

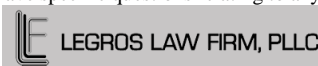


**OVERVIEW of The Role of a Real Estate Attorney in the Home-Buying Process**  
Prepared for the NYC Housing Partnership's First Time Homebuyer Education Class  
Saturday, February 8th, 2020

Location: Amalgamated Bank, 275 Seventh Avenue, 12 Floor, New York, NY 10001

- 1. Biography of Evans J. Legros, Esq.** ([www.LegrosLawFirm.com](http://www.LegrosLawFirm.com))
- 2. Legros Law Firm, PLLC - Areas of Practice** ([www.LegrosLawFirm.com](http://www.LegrosLawFirm.com))
- 3. Legal Disclaimer:**
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- 4. What is an Attorney? / How can I exercise the Attorney-Client Privilege?**
  - a) An attorney is a person appointed to act for another in business or legal matters.
  - b) All that you discuss with an attorney can be covered under the Attorney/client Privilege
  - c) Attorney/ Client Privilege
  - d) Confidentiality: no photographs/ no video recordings / no audio recordings
  - e) Protect your private E-Mails (you may not want to use your work E-Mail address)
  - f) Do not share or forward Attorney E-Mails
  - g) Sign nothing until your Attorney reviews - otherwise you will be legally bound

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**5. What is Real Estate?**

- Real Estate is property comprised of land, the buildings on it, and the natural resources of the land (i.e.: farmed crops, livestock, and etc).

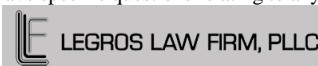
**6. What are the different types of property or purchases that I can make?**

- a. Residential House (Single/Two/Multi-Family Homes)
- b. Condominium (Common Charges/Owns the interior/exterior owned by the condo association)
- c. Townhouse (HOA fees/shared walls/Owns the interior and exterior)
- d. Cooperative (Shareholder/ Maintenance Fees/Shares are purchased, not the Unit; {HDFC})
- e. Time-Share (Several joint owners use as a vacation home under a Time-Sharing agreement)

**7. What are the duties of a Real Estate Attorney?**

- a. A Real Estate attorney will guide you through the legal process in the purchase or sale of a residential home, land or commercial space
- b. Ensures that your Real Estate transaction adheres to the applicable NYS/ NYC rules
- c. Reviews Condominium/Cooperative Board Minutes/ Financial Statements - legal opinion
- d. Reviews the Contract / Rider / interprets wording
- e. Reviews loan docs at closing
- f. Helps with negotiations and disputes
- g. Since contracts are legally binding, they should be read carefully. An attorney should always be the go to person when you have any questions concerning meaning or effect of the contract.
- h. Dual Attorney Representation - Represents the buyer and the lender- possible conflict of interest issues as the attorney is liable to both parties (i.e. issues at the closing with the rate, who does the attorney represent) - use one attorney for each area

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**8. At what point in the Home-Buying process should I retain a Real Estate Attorney?**

- a. Once you have an accepted offer you should retain an attorney
- b. A buyer and seller should always consult with a Real Estate attorney before signing a contract, or offer to purchase.
- c. To find an attorney, use referrals of family, friends, professionals to find a competent Attorney (do your own research as well)

**9. What is a Retainer Agreement?**

- a) An Agreement for Legal Services and Fees between the Attorney and the Client
- b) Legal Fees - Vary based on the type of purchase; work to be done; attorney experience



**10. What are some elements included in a Real Estate Contract of Sale (a.k.a. Purchase Agreement)?**

- a) Parties & Addresses (over 18)
- b) Premises - Address, Block and Lot
- c) Personal Property included - be sure to discuss with Broker prior to accepting the offer
- d) Property sold "as is"
- e) Sellers Concessions
- f) Purchase Price / Sale Price
- g) Down Payment (%age in Escrow) If Default you can lose (the less the better)
- h) Closing of Title - On or about Date, location (closing at beginning vs. end of month)
- i) Seller's Representations, Warranties and Covenants
  - Seller truly owns unit and can legally sell
  - Common Charge / Maintenance / Assessment / Real Estate Tax - Amounts
  - Seller is / is not a Sponsor
  - All appliances are in "Working Order"
  - Seller is / is not a Foreign Person - Tax withholdings
  - Must disclose ALL Judgments or defects
- j) Waiver of Right of First Refusal (Condominiums / Cooperatives)
- k) Cooperative Board Approval - Package / Process / Interview
- l) Purchaser Representations (Ability to purchase; funds to purchase, due diligence; abide by all contingency deadlines)

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### **11. What is an Escrow Deposit / Escrow Account?**

- a) An escrow account is a special bank account (usually a checking account) that is used to handle client money and other funds that an attorney holds in the practice of law
- b) It is usually held by the attorney for the Seller
- c) The purpose of this type of trust account is to protect a client's funds from loss
- d) Attorneys are responsible for maintaining this account and must make sure it's separated from the attorney's personal business accounts
- e) Interest Bearing Account vs. Attorney I.O.L.A. Interest Account

### **12. What happens once all parties sign the Contract of Sale?**

- a) The Seller's Attorney delivers a dated & signed Contract of Sale to the Purchaser's Attorney
- b) The Contract of Sale is deemed fully executed/You are "in Contract"
- c) Give copy of fully executed Contract of Sale to your loan officer
- d) Conduct all Contingency requirements
- e) Submit Purchase Application to the Management Office for the Condominium or Cooperative
- f) Attend Cooperative Interview
- g) Order Title Report / Lien Search
- h) Review the Closing Statement provided to you by your attorney

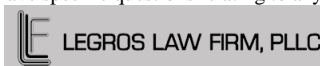
### **13. Can I get out of the Contract of Sale? (Time sensitive /Re-negotiate vs. Termination)**

- a) Finance Contingency Clause
- b) Bank Appraisal Clause
- c) Inspection Clause (reveals issues relating to bugs, insects, rodents, rot; Structural & electrical issues)
- d) Walk-Through Contingency clause
- e) An Act of God - Natural Disaster
- f) Cooperative Board / Condominium Board denial
- g) Seller or Purchaser duties not fulfilled

### **14. Can I have my Escrow Deposit returned to me if the Contract is Terminated?**

- a) Depends - Who is at Fault? Contractual Reasons / Clauses
- b) Partial return / Full Return

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### 15. What is a Deed?

- A **Deed** is a written instrument signed by a grantor, whereby Title is transferred from one to another (National Fire Ins. Co. v. Patterson, 1y70 Okl. 593, 41 P. 2d. 645, 647)

### 16. What is Title?

- **Title** is the formal right of ownership of property. Title is the means whereby the owner of lands has the just possession of property (Black's Law Dictionary).

### 17. What is a Title Report/ Lien Search?

A **Title Report** is the written analysis of the status of Title to Real Property. It includes the following:

- a) Property description (meets & Bounds) block & Lot
- b) Name of titleholder (Sellers)
- c) How the Title is held (TICs, JTWR0S, etc.)
- d) Tax Rate
- e) Encumbrances (mortgage, liens, deeds of trusts, recorded judgments)
- f) Easements
- g) Real Property taxes due
- h) Sightline considerations
- i) Your attorney also helps examine the records to make sure you're buying what you think you are and that the property is free and clear of:
  - (1) Claims of others
  - (2) Judgments / Liens
  - (3) Outstanding deeds of trust or mortgages
  - (4) Unpaid taxes
  - (5) Defective deeds and similar defects
  - (6) No Third Party Claims
  - (7) Foreclosures

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## 18. What is a Title Insurance Policy?

- a) Title Insurance protects Real Estate owners and lenders against any property loss or damage they might experience because of liens, encumbrances or defects in the title to the property.
- b) A Title Insurance Policy insures against events that occurred in the past of the Real Estate property and the people who owned it.
- c) A one-time premium is paid at the Closing of Escrow.
- d) A contractual arrangement entered into to indemnify loss or damage resulting from defects or problems relating to the ownership of real property, or from the enforcement of liens that exist against it.
- e) This type of insurance assures against things inherent within real estate titles, but may not be apparent from the title search.
- f) Some examples of these defects in titles are forged deeds, missing heirs, clerical errors, and etc.
- g) Your attorney will apply for the title insurance on your behalf.

## 19. What are the different types of ways that I can hold Title / Deed?

- a) Fee Simple Absolute (100% - Sole Owner)
- b) Joint Tenants with Rights of Survivorship (Determine percentages for each owner)
  - Used for Married couples
- c) Tenants in Common (determine percentages for each owner)
- d) Shareholder of Cooperative (Proprietary Lease /determine percentages for each Shareholder)

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## 20. What is a Real Estate Closing?

- a) The final Step in executing a Real Estate transaction
- b) Prior to the closing, instructions from the lender are sent to your attorney, a survey is completed, inspections are made, you will have obtained a homeowner's hazard insurance policy, and arrangements for defects or incomplete items will be made.
- c) It's the attorney's responsibility to prepare all necessary closing documents, scheduling the closing, explaining all necessary closing documents, and having them properly executed and recorded.
- d) A Closing Statement will be provided to you prior to listing all fees to be paid at closing
- e) As a Buyer or Seller you will then receive copies of most closing documents, including an itemized record of all monies paid by you on your behalf
- f) The Purchaser will pay all fees
- g) The Seller will provide all keys / FOBs / Alarm access codes

## 21. How long does a Closing take?

Varies based on the issues of the particular deal

## 22. What do I prepare or have to do prior to the Closing?

- a) Bank Commitment Letter
- b) Bank Appraisal Report
- c) Obtain Bank Clearances for the loan ("Clearance to Close")
- d) Bank Closing Disclosure - Time Sensitive
- e) The TILA-RESPA Integrated Disclosure Rule, typically known as TRID, was passed in 2013 and became effective October 3rd, 2015. TRID is also referred to as the "Know Before You Owe" rule because it addresses the information and knowledge borrowers should possess before they get a mortgage and start making monthly payments.
- f) Prepare for and attend the Cooperative Board interview
- g) Obtain Cooperative / Condominium Board Approval
- h) Obtain valid Government issued photo identification (2 forms)
- i) Review the Closing Statement provided to you by your attorney
- j) Prepare all certified checks, check book; bring all bank documents,

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- k) Conduct the Final Walk-Through - create Punch List, if needed
- l) Pack your things (use labels)
- m) Call the moving Company
- n) Scheduled the Move-In date with the management company
- o) Call any Utility companies to turn on/off /transfer services

**23. Who will be present at the Closing?**

- Parties present at a Real Estate Closing - Purchaser, Purchaser's Attorney, Seller, Seller's Attorney, Lender's Attorney, Grant or subsidy Representative, Transfer Agent, Title Closer, Real Estate Brokers/Agents, Witnesses, Power of Attorney Agent; Cooperative Representative; Pay-Off Lender representative; Family Member / Friend for support

**24. What items are included on the Closing Statement?**

- a) Names of Seller & Purchaser / Attorneys / All parties
- b) Closing Date and Time
- c) Closing location
- d) Address of the Premises - Unit #; Block & Lot
- e) NET Amount of Bank Loan
- f) Dollar amount for each check / Payees for each check

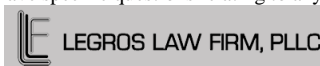
**25. What are some of the things that the Seller should deliver at-Closing?**

- a) Bargain and Sale Deed
- b) Waiver of Right of First Refusal (Condo/ Cooperative)
- c) Title Report/ Lien Search - Free of liens and judgments
- d) NYC Real Property Transfer Tax Forms & Payments (as Grantor)
- e) Certification that Seller is not a Foreign Person (FIRPTA) or IRS Withholding Certificate
- f) Smoke Detector Affidavits (New York Executive Law §378(5).
- g) Keys / FOBs/ Alarm Codes

**26. What are some of the things that the Purchaser should deliver at-Closing?**

- a) Checks for balance of Purchase Price (see Closing Statement. Keep Reserves in your Account post Closing)
- b) Unit Power of Attorney (Condominiums)
- c) Executed NYC Real Property Transfer Tax Returns (as Grantee)
- d) Title - Take Clear of liens and judgments
- e) Closing Adjustment as of 12:00 AM day of closing (Electricity, Water, Maintenance, Common Charges, Real Estate taxes, Fuel, Assessments, Condo/Co-op Fees)
- f) Insurance Policies Home Insurance & Master Policy - effective the day of the Closing

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