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## Buyer Information

### **IMPORTANT NOTICE ABOUT YOUR CLOSING (BUYERS/BORROWERS)**

As you may know, our office represents your lender in matters relating to your request for a mortgage loan in order to purchase real estate. We have commenced an examination of the title and have ordered necessary information to complete the closing.

When these matters are completed and reviewed by our staff we will notify you to arrange a time to close the loan. We will also advise you of any funds you may need to complete the transaction. You must bring **CERTIFIED or BANK CASHIER'S CHECKS** made payable to YOU for these funds. In addition, you must bring a valid drivers license or passport with you to closing for proper identification. We cannot close your transaction without this. Please do not forget as this is very important.

Please review the Lender's Commitment Letter carefully. If special conditions are required, they must be met to the satisfaction of the lender **PRIOR** to closing. Also, please review the enclosed instructions and forms carefully with respect to other requirements that must be met prior to closing. Respond to each item applicable to your situation. Directions to our offices are posted on our website at [www.tardiflaw.com](http://www.tardiflaw.com) as well as more information regarding matters discussed in this letter. If you have any questions or comments related to these matters please contact us.

### **REPRESENTING THE INTERESTS OF THE BUYER IN REAL ESTATE TRANSACTIONS**

If this is your first home purchase, or perhaps you haven't purchased a new home in a while, the process may seem confusing. We hope that our office can make the entire purchase process easy and enjoyable for you. There are a few things to remember.

First, understand that the lender's closing attorney, and this includes our office if we are representing your new lender, represents the interests of the lender. Therefore, it is not the responsibility of lender's counsel to advise you on your rights and obligations regarding your new home purchase. Because of this, we highly recommend that you retain your own attorney to represent your interests in this process. Our office can represent you, even if we are handling the closing for your new lender, for a reasonable fee and give you the comfort you need to proceed confidently toward the purchase of your new home. Some of the services we provide when representing buyers are:

- Negotiation and preparation of the Offer to Purchase and Purchase and Sale Agreement to protect your interests and concerns.

- Resolve issues which may arise during the pendency of your purchase and assist you if you are selling real estate to purchase your new home.

Explain the mortgage process and assist you in understanding just what the Lender's Commitment Letter says. Assist in the coordination of the closing and represent you at the closing, review all closing documents and explain their meaning and significance to you.

Answer questions you might have and resolve disputes that may arise at any time during the closing process. Please call our office to discuss how we can represent you and what our fees are for this service. We look forward to hearing from you.

### **WHAT YOU SHOULD KNOW ABOUT YOUR CLOSING (BUYERS/BORROWERS)**

1. **INSURANCE.** At the time of closing, please bring with you a homeowner Fire and Extended Coverage insurance policy or binder for such insurance either in an amount at least equal to the total of all new mortgages on the property or 100% of the replacement cost of all insurable buildings and other improvements on the land. **IF YOU ARE GOING TO RELY ON THE 100% REPLACEMENT COST AMOUNT AS SUFFICIENT INSURANCE, THEN THE POLICY OR BINDER MUST STATE THAT 100% REPLACEMENT COST IS IN EFFECT.** The insurance policy or binder must name all of the persons who will hold title to the property. The mortgage clause adding the mortgagee's insurable interest to all policies **MUST BE WORDED** in accordance with the instructions listed in your commitment letter issued by your lender.

Your insurance agent **MUST** fax or deliver to our office a copy of a binder for such insurance along with a receipt showing that the first year's premium is paid in full, at least three (3) business days prior to closing.

2. **FLOOD INSURANCE.** If the premises is located within a specially designated federal flood hazard area then flood insurance is a mandatory requirement and you must provide a flood insurance policy together with a paid receipt for the full first year's premium at or before the closing. Please note that if the premises is located within Zone B, flood insurance is not required.

3. **RENT LOSS INSURANCE.** If this transaction involves a loan on investment premises or a 2-4 family dwelling then rent loss insurance may be required and an appropriate binder to that effect will be required at or prior to closing. You should check with the bank for applicability of rent loss insurance to your loan.

4. **TITLE INSURANCE.** The lender requires that they be provided with a lender's title insurance policy (loan policy) to protect their interest in your property up to the amount of the mortgage. While the premium for the loan policy is included in your closing costs, it does not protect you. Your ownership interests are insured only by an owner's title insurance policy (owner's policy). While the lender's coverage under the loan policy decreases as the mortgage is paid down and terminates when the final payment is made, your owner's policy remains in effect for as long as you and your heirs own the property. The owner's policy is available for a one-time premium and at a discounted rate if purchased simultaneously with the loan policy at the time of closing.

The owner's policy provides coverage for numerous matters which are not covered by the standard attorney's Certification of Record title and which are not discoverable by searching the land records. Typical examples of such matters include forged documents, the incapacity of a grantor, undisclosed or missing heirs, missing signatures, mistakes in recording, unknown creditors and problems involving access to the land. The best owner's policy now available is known as the Star policy, which provides additional protection for problems such as zoning and building permit violations, restrictive covenant violations, encroachments and defects in title.

Because we believe that obtaining an Eagle Owner's Title Insurance Policy is in your best interest we will plan to issue same and include the additional premium cost in the settlement figure you will bring to closing unless you advise us to the contrary.

5. **CONDOMINIUM INSURANCE.** If the mortgage involves a condominium unit, we will require a Certificate of Insurance from the insurance carrier for the condominium naming you and the association and identifying the unit you are purchasing. Please contact our office for the exact language naming the bank. Please note that you may be required to purchase additional insurance if the insurance company does not provide 100% replacement cost coverage.

6. **OTHER CONDOMINIUM REQUIREMENTS.** A "6 (d)" certificate stating that there are no unpaid common charges to the condominium association as of the date of closing must be issued and sent to us prior to closing. This certificate is obtained from the trustees or managers of the condominium and must be in the form prescribed by law. You should be sure that the seller procures such a document before the closing.

7. **MANNER IN WHICH TITLE WILL BE HELD.** Below, you will find an explanation of some options on how to hold title to real estate. Please advise our office on how you would like to take title to the property and fax it back to us. This information should be provided to us as quickly as possible since many documents which we prepare require this knowledge.

8. **OUR CERTIFICATION OF TITLE.** The following matters apply only if the transaction involves a purchase of real estate with a dwelling designed to be occupied by not more than four families and occupied in whole or in part by one or more of you. For a detailed explanation please see Massachusetts General Laws, Chapter 93, Section 70. We are required to certify to you that the title to the premises meets the standard established by that law. Our certification to you should not be construed as establishing an attorney/client relationship between you and our office. The services we render are only on behalf of the mortgage lender unless other arrangements are made with our office, and we cannot advise or counsel you relative to the transaction. If you wish to obtain legal advice regarding the quality of the title or with regard to some other aspect of the transaction, you should retain independent counsel.

9. **SMOKE AND CARBON MONOXIDE DETECTOR COMPLIANCE.** We call your attention to the provisions of Massachusetts General Laws, Chapter 148, you may be required to execute a certification at the closing that you have inspected the installation of the smoke and carbon monoxide detectors and are satisfied as to compliance with this law. You should contact the sellers and ensure that they have obtained, and will bring with them, a current certification from the city or town fire department relative to the installation of smoke and carbon monoxide detectors. The foregoing may not apply in certain commercial transactions. If you are unsure of the applicability of this law, please check with your counsel or contact our office.

10. **WATER, SEWER AND ELECTRICITY.** You should ask the sellers to obtain a final reading of the water meter so that all outstanding water and sewer bills may be taken care of at the closing. If you are purchasing a condominium unit, it is likely that water and sewer charges are included in the monthly condominium fee. In that case, a final water and sewer bill is not required. If electricity is provided by a municipal light plant, the sellers should obtain a final electric reading.

11. **HOMESTEAD DECLARATION.** Our office can prepare a Homestead Declaration for you for this transaction if the home you are purchasing will be your primary residence. Under Massachusetts law an owner of a home who intends to occupy it as their principal residence can protect a portion of the equity in their home by merely filing a Declaration of Homestead in the Registry of Deeds where the property is located. Please let us know if you want us to prepare and record this Declaration.

#### OUR FIRM'S PRIVACY POLICY NOTICE

This notice is provided to you pursuant to the Privacy of Consumer Financial Information Act and the Federal Trade Commission's implementing regulation hereunder, 16 CFR Part 313.

1. We collect nonpublic personal information about you from the following sources: information we receive from you on applications or other forms either directly from you or from lenders and their affiliates or agents;

2. We do not disclose any nonpublic personal information about our clients, borrowers, or sellers to anyone, except as is necessary in the mortgage loan transaction as may be necessary to effectuate the transaction with the lender that you have requested; to prevent fraud or unauthorized transactions; as otherwise required or permitted by law.

3. We restrict access to nonpublic personal information about you to those clients, lenders, third parties and employees who need to know that information to provide the requested settlement services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

## **WAYS TO HOLD TITLE IN MASSACHUSETTS**

THE FOLLOWING INFORMATION IS INTENDED ONLY TO GIVE A BRIEF DESCRIPTION OF THE THREE COMMON WAYS OF HOLDING TITLE AND IS NOT PROVIDED FOR THE PURPOSE OF ADVISING YOU HOW TO TAKE TITLE. IF FURTHER INFORMATION IS DESIRED ABOUT CREDITORS' RIGHTS AGAINST THE TITLE, ADVANTAGES AND DISADVANTAGES WITH RESPECT TO ESTATE PLANNING AND OTHER PRACTICALITIES, YOU SHOULD SEEK LEGAL COUNSEL FROM YOUR ATTORNEY OR RETAIN AN ATTORNEY FOR ADVICE IN THESE MATTERS.

In order to properly prepare the mortgage documents we require information from you as to how you intend to take title to the real estate.

The three most common ways two or more persons may hold title to real estate are: TENANTS IN COMMON, JOINT TENANTS or as TENANTS BY THE ENTIRETY (tenants by the entirety is only available for married couples.)

### What Happens Upon Death

1. When title is held as Tenants in Common, it is necessary to probate the estate of the deceased before the real estate may be sold or mortgaged. There is no right of survivorship and so the deceased person's interest in the property passes to his or her heirs and not to the other owner(s).
2. When the title is held a Joint Tenants or as Tenants by the Entirety, the title automatically passes to the surviving owner(s) without the necessity to probate the estate of the deceased.
3. In any case of death of an owner of real estate, whether Tenants in Common, Joint Tenants or Tenants by the Entirety, it may be necessary to procure a release of the estate tax or taxes which may, by statute, become a lien on the property.

### Who has Control and Management

1. When title is held as Tenants in Common or Joint Tenants, the rents, control, management and possession of the property is in the owners equally, in the absence of an agreement to the contrary, but the individuals can divest themselves of their individual share in the property without the joining in with the others.

2. Under the provisions of M.G.L. c.209, section 1, when title is held as Tenants by the Entirety, (which is limited to husband and wife) rents, control, management and possession of property are in the owners equally.

Chapter 209 further provides:

"...The interest of a debtor spouse in property held as tenants by the entirety shall not be subject to seizure or execution by a creditor of such debtor spouse so long as such property is the principal residence of the non-debtor spouse; provided, however, both spouses shall be liable jointly or severally for debts incurred on account of necessities furnished to either spouse or to a member of their family...Neither the husband nor the wife can divest themselves of their interest in the property to anyone except to each other, so long as the marriage lasts, without the signature of both."

## **OUR CERTIFICATION OF TITLE TO BUYERS OF REAL ESTATE**

Our duties on behalf of the lender require that we examine the title to the premises. In addition, under the provisions of Massachusetts General Laws, Chapter 93, Section 70, we will also certify title to the premises you are buying. This statute states in part:

"In connection with the granting of any loan or credit to be secured by a purchase money first mortgage on real estate improved with a dwelling designed to be occupied or to be occupied in whole or in part by the mortgagor, the mortgagor is required or agrees to pay or be responsible for any fee or expense charged or incurred by an attorney acting for or on behalf of the mortgagee in connection with the rendering of a certification of title to the mortgaged premises such certification shall be referenced to the mortgagor and to the mortgagee."

The statute further prescribes that:

"The certification shall include a statement that at the time of recording the said mortgage, the mortgagor

holds good and sufficient record title to the mortgaged premises free from all encumbrances, and shall enumerate exceptions thereto. The certification shall further include a statement that the mortgagee holds a good and sufficient record first mortgage to the property, subject only to the matters excepted by said certification."

Because the scope of our examination is confined to matters of record at the appropriate Registry of Deeds and Registry of Probate, our certification will specifically exclude the following matters:

Building and zoning laws for (Property City or Town) and other governmental statutes and regulations which have not been examined;

All applicable health, environmental and hazardous waste rules, regulations, laws and ordinances of the municipality, state and federal jurisdiction in which the premises is located;

Such taxes, assessments or municipal charges that may be due and payable and not shown on the Certificate of Municipal Liens or on the record at the Registry of Deeds or from information provided by the municipality;

Persons in possession;

Any lien or claim, any other tax liability, or any matter of bankruptcy or insolvency that may not appear in the indices of Registry of Deeds in which the said premises are located;

Any set of facts or errors in description not apparent on the record that would be shown by any accurate on-site survey or which a physical inspection of the premises may disclose;

Matters not of record; forgeries; errors and omissions in the records and indices of the Registry of Deeds and relevant Registries of Probate; lack of sufficient capacity or competency of grantors.

Additionally we will note for exception and your attention to significant easements, restrictions and other material matters of record.

This disclosure is made in advance of the closing to apprise you of the statutory language regarding certification of title and the scope of our examination of the title to the premises you are purchasing as well as the limitations of same. Please be aware that a policy of Owner's Title Insurance would cover issues related to some of the exceptions noted above. Please call us if you have any questions.

#### CLOSING ATTORNEYS AND THE CLOSING PROCESS - WHAT YOU SHOULD KNOW

Your application to your lender for a home mortgage loan leads you inevitably to the closing attorney's office. You undoubtedly have questions as to what the role of the closing attorney is, what tasks the closing attorney will perform and what will take place at the closing. First, understand that the closing attorney represents the interests of the lender. If your loan is a standard secondary market type loan, the loan transaction and loan documentation are uniform throughout the state.

At our firm it has always been our practice to be as helpful as we can to assist borrowers in the mortgage loan transaction. Sometimes issues arise regarding the record title to a property. If there are title issues, problems in a sale transaction, or issues involving inaccuracies, we endeavor to keep the borrower informed of all relevant issues. When possible, we seek to resolve title issues and disputes, many times without any additional fees.

This usually ensures that the loan and, if applicable, the sale of the property being mortgaged, proceeds forward to close with the borrowers being satisfied with the result.

The closing fees quoted to you by your lender include a variety of items. Those which involve our office include the following and are standard transactional items for representing the lender in residential loan transactions:

Legal Fee - Includes ordering and obtaining a title examination from title examiners at the various Registry of Deeds, title review, obtaining municipal lien information & survey information, loan document preparation, title certification (if a purchase transaction), communications with borrowers, sellers, broker, etc., conducting the closing, final rundown of title, recording of documents, payoff of liens and sundry other matters relating to the loan closing.

Title Abstract - Includes the physical review of the title to your property in the Registry of Deeds and Probate, including bankruptcy and tax matters where available.

Mortgage Survey Plan - Sometimes referred to as a plot plan, this is a tape measure survey of the land to be mortgaged in order to determine that it was not in violation of zoning when constructed and that no buildings

