

THE “STRESS – LESS” REAL ESTATE CLOSING

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These items may help ease the stress you feel in purchasing or selling Florida real estate. The items mentioned below may help with the ideal goal of having a closing with much less stress. Buying and selling real estate involves the active participation by all of the parties, i.e. seller, buyer, broker, and the parties' attorneys. You do not want to be caught off-guard or blindsided by potentially damaging information. What is noted below is not an all-inclusive checklist, and the items are not listed in order of importance – they are only highlights. Every real estate transaction is unique. That is why it is important to have an experienced real estate attorney guide you through selling or buying your real estate.

1. **You Don't Know What You Don't Know.** Sign no document before your attorney has reviewed it and advised you it is ready for your review and signature.

Bonus Information: What is the most important document in buying or selling real estate? You're right, it's the purchase and sell agreement (the “Contract”). After the Contract is signed, the Contract cannot be unilaterally changed. Both seller and buyer must agree to change the Contract in a written, dated, and signed amendment to the Contract.

2. **Contract Review by your Attorney.** The best time to have your real estate attorney review the proposed Contract is before the agreement is signed. This often does not happen. The Contract is signed first and then questions are asked. Once the parties sign the proposed Contract, it becomes a binding agreement, i.e. both parties are legally obligated to proceed to a closing, subject to any exceptions or conditions stated within the Contract. If the seller or buyer feels compelled to sign a proposed Contract fearing losing a deal, then insert a provision that states that the Contract must be approved by the party's attorney, spouse, partner, or lender.

3. **Survey and Title Insurance.** You, as buyer, should obtain a copy of the most recent survey right after the Contract is signed. Give a copy of the survey to your attorney and title insurance/closing agent. Discuss with your attorney whether the survey should be updated, and in most transactions, the survey should be update, and a copy of the updated survey given to your attorney and the title insurance agent.

Bonus Information: The survey exception in a policy of title insurance is a big loophole in allowing the title insurance company not to provide coverage for a claim made under the owner's policy of title insurance. If an issue arises after closing that would have been discovered with an up to date survey made near to

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the closing date, the title insurance company does not have to respond to the claim or pay damages.

More Bonus Information. Verify public or private road availability for access to and from the property, i.e. access that satisfies you. The survey should show ingress and egress to the land. Access may be restricted by adjacent properties, or the Buyer may have to construct buyer's own roadways. Check this during the inspection period; see paragraph 3 below.

4. **Physical Inspection**. Have the land and its improvements inspected by a professional. The buyer will want the Contract to include, as a condition to close, a satisfactory inspection of the property being purchased.

For residential real estate, use the service of a general contractor or you may contact the American Society of Home Inspectors (www.ashi.com) and the National Association of Home Inspectors (www.nahi.org) to provide names and telephone numbers of local members of its respective organization. Some states do not license or certify home inspectors, so you will want to be certain the person you hire is reputable, adheres to the standards of his or her organization, and has references. If you have a particular company or person that has done inspections for you, write that source into the Contract as the party that must give the satisfactory review. You may even want to state certain levels of minimum acceptability, such as - in the opinion of the inspecting party - the roof will not require replacement for a certain minimum time period.

5. **Hazardous Materials**. For commercial property, and sometimes it is appropriate to do with residential real estate, have performed environmental inspection performed. The Contract should say buyer's obligation to close is subject to receipt of an acceptable environmental inspection report. For commercial real estate, plan to have at least a Phase I Environmental Audit. This often includes the adjacent land. Toxic materials may leach into water tables and wells from nearby property. For residential real estate, an audit may be performed by an environmental engineer that is not as extensive as the Phase I Audit. It's called a "transaction screen process" (TSP). A TSP is about one third the cost of a Phase I audit. A TSP is useful when the party buying or selling residential real estate is an institution such as a charity.

6. **Zoning Regulations**. Make certain that the land is being used for its intended purpose. Your attorney and in some states your surveyor or the title insurance agent may make that determination. Do not assume that the current owner's use or improvements comply with current zoning restrictions.

Bonus Information: If you are the buyer, include in the Contract that buyer's obligation to close is contingent on buyer's review and approval of the restrictions, limitations, and obligations embodied in the Declaration of

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Easements and Restrictive Covenants. Example: You have three 75 pound dogs and the restrictions state you may have only two dogs each weighing no more than 40 pounds.

7. **Disclose Availability or Unavailability of Public Utilities and Services.** The Seller should notify the Buyer about the availability and the accessibility of utilities. If there are known obstacles to availability, full disclosure is advised. The buyer should get confirmation that access or a connection to various utilities, such as water, sewer, garbage, electric, telephone, and cable is available. Availability does not mean at zero or low cost. The Buyer should also check on the cost to connect. The Buyer may want to check on emergency services that would service the area – Emergency Medical Services (ambulance), fire, police, or sheriff's departments.

8. **Real Estate Taxes.** If the property has not been assessed recently, buyer must know that their property tax will be based upon the purchase price and will probably increase. This could mean a significant increase in taxes, which one may not have anticipated.

9. **Personal Property Included in Sale.** An accurate inventory of all personal property included as part of the sale should be in the Contract. As examples, this may include window treatments, furniture, equipment, lighting fixtures, swimming pool equipment and electronic equipment. Be detailed in your description. Example: A pool sweep to the Seller means a brush with a long handle; to the Buyer it means an automated system hooked up to the pool's circulation system.

Bonus information. For Seller, identify in the Contract what fixtures or other items in the house is excluded from the sale and Seller may remove. Example, is a chandelier that is a family heirloom that Seller will want to retain.

10. **Insurance.** Buyer should include in the Contract that Buyer's obligation to close is subject to the availability and affordability of proper casualty and flood insurance.

11. **Service Providers.** Use licensed and insured contractors and service providers. Licensed service providers may have a longer, more stable track record, plus there is some indication they have experience or knowledge of their trade specialty. Get at least one and preferably two references and do talk with those references.

12. **Details.**

- Buyer, obtain a copy of the existing survey and the prior title insurance policy from Seller. Provide those to the attorney or title insurance agent that will close the transaction and issue title insurance. Provide the attorney or title insurance agent with a copy of the signed Contract.

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- Obtain homeowners' association information, i.e. name of homeowner's association, the person to contact at the HOA, and their telephone number and email address.
- Mortgage loan payoff(s). Is there more than one mortgage? What are the loan numbers? Provide a coupon from the mortgage company or a recent mortgage statement to the title insurance agent or attorney closing the loan. These usually contain the loan number and a telephone number to call to order a loan payoff statement.
- Avoid duplication of tasks. Confirm with the attorney or title insurance agent your understanding of who will obtain the updated survey, pest inspection, septic system inspection, environmental inspection and report, home inspection, etc. The buyer may be doing some of the foregoing, e.g. coordinating the pest inspection time.
- Collect as much data as you can from seller and buyer when the Contract is signed, such as daytime and evening contact phone numbers and email addresses. Much time is used trying to track down buyers and sellers. Some don't like to be called at work, some prefer to be called at work, etc. If this information is available at the beginning of the transaction, it would help to have a smoother closing process.
- Know the identity and contact information for the players in the transaction including the attorney, title insurance agent, surveyor, and inspectors, i.e. their telephone numbers, contact names, and email addresses.

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