

we will order title and survey at your request before the mortgage and home inspection contingencies are satisfied. You must understand that you will have to pay for any such work done, even if you don't close.

SCHEDULING CLOSING.

Once the title work is received, your attorney will review it for liens or other encumbrances, and submit it to your lender with a request for a closing date. This date must also be coordinated with the attorney for the seller. Do not assume that the date on your contract will be the closing date; rather, it must be scheduled by the attorneys for both parties. You should stay in frequent communication with your attorney to help schedule a closing date that is agreeable to all parties. Generally, closing must occur within ten days to two weeks after the date indicated in the contract, unless an amended date is agreed to by the parties. If the contract indicates that the closing date is "time of the essence," then closing must occur on that date or the non-performing party will be in breach of the contract. In all other cases, if one party refuses to close by the agreed upon date, than at that time, the other party may make time of the essence for a date no sooner than ten days to two weeks later, or such other time frame as may be considered reasonable under the circumstances.

Most lenders will not schedule a closing date unless your file has been marked "clear to close", which means that you will need to have satisfied any conditions listed on your mortgage commitment, and provide proof of homeowner's insurance with a receipt for payment of the first year's premium. If you have any questions about the conditions listed, please ask your attorney and your loan officer. It is imperative that your conditions be addressed in a timely manner, or your closing could be delayed. During busy times of the year, including the summer months and the beginning and end of each month, lenders will be resistant to scheduling closings at the last minute, or rushing your file through their closing department. Keeping communications open is always advisable.

A day or two before the closing your attorney will receive your figures from your mortgage lender, indicating their closing costs, escrows for taxes and insurance, and net mortgage proceeds. Your attorney will apply these figures to a closing statement to determine the amount of money you will need to bring to closing, including the balance of your contract deposit, title insurance and

survey and all other closing costs. You will need to bring a bank or certified check payable to Fellen & Fellen Attorney Trust Account, or arrange to have the funds wired to our account. At the closing, your attorney will pay all of your closing costs and the purchase price out of the funds received from you and your mortgage lender.

CLOSING ON YOUR PROPERTY

Shortly before the closing (usually, earlier that day) you will have a walk through of the property with your realtor to verify that the property is in an acceptable condition. You need to make sure that all appliances and mechanical systems are in working order, that any agreed-upon repairs have been performed, that there are no observable leaks, and that there is no new damage to the property that was not observed at the time of the inspection. At the walk through, the property should be vacant and broom clean.

Closing usually occurs at the office of the buyer's attorney, except in the case of new construction, for which closing occurs at a place designated by the builder. When you come to closing, advise your attorney if there are any unacceptable conditions observed at the walk through. These issues will have to be addressed and negotiated at the closing. A completed closing is generally considered to be evidence of the buyer's acceptance of the property; there is usually no recourse for conditions observed after the closing. Consequently, it is important that you do a careful walk through.

At the closing, you will sign all of your mortgage documents, and your attorney will review the seller's closing papers (including the deed and affidavit of title) to make sure they are accurate. Your attorney will record the deed and mortgage in the county clerk's office to perfect your title to the property. Your attorney will also make sure that any liens against the property (including the seller's mortgages) are discharged, so that you will receive clear and insurable title to the property.

AT FELLEN & FELLEN, LLC, we believe that communication is the key to a successful deal. We are always available to our clients to guide them through the home-buying process. Unlike other law firms, which pass their real-estate clients off on a paralegal, at Fellen & Fellen, your attorney works with you every step of the way, and phone calls are returned promptly. Because we are attorneys, you can trust us to give you unbiased advice. Most contracts result in a closing, but sometimes, issues arise that can be difficult for a buyer to wrestle with. You can rely on our experience in guiding you through the tough choices, so that you end up with the home of your dreams. We look forward to working with you.

Expert Advice—Personal Service

Buying a Home in New Jersey



Buying a home can be confusing and stressful for anyone, even if you've purchased real estate before. At Fellen & Fellen, LLC, we are here to help make your home buying experience as smooth and worry-free as possible.

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THE FIRST STEP: GOING TO CONTRACT.

If you are buying property through a real estate agent, your agent will prepare a contract on a standard form for you to sign. The Contract should contain the pertinent terms of your deal, including the price, the amount of the mortgage, the closing date, the items of personal property and fixtures that are included and excluded in the sale. The contract should also include time frames for mortgage approval, and inspections. Your agent will make your offer to the sellers by presenting your contract to the seller's agent, and if the terms are acceptable to the sellers, they will sign, and return a copy to you.

ATTORNEY REVIEW

Once you have received a copy of the fully signed contract, you enter the period of time known as Attorney Review. By law, both the buyer and the seller have three business days to have their attorney review the realtor's contract. If the attorney wishes to change any part of the contract, he or she must write a letter disapproving of the contract within the three-day period. This letter has the legal effect of cancelling the contract. However, through the attorney's disapproval, the finer points of the contract are negotiated, as well as any other concerns of the parties. The attorneys will prepare an addendum to the contract incorporating all the negotiated changes. Once the addendum is signed, the contract is reinstated (as amended) and is binding on the parties.

During Attorney Review, your attorney will explain the terms of the contract to you, and answer any questions you may have. Make sure to raise any concerns you have about the purchase, and any issues you may have noticed about the property including defects. Because we are negotiating additional terms to the contract, you must let your attorney know about any issues which should be incorporated into the contract. Tell your attorney if there is a swimming pool or other unusual structure on the property, if the property is heated by oil, and if there is a septic system or well water. You should also tell your attorney if you will need to sell another property in order to close on the new property. These situations can give rise to legal issues that should be incorporated into the contract.

A common misconception is that the Attorney Review

process must be completed within three days. This is not true; rather, it must be initiated, by way of an attorney disapproval letter, within three business days. Thereafter, there is no specified time period for completion of the Attorney Review negotiations, although it is usually preferable to complete the process as quickly as possible. During Attorney Review, the contract is terminated, so the parties are free to walk away from the deal, and sellers can entertain other offers on their house. Conclusion of Attorney Review is noted by the signing of the binding contract addendum.

THE MORTGAGE APPLICATION.

Your contract will provide that your purchase is contingent upon your obtaining a mortgage commitment within a specific time frame. Therefore, you must apply for the mortgage loan immediately after concluding Attorney Review and use your best efforts to supply your mortgage lender with any requested information in a timely fashion. If you are not approved for the mortgage loan, you must tell your attorney immediately, so that he or she can properly terminate the contract and obtain return of your deposit.

A mortgage pre-approval is not a commitment. A full-blown commitment usually requires that the lender verify your employment, assets and income, which can take some time. An appraisal of the property is also required. Sometimes a purchaser receives a conditional commitment, meaning that the full loan commitment will be granted only upon the satisfaction of certain specified conditions. You must make sure that you have satisfied all conditions indicated in the commitment before you can state that the mortgage contingency is satisfied. Your attorney can review the commitment with you, and identify any potential problems. Once you furnish the seller with your loan commitment, the seller has a legal expectation that the contract is no longer contingent upon you qualifying for a mortgage, and that you will be proceeding to closing.

If you are unable to obtain a full commitment in the time frame allotted by the contract, tell your attorney, who can request an extension.

INSPECTIONS PAID FOR BY THE BUYER.

A buyer should hire a licensed inspector to inspect the property for structural and mechanical defects, wood destroying insect infestation, and radon. Underground oil tanks, septic systems and swimming pools should also be inspected if present on the property. The inspections must be completed and reports returned to the seller within the time frames provided in the contract.

Therefore, it is advisable to schedule inspections to take place early in the inspection period. You should attend the inspection and ask the inspector about any conditions observed.

Make sure to provide your attorney with a copy of the inspection report, and then contact your attorney to discuss any problems discovered during the inspection. If the inspection identifies any defects, your attorney must submit a request for repair within the inspection time frame. There may be a subsequent negotiation with the seller's attorney regarding repairs.

Re-sale homes are generally sold as-is; the purpose of the inspection is to identify any structural or mechanical defects. The contract does not require the seller to deliver the home in new condition, but only in working condition. Cosmetic defects, or observations regarding the remaining useful life of any particular aspect of the property will generally not give rise to repairs, unless the item is not in working order. If the seller refuses to fix any specified structural or mechanical defects, you may terminate the contract. Generally, the parties come to an agreement regarding repairs, after which the home sale contingency is deemed satisfied, and the buyer is legally expected to proceed to closing.

In most circumstances, the seller is responsible for having a municipal certificate of occupancy inspection and a fire-code inspection. These inspections are not necessarily duplicative of the buyer's inspections outlined above, and should not be relied on in place of private inspections paid for by the buyer.

TITLE SEARCHES AND SURVEY.

Once you have satisfied the mortgage and inspection contingencies, you will be legally expected to close on the property so long as the seller can deliver good title to the property. In order to confirm that there are no defects in the title (e.g., liens), your attorney will order title searches and a survey. In New Jersey, these costs are paid by the buyer. Because of the expense involved, we do not usually order title and survey until the other contingencies have been satisfied and it is understood that you will be working towards closing. Otherwise, you would have to incur the expense of title searches and a survey for property you may not be buying. Occasionally, when the contract specifies a fast closing date,