The Nuts And Bolts Of Buying A House For The First Time Buyer

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For most of us, our home is our most prized possession, our biggest financial asset and, of course, our most stressful acquisition. And for those who have not made the leap into home ownership, the thought of buying a house can seem daunting. Fortunately, people have been buying and selling houses for centuries. As such, the process of buying a house has been institutionalized over the years with various agents and service providers employed to marshal you through the process. For first time buyers, the process typically proceeds in the following manner.

The first step is to contact your bank to see how much financing you can obtain. The bank will send you an application form to fill out with all of your relevant information. The bank will use that information to check your credit history and determine your borrowing capacity. Once the bank determines the amount it will loan you, the next step is obviously to find a home that will fit into your needs and budget. If you are unfamiliar with the area, the easiest way to locate a house is to retain a real estate agent to assist you in doing so. Before retaining the agent, make sure that the agent is actually familiar with houses in your area that fit within your price range. The local board of realtors can assist you with locating such an agent.

Real estate agents are generally paid on a commission basis from the seller. Specifically, the seller's real estate agent typically takes a five to six percent commission from the seller for selling the house. The seller's agent then agrees to split that commission with the buyer's real estate agent. As the buyer you will not have to pay your agent directly; rather, it will come out of the sale amount of the house.

Once you locate a home and enter into a purchase agreement with the seller, the bank will typically drive the process. First, the bank will likely require an appraisal from a registered appraiser to make sure the home is actually worth the amount being financed. The bank will also typically require a survey to make sure the boundary lines are actually as represented in the legal description and to uncover all existing easements of record. For those who slept through property class in law school, an easement is the right granted to another party to enter upon and use the land for a specific purpose, such as a city's right to run a sewer line across the property or a neighbor's right to gain access to his or her property over a driveway located on your property. The survey also helps uncover those sticky situations where the neighbor builds his new shed on your side of the property line. Finally, the bank may require a home inspection to make sure, for example, your new home is not already inhabited by a family of termites.

If your bank does not require the foregoing inspections and services, you may want to have them performed nonetheless to be sure of exactly what you are purchasing. You might also want to make your purchase agreement contingent on your acceptance of the outcome of those inspections and services. Indeed, it is important to keep in mind that the doctrine of *caveat emptor* ("let the buyer beware" for those you who also slept through contracts) generally applies to all real estate purchases. In other words, the burden is on the purchaser to examine, judge and test the property to make sure the property is acceptable.


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For example, in a recent case the buyers attempted to recover from the sellers the cost of replacing carpet in the laundry room where a litter box was housed. Although the smell of the carpet had been masked by an air freshener during the inspection, the court still found that the buyers had the burden for checking on the condition of the laundry room carpet. The buyers were on notice that not only did a cat live in the home, as one of the buyers sat petting it during the home inspection, but the litter box had been in plain view on the floor of the laundry room during that time. Because they failed to require the sellers to replace the carpet before the transfer, they could not recover afterwards.

Once you have waived all of the contingencies in the purchase agreement and the bank has approved your financing, the next step is to retain a title agent. Your local board of realtors can also assist you in finding a title agent, or your agent may recommend one. The title agent will prepare and organize the closing documents, which generally consist of the deed, legal description of the property, title insurance policy, promissory note, mortgage and the HUD closing statement. The deed is the document that actually transfers the property from the seller to the buyer. The title insurance policy insures, among other things, that the seller actually has good title to the home and that it is properly transferred from the seller to the buyer. The promissory note and mortgage are the documents required by the bank to secure repayment of the loan, and the HUD closing statement details all of the various transfer costs and expenses that are allocated between the buyer and seller.

The title agent will also typically host the closing, which is the culminating event where the buyer and seller sit at the table and execute all of the transfer documents. From the buyer's perspective, the closing is sometimes referred to as the "signing party" where you sign your life away. It is true that the closing can be intimidating due to the fact that the title agent will place a number of documents in front of you for your signature. Keep in mind, however, that you may ask as many questions as you like about the various documents and you should have the title agent fully explain the HUD closing statement so you are comfortable with the allocation of the various transfer costs and expenses. If you are still uneasy about the closing, don't be embarrassed to beg your real estate attorney friends and former classmates to be present with you at the closing to assist in explaining the various documents. (Just explain to the parties that you slept through property class.) In any event, once all of the documents are properly executed, you are officially a home owner.

Congratulations and let the payments begin.

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Learning the necessary legal aspects of your job is difficult enough, but the early years can become even more difficult for young lawyers who neglect the work necessary to learn how to practice law. By learning from your own mistakes and the mistakes of others who have come before you, you may be able to avoid some of these common problem areas and concentrate your efforts on other areas of your law practice that need attention.

[1] *Dennis Kennedy. Twenty Lessons for Lawyers Starting Their Careers, in Law Practice Today. (American Bar Association ed., March 2005).*

[2] *Glenn S. Bacal. Secrets of a Mentor: How Young Lawyers Can Purposefully Evolve into Good and Happy Lawyers, in Arizona Attorney, (State Bar of Arizona ed., November 1999).*

[3] *See Kennedy, supra note 1 page 3.*

[4] *Id. at 5.*

[5] *Id. at 2.*

[6] *Ellen Ostrow. When It Comes to Leadership Training, Have You Been Left to Sink or Swim?, Newsletter: Beyond the Billable Hour available at http://www.lawyerslifecoach.com/newsletters/issue35.html (July 25, 2005).*

[7] *See Kennedy, supra note 1 at 6.*

[8] *Jeffery T. Davis. Collegiality in the Profession: Disagreeing Without Being Disagreeable, The Young Lawyer. (Missouri Bar Association ed., Spring 2005) also available at http://www.mobar.org/ publications/ylsquery.php?item=15 (July 18, 2005).*

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