

REAL ESTATE



Buying a home can be exciting, filled with hope and anticipation as you imagine settling into your new nest. But before you sign on the dotted line, be sure to consult with the right attorney. As of October 2015, the Dodd-Frank Wall Street Reform and Consumer Protection Act has reformed the consumer mortgage process. To better understand the legal underpinnings of home ownership, we spoke to Amanda C. Tullidge, Real Estate Attorney with Blalock Walters, P. A.

When in the home-buying process should a person consult a real estate attorney? Many of our clients come to us after they have already entered into a binding contract, and we serve as their Title Agent and Closing Agent. However, we recommend that clients consult an attorney before this stage, so we can assist in reviewing the transaction and drafting the contract before they legally bind themselves.

What should a person look for when choosing an attorney? It's beneficial to find an attorney whose focus is in real estate, especially residential real estate, rather than a general practitioner. This is even more critical with the onset of the new Dodd-Frank lending regulations. With a residential real

estate attorney, you'll know you have an informed, knowledgeable advocate who understands how to review and prepare all the necessary legal documents required in the transfer of your property.

How does the role of realtor differ from that of the attorney?

The realtor will be the primary resource to help a buyer find their perfect home, schedule inspections, and apply for financing. The attorney will be the resource for reviewing title and drafting the closing documents. Both the realtor and attorney serve as invaluable resources to the parties in understanding their transaction. The key difference is that only the attorney can speak to the legal rights of the parties and

interpret the contract should the parties have questions or if any dispute arises. In fact, you'll find the suggestion to seek the advice of an attorney included within the language of the standard Florida residential real estate contract.

What are some common points of buyer misunderstanding?

Many buyers seek the advice of an attorney in determining how to take title to property. Many options exist, each with legal and financial implications. A buyer can take title in their individual name, through a trust, or through a corporate entity like an LLC. Trusts help our clients achieve their long-term estate planning goals. LLCs can provide buyers with certain insulation from

legal liabilities, especially if the property will be used for rental.

Other issues arise when more than one person is purchasing the property together. We assist our clients in determining if they should take title as tenants in common, joint tenants, or tenants by the entirety. These different classifications, which will be reflected in the deed, can affect everything from rights upon the death of a co-buyer, to creditor rights, to tax treatment. For example, if a co-buyer dies, their interest passes to the surviving buyer if they have taken title as joint tenants or tenants by the entirety. But if a tenant in common dies, their interest passes to the person specified in their will.

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Another area that often needs further explanation is the restrictions on property revealed by a title search. These can include rights of others to cross or use your property, known as easements. These may also include restrictions established by your subdivision which regulate the size of the house to be built on the lot, the location of the house as set back from the street, the ability to build fences, etc. Condominium restrictions often limit the ability of buyers to rent their property, impose monetary assessments, and enforce varying use constraints. It is critical for

buyers to understand these restrictions before purchasing a property. An experienced real estate attorney can explain their implication to a buyer.

Finally, I find there to be some misconceptions about the cost of closing with a title company versus closing with an attorney. Some buyers believe that closing with a title company is less expensive, but the price of title insurance is set by the state of Florida, so the cost of obtaining it through a title company or an attorney is the same. While both title companies and attorneys

are able to complete a basic transaction and issue title insurance, only an attorney can offer legal advice if a title issue arises, draft non-standard closing documents, and advocate for a client throughout the transaction.

Does a real-estate lawyer review the loan documents of the bank or only the sale transaction?

When engaged solely as the Closing Agent, the attorney does not do a substantive review of the loan documentation. However, a client can retain us to provide a more thorough overview and analysis for their benefit.

▶ do

CONTACT AN ATTORNEY to understand your legal rights before entering into a binding contract.

CHOOSE A FINANCING CONTINGENCY if there is any possibility you will be obtaining a loan, and ensure you have ample time for your lender to bind your loan.

BE PREPARED WITH DOCUMENTATION related to your property, including mortgage payoff information, your prior title commitment, and prior survey (for sellers).

▶ don't

LET YOUR INSPECTION PERIOD EXPIRE without conducting a home inspection and other necessary inspections on the property.

IGNORE LEGAL RESTRICTIONS which appear in your title search.

COVER UP KNOWN DEFECTS IN YOUR PROPERTY. Be sure to include this information in the Seller's Disclosure portion of the contract (for sellers).



▶ **AMANDA TULLIDGE**

attended University of Florida's Levin College of Law, where she served as Notes & Comments Editor for *The Florida Law Review* and graduated Order of the Coif. In 2013, she joined Blalock Walters, P. A. to focus on residential real estate. She serves as the Secretary of the Manatee County Young Lawyers Division and co-founded Cheers for Charity under the Lakewood Ranch Community Foundation.

► terms

TITLE AGENT

The person tasked with ordering the title and lien search and reviewing its contents. The title agent clears the requirements shown on Schedule B-I of the title commitment and reviews the exceptions shown on Schedule B-II. After closing, the title agent issues a policy of title insurance on the property.

CLOSING AGENT

The person tasked with coordinating the closing and drafting the documents necessary to complete the sale.

FINANCING CONTINGENCY

Stipulates the number of days a buyer has to obtain financing and under what terms (interest rate, term length, etc.). If a buyer is not able to obtain the loan they expect, they must provide timely notice to the seller in order to terminate the contract and receive their deposit back with no penalty. With the advent of the new Dodd-Frank regulations, this provision is extremely important for any Buyer looking to obtain financing.

INSPECTION PERIOD

The time allowed for the buyer to conduct inspections to determine the suitability of the property.

TITLE SEARCH

Confirms ownership of the property and reveals any encumbrances on the property, such as existing mortgages, easements, and restrictions of a condominium or subdivision.

LIEN SEARCH

Reveals any unpaid utility bills, open building permits, or code enforcement issues.

TITLE INSURANCE

Insures against financial loss from defects in title to real property (subject to any exceptions contained therein). An Owner's Policy of title insurance protects the buyer. If a buyer

takes out a mortgage to purchase their property, they will also be required to purchase a Lender's Policy to protect the lender.

FORCE MAJEURE

Permits a delay or excuses either the buyer or seller from performing their legal obligation under the contract in the face of an act of God. Potential home buyers should be aware of this provision as hurricanes are a fact of life for us Floridians.

DEFICIENCY JUDGEMENT

If a bank forecloses on a property and sells it for less than the amount owed on the mortgage, the bank may be able to pursue a monetary judgment against the seller for the balance owed.

DEED

The document that transfers legal ownership of the real property. It is recorded in the public records of the county in which the property is located so all parties are on notice of ownership.

BILL OF SALE

The document that transfers legal ownership of any personal property, for example, art, appliances, or furniture.

CLOSING STATEMENT

Lists every cost associated with the transaction, including real estate agent commissions, mortgage payoffs, tax proration, credits, debits, etc. For consumer loan applications made after the October 3rd deadline, borrowers will be receiving a new form called a "Closing Disclosure."

OWNER'S AFFIDAVIT

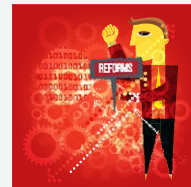
Document signed by the seller that states the property is owned free and clear, and that no judgements or liens exist.

SCHEDULE B-I

This portion of the title commitment lists all requirements to clear title. These requirements may include obtaining a pay-off of the seller's mortgage, ordering an estoppel letter from the Homeowners' or Condominium Association, or terminating a "Notice of Commencement" filed by a contractor on any recent construction.

SCHEDULE B-II

This portion of the title commitment lists any exceptions to coverage for your policy of title insurance. Exceptions are those matters which affect the property which are of record, and often include easements, setbacks, or use restrictions.



NEW LEGISLATION

The Dodd-Frank Wall Street Reform and Consumer Protection Act has mandated an overhaul of the consumer mortgage process. All loan applications made after October 3, 2015, are subject to these new regulations. Speak to your attorney about how this may affect your sale or purchase. Buyers can expect to review a new "Closing Disclosure" form 3-6 business days prior to closing. If the bank fails to timely deliver this disclosure, the closing date must be rescheduled. Sellers may find this potential delay makes cash offers more appealing.