



Real Estate: Frequently Asked Questions

- **What is the process for buying residential real estate?**
- **What is the process for selling residential real estate?**
- **At what point in the process do I need an attorney?**
- **Can't I just use the bank attorney?**
- **When do I pay the attorney?**
- **Do I discuss my questions with my realtor or my attorney?**
- **Can I move into my new house before the closing?**
- **How do I notify my utilities and taxing authorities that my property has been sold?**
- **What are prorations?**
- **What documents does my attorney need to handle my closing?**
- **What is title?**
- **What is title insurance?**
- **Do I need a survey?**

What is the process for buying residential real estate?

1. Contract review and signing
2. Property Condition Disclosure Statement
3. Inspection
4. Financing
5. Survey
6. Title review
7. Closing

1. **CONTRACT REVIEW AND SIGNING:** During this stage, if you are working with a real estate agent or realtor, you will have typically signed a real estate contract drafted and approved by the Warren, Washington or Saratoga County Board of Realtors and/or the Bar Associations for those respective counties. Down payments and/or deposits are made at this point, with the monies usually deposited in an escrow account with the realtor. The contract sets forth your rights as well as your responsibilities in the closing. It includes the purchase price, description of the property, the realtor's best estimate of a closing date, financing contingencies by certain dates, rights of inspection by certain dates, realtor's fee, attorney review clause, and other issues relating to the purchase. Once the contract is signed, it is time to deliver a copy to your attorney. Your attorney is generally provided with a minimum of 3 and often as many as 5 business days to review the contract to make any necessary changes. If you require more time to select an attorney and have the contract reviewed, you and your realtor should ensure that the contract allows you the time you need. Otherwise, you will have missed the opportunity for your attorney to review and adjust the contract terms as needed.

2. PROPERTY CONDITION DISCLOSURE STATEMENT (PCDS): The seller or your realtor will, in most cases, provide you with a PCDS. This is an important disclosure document and should be reviewed carefully by you and your Inspector. If you are not provided with a PCDS for your residential purchase, you are entitled, by statute, to a \$500.00 credit against purchase price, which is not incorporated in any negotiated reduction in sales price. Responses of the seller in the PCDS are limited to the seller's personal knowledge. A response of "Don't Know" should alert both you and your Inspector that further inquiry and/or a more thorough inspection may be necessary. Knowingly false statements of seller may support legal action later, but such legal action should not be, and is not, a preferred course. We want to be reasonably assured that the home you get is, in fact, the home you thought you were buying.

3. INSPECTIONS: We strongly recommend that the buyer engage a home inspection company and obtain a thorough and complete inspection of each and every major system of the home or property. After the closing, it is too late. The buyer is entitled to do a number of inspections to insure that the property has no flaws which are discoverable. Some Inspectors offer two levels of inspection - a general inspection and a detailed inspection. Consider the property carefully and select the type most suited to your circumstances. Inspections include termite inspection, structural inspection, septic and water quality inspection, and even radon inspection in some cases. Any contract which we approve will allow you to do any inspection you choose. Typically, however, the cost of these inspections is the buyer's responsibility.

If the inspection is completed in a timely manner and reveals a significant defect, you are generally permitted to withdraw from the contract and take back your deposit. You should note, however, that most realtor-originated contracts contain a specific "cost to cure" provision, meaning a single item cost-to-cure must exceed a certain amount, not a total cost for multiple items. If the inspection reveals any deficiencies which you feel require further negotiation as to repairs or price with the seller, be sure you discuss them with your realtor and your attorney and that the matters are brought to the attention of the seller by the "inspection contingency date" in the contract. Failure to meet this date effectively waives your rights to further negotiation or to cancel the contract in the event that the defects are serious. While these matters can sometimes be handled through your realtor, be sure to advise us before the contingency date has expired.

Please be particularly mindful of the limitations the Inspector has placed on his inspection. Areas of potential concern which were not actually inspected due to access or other exceptions to the Inspectors services may be areas of concern later.

4. FINANCING: Most buyers of real property obtain financing from a lending institution. In order to obtain the financing, you will need to fill out a credit application and provide the lender with financial information which they will evaluate in order to approve a loan to you. The lending institution will have you sign a note and a mortgage at the closing. The note is the promise to pay back the money you are borrowing to complete your purchase; the mortgage secures the property as collateral in the event you default upon the note. In other words, if you do not pay back the note, the lending institution has the right to foreclose and sell the property to repay themselves. As such, your home mortgage is most likely the most important debt that you have and you should at all times insure that it is paid promptly. Notes and mortgages vary in form, and they will be reviewed in detail with you at the closing.

5. **SURVEY:** A survey is a document, prepared by a professional land surveyor, which locates the boundaries of the property and the structure(s) within the boundaries, and any encroachments. It also states the acreage or square footage of the parcel. Without a survey, there is absolutely no way to determine where your actual property lines are or ensure the placement of your future home is within the property lines. Without a survey, you are accepting the responsibility for any set of facts which an accurate survey may show. Neither the attorney review of title nor title insurance will afford specific protection for such facts, so a survey may prove to be a worthwhile investment. Arrangements for a survey will need to be made promptly, as this may be a service which cannot be completed quickly. We strongly recommend you obtain a survey for the property you are about to purchase. We would be happy to provide you with the names of several surveyors who would be able to assist you. Please let us know if you have elected to have a survey done and the name of the surveyor you have chosen. We will need to provide certain additional information to your surveyor in order to assure that their map bears the required certifications to you, the lender and the title insurance company.

6. **TITLE REVIEW:** Next, the buyers, through their attorney, must review the title. The title is evaluated by examining an updated abstract which compiles all the deeds, conveyances and encumbrances affecting the property, including, but not limited to, mortgages and judgments. A tax search is also completed. Prevailing custom provides that the abstract must go back at least 40 years, showing the property to be free of title encumbrances, except for the usual utility easements. Your lender will likely require "loan" or "mortgage" title insurance as a condition of its mortgage commitment. The lender's policy does not provide specific title insurance coverage to you as owners. We strongly recommend that you obtain owner's title insurance. Title insurance is a one-time cost. Substantial savings are available to you if you order both loan and owner's coverages at the time of closing. Our staff will be able to answer any questions you may have in this regard. Upon purchase, the buyer is insured against later challenges to the title that are covered by the title insurance policy. The title company will defend you in litigation, if necessary, and indemnify you, which means pay you back, in the event there is a successful challenge. Even though we will carefully review your abstract, it is always possible that certain defects of the title are not apparent, even with the most diligent review. The most effective way to protect against these hidden defects is by obtaining owner's title insurance.

7. **CLOSING:** The final phase of purchasing real estate is the closing. Once all the requirements of your lending institution have been satisfied, your lending institution will contact both the buyer's and seller's attorneys and advise them that the transaction is cleared to close. Please note that the attorneys cannot schedule a closing until the bank has provided the clearance. At this point you will need to have a paid homeowner's insurance binder (hazard insurance) provided to us by your insurance agent. The closing will be held at the lending institution or the lender's attorney's office. Approximately 1 day prior to the scheduled closing date, we will notify you of any funds that you must bring with you to the closing. The figure provided to you will include the purchase price, closing expenses, and the proration of certain costs, such as taxes. This means that whatever taxes were pre-paid by the seller will be paid back to the seller by you at the closing. You are required to bring good funds (i.e., a bank officer's check or a certified check), and most often are told to have this check made payable to yourself, to be endorsed over to the seller at the closing table. At the closing, you will pay the seller and sign all the necessary documents, including the note and mortgage. We always suggest that you also bring a few personal checks in case there are last minute adjustments. Please note that pursuant to the 'USA Patriot Act', a governmental photo I.D. (e.g., a driver's license) is required to be produced at closing.

What is the process for selling residential real estate?

1. Contract review and signing
2. Inspection
3. Title documentation/searches
4. Closing

1. **CONTRACT REVIEW AND SIGNING:** During this stage you will have typically signed a real estate contract drafted and approved by the Warren, Washington or Saratoga County Board of Realtors and/or Bar Associations for those respected counties. Your realtor will ask you to complete and provide a Real Property Disclosure form to the buyer. Down payments and/or deposits are made at this point, with the monies usually deposited in an escrow account with the realtor. The contract sets forth your rights as well as your responsibilities in the closing. It includes the purchase price, description of the property, the realtor's best estimate of a closing date, financing contingencies by certain dates, rights of inspection by certain dates, realtor's fee, attorney review clause, and other issues relating to the purchase. Once the contract is signed, it is time to deliver a copy to your attorney. Your attorney is generally provided with a minimum of 3 and often as many as 5 business days to review the contract to make any necessary changes. If you require more time to select an attorney and have the contract reviewed, you and your realtor should ensure that the contract allows you the time you need. Otherwise, you have missed the opportunity for your attorney to review and adjust the contract terms as needed.

In the event you have chosen not to use the services of a real estate agent, please contact us as soon as possible in order that we may be of assistance in preparing a contract of purchase and sale. A formal appraisal may be helpful to you in establishing an initial offering price. We can provide you with the names of several local appraisers if you so desire. Note that appraisers charge a fee for their services.

Please note that sometimes the property has known defects or other "issues". These are required to be disclosed in a Property Condition Disclosure Statement (PCDS). If these issues are significant, you may wish to have an inspection done in advance, providing potential buyers with a copy. The price set will often then reflect these known, disclosed problem areas.

2. **INSPECTIONS:** The contract usually allows for the buyer to engage a home inspection company and obtain a thorough and complete inspection of each and every major system of the home or property. The buyer is entitled to do a number of inspections to insure that the property has no flaws which are discoverable. Inspections include termite inspection, structural inspection, septic and water quality inspection, and even radon inspection in some cases. Typically, the cost of these inspections is the buyer's responsibility. If the inspection is completed in a timely manner and reveals a significant defect, the buyer is generally permitted to withdraw from the contract and take back their deposit. If the inspection reveals any deficiencies which the buyer wishes to have you address, they may ask for further negotiation as to repairs or price reductions to cover repairs through their realtor. These matters should be brought to your attention by the "inspection contingency date" in the contract. Failure to meet this date effectively waives the buyer's rights to further negotiation. While these matters are often best handled through your realtor, if you need our involvement, be sure to advise us before the contingency date has expired.

3. **TITLE AND SURVEY REVIEW:** Next, the buyers, through their attorney, must review the title and survey. Depending upon the county in which your property is located, you may be responsible for providing existing back title (an Abstract of Title or Owner's Title Insurance Policy) to our offices for updating as the contract may require. This is generally your responsibility in Warren County and may be your responsibility in Washington County. In Saratoga County this is generally not the seller's

responsibility. If you cannot provide some form of back title, we can have an abstractor create one for you. However, this is an added expense to a seller, which can be avoided or at least reduced if the existing documents are located. The title is evaluated by examining an updated abstract which compiles all the deeds, conveyances and encumbrances affecting the property, including, but not limited to, mortgages and judgments. A tax search is also completed. The abstract must go back at least 40 years. A survey is a document, prepared by a professional land surveyor, which locates the boundaries of the property and the structure(s) within the boundaries. If you have had a survey of your property, it should be provided to the buyer's attorney for review.

4. **CLOSING:** The final phase of a real property sale is the closing. Once all requirements of the buyer's lending institution have been satisfied, they contact both buyer's and seller's attorneys and to advise that the transaction is cleared to close. Please note that the attorneys cannot schedule a closing until the buyer's bank has provided the clearance. Once the closing is scheduled, we will prepare a closing statement to outline the amounts due to you for the sale, after the proration of certain costs, such as taxes and water bills, as well as your closing costs, such as abstracting. We will handle the payment of any liens against the property, such as open mortgages and home equity loans. Approximately 1 day prior to the scheduled closing date, we will review this closing statement with you. Please note, at the closing you will be required to sign affidavits stating that you have an operable smoke alarm and carbon monoxide detector in the home. If you do not have these alarms, you will need to install them prior to the closing. Please note that pursuant to the 'USA Patriot Act', a governmental photo I.D. (e.g., a driver's license) is required to be produced at closing.

At what point in the process do I need an attorney?

Most buyers and sellers do not need an attorney's involvement in their transaction until a contract is signed and delivered and the "attorney review" period in the contract is activated. However, under certain circumstances it may be very important to engage counsel before the property is listed for sale. A contract drawn to uniquely address the particular attributes of the property may be the most appropriate course of action, rather than reliance upon a more standard contract of purchase and sale. We are ready to assist you under these circumstances as well.

Regardless of your particular situation, it is often beneficial to select and alert an attorney to a forthcoming contract as the attorney review period is time sensitive. Once the contract is signed, a copy should be delivered immediately to your attorney. You or your realtor can simply fax a copy to your attorney's office to begin the process.

However, you may hire or consult with an attorney at any point in the process, including when you are only just considering placing your property on the market, or considering making an offer on a property. You need an attorney when you have legal questions, regardless of the point in the process.

Can't I just use the bank attorney?

"Using the bank attorney" equals not having an attorney at all. While the bank's attorney will sometimes attend to details normally required of your attorney if you had one, having them do so does not require them to advise you in any way or to act in your best interests. They are acting in their own client's best interests, and you are unrepresented. The bank's attorney represents only the bank, not the buyer nor the seller.

When do I pay the attorney?

The fee charged by this office for a closing is collected as a closing expense at the time of the closing. You do not pay the fee in advance as a retainer. However, quoted fees are not contingent on the outcome of the transaction. Our clients must understand that an attorney cannot guarantee the outcome of a real property transaction. If the transaction fails to close, the client shall receive a billing statement within 30 days, based upon the time our firm has devoted to your representation, and detailing any costs and disbursements which are due to third parties (e.g., abstractor, title company), or have been disbursed by us on your behalf.

Do I discuss my questions with my realtor or my attorney?

Once a contract is signed, your attorney assists you with the following:

1. Attorney Review of Contract of Sale
2. Follow up on Contract contingencies (and removal thereof)
3. Review of back title/search work, tax maps or surveys, and preparation or review of deed
4. Advice and consultation as needed
5. Schedule and attend closing
6. Preparation of closing statement and supplemental closing documents
7. Review and confirm lender's HUD1 settlement statement
8. Handle mortgage payoffs
9. Attend to recordation of closing documents
10. Prepare necessary IRS 1099 forms
11. Preparation of Power of Attorney

Once a contract is signed, you should continue to consult with your realtor regarding the following:

1. Scheduling of inspections
2. Requests for repairs
3. Communications with your buyer/seller

Can I move into my new house before the closing?

Under certain circumstances, early possession of a property by a buyer becomes desirable or necessary. Pursuing this option should not be taken lightly, as there are associated insurance liabilities, rent payments, and other difficulties which can arise. However, it is possible, if all parties are in agreement, to take possession under an Early Occupancy Agreement. Should you feel this option is right for you, the individual situation should be discussed in detail with your attorney.

How do I notify my utilities and taxing authorities that my property has been sold?

When the closing is scheduled by your attorney's office, your attorney will notify the real property taxing authorities of the new owner. Your attorney will also notify any municipal water and sewer providers, and order the final bills. It is your responsibility to notify your other utility providers, such as the electric, gas, oil, cable and telephone providers. Finally, sellers should cancel their homeowner's insurance policy immediately AFTER the closing.

What are prorations?

Prorations are line items on your closing statement where a seller is reimbursed for items they have already paid for a time period extending past the closing date, or, in other words, items they have paid for a time period when they no longer own the property. For example, if the seller pays an annual Town & County tax bill in January for the whole year, and then sells the property on July 1st, the buyer will reimburse the seller for the period of July 1st through December 31st.

What documents does my attorney need to handle my closing?

A seller should provide us with the following:

- Current Deed
- Owner's Title Insurance Policy
- Abstract of Title
- Survey
- Town/County Tax Receipt (current year)
- School Tax Receipt (current year)
- Village Tax Receipt (current year - if applicable)
- Most recent water bill receipt
- Turn in checks for credit line mortgage at closing
- Death Certificate - if any owner on deed is deceased
- Release of Estate Tax Lien - if any owner is deceased

What is title?

Title to a piece of property is the evidence that the owner is in lawful possession of that property. Your deed will most likely contain specific warranties. We will be pleased to discuss them with you.

What is title insurance?

Use these links for informative and concise information on what title insurance is and how to decide if you need it.

http://www.stewart.com/docs/SISCO_0814_169_10_What_is_Title_InsuranceSTATICLowRes.pdf

<http://www.stewart.com/why-title-insurance/what-does-title-insurance-protect-you-from-a-lot>

Do I need a survey?

Without a survey, there is absolutely no way to determine what your actual property lines are or the placement of your future home within the property lines. Without a survey, you are accepting the responsibility for any set of facts which an accurate survey may show. Neither the attorney review of title nor title insurance will afford specific protection for such facts. Thus a survey may prove to be a worthwhile investment.