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The Legalities of Real Estate Contracts

by [Barbara Ballinger](#) and [Margaret Crane](#) | March 30, 2018



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Congratulations! You've found the house of your dreams, completed negotiations, had the house inspected, put down your deposit, and now it's time to close the deal. At least, that's how you

hope the story proceeds. And it will, if you've done your due diligence.

An important step when buying or selling property could involve a real estate attorney – to review your contract and guide you in the process, ensuring that transfer of ownership and related matters are handled correctly. Whether you use an attorney may depend on state requirements and your own comfort level, since not all insist on such representation.

Regardless, it's a smart idea to hire a real estate lawyer to study your contract. Problems can arise both for the buyer and seller and even experienced home owners. Example: A former property owner may not have addressed an easement issue, so you may not have legal access to your dream home! Or as the seller, you may have neglected to exclude that expensive chandelier in your listing agreement and you could face legal consequences by removing it just before closing.

The devil can be in the details. "You don't want to

leave anything to chance," says [Kyle D. Smith, a Boston real-estate attorney with KDS Law PC](#), who's also of counsel with Canner Law Associates. For this reason, it's usually unwise to print off a copy of a standard agreement from the internet. "It's the largest purchase you may make and it's not the time to 'cheap' this one out since you usually do get what you pay for," says [Neil B. Garfinkel, a partner at Abrams Garfinkel Margolis Bergson LLP in New York City](#).

And even though many house sales involve a standard purchase agreement or contract, each side typically will make changes that pertain to specifics of the deal by attaching buyer and seller favorable language in what are called "riders" such as those that address remedies for any problems uncovered during the inspection. The following five pointers won't cover everything but will apprise you of some of the most important steps to safeguard your interests, so that you close on your new home without issue and can pop open champagne and celebrate without any regrets.

Hire a top real estate attorney. Besides knowing whether your state requires an attorney, (for example, it's not required in parts of California or Seattle), hire one who is a real-estate specialist and handles home sales on a regular basis. "This is a specialized field, and you don't want a divorce lawyer handling this contract, unless they're also experienced in real estate," Garfinkel says. Because most buyers and sellers work with a real-estate salesperson, that agent can usually recommend a qualified real estate attorney. Another good source is a lender, as most buyers obtain financing rather than paying cash and lenders deal with real estate attorneys on many matters.

An important trait to consider is the responsiveness of the attorney. Does he or she return phone calls, emails and texts in a timely fashion? Also, make sure the attorney is considerate and knowledgeable, and they need to carefully assess the specifics of your deal. You'll be working closely together, Garfinkel says. "You'll especially want this representation in a

highly competitive real-estate market, which is what we now have in Boston," Smith adds.

Know the cost of working with your legal representative. Prices vary, depending on your location and level of expertise of whom you work with—a partner or associate—so ask in advance. The charge may be a flat rate or by the hour. Smith's firm generally charges a comprehensive fee, between \$750 and \$1,250 for the sale or purchase of a condo or single-family home; multifamily purchases where tenants are being absorbed with the purchase raise a buyer's liability offer more complexity and therefore demand higher legal representation fees. Garfinkel's firm charges a flat fee for homes under \$1 million and a different fee for those above; generally, fees run from \$2,000 to \$3,000. Also, ask if there are any extra fees for printing documents, emailing or making calls. Your financial advisor can advise you whether any of these costs are deductible under the new tax law.

Sign a letter of engagement. This document will summarize the relationship between you and

your counsel, identify the property, will state legal fees for services, including extras, and provide other pertinent information, Smith says. Any fees that deviate from those disclosed in the engagement letter must be separately disclosed and approved by a client prior to the expenditure.

Be sure the completed contract covers all essentials. Some states also dictate when a sales contract is considered finished and what happens at different times in the process. In Massachusetts, the purchase and sale agreement is usually signed within seven to ten business days after an offer to purchase is accepted, at which point additional earnest money is deposited. In New Jersey, a buyer and seller move right to purchase and sale, and the offer to purchase is traditionally bypassed. In New York, it's finalized when both parties sign the contract; then, both sides are bound unless there is some previously drafted contingency agreement such as the right to cancel if a mortgage can't be obtained, Garfinkel says. In New York, it's also

common for sellers to provide a quality of life representation for cooperative and condominium apartments, which states there are no unusual odors or noise complaints. The seller's attorney also may put in writing that they will hold the down payment to protect their client in case the buyer defaults, Garfinkel says. Among a purchase and sale agreement's essentials is proof of a clear and marketable title from the seller that shows no title issues such as outstanding liens. "Title issues are among the most common reasons to delay or derail a sale," Smith says. All states have building codes and municipalities also have separate zoning limitations and requirements. Ensuring that any necessary permits were pulled and that all zoning requirements were followed should also be the focus of a purchase and sale agreement. Contracts may run many pages and vary in their scope, depending on the added riders each side attaches.

Safeguard your signed documents. Besides holding onto the purchase or sale agreement,

each side will want to keep a copy of related documents such as a home inspection, mortgage paperwork, warranties, deed or title transfer, or proof of insurance coverage. It's best to store documents in a secure server, a safe, or bank vault.

You've worked hard to buy your dream home. If you protect yourself by taking the right steps, and that includes hiring a seasoned real estate attorney, you may avoid costly mistakes. Safeguard what will most likely be the biggest purchase of your life.

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