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BUYING OR SELLING A HOME

Following is a discussion of some important issues with explanations so you can familiarize yourself with buying or selling real estate and hopefully save yourself money and time, while avoiding problems.

Buying a Home- a basic checklist

After you have decided it is the right time to buy a home, the next step is to arrange financing. Be wary of any outstanding debts you have and check your credit report to make sure it is accurate. A bad credit report can have an impact on your initial approval for a loan, the interest rate, and many other terms of the purchase agreement. After March of 2005 you can request a free annual credit report from each of the 3 national credit reporting agencies.

You need to shop around for a lender. It would be wise to check your bank first because it will often give preferential treatment to members over non-members. But don't stop there. Check other institutions for their rates and terms as well. Above all, settle on someone you are comfortable with and someone you trust. The lowest rates do not always mean the best service. In fact, be wary of lenders offering interest rates far below the competition. There could be hidden fees involved or other consumer

exploitation schemes which will have you paying far more than you first thought. Consider getting pre-approved for a loan with documentation to show to a seller. This has many advantages, among them the fact that your paperwork will get moved to the top of the stack at any lending institution. This could be beneficial to you in a tight housing market.

The next step is possibly the most important: hire or consult with an attorney before you sign any purchase agreement. Sadly, many people neglect this step, and it ends up costing them hundreds or even thousands of dollars, which could have been easily avoided had they sought legal counsel. While hiring an attorney has several advantages, the most important one is that the attorney protects you and works only for you. Everyone else involved in the buying or selling of a house (lender, real estate agency, broker, etc.) typically has an interest in the purchase price because, somewhere down the line, they will see a percentage of the profit. This is not the case with an attorney. He or she will be there to protect you at every step of the process. Among the services the attorney will provide are: giving an overview of the home-buying process, reviewing and/or negotiating the contract to purchase and other documents, negotiating any repair issues, examining the title and survey to make sure you are actually purchasing the property you contracted for, dealing with government agencies, and determining that there are no encumbrances on the property which could adversely affect your ownership. Furthermore, he or she will explain the difficult tax issues involved and attend the closing to assure that the other party is in full compliance with the contract.

You should strongly consider having an inspection made. Make your offer to purchase contingent on your approval of the inspection. Find your own inspector and avoid inspectors referred to you by a realtor involved in

the transaction. Check the Yellow Pages of your phone directory. There are at least four national associations for home inspectors which can be checked to see if they have members in your area. They can be contacted online or by phone.

American Association of Home Inspectors, (806) 794-1190,
www.aahi.com.

National Association of Home Inspectors, (800) 448-3942,
www.nahi.org.

National Association of Certified Home Inspectors, (610) 933-4241,
www.nachi.org.

American Society of Home Inspectors, (800) 743-2744,
www.ashi.org.

As in all steps, consult your attorney before you hire someone—he or she might be able to guide you to a reliable inspector. If possible, try to be present when the inspector looks over the house you have made an offer on and ask as many questions as you can think of. Not only might you be made aware of defects and problems, but the inspector can point out important things such as ways to shut off electricity and water. If you decide not to hire an inspector, at least spend some time carefully looking over the home yourself. It is also a good idea to give the house a final lookover just prior to closing.

Federal law requires that a seller disclose the presence of lead paint in any house built prior to 1978. Make sure this is checked for during the inspection. The seller might not even know that lead paint exists in the house or might “forget” that it does. The cost you expend for such an

inspection will be well worth your peace of mind to know that nothing in the house will be hazardous to your health.

Michigan has a Seller Disclosure Act. This says that a statement of any defects in the house must be delivered to the buyer by the seller before signing the contract. The statement is based on the seller's personal knowledge of any defects **but is not a substitute for any inspection and is not a warranty.** As with the possibility of lead paint, a seller might "forget" to disclose a defect and trying to prove later that he or she knew of a defect would probably not be worth the trouble.

Be careful buying a house "as is." Although this is prohibited in some areas if the house is not up to code (check with your attorney), a house sold "as is" means that the buyer will be responsible for any problems with the house after closing. Selling a house in this condition can have advantages for both the seller and buyer. For the seller, it is effective against having to pay for repairs and protects him or her from liability for any unknown defects. As for the buyer, buying a house "as is" might result in a lower sale price to compensate for any future repairs needed. If buying "as is" an inspection of the house really becomes a necessity.

After you are satisfied with the inspection and any disclosures that were made, you will be ready to proceed. Make a list of the items you want to stay with the house and discuss this with the seller. While items attached to the house usually stay with the house, the seller might have different ideas about what stays and what goes. Therefore, it will be in your best interest to have an itemized list and have your attorney possibly negotiate a new price to compensate for items that the seller insists on removing.

Title Insurance

A buyer of any realty should be satisfied that the seller has good and marketable title, or complete ownership so that when title is transferred the buyer will have this same ownership. In order to do this, the buyer must obtain a title insurance policy. Title insurance has become the standard method to verify that the seller has good title; it verifies the seller's title, notes the rights of any other interests in the property, tells what liens are on the property, and reveals any other matters which could slow down the process or affect the buyer's ownership. Additionally, it will show whether there are any encumbrances or building restrictions on the property. The buyer customarily pays for it but, as with almost any item in the purchase agreement, it is negotiable. The cost of the title policy is based on the sales price of the property, but is not a significant expense. Your attorney will carefully review the title documents and take steps to ensure that any defects or problems are cleared up prior to closing or warn you that it is not safe to proceed.

Survey

When buying real estate, it is almost always advisable to have a survey done to guarantee that what you appear to be buying is really what is going to be transferred to you. Mortgage surveys are often required when the purchase of a home is financed, but these simply indicate if any buildings on the property are within the boundaries. It is better to have a "stake survey" in which the surveyor stakes out the corners, and the boundaries can then be determined. If a mortgage survey is being ordered by a lender, you should contact the surveyor before they go to the property and discuss the possibility of performing a stake survey.

Taxes

Tax issues are a consideration when buying a house. The main tax you should concern yourself with is the property tax. As a way to keep property taxes down, Michigan law states that the taxable value of the property will only increase at the inflation rate or 5% of the value of the property, whichever is less. When the house is transferred to you, the taxable value of the house will be “uncapped” and this usually results in the taxes substantially increasing, depending upon how long the seller lived there. In the first calendar year after the house is bought you will be taxed according to the state equalized valuation (SEV), which is 50% of the assessor’s judgment of your property’s actual value. With certain exceptions, this rate may not exceed \$15.00 per \$1,000 of the value of the home. Therefore, it is best to estimate taxes based on the SEV, not the seller’s tax bill

Recording Fees

As of 2005, the fee for recording documents at the county recorder’s office is \$14.00 for the first page and \$3.00 for each additional page. In addition to the per-page fee there is an additional fee of \$3.00 per document. The payment of this fee is usually the responsibility of the seller, however this can be negotiated between the buyer and the seller.

Selling a home- a basic checklist

When you make the decision to sell your home you should hire an attorney. As in the process of buying a home, an attorney will help explain

things to you along the way and have your best interests in mind to protect you. He or she can also give you advice on the pros and cons of selling the house yourself or whether you should hire a real estate agent. If you decide to hire a realtor, do your homework. Consult your attorney on the proper questions to ask when interviewing an agent to make sure the agent will operate effectively to get your house sold as quickly as possible.

Hiring an attorney in connection with the sale of your home can help to:

- Make sure you are properly disclosing any and all defects, and to guide you in selling “as is”;
- Ensure that the buyer is qualified to complete the sale;
- Draft the purchase agreement in order to protect the seller, and;
- Cover all the bases for a seller who is financing the transaction (e.g. selling on a land contract).

Since buying or selling real estate is complicated (it can be a lot more complicated than you might think) and mistakes often turn out to be costly because of the amount of money involved, the Legal Hotline always recommends you hire an attorney to represent and advise you throughout the process.

Taxes

Michigan has a Real Estate Transfer Tax. This is a tax placed on all documents that deal with the transfer of land and are filed with the county. There is a state tax and a county tax. The state tax is \$3.75 for every \$500 of the purchase price (and a fraction for an amount less than \$500). The county tax is usually 55 cents for every \$500. However, if the county which you live in has a population of over 2,000,000, the county can charge up to 75

cents for every \$500. Unless the buyer and seller agree otherwise, Michigan law requires that the seller of real estate pays the transfer tax.

For Sale by Owner

It is possible to sell your home yourself, without using a realtor. Planting a “For Sale by Owner” sign in your front yard may save the commission you would pay a real estate agent, but you will have to do some work and probably endure some headaches for the savings. If you decide to sell your home without a realtor, it is probably even more important that you hire an attorney to give you the protections you need when selling realty. The savings you will realize by not paying a real estate commission will more than cover the cost of the attorney. A sale of your home without the assistance of an attorney or a real estate agent will be a sale without their advice and expertise. They both have an ethical and professional responsibility to assist you to the best of their abilities throughout the process. Many people are successful in operating without one or both of these individuals, but the advantages of seeking professional advice far outweigh the disadvantages and will likely save you a lot of time and trouble.

If you are a senior, you can get specific questions answered at the Legal Hotline for Michigan Seniors. Call 1-800-347-5297 (372-5959 for the Lansing area).

The Legal Hotline is a program of Elder Law of Michigan, Inc., a non-profit organization. If you would like to support our work, please consider sending a tax deductible donation to the Legal Hotline, 3815 W. St. Joseph, Suite C-200, Lansing, MI 48917. Thank you.