sale of a home must be reported to the Internal Revenue Service and may be subject to a capital gains tax? However, if you have owned and occupied your principal residence for more than two years you may not have to pay this tax. An experienced Real Estate Attorney can help you understand tax problems that may occur if your home is sold at the wrong time. In addition, an experienced Real Estate Attorney will make sure that, before signing, you understand all legal agreements related to the sale of your home.

How Your Attorney Can Help You

Since the process of selling your home is fairly complex, the Illinois State Bar Association recommends that you hire and consult with an experienced Real Estate Attorney before you sign any documents related to the sale of your home. If you do not know an experienced Real Estate Attorney, contact the ISBA or your local bar association and they will provide you with the names of several Attorneys in your area. When you contact an Attorney, be sure to inquire about the fee arrangement and ask questions about that Attorney's experience in handling real estate matters. Also, it is helpful if, regarding the property you desire to sell, you have copies of the following documents available for your Attorney to review:

___ The title policy;

___ The deed;

___ The survey; and

___ If there is a mortgage outstanding on the property, a copy of the current mortgage statement along with a loan number and customer service number.

If you are involved in a mortgage foreclosure or any other lawsuit that may affect the property, you need to let your Attorney know and provide the Attorney with copies of any documents you may have.

After your initial consultation with your Attorney, you can then decide if you are ready to put your house on the market. If you decide to use a Realtor, you should send the listing agreement to your Attorney for review.

The Contract to Purchase

When a Buyer is interested in purchasing your home, the Buyer should submit an offer to purchase in writing. If you accept the offer, you and the Buyer have a binding Contract. The Contract sets forth the rights of both the Seller and Buyer. The Contract should include all the terms of your sale, such as sales price, earnest money deposit, financing terms, closing date, possession date, personal property to be included in the sale, tax pro-rations, and rights of inspection and possession. Since the Contract is the most important document involved in the sale of a home, it is essential that you understand the terms of the offer. *DO NOT SIGN ANY OFFER WITH CONDITIONS YOU DO NOT UNDERSTAND.* Your Real Estate Attorney can assist you in reviewing your offer and making any counter-offers. If you *MUST* accept an offer from a Buyer prior to consulting with your Attorney, make sure your Contract allows for an Attorney to review it and modify its provisions, if necessary.

The Closing

In addition to helping you negotiate the terms of the Contract, when all requirements of the Contract have been met, your Attorney will arrange the time and place for your closing. As necessary, your Attorney will perform the following tasks:

- ◇ Obtain a pay-off statement for your existing loan(s), if any;
- ◇ Assist in the selection of a title company of your choice;
- ◇ Assist in obtaining any necessary inspections (termite, radon, mechanical, etc.);
- ◇ Assist in the completion of the Residential Real Property Disclosure Act and a Lead-Paint Hazard disclosure, if applicable;
- ◇ Review and pro-rate your real estate taxes;
- ◇ Prepare your final closing figures and forward to the title closer;
- ◇ Prepare conveyance documents and other closing documentation necessary to complete the transaction;
- ◇ Help prevent or resolve disputes between you and the Buyer regarding the inspections, repairs and the possession date;
- ◇ Attend the closing with you and explain the transaction to you; and
- ◇ Assist you with post closing matters.

Every real estate closing is unique. However, this article was designed to explain the basic steps of selling a single family home. A variety of special circumstances – new construction, cooperates, installment sale (also called land sale contracts or articles of agreement) seller financing, lease-options, senior/retirement housing, tax deferred exchanges, multifamily building, land trust, estate planning trusts, planned unit developments, condominium conversions, even cash transactions – require additional considerations which are beyond the scope of this article. Just remember when you are ready to sell a home, the best possible decision you can make is to hire an experienced Real Estate Attorney.