

you may not be willing to accept any defects in title. This can be prevented by hiring a lawyer to conduct an independent examination for your benefit.

For your own protection, you can demand title insurance. Title insurance is a contract between you and the title company. The insurance provider insures you marketable title and will pay you a set amount, usually not to exceed the purchase price, if it turns out that there is a title defect. These policies often have numerous exceptions to coverage written in legalese. A lawyer can advise and interpret those exceptions for you.

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State Bar of Michigan Lawyer Referral Service

(800) 968-0738

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The State Bar of Michigan Lawyer Referral Service is designed to assist anyone who wants to hire an attorney and can afford to pay for legal services.

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It is the unauthorized practice of law for a person to exercise legal discretion on behalf of another person, or practice law for another person, when he is not legally authorized to do so.



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STATE BAR OF MICHIGAN



buyer
beware

The purchase or sale of a house is often the single most complex and financially significant transaction that most people will ever undertake. Because of the large number of legal questions that arise in real estate transactions, a lawyer with a real estate background and experience is the best way to ensure a smooth and successful transaction. In fact, only lawyers can give you legal advice; your lender, title company, real estate broker, and real estate agent cannot. This pamphlet is intended to assist homebuyers and sellers in assessing their need for a lawyer and understanding the roles of all the different players in the real estate game.

COST EFFECTIVENESS

While many home buyers and sellers believe that hiring a lawyer will be expensive, there are no set fee schedules for lawyers, and individual lawyers will charge different fees for different services. Before hiring a lawyer, ask the lawyer to explain his or her fee schedule. You can also ask your lawyer to limit his or her role to specific tasks, such as reviewing the contract, title, and closing documents. Considering the large percentage fees taken by brokers, you may find that legal fees are a surprisingly small price to pay to avoid many headaches down the road.

THE ROLE OF A LAWYER

A common recommendation before purchasing a home is to have an inspection done. A professional inspector will look for defects, such as mold or wood rot under the home's exterior.

By the same token, a lawyer can help you find similar "hidden" defects in the title to the land and the real estate documents. No homebuyer wants to find that there is a restrictive covenant preventing the family dog from living on the property, or a right of way held permitting a third party access over your property. A lawyer can uncover these

hidden defects and others that may otherwise go unnoticed. Hiring a real estate lawyer will reveal these issues and help ensure a smooth transaction.

A lawyer's role in any transaction is to protect the client. In a real estate transaction, the bank, real estate agents, and title insurance company are all focused on their own interests. A lawyer will look out for the best interest of the buyer or seller.

GENERAL CONSIDERATIONS

When purchasing real estate, there are a number of items you must consider:

- What property, real and personal, will be included in the transaction?
- Is the property a condominium?
- Zoning regulations on the property.
- Easements, liens, deed restrictions, covenants, and other encumbrances affecting the property.
- Is there a homeowners' association?
- Current real estate tax situation.
- How will taxes be prorated, and what is the effect to seller/buyer?
- Evidence of marketable title.
- Will title insurance be provided?
- Who will insure the property between signing and closing?
- Inspections, including environmental, such as mold, radon, lead paint, and buried fuel tanks.
- Is a survey necessary?
- How will title be conveyed (joint tenants, tenants in common, tenants by the entirety, etc.)?
- Terms of payment.

Each of these issues should be carefully analyzed before signing the purchase agreement. Many questions you may have about these issues can be answered by a lawyer.

PURCHASE AGREEMENTS

A purchase agreement should contain an accurate description of the property and all of the terms of sale and payment. A purchase agreement is enforceable by either party as long as it is signed in writing by both buyer and seller. If these requirements are met, the purchase agreement is generally enforceable absent fraud.

When drafting a purchase agreement, it is often advisable to have a lawyer examine the document to ensure that the terms are exactly as you specified and otherwise consistent with the law and custom in your area. Often the document contains sufficient legalese to confuse the average buyer and seller. By hiring a lawyer to review your purchase agreement, you will have assurance that you know and understand what you are signing.

MICHIGAN'S RESIDENTIAL DISCLOSURE LAW

By law, sellers in Michigan are required to comply with the Seller's Disclosure Act (MCL 565.951 et seq.). This law requires a written statement to be provided to the buyer by the seller before a binding purchase agreement can be created. This law also creates loopholes to escape some of these requirements, and may void transfers when there are errors in the written statement. It is best to consult a lawyer about required disclosures under the law.

TITLE ISSUES

When purchasing real estate, it is important to examine title to the property. While many banks perform their own title examinations before lending money, it is advisable that you hire your own attorney. Banks and homebuyers have different interests when examining title. Your bank may choose to risk having to clear title later or be willing to accept small defects in title. As a buyer,