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**UNDERSTANDING YOUR RIGHTS IN REAL ESTATE TRANSACTIONS,  
CONTRACTS AND CLOSINGS**

**DO I NEED AN ATTORNEY IF I AM BUYING OR SELLING A HOME OR OTHER REAL ESTATE?**

This largely will depend on your knowledge about real estate transactions. Very few individuals who are not realtors or attorneys can ensure the successful outcome of a real estate transaction without the assistance of an attorney who is acting in your own best interests. It is crucial for you to be fully aware of your legal rights and to ensure a contract is properly drafted to maximize and protect your legal rights. In many instances, a well drafted contract can help ensure a successful closing and avoid future problems stemming from the transaction. In many instances, a small investment in an attorney at the onset of a real estate transaction can end up saving you from significant expenses and problems down the road. For most people, the purchase of a home is their largest single purchase in their life. Given the amount of money involved in a real estate transaction, either as buyer or seller, the cost of a legal professional to advise you on the transaction often ends up being a small fraction of the amounts involved and money is well-spent. It is important to remember that the only person involved in a real estate action whose duty it is to look out for your best interests is your attorney, as realtors, lenders, and title companies all have a financial stake in the transaction. If you are not familiar with real estate transactions or do not have a complete understanding of all of the paperwork involved in buying or selling a house, it is advisable to consult with an attorney as only an attorney can give you legal advice.

**WHAT ARE THE STEPS INVOLVED IN BUYING OR SELLING A PROPERTY?**

There are a number of steps involved in the process of buying or selling property. Initially, there are negotiations and the drafting of a contract and counteroffers. While many Colorado realtors utilize a standard Contract to Buy and Sell Real Estate approved by the Colorado Real Estate Commission, many people do not realize that this document is structured to provide numerous different options for the terms of the contract even though it is a standardized form. It is crucial when you enter into a real estate contract to fully understand the terms of the contract and to ensure that the contract is drafted, and contract options are selected, so that your legal rights and best interests are protected. After signing, a contract can provide numerous obligations for the parties as well as various procedures for physical inspections of the property, disclosure of property defects, appraisals, surveys, title work, loan approval and environmental compliance. The contract will require the parties to complete certain items by a specified deadline and should provide the parties with the right to terminate a contract on certain grounds. You should understand that the terms of even a standardized real estate contract can be altered significantly to increase, decrease, create or eliminate your rights or obligations under the contract, including, but not limited to, grounds on which the parties may terminate the contract, the ramifications of a terminated contract, who is responsible for closing costs and title insurance, what happens if problems arise before closing, the amount of earnest money (deposit) that may be retained if a contract is terminated, etc.

### **CAN I RELAY ON OTHERS TO ASSIST ME WITH A REAL ESTATE TRANSACTION?**

It is important to remember that the only person involved in a real estate transaction who is looking out for your own best interests, who does not have a financial stake in seeing a transaction to a closing, and who can give you legal advice is your own attorney. Realtors cannot offer legal advice and in most transactions, they will receive a significant commission if the sale of the property closes. Lenders are primarily concerned with protecting their loan, cannot offer legal advice and in most situations do not have any motivation to look after the buyer's interests. In addition, the representative of the lender will likely receive a commission for the mortgage if the sale closes. Similarly, title companies are primarily concerned with their own financial interests in the transaction, and while title insurance will often require the title company to indemnify you for defects in the title to the property, title insurance policies contain many exceptions which leave uninsured gaps in the buyer's title and, the insurance company will make any possible attempt provided by the policy to avoid coverage of a claim. Therefore, it is advisable to have an attorney review your title insurance policy, and in many cases, request the title company to delete certain standard insurance coverage exceptions that will only be removed upon request.

### **DO I NEED AN ATTORNEY TO REVIEW THE REAL ESTATE CONTRACT OR OTHER PAPERWORK?**

Since the contract will define the terms and conditions on which a parcel of real estate will be sold, it is crucial to ensure the contract contains the terms you want, contains terms to cover unexpected problems, and protects your legal rights as best as it possibly can. While many real estate transactions in Colorado will utilize a standard form Contract to Buy and Sell Real Estate, it is important for all parties in a real estate transaction to understand that this standard contract provides many different options for how it will operate. While this contract is standard, there are many different choices for the contract terms, the rights/obligations of the parties, and deadlines. Therefore, if you do not fully understand the terms of the contract or the different options, you should consult an attorney. Even if you do fully understand the contract terms and options, an attorney can provide considerable expertise and input on additional terms to further protect your interests and allow you to plan for unforeseen problems and contingencies you may have not considered. Thus, whether or not you utilize a standardized contract form, it is advisable to have an attorney review any real estate contracts before you enter into them. Since a real estate transaction also involves numerous other documents, given the amount of money at stake in these transactions, it is also advisable to have your attorney review all of the paperwork associated with your real estate transaction as items such as title work, deeds, homeowners' association documents, loan documents, surveys and property disclosures may all affect the sale or result in future problems after closing.

### **WHEN IS IT BEST TO HIRE AN ATTORNEY?**

If you are a buyer, it is crucial to involve an attorney before submitting an offer to purchase or signing a purchase contract. Once a contract is signed by both parties, it is too late to alter the terms of the contract without the consent of all parties to the contract. It is important to understand that if you make an offer to purchase, in most instances, a valid and binding contract is created as soon as the offer is accepted. For sellers, it is best to involve an attorney before signing a listing contract with a real estate agent, as the terms of this contract will often be binding and it is advisable to ensure the contract contains fair terms that are not significantly skewed to the realtor's favor.

### **DO I NEED AN ATTORNEY IF I AM ENTERING INTO A LEASE?**

In most circumstances, it is also advisable to consult an attorney if you are entering into a lease either as a landlord or a tenant. Like all real estate contracts, leases can be drafted with dramatically different terms. As with any contract, it is important to understand a lease's terms to ensure that they are acceptable and protect your interests. Since commercial leases and long-term leases usually involve more significant financial commitments over longer periods, it is even more important to ensure that you protect your interests, obtain the most favorable terms possible and will be satisfied with the lease's provisions during the lease term. For landlords, there are numerous lease provisions that can allow you to better ensure tenant responsibility for rent, damages and other expenses, tenant compliance with rules, maintenance of

the property, lease renewal, dispute resolution, early move out as well as any other issues of concerns. It is also important for tenants to consider a lease's terms to ensure that provisions are not overly burdensome, allow them to use the property as they intend, and provide acceptable terms for rent payment, damages, security deposits, eviction, and rules.

**HOW CAN I GET HELP WITH A REAL ESTATE CONTRACT, CLOSING, OR LEASE?**

If you have further questions about real estate transactions or need representation, please contact The Law Firm of Jessica H. Miller, LLC at (303) 443-0568 or [jessica@jhmillerlaw.com](mailto:jessica@jhmillerlaw.com).

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