Real Estate Cost Savers for Sellers and Buyers

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For buyers, sellers, landlords, and tenants alike, real estate transactions are complex. Here we take a look at the process, outline who is responsible for what aspects of a transaction and offer some hints to help things run as smoothly as possible.

It Takes a Village: Who does What in a Real Estate Transaction
There are a variety of people involved in any transaction, so let's start at the beginning.
The ***Realtor*** is the person who negotiates the details and structures the deal between buyer and seller. He or she modifies a standard contract to fit the circumstances of the sale and informs the buyer and seller of their rights and responsibilities.

Next we have the ***Mortgage Broker***, who connects buyers to lenders and vets the buyer's information. Some buyers will choose to organize their mortgage directly with a bank or another lender.

Finally, the ***Lawyers*** enter the equation. The buyer and seller must have independent representation to conduct due diligence, document the transaction and close the deal. What does this mean? Here's an overview of the legal aspects of a real estate transaction:

	Buyer's Lawyer	***Seller's Lawyer***
Due Diligence	Review contract terms Review title Review survey/Condominium plan Tax Search	Review contract terms Review title Review survey/ Condominium plan Municipal compliance Tax search Request payouts
Documentation	Direction to pay Transfer Back Tenancy at will Shortfall cash Confirm Insurance Foreign ownership (if required) Mortgage documents	Transfer Direction to pay Seller's Lien Caveat Real Property report with Compliance (or title insurance) Deliver documents to Buyer's lawyer in trust
Closing	Deliver funds in Trust to Seller's lawyer	Receive funds Discharge of encumbrances

Things to Watch For – Sellers

There are a few ‘tripping hazards’ for sellers and their lawyers to be aware of and tackle.

A ***Real Property Report*** is a legal survey that illustrates all the features of a property and includes an opinion by a surveyor that shows the location of all the buildings and structures on the property. It’s essential that this document is correct and up-to-date for the transaction to proceed.

Are there ***tenants*** living in the property? If so, will the new owner assume the leases, or is there an expectation that the property will be vacant on possession? Again, important issues to clarify and document.

An ***encumbrance*** is a claim or liability against the property that’s held by someone other than the owner of the property. These include mortgages, property liens, restrictions on use, easements, and encroachments. An encumbrance does not necessarily prevent the transfer of the property, but it must be reviewed and included as part of a transaction agreement.

If there are ***alarm systems*** on the premises, are the contracts assignable to the new owner? If so, do you need to adjust the annual contract?

Things to Watch For - Buyers

On the buyer’s side, it’s important to review the ***mortgage documents*** to ensure that the content and schedules are correct.

If the property is a ***condominium***, details like the parking stall, storage, and mailbox should be included in the agreements. And, of course, identifying and outlining any recent ***Special Assessments*** that the buyer will be responsible for, is essential. It is important to know that Condominiums with fewer than 12 units are treated differently than larger buildings. They have lower standards for reserve fund studies which means you cannot be sure proper maintenance is being planned or completed.

Too Good to be True?

There are a few more areas that can cause problems and delays in transactions, which you should be mindful of when proceeding through a sale.

Often, a buyer will include ***conditions of sale*** in an offer that the seller is expected to satisfy as part of the sale. It may be something substantial, like repairing a roof, or smaller issues, such as patching and painting walls where shelves or artwork is removed. There can be disagreements on the quality of work expected vs delivered. To avoid this, be sure to include a holdback amount and establish clear guidelines on timing and satisfaction in your documents.

A ***Rent to Own*** purchase is an arrangement in which a tenant agrees to buy the property from the landlord at the end of the rental term. In these agreements, the purchase price is guaranteed at the beginning of the lease term. The buyer tends to pay higher-than-normal rent, with a portion of it going toward a down payment on the home.

Rent to Own arrangements are attractive to sellers because they appear to guarantee the future house sale while still earning income on the property. For the buyer, Rent to Own may be a way to enter the market when he/she would not otherwise be able to because of a poor credit rating. The risk for the seller is that the buyer may be in no better position to get a mortgage when it is time to sell the house. The risk for the tenant is that he/she could lose the deposit if they is unable to complete the transaction. A well-written Lease with option to Purchase or Agreement for Sale are better options to cover the interests of both buyer and seller is key to ensuring a fair arrangement.

An ***assumable mortgage*** allows a home buyer to take over a seller's existing mortgage along with the property. The lender must agree to the transfer and approve the buyer who will assume the mortgage. This offers the seller the advantage of avoiding mortgage prepayment fees the buyer can potentially take advantage of a lower interest rate than he/she may be able to obtain with a new mortgage. However, if the original down payment on the mortgage was less than 20%, and the mortgage being assumed is protected by high-ratio insurance, the original borrower remains liable to the bank for any shortfall if the bank enforces the mortgage against the buyer.

Hopefully, this short introduction prepares you to ask the right questions and avoid some potential headaches in your own transactions. As always, it's important to consult legal advisors who can manage your real estate transaction successfully.

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