



# TOP FIVE Questions Most-Asked of A REAL ESTATE LAWYER

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For parties on both sides of the deal, the undertaking of buying and selling property can be...involved, to say the least. A licensed real estate lawyer can help you negotiate the morass of legal requirements and provide insight into the process. Though each property-buying experience is different, there are several questions that real estate lawyers are asked time and again. Here are answers to five of the most common queries.

## When Is the Closing?

In the State of New York, closing dates are generally subject to reasonable adjournments. In fact, whenever a contract of sale utilizes the terms "on or about," "on," or "on or before" to describe the closing date, such closing date is subject to a reasonable adjournment. The amount of time for an adjournment is often said to be 30 days, but that is just folklore. The law in New York State does not offer a specific number of days that is ever considered to always be reasonable, but instead makes a case-by-case determination on a factor-based test. The factors to determine the reasonableness of an adjournment are as follows: (1) the nature and object of the contract; (2) the previous conduct of the parties; (3) the presence or absence of good faith; (4) the experience of the parties; (5) the possibility of prejudice or hardship to either one; and (6) the specific number of days provided for performance.

As the reader can tell, determining whether an adjournment time period is reasonable would require a trial, which is almost always a poor allocation of resources for transacting parties. So, buyers and sellers should be given realistic expectations to roll with the punches in a transaction and make contingency plans if a deal does not close when they expected it to.

As an aside, if a transacting party wants a date certain, called a "law day," such party should negotiate a "time of the essence closing" in the contract of sale or thereafter set such "time of the essence closing" by way of a clear, distinct and unequivocal notice that fixes a reasonable adjournment, which can be done unilaterally by one party to a transaction even without the other party's consent.

## What Are Closing Costs for a Single-Family House?

Closing costs are different for buyers and sellers.

For buyers, closing costs in Suffolk County include, but are not limited to, the following:

- Mansion tax of 1% of the purchase price for purchases \$1MM or more.
- Mortgage recording tax [if getting a mortgage] of 0.8% of the mortgage loan amount.

If getting a mortgage:

- Bank attorney's fee of approximately \$650 to \$950.
- Mortgage title insurance of approximately 0.13% of mortgage amount.
- Origination fees of approximately \$750 to \$2,000.
- Application fees of approximately \$350.
- Processing fees of approximately \$350.
- Appraisal fees of approximately \$1,500.
- Credit report fees of approximately \$50.
- Escrow of future real estate taxes and homeowner's insurance [if borrower does not opt out of escrow].
- Points (1% of loan amount) as agreed for loan.
- Recording fees of approximately \$500.
- Owner's title insurance of approximately (Continued on page 26)



(Continued from page 22) 0.45% of purchase price for purchases under \$1MM, approximately 0.41% of purchase price for purchases between \$1MM and \$2MM, and varying down to approximately 0.30% on a purchase price of \$40MM.

- Title searches and municipals of approximately \$1,000.
- Peconic Bay Tax in the Towns of Southampton, East Hampton, Riverhead, Southold and Shelter Island, which only applies after the first \$250,000 (Riverhead and Southold are only exempt up to the first \$150,000) at 2% of the purchase price after the exemption.
- Adjustments (prorated recoupment of monies by seller of items such as taxes, oil, fuel, propane, homeowner's association/condominium/cooperative maintenance, and other home service contracts).
- Buyer's real estate brokerage fees.
- Buyer's attorney fees.
- Title closer tip of approximately \$150.
- Updated/new survey of approximately \$1,500.
- Home inspections fees starting at around \$400 and going as high as the number of searches ordered.
- If purchasing a cooperative, there is also a UCC-1 filing fee of approximately \$100.
- Deed recording fee of approximately \$450.

For sellers, closing costs in Suffolk County include, but are not limited to, the following:

- Transfer tax of 2 dollars for each \$500, or fractional part thereof, of purchase price.
- Pick-up fees for each lien existing on the real property on the date of sale of approximately \$100 to \$300.
- Seller's attorney's fees.
- Recording fees for satisfaction of mortgage or outstanding liens for approximately \$200 per recording.
- Seller's real estate brokerage fees of approximately 6% of the sales price.
- Tax adjustments for unpaid and previously due real estate taxes.
- New Certificate of Occupancy filing fee of approximately \$100 when required by local law.

### Can a Seller Keep the Down Payment if the Buyer Backs Out of the Deal?

Many contracts provide for contingencies that must be satisfied before a buyer is required to close on a real estate transaction (e.g., mortgage contingency clause, sales contingency clause, municipal code violation contingency clause, insurable/marketable title contingency, etc.). Assuming all contingencies are satisfied, a seller still does not have an automatic right to keep the buyer's down payment if the buyer does not

close the transaction. Instead, and at best, the seller has a legal claim for such down payment, which will require either a settlement agreement with the buyer or a lawsuit before the seller recoups any money whatsoever as a result of the buyer backing out of the deal. Also, a down payment is not always the amount of money in dispute when a buyer breaches the real estate contract of sale. Instead, the contract of sale must specify that such down payment shall constitute liquidated damages in the event of a breach for such down payment to represent the amount of money in dispute. Should a contract of sale not specify that a sum certain shall constitute liquidated damages in the event of a breach, New York's highest court ruled in 2013 that the measure of damages in dispute, in the event that a buyer breaches a real estate contract of sale, is the difference between the purchase price set forth in the contract of sale and the value of the property on the date of the breach.

### Does It Matter That I Don't Have a CO?

Yes, if someone is occupying the property without a Certificate of Occupancy (CO), the owner is exposed to a municipal ticket from their local town or village (fines are generally in the \$1,000 range per offense, but vary by town or village). More so, most lenders will require that a house be appropriately CO'd as a condition precedent to extending a commitment on their loan. Still further, villages like Southampton and Westhampton Beach require an updated CO whenever a title is transferred at a closing. Even further, on April 29, 2016, the Department of State of New York opined that real estate brokers who fail to affirmatively disclose all defects in real estate, when they have actual knowledge of such defects, engage in dishonest or misleading advertising in violation of Real Estate License Law (RPL §441-c). So, real estate brokerage license law prohibits a broker from advertising any property that is not properly CO'd and actually requires such advertisements to set forth that the property is not legally CO'd in the advertisement. As a consequence, property that does not have the appropriate COs will experience a reduction in the fair market value of such property and exposes the seller to municipal tickets and their broker to license law violations.

### How Much Do Attorneys Charge for Transactions?

Real estate transactional attorneys' fees vary through Long Island from a low end of approximately \$600 to a high end of over \$7,500 (high-end deals are often charged on an hourly basis rather than by a flat fee and can exceed \$7,500 by a landslide). On the East End, typical flat fees that we see range from about \$2,500 to \$3,500. ▲

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