

FREQUENTLY ASKED QUESTIONS:
ATTORNEY'S ROLE IN MY REAL ESTATE CLOSING

The purchase and sale of your home will likely be the largest and most important financial transaction of your life. In order to ensure the smooth and proper handling of such a transaction, both seller and purchaser should consult with an attorney of their own choosing to guide them through the various steps and aspects of a real estate transaction. What follows are a number of frequently asked questions and answers that will provide a guideline as to the attorney's role in your real estate transaction.

DAVIS BINGHAM & HUDSON, PC

-Attorneys at Law-

324 East Magnolia Avenue, Auburn, Alabama 36830
(334) 821-1908, Fax: (334) 821-6335

What do I need to consider in choosing my attorney?

As today's attorneys specialize, it is important that the attorney you work with is well versed in current real estate practices in your area. Prior to hiring an attorney, you should discuss details of the transaction, the services to be provided, and the cost and fees for which you will be responsible. Many lending institutions now have approved attorney lists; therefore, it will be important to confirm with your attorney that he or she is approved to work with your lending institution.

Do I need an attorney in order to enter a real estate contract?

In Alabama, an attorney is not required to enter into a binding real estate contract. However, if you have questions about a contract or what should be in a contract, a real estate attorney can advise you and work along with your REALTOR(s) in drafting a contract or negotiating contract provisions.

What legal services will the attorney perform?

A general outline of the services to be performed by your attorney is as follows:

1. Search of the title to the property as recorded in the county and municipality where the property is located.
2. Review and rendering of an opinion of the sufficiency of title.
3. Preparation of corrective documents to satisfy any deficiencies or discrepancies.
4. Preparation of deeds and other documents necessary and appropriate to transfer title.
5. The closing or settlement of such transfer of title and the mortgage loan, together with the recording of necessary documents.
6. Disbursement and distribution of sale and loan proceeds in accordance with the sales contract to the proper parties to assure the extinguishment of all prior claims, liens, or encumbrances upon title to the property.
7. Preparation of documents necessary to extinguish all prior claims to the property.
8. Certification to the lender and the title insurance company, if any, of the first mortgage status of the mortgage loan.
9. Coordination of the 1099 or tax requirements related to the sale.
10. Enforcement of all elements of the sales contract.

What issues does an attorney look for when searching or examining the title records?

In the purchase of a home, it is important to determine that the seller has good and marketable title to transfer the property to the purchaser. One of the attorney's responsibilities is to examine the public records, including the probate records, tax assessments, and city assessments. This examination will disclose whether the seller is, in fact, the legal owner of the property; the presence of any unpaid mortgages, judgments or other liens which must be satisfied before clear title can be conveyed; restrictions, easements, or rights-of-way for roads, alleys, utilities, etc. affecting the property that may limit your right to use of the property, even though you will own the property; the determination of boundary lines; and the status of property taxes and other public or private assessments.

If a problem in the title is discovered, what steps can be taken to remedy the situation?

In Alabama, the seller generally is required to provide the purchaser a "Warranty Deed" upon closing. If any defect of title exists, an attorney should be able to resolve or "cure" said defect prior to a closing. In the rare occasion where the title defect cannot be cured, then the responsibility for taking the necessary legal action would generally lie with the seller.

Is an attorney involved in handling property tax proration and homestead exemption?

In Lee County, the property tax year runs from October 1 until September 30. Unless your property closing occurs on October 1, an attorney should fairly and accurately divide the property taxes due for the year between the purchaser and seller. It is also important for the attorney to help the purchaser after closing with the tax assessment procedure so that the property is assessed in the purchaser’s name and the proper homestead exemptions be put in place where applicable.

Is an attorney involved in advising a purchaser in regard to a Homeowner’s Association?

An attorney can advise whether your property must comply with neighborhood covenants and restrictions and can provide a copy of these. An attorney can also advise whether a neighborhood HOA is mandatory or voluntary and can coordinate how to join. An attorney can also prorate HOA dues between the seller and purchaser.

Is it necessary for me to have a survey of the property?

Some lenders require that a survey of the property be furnished, showing the location of the dwelling, other structures on the property, and that all of these are within the boundaries of the property. A purchaser may insist upon a survey even when the lender does not require one.

After the closing itself, are there any issues in which the attorney will still be involved?

An attorney’s responsibility does not end at the closing. Details such as ensuring that the closing documents are properly placed of record, including the deed, releases of liens related to the seller’s interest, and the mortgage documents, as well as the issuance of title insurance policies extend beyond the date of closing.

DAVIS BINGHAM & HUDSON has served the Lee County community since 1978 and has proudly built our residential real estate practice on service and professionalism.

Our firm is licensed to handle real estate matters in both Alabama and Georgia, and our attorneys provide full service representation in the closing of home purchases and refinances.

Our firm takes great care with each individual closing. We recognize that a residential closing is a very significant milestone for the purchaser and the seller, and our firm takes very seriously the responsibility entrusted to us.

Our firm also understands that a successful closing is a team effort. All parties involved in the transaction, whether it’s the REALTOR(s), the lender, the borrower, the buyer, the seller, or the attorney, each contribute to the process. When problems arise, we are dedicated to finding a respectful and legally fair solution to address each party’s concerns. Our focus is to resolve issues efficiently, effectively, and in a timely manner.

Direct Contact Information for Attorneys:

NANCY DAVIS- nancy@davislaw78.com

TOM BINGHAM- tom@davislaw78.com

KIM HUDSON- kim@davislaw78.com

TAYLOR BUCKNER- taylor@davislaw78.com

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-Attorneys at Law-

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Alabama State Bar Rules require the following:

“No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.”