



LITTLE,
O'CONNOR
& BORIE, P.C.

PURCHASING OR SELLING A HOME



**BRIAN C. BORIE, ESQ.,
PRINCIPAL ATTORNEY**

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Purchasing or selling a home can seem daunting, especially if you are a first-time homebuyer or if you haven't purchased or sold a home in many years. The parties in a residential real estate transaction will often need to work through a number of unfamiliar areas, such as financing, property inspections, title searches and insurance requirements.

At Little, O'Connor & Borie, P.C., we strive to make this process less stressful for our clients. This guide is designed to provide a basic overview of the steps involved in a residential real estate transaction.*

SHOPPING FOR OR LISTING A HOME

A buyer can shop for, or a seller can list, a home either with or without a realtor. In most instances, however, we recommend that our clients hire realtors.

With a buyer, a realtor will help him or her find a property that suits his or her needs. A good realtor will not only have access to current listings, but will also be monitoring new listings to see if they are a match for their clients. Additionally, once a buyer has found a house, the realtor will help present an offer and negotiate the basic terms. Further along in the process (as outlined below) a realtor can help recommend other professionals (e.g., inspectors and lenders) and help resolve issues that arise during the process (e.g., issues with inspections and appraisals). Also, typically, the commission of a buyer's realtor will be paid as a seller's expense, not a buyer's expense.¹

With a seller, a realtor will help appropriately price the seller's home for sale. Realtors have access to comparable property sales, which will become crucial in negotiating a fair sale price.

Although our office has no formal affiliation with any realtors, we can recommend realtors that we have worked with before and whom we trust. For more information on the value of a realtor, please visit www.realtor.com.

¹ A caveat to this is if you are looking at a home that is for sale by owner ("FSO"), the seller may have the right to refuse to pay any realtor commissions.

LITTLE, O'CONNOR & BORIE, P.C.

19 W. Notre Dame Street,
P.O. Box 898

Glens Falls, New York 12801

Phone: 518-792-2113

Fax : 518-792-6972

<http://www.locblaw.com>

Cost. Although this is a topic that could be discussed at length, it is important for a buyer to consider cost when searching for a new home. We recommend that buyers not only look at the purchase price of a home, but also the monthly and annual carrying costs (mortgage, taxes, insurance, homeowner's association dues and upkeep). Again, a good realtor will be essential in finding a home that suits a buyer's needs and budget.

MAKING AN OFFER/ATTORNEY REVIEW

When a buyer finds a home that he or she likes, the buyer will present an "offer". In doing so, the buyer will likely sign a form residential real estate contract provided by the buyer's realtor.

If the seller accepts the buyer's offer, the parties' realtors will send a copy of the contract to the parties' real estate attorneys² for review.

Unlike many other types of contracts, most residential real estate contracts contain what is called an "Attorney Review" period, which means, the attorneys for buyers and sellers will have a certain period of time (usually 5 business days) to terminate the contract for any reason. This period allows the parties to discuss the contract with their attorneys, despite having already signed the contract.

The attorneys for the parties will then review the contract and give their clients a call to discuss the terms and explain the process. Once a party and his or her attorney have gone through the contract, the attorney will likely have a list of changes or clarifications to make to the contract. The attorney will then send an "Attorney Review" letter seeking to make those changes. ***Until "Attorney Review" is complete (or waived), the parties will not have a binding agreement.***

Once the parties' attorneys have an agreement on these additional terms, the Attorney Review will be complete, and the contract finalized.

After the Attorney Review period, the parties may only cancel the contract if there is a contingency for doing so (see below regarding the mortgage contingency, inspection contingency, and title review).

² It is our recommendation that you retain an experienced real estate attorney when purchasing or selling a home.

LITTLE, O'CONNOR & BORIE, P.C.

19 W. Notre Dame Street,
P.O. Box 898
Glens Falls, New York 12801
Phone: 518-792-2113
Fax : 518-792-6972
<http://www.locblaw.com>

MORTGAGE & INSPECTION CONTINGENCIES, GENERALLY

Once Attorney Review is complete, a buyer will need to schedule inspections and, if necessary, apply for a mortgage. Both the inspection and mortgage approval process are subject to strict timelines, as provided in the contract. *It is essential that a buyer start these processes immediately after completion of attorney review.*

These two steps create what are called “contingencies” under the contract; meaning, if significant issues arise (to be explained in further detail below), a buyer could have grounds to cancel the contract and have the buyer’s deposit returned (without risk of further liability for terminating the contract).

INSPECTIONS

Once Attorney Review is complete, a buyer should schedule property inspections as soon as possible. A buyer’s realtor and/or attorney can typically recommend a number of reputable local home inspectors.

Unlike a realtor, an attorney’s knowledge of the property itself will be minimal. For example, the parties’ attorneys will not attend property inspections or final walkthroughs (realtors often do this). An attorney would not usually know about the physical condition of the property or buildings (e.g., physical defects, fences, driveways or power lines), unless those items are brought to the attorney’s attention. Of course, should any issues arise *and* be brought to an attorney’s attention, that attorney should be able to advise as to the legal impact of such issues.

It is prudent for a buyer to consider as many inspections of the property as possible. These are, usually, a general home inspection (sometimes referred to as a “structural inspection”), water test, radon test, pest inspection, septic inspection (if applicable) and lead paint inspection (if applicable). New York law follows the doctrine of “caveat emptor” (meaning, “buyer beware”). What this means is that a buyer will take ownership of the property “as is”. As such, the inspection process becomes essential to determining what conditions a buyer may inherit.

It is also important to note that, although real estate attorneys and realtors should be well-versed in real property issues, they are not professional contractors (for example, in the areas of electrical, plumbing, septic, pest and mold removal). As such, a buyer should defer to the opinions of these professional contractors on property condition issues.

A buyer should attend inspections (often with the buyer’s realtor) in case the inspector discovers issues with the property. The inspector’s report should note any such concerns, but it is often better to see first-hand what the inspector is

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Glens Falls, New York 12801
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<http://www.locblaw.com>

concerned about.

When a buyer's inspections are complete, his or her inspector(s) should send him or her copies of the inspection report(s). ***The buyer should send those report(s) to his or her attorney and realtor promptly upon receipt.***

Again, it is in a buyer's best interest to review these reports thoroughly to see if there is anything of concern. If any issues are discovered, a buyer should let his or her attorney know immediately via phone or email. The attorney will help the buyer determine whether these issues are significant under the contract. Residential real estate contracts typically provide several categories of significant issues:

1. A "substantial defect" in the structural, mechanical, electrical, plumbing (including any pool/hot tub), roof covering, water or sewer systems in the house. This is defined as a single repair reasonably costing more than \$1,500. Multiple issues that add up to more than \$1,500 do not typically constitute "substantial".
2. Septic system defects.
3. Pests issues.
4. Unsafe levels of radon.
5. Hazardous materials, like fuel spills or mold.

If a buyer's inspection report(s) make note of these issues, they should be brought to his or her attorney's attention immediately.

If one of these significant issues exist ***and*** notice is given within the appropriate timeframe, it will trigger the buyer's "contingency", meaning that he or she will be able to cancel the contract and have his or her deposit returned (without further liability). Most often, however, the parties will negotiate for the seller to repair these items or for the seller to provide a credit to the buyer so that he or she may complete the repairs post-closing. In this process, the parties will usually retain their own contractors (e.g., electricians, plumbers or environmental contractors) to provide repair estimates.

It is important to note in this process that:

- A buyer is not entitled to an upgrade. Buyers are only entitled only to systems and appliances working as they should. For example, if a furnace is malfunctioning but can be repaired, the buyer isn't entitled to a new furnace.
- If an inspector concludes that something is at the end of its expected life, this does not constitute a "defect". If this item is still functioning correctly, a buyer is not entitled to a new one.

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MORTGAGE APPROVAL/CONTINGENCY

(IF NECESSARY)

Once Attorney Review is complete, a buyer should apply for a mortgage immediately as well. Residential real estate contracts often require that a mortgage application be submitted within five or six business days after the contract is signed. ***Failure to do so, could waive a buyer's opportunity to cancel the contract if the buyer does not get his or her mortgage.***

Initially, a buyer will often receive a "pre-approval" letter from one or more banks or mortgage lenders. These "pre-approval" letters are often issued without much inquiry into a potential borrower's finances. ***These do not constitute an actual approval (or "mortgage commitment") of a lender to lend to the borrower.*** A "mortgage commitment" (see below) will be issued later in the loan approval process.

Applying for a mortgage will involve a significant amount of paperwork. It is prudent for a buyer to gather all information and documentation requested and submit that information and documentation as early as possible to allow time for the lender to process that information. A borrower/buyer will typically need:

1. A driver's license or similar identification;
2. A Social Security card;
3. A buyer's last 2 years' tax returns;
4. A buyer's last 2 years' W2s;
5. A buyer's Last 2-3 pay stubs;
6. A copy of the parties' contract;
7. A copy of the buyer's deposit check;
8. The most recent tax bills for the property and the current deed;
9. The last 2 months' bank statements for any account(s) holding funds that can be used toward the purchase of the house;
10. For VA Loans – Certificate of Eligibility;
11. For VA Loans – DD214 or Statement of Services;
12. For other government-regulated loans (e.g., FHA, VA or USDA), the lender may have a number of other document or informational requirements.

It is also very common for the buyer's contact person with the lender (a mortgage "originator" or "processor") and those reviewing the application in depth behind the scenes (mortgage "underwriters") to request additional documentation and information throughout the process. It is in a buyer's best interest to be patient and to provide such information and documentation promptly when requested.

Once the mortgage loan application is submitted and the necessary documentation provided, a buyer will have overcome a major hurdle. The buyer will then wait for the underwriters to review the application and information/documentation provided.

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Glens Falls, New York 12801
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If everything is satisfactory, the lender will issue a “commitment letter”. Once issued, this “commitment letter” is the lender’s promise to lend to the buyer provided that certain conditions are met (e.g., title is satisfactory, the property appraises for the purchase price or additional documentation is provided).

It is this “commitment letter” that must be received by the deadline in the “mortgage contingency” paragraph of the contract (usually 5-6 weeks from the contract execution). ***It is prudent for a buyer to put the mortgage contingency date on his or her calendar and to keep the buyer’s realtor and attorney informed regarding the mortgage application status.***

If a buyer has promptly completed the items above, but still cannot get a commitment letter within period, an extension can usually be requested. If the buyer/borrower will simply not be able to qualify for financing, he or she will be entitled to cancel the contract and have his or her deposit returned (without further liability under the contract). ***Notice of the failure to get financing must be given by the deadline in the mortgage contingency.***

Once a buyer receives his or her commitment letter, he or she should provide a copy to his or her attorney. After that, the buyer should sign it and send it back to the lender immediately.

It is also important for a buyer to see what other information the lender is requesting in the commitment letter. Lenders will often require additional items (e.g., an appraisal or more information about a buyer’s assets) prior to closing. That information would generally be on last few pages of the commitment letter. If a buyer has any questions, he or she should contact his or her mortgage originator or processor. The faster a processor gets needed documentation, the faster the lender will “clear” the loan to close (see below).

The lender will then order the buyer’s “appraisal”. Unlike the “inspections” (see above), the appraisal is a more general valuation of the property as determined by an independent, third-party contractor (the “appraiser”). Lenders require appraisals to ensure that the property is worth what the parties have agreed on in the contract. A lender will usually not loan money for the purchase of property that is not worth what the parties have agreed on.

A buyer does not have to do anything in relation to the appraisal, except (usually) write a check to the lender for the cost of the appraisal. The lender contracts with appraiser and they will make arrangements with the seller’s realtor to do the appraisal. ***A buyer is, however, usually entitled to a copy of this appraisal once it is done.***

Once the mortgage commitment has been issued, the parties will start the title search work for the property (see below), ***which usually takes 1 to 2 weeks.*** Once the title report (or “title commitment”) is issued, it will be provided to the

LITTLE, O'CONNOR & BORIE, P.C.

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lender and buyer. This title report is often one of the final conditions a lender will require to be satisfied pursuant to the commitment letter.

At this stage, a buyer will also want to shop around for homeowner's insurance (if the buyer has not already). A buyer should get a homeowner's insurance policy in place and paid for at this time. A Buyer's lender will need a copy of the homeowner's "insurance binder" and a paid in full receipt. An "insurance binder" is usually a one-page summary of the terms of the insurance (e.g., amount of coverage, insured parties, etc.). The buyer's commitment letter will specify what the "mortgagee clause" should be on the binder. Insurance companies and agents are familiar with this process, so they and a buyer's mortgage processor can usually guide a buyer through these steps.

Once the final conditions of the mortgage commitment are satisfied (e.g., appraisal, title commitment, insurance binder, etc.), the lender will issue a "clear to close", meaning the lender is ready to schedule the closing date (see Final Pre-Closing Steps, below).

TITLE REVIEW/TITLE INSURANCE

Probably the most important step in the purchasing process happens near the end. This is the title review process.

During this process, either the buyer's or seller's title company³ (depending upon the County) will research the ownership records of the property to confirm that the seller truly owns the property and that the property is free from liens, mortgages and other encumbrances that cannot otherwise be resolved before closing.

Despite its tremendous importance, the title review process is not usually started until after the mortgage commitment is issued, *and can take, usually, 1 to 2 weeks to complete*. The delay in the commencement of title search work is to prevent the parties from having to pay the cost of the title search if the mortgage approval does not go through.

Often, a "title abstract" will be prepared in this process, which will include copies of all relevant documents in the "chain" of title for 40 years. For example, this abstract will include the deed to the seller, along with prior deeds dating back for at least 40 years. This abstract will also include copies of any easements, restrictions, mortgages, liens or other encumbrances on the property. These items may affect the ownership or use of the property.

Although a "title abstract" should provide the title history of the property, a buyer

³ A buyer's or seller's attorney can usually coordinate the engagement of title company. Many experienced real estate law firms, like Little, O'Connor & Borie, P.C., can offer title services in house or through an affiliated company.

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will have option to purchase a policy of insurance, called "title insurance", to cover any other title issues that may exist (e.g., fraudulent deeds, missing heirs, misfiled mortgages and liens).

A buyer's lender will almost always require a policy of title insurance called a "mortgage policy" to insure the lender. ***This policy provides no protection for a buyer.*** A buyer will also have an opportunity to purchase a title insurance policy to cover the buyer, called an "owner's policy" or "fee policy". This policy will protect the buyer's equity in the property should a title defect be discovered. This policy also protects a buyer after the buyer sells the property.

Although an "owner's policy" of title insurance is not usually required, any qualified real estate attorney will highly recommend this insurance due to the relative cost and risk involved. It is strongly recommended that a buyer seriously consider this type of insurance and discuss it in depth with his or her real estate attorney.

FINAL PRE-CLOSING STEPS

Once the buyer's final mortgage conditions have been met (e.g., appraisal, insurance, title insurance), the lender will issue a "clear to close". This step will trigger the parties to schedule the "closing" (see Closing, below). ***It is at this point that the parties will finally be able to establish a definite closing date and time.***⁴

This closing date and time will be scheduled by the parties' attorneys. The closing will usually take place at the seller's attorney's office (if no lender is involved), or the lender attorney's office. The lender attorney's schedule will usually be the most significant factor in scheduling.

Once a date and time is scheduled, the parties' attorney and the lender attorney will prepare "closing statements" and "closing disclosures", which will set forth the final financial figures in the transaction. A buyer and seller should review these statements closely when received to ensure that they are correct. For example, if a seller's closing check should be issued to one person (instead of two), this should be made known.

Often times, the closing figures will be adjusted up to the date of closing. This can, of course, create practical difficulties (for example, in determining which certified checks should be brought by a buyer to the closing). Buyers and sellers

⁴ The parties' real estate contract will usually provide an "on or about" or "on or before" closing date in the contract. This date should not be relied upon since there are many parties and steps involved in the home purchasing processing. It is only at the "clear to close" stage, that a definite closing date and time will be established. ***A buyer or seller should not, for example, schedule a moving truck before this stage. Buyers and sellers should always have a "Plan B" in place in case the contract closing date does not come to fruition.***

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19 W. Notre Dame Street,
P.O. Box 898
Glens Falls, New York 12801
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Fax : 518-792-6972
<http://www.locblaw.com>

should try to be as patient as possible in these final steps.

Often, sellers do not need to attend a closing. A seller can, usually, pre-sign the necessary documents and give his or her attorney the authority to attend on his or her behalf.

One of the final steps will be the “walkthrough” by the buyer. Real estate contracts typically provide that a buyer will have an opportunity within 48 hours of a closing to revisit the property (usually with the buyer’s realtor) to double-check the property, appliances and systems to ensure that they are working in the same manner as they had at the time of inspection.

This final walkthrough is essential. Once the closing has occurred, a buyer will own the property (along with all of its defects). If something is discovered in the walkthrough, it must be brought up at closing or the opportunity to object will be waived.

The day or so before the closing, the parties should also contact the utility company (e.g., National Grid) to “switch over” the utility accounts. ***Please note: on occasion, the utility company will “turn off” the power, which sometimes takes a week or more to have turned back on! When contacting the company, explain that the account should simply be “switched over” from the seller to buyer.***

CLOSING

The “closing” is when the parties meet to finalize the sale/purchase. Put simply, the seller will provide the buyer with a deed and related paperwork and the buyer will provide the seller with the agreed upon sale proceeds. After the “closing” is complete, the buyer will own the property and the seller will have been paid.

The buyer and seller will be responsible for paying their respective costs at the closing which often include, but are not limited to, realtor commissions, taxes, filing fees, attorney’s fees, title search costs and title insurance costs.

The buyer and seller will also reimburse each other (or “adjust”) for property tax, water and sewer bills, so that each party will only be responsible for such expenses for the period of time that they own the property.

The closing (including the date, time, location, costs etc.) will all be organized and coordinated by the parties’ attorneys and will usually either take place at the seller’s attorney’s office (if no lender is involved) or the lender attorney’s office.

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POST-CLOSING

If the property is a primary residence, a buyer should apply for the STAR Property Tax Exemption, if it applies. The STAR Exemption is a discount on an owner's real property taxes if the property is your primary residence and an owner's annual household income is under \$500,000. An Enhanced Star Exemption is also available if an owner is over 65 and the owner's household income is \$86,000 or less. This application must be done by the next March 1st following a purchase, *although it is prudent to apply as soon as possible after closing*. For more information and instructions regarding the application process, please <https://www.tax.ny.gov/pit/property/star/>

It is also crucial that a buyer change all of the locks at the property post-closing.

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