

The law of real estate covers the many issues of ownership, use, and possession of real property. Buying and selling a house, condominium, or cooperative are the most common situations people face with respect to real estate. Common related problems often arise involving real estate brokers, purchasing unimproved land, and landlord-tenant relationships.

What is a Deed

Title to real estate is accomplished by delivery of a deed from the grantor (the seller) to the grantee (the buyer or person acquiring the property by gift, will, or inheritance). A deed is a document that describes the parties involved and the property transferred; it also states the amount of money, if any, paid for the property and whether the property is subject to any exceptions, special conditions, or warranties. Deeds have many forms. For example, in Massachusetts, a ***quitclaim deed*** permits the transfer of title to the property, free and clear, with no legal claims (referred to as encumbrances or liens on the property). Note: Massachusetts is different from any other state. Generally, what is referred to as a ***quitclaim deed*** in Massachusetts is referred to as a ***warranty deed*** in other states, while a ***warranty deed*** in Massachusetts provides greater protection than a ***warranty deed*** otherwise provides for in other states. In other states, a ***quitclaim deed*** is essentially the same as a ***release deed*** within Massachusetts. Notwithstanding this, the general form of deed that is utilized in Massachusetts is a ***quitclaim deed***. A person filing a lien (i.e., a lien holder) does not claim title to the property but asserts a financial claim for a debt to be repaid from the proceeds of its sale. After a valid lien is filed, the property may not be conveyed until the lien holder is paid off).

After a deed is recorded at the county clerk's office in the county where the property is located, it provides notice to others that title to the property has passed to the buyer.

Buying or Selling a House

The first step in buying or selling a house occurs when the property is listed for sale by the seller, usually through a real estate broker. The real estate broker pays the costs of advertising the property and negotiates a deal between the buyer and the seller. In many states, and typically in Massachusetts, once the parties agree on a price, they generally will sign a one-page offer to purchase real estate form, and the buyer will tender a small deposit. Shortly thereafter, the remaining details on all key terms are discussed, and negotiated, and a comprehensive signed written contract (referred to as a purchase and sale agreement) is executed, at which time the buyer will pay large deposit, typically 10 percent of the purchase price, to be held in escrow by either one of the lawyers representing the parties or the real estate broker. Over the next few months, the buyer will attempt to obtain financing, usually through a mortgage, and have the property inspected for termites, radon, asbestos, and building irregularities. A lawyer or a title insurance company will research the property to make sure that the seller owns the property, that no one else has an interest in the property (e.g., an easement giving another

party the right to go on or use the property), and that there are no judgments or liens filed against the property.

Once all of this is done, a date is set for title to the real estate to pass at a “closing,” which all the involved parties attend. At the closing, the title insurance company issues insurance to the buyer, the buyer shows the bank issuing the mortgage proof that the house is insured, the bank lends the buyer the money, the buyer pays the seller the balance of the purchase price, the lawyers for the buyer and the seller adjust any outstanding monies due, such as unpaid real estate, water, and other taxes, or give a credit to the seller if money was already paid for these items for a period of time (typically no more than several months), and the seller turns over the deed to the buyer together with the keys to the premises. The buyer now owns the house and is ready to take possession.

This series of events can take months to complete and never seems to occur as easily as the above narrative suggests. The following strategies outline key points you should remember during all phases of the sale or purchase of a house:

- ***Dealing with real estate brokers.*** It is not necessary to attempt to sell property by using a broker. If you do, the seller typically pays the real estate broker’s commission, which generally is a percentage of the sale price. If you use a broker, select an experienced broker with a good reputation such as one who belongs to the National Association of Realtors (NAR). This is important because local chapters of the NAR police their members and conduct formal hearings on complaints. Realtors who misappropriate money or engage in illegal practices such as misrepresentation (advertising a bedroom that is really a walk-in closet) or discrimination (steering minority buyers away from certain communities) are subject to disciplinary sanctions, including removal from access to multiple-listing services, fines, and suspension from the association. Some states have licensing boards that oversee and police activity.
- ***Research the law in your state for more information.*** If you have a problem with a real estate broker or salesperson that cannot be resolved, contact the regional Board of Realtors in your state and the local chapter of the NAR. These boards may investigate your written complaint and conduct a formal hearing on your behalf. You may also want to speak to a lawyer for advice and guidance.
- ***Negotiate the broker’s commission and length of representation in advance.*** Many independent brokers will reduce their fees (say, from six to five percent of the sale price of the property), so insist on a reduction of the commission before agreeing to representation. Confirm the terms of your arrangement in a written listing agreement to prevent future misunderstandings. If you do not receive an agreement from the broker, prepare one yourself. Read the agreement carefully. Avoid agreeing to pay a commission just because the broker produces a willing, able, and ready

purchaser, because many deals fail to go through. Insert language that no commission shall be considered earned until the full purchase price is paid to the seller and the deed is delivered to the buyer. Specify in the listing agreement under what conditions a commission does not have to be paid (e.g., if you sell the house to a friend with no help from the broker).

- ***Deal with real estate brokers rather than salespeople if possible, particularly for complicated transactions.*** In order to qualify as a broker, an individual must have a certain amount of classroom instruction and actual selling experience and must pass a state exam. Salespeople usually must pass a less rigorous exam and are restricted to working under a broker's supervision. Understand that realtors often promote their exclusive listings, which maximize their sales commissions, even if these listings are not in your best interest. In an open or multiple listing, all the agents in an area have access to the property and the commission goes to the agency that produces the buyer. In some cases, the original listing agency splits the commission with the agency that produces the buyer. In an exclusive listing, one agency is the sole marketer of the property for an agreed-upon period of time. If you are the seller, consider a multiple-listing service immediately. Offering an agency an exclusive can limit prospects. But try to retain the right to show and sell the property yourself and not be obligated to pay a commission to the agency if you directly bring about the sale. Sometimes a buyer finds the house through one of the cooperating brokers in a multiple listing. The original listing agency and the cooperating broker then share the commission. Generally, cooperating brokers act as agents for the seller. They do not have the buyer's best interest in mind at all times, so be aware of this. For example, when initially considering buying a house, do not agree to look at properties consistently above your maximum price range or not in your preferred location. Do not let the broker argue with you about an offer you want to make. It is the broker's responsibility to communicate all offers to the seller. If you are unhappy with a broker, switch to another broker or another agency. Be wary if a broker offers you legal or tax advice.
- ***Carefully inspect the property before making an offer.*** Be certain you understand the asking price and what is included in the sale. How much are the yearly property taxes? How long has the house been on the market? Has the broker conducted a thorough inspection of the house for defects before attempting to sell it? Are there any hidden defects or problems (e.g., a basement that leaks or poor electrical wiring) that the broker is required by state law to reveal? If so, how much will it cost to repair the defects? Who will pay for this? Is the property owned with no liens or encumbrances? If the house is to be built, what is the builder's reputation and financial stability?

The Offer Sheet

An offer sheet is a simple written document that is typically prepared on behalf of the buyer with the broker, setting forth an offer to purchase property. It will generally set forth the purchase price, the amount of financing sought, rights of inspection, and other contingencies associated with the sale. Although some buyers do not like signing anything until a complete sales contract is negotiated and prepared, you run the risk, as a buyer, of having the seller selling the house to someone else who is willing to sign a document in the form of an offer sheet. Accordingly, offer sheets in Massachusetts, although typically a precursor to a full and complete detailed purchase and sale agreement between parties, is nonetheless binding upon the parties, and you should seek legal advice if you have any questions concerning that document.

The Purchase and Sale Agreement

This contract is a comprehensive document that contains all the key issues of the sale. Besides routine information such as the exact description of the property being conveyed, the purchase price, the names and addresses of the parties, and the tentative closing date, the contract also includes provisions concerning financing, inspections for repairs, what comes with the house, and the condition of the house to be delivered.

The following checklists give the key points that the seller and the buyer should always try to include in the contract for their own benefit.

If you are the Seller:

- (a) You will collect damages (e.g., all or a portion of the escrow deposit) if the deal does not go through for any reason. The buyer may pay you a penalty (e.g., \$500 a day) for every day the closing is delayed beyond a specified date through no fault of yours.
- (b) You have minimal or no liability if the condition of the house is not as the buyer expected.
- (c) The buyer is obligated to exercise best efforts to obtain a mortgage and keep your lawyer informed of the progress of obtaining the mortgage.
- (d) All the terms of the loan are stated if you are financing any part of the purchase price.
- (e) You list the objects (e.g., appliances) that you are including in the price, and those that are excluded.
- (f) You will be reimbursed at the closing for any expenses such as taxes and insurance that you have already paid.

If you are the Buyer:

- (a) The seller will pay any broker's fee.
- (b) You can back out of the deal without liability or penalty and receive the full escrow deposit, with interest, in the event you are unable to obtain suitable financing at prevailing rates or the inspection reveals termite or structural damage or environmental hazards that could not have been discovered before the contract was signed.
- (c) Your deposit, to be held in escrow in an interest-bearing bank account by a lawyer or a reputable escrow company (never directly by the seller), should be as small as possible. Negotiate as much personal property and "extras" as possible to be included in the purchase price.
- (d) The seller will repair at his cost any minor defects discovered before you move in or give an appropriate reduction of the purchase price.
- (e) The seller will deliver the house empty and clean immediately after the closing; if this is not done, you may receive damages (e.g., storage fees and money to live in a hotel). You will also receive damages if the house is not in perfect working order when you move in.
- (f) The contract will be null and void if the house is destroyed (e.g., by fire) before the closing.
- (g) The sale is contingent on your receipt of marketable title and there are no encumbrances, liens, or other restrictions affecting the property.

These are just some of the many considerations to be negotiated by both parties and included in the sales contract.

- Never sign the sales document before an experienced lawyer has reviewed it and negotiated any issues that arise.
- Read this document carefully and question all ambiguous language. The language in the agreement governs the relationship and rights of the parties. What you may have been told by the broker doesn't matter; all promises must be included in the contract for your protection.
- The contract should include a detailed list of situations in which either party may break the deal with no financial consequences. Be sure to

notify the other party in writing within the time frame specified in the contract if you want to break the deal. Your lawyer should advise you if you have sufficient cause to do so. Contracts typically cannot be rescinded for minor violations. If the seller changes his mind and wants to back out, the buyer can sue the seller for “specific performance” of the contract in court and make him transfer the title in exchange for the purchase price plus incidental damages. Your lawyer should explain your rights and options whenever problems concerning the contract develop after its execution.

The Closing

After the buyer arranges the necessary financing, completes inspection of the property, obtains house insurance, and receives the results of the title search assuring that the property is free from liens or other claims by third parties, the closing takes place at a convenient location, often at one of the lawyer’s offices or at the bank issuing the mortgage. At the closing, many documents are prepared and executed. The buyer pays the seller for all miscellaneous expenses (e.g., the remaining oil in an oil tank), previously agreed-upon purchases (e.g., furniture), and other expenses, such as school and property taxes, that the seller previously paid. If all is in order, the seller will transfer the deed and keys to the buyer. Whether you are a buyer or a seller, you should to have a lawyer present at the closing to review and inspect all documents you are required to sign by the title insurance company, bank, broker, and any other representative. *Do not attend the closing if your lawyer cannot appear.*

Buying or Selling a Condo or Co-op

Many of the points discussed above also apply when a condominium or cooperative is bought or sold. A condominium differs from a private house in that it typically is one particular unit in a multiple-unit complex. Owners of condominiums own only their unit. The condominium homeowners’ association owns the building, hallways, elevators, and recreational facilities (called common areas) in and around an individual’s property.

The association has written rules (bylaws) that set forth how the condominium is to be run. These bylaws impose fees and assessments that all condominium owners must pay to maintain the common areas in good condition.

Townhouse developments are like condominiums with one exception: typically, the owner, and not the association owns the land under the townhouse.

A co-operative differs greatly from a private house and a condominium. The owner of a co-op owns a share of the land and the apartment building in the form of stock, because a corporation owns the entire building and the land on which the building sits. Each co-op owner signs a proprietary lease that sets forth the rules and regulations for occupying a particular unit. Before a co-op can be bought or sold, approval (which is sometimes difficult to acquire) must be

obtained from the corporation's board of directors who typically live in the building. The directors are elected by all the co-op owners in the same fashion as shareholders appoint directors in a business corporation. The directors set policies and implement rules governing how the building and each co-op is to be run (e.g., the rules for interior renovations, subletting, and the proposed use of a co-op). These rules are often quite restrictive.

Speak to a lawyer to determine all the hidden charges and extra fees to be incurred if you are considering buying a co-op or condo. How much are your monthly maintenance fees?

What portion of the maintenance and related fees is tax deductible? Can special assessments be imposed without your consent? Carefully examine the bylaws and proprietary lease to understand all your rights and obligations. Recognize that it may be more difficult to obtain financing from a bank because of stringent requirements imposed by the co-op's board. Consider all the ramifications of the form of your real estate purchase before deciding to buy a unit.

Purchasing Undeveloped Land

Vast acreage of unimproved land throughout the United States is being subdivided and offered for sale as home sites and retirement spots. Despite the advantages of purchasing such real estate, abuses frequently occur. In many cases, developers abandon projects before completing elaborate facilities. When buying undeveloped land out of state, ask for written documentation to support advertising and promotional claims. This can help you recognize if you are dealing with a legitimate land developer. Request copies of all documents that are required to be filed by law. Review these documents before you initially travel to the development site or sign the sales contract. The following documents must be filed with appropriate agencies under many state and federal laws:

- (a) purchase agreement embodied in the sale program;
- (b) county engineer's report that describes the physical characteristics of the land proposed for development;
- (c) title insurance policy;
- (d) certificate of registration;
- (e) deed and opinion of title;
- (f) reports by licensed engineers regarding drainage, accessibility to roads, and availability of drinkable water
- (g) schedule and timetable of all improvements to be made by the developer

- (h) report from the county stating that the streets and other public places in the subdivided plot will be maintained; and
- (i) proposed offering statement.

According to the federal Interstate Land Sales Full Disclosure Act, developers must file a statement of record and property report with the Secretary of Housing and Urban Development (HUD) in Washington before large subdivided plots can be sold to the public. In order to be approved by HUD, all statements contained in these documents must be substantiated by supporting affidavits and exhibits. Once approval is obtained, a copy of the property report must be given to each prospective purchaser. If you are not given a copy of the property report before signing the contract, the law allows you to rescind the transaction or sue for damages.

Investigate the background and track record of the developer. Call the Attorney General's office in the state where the land is located to find out if the developer has ever been charged with land fraud or other illegal practices. When you meet with the developer or his or her representative, get answers to the following questions before beginning serious negotiations:

- Has a performance bond or other security been posted to assure the completion of facilities or improvements? With whom? Request a copy.
- Who is the lawful owner of the land? If title is held by a corporation or limited partnership, who are the partners? Are there any judgments, liens, or encumbrances against the owner of record?
- What is the track record of the developer? Has he or she completed other developments? (Investigate them.)
- Who are the authorized sales agents? Where are they located? How long have they been in business? Have they worked with the developer in the past?

Once you are satisfied with the developer's reputation, familiarize yourself with the physical characteristics and other features of the land. For example, you should know the amount of yearly property taxes and whether there are any hidden costs. The following are important points to consider:

- What is the total purchase price
- How much money is required as a deposit? Is it refundable?
- What is the down payment?
- What kind of deed and other assurances are you receiving from the seller?
- What are the monthly payments and financing charges?

- Is time of the essence? If the land is supposed to be built on or developed within a certain period of time, this should be specified in writing.
- Has the land been zoned for special use?
- If the property to be acquired is income producing, do existing leases comply with all federal and state regulations?
- Have special assessments been imposed for local improvements?
- Does the seller have legal authority (power of attorney) to sign the contract if he or she is not the real owner?
- Have you as the buyer received a detailed description of the premises? Have you reviewed it to be sure it is accurate?
- What is the range of selling prices within the development?
- Does the community offer potential for future growth?
- Are there provisions for water, drainage, electricity, gas, telephone lines, and sewage disposal?
- Is there access to main roads?
- Are there recreational and common facilities?
- Are there municipal services such as fire and police protection, medical and dental facilities, public transportation, schools, and shopping?
- Are the premises sold subject to an existing mortgage or can you obtain your own mortgage?

If you are satisfied with the developer's reputation and the land you are about to purchase, discuss the deal with a lawyer. Have the lawyer review all documents and represent you at the closing. This is essential in any significant real estate transaction.