



Tips on Selling a Home in Florida

Advice from an Old Real Estate Lawyer

Marshall C. Deason, Jr.
Board Certified Real Estate Lawyer
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Introduction

There are many different reasons why you may want to sell your home. However, whatever your reasons for wanting to sell, entering the real estate marketplace will offer you new experiences and challenges. As you progress in the selling process, you will have to deal with real estate agents, home inspectors, surveyors, title agents, and real estate lawyers, all of whom use strange jargon and real estate “buzz words” that are unfamiliar. You will be confronted with stacks of paperwork, all written in legalese. You will have to put up with many people you don’t know wandering through your house and your yard. It will be easy to get overwhelmed, and even the most astute sellers will need guidance. Finally, because residential real estate closings have become the target of internet thieves, you will have to take extra precautions to be sure that you receive the proceeds from your closing.

For more than 30 years, I have helped guide Floridians selling their homes through the complexities of marketing real estate and helped them solve the problems that come up in the process. I am writing this guide to help sellers better understand the process and to help them avoid many of the pitfalls.

The Basics

When the seller puts a house “on the market,” it means that the seller lets the public know that the seller is interested in entertaining offers from prospective buyers. The pool of all of the houses that are on the market in a particular area is called the “inventory.” Prospective buyers review the inventory and choose the house that they want to offer to buy. From the time that a buyer starts looking at houses until the buyer decides to make an offer may take several weeks or months. Because of the way that the market works, it is not unusual for it to take a long period of time before anyone makes an offer on your house. It is also possible, if the inventory of houses for sale is small, that you will receive multiple offers on your house in a very short time. To help your house to sell more quickly, you need to do two things. First, you need to make as many potential buyers as possible aware that your house is on the market. Second, you need to make your house more attractive to buyers than your competition.

There are two ways you can put your house in front of more buyers. The first way is to advertise your house. The second way is to hire a real estate broker to put your house in front of buyers. I will discuss both of these ways later in this pamphlet.

There are also two ways of making your house more attractive to the buyers who look at it. The first way to make your house appeal to buyers is to price it at a lower price than other houses in the market of comparable size. The second way is to make your house more appealing to the tastes of the buyer than the other houses with which it is competing. This second way is called “staging.” Staging involves things like cutting the grass and removing clutter before a buyer visits your house. There are frequent shows on cable television about how to stage your house for sale. There are also “staging professionals” - interior designers who will advise you on how to make your house appealing to buyers who inspect it.

Steps in selling a house

Although every real estate transaction is different, there are several steps in the process that are similar in most residential real estate transactions:

1. The seller puts the house on the market.
2. The buyer visits the house and makes an offer to buy the house from the seller.
3. The seller accepts the buyer’s offer by entering into a binding written contract.
4. The buyer applies for a mortgage to buy the home.
5. The buyer has the house inspected, and a title search is ordered.
6. The buyer examines the home inspection report and the title report, discusses with the seller who will pay for any needed repairs, and decides whether or not to proceed with the transaction.

7. A closing is held at which the buyer and the seller sign all of the closing documents, the buyer pays the seller for the house, and the seller delivers the deed to the buyer.
8. The seller receives money from the closing and the buyer receives the keys to the property.

For Sale by Owner

Sometimes sellers try to sell their homes themselves, without the aid of a real estate agent. There are both advantages and disadvantages to selling your house by yourself. The advantages include not having to pay a real estate commission to an agent, control of the advertising of the house, and the ability to negotiate with the buyer without a middleman. The disadvantages in selling property yourself are that selling a home is a time consuming process that may be burdensome to the seller. More importantly, most sellers do not have a real estate broker's knowledge and experience. This knowledge and experience includes determining how much the property is really worth, knowing how to reach prospective buyers, and knowing how to move a deal from "I want to buy your house" to the seller getting a check for the purchase price.

There are advertising services which are designed to help owners who want to sell their property. Some of these services have television shows and publish magazines to put advertised property in front of buyers. Some of these advertising services offer buyers guidance in going through the contract and closing process. Of course, they charge a fee for the services that they provide.

Quick Sale Advertisers

When the real estate market is strong and there is little inventory available for buyers, "real estate investors" advertise that they can make the homeowners a quick offer to buy their homes, close quickly without all the trouble of dealing with real estate brokers and prospective buyers wandering through your house or without having to make any repairs to your house. They will sometimes agree to pay closing costs on your sale and the costs of moving your belongings to your new home. They advertise on television, in the print media, by direct mail, through telephone calls to homeowners, by mail, by email and on social media.

While taking the hassle out of the real sales process may be an appealing alternative to people who have little experience in the real estate market or have had problems with past home closings, choosing this alternative will significantly reduce the amount of money that the seller receives from the sale. Real estate investors of this type (also referred to as "flippers"), are not altruistic do-gooders who performing a public service by making real estate

selling easy for inexperienced homeowners. They are people who want to make the most money possible from real estate deals. They target naïve homeowners and convince them to sell their homes at far less than market value. They then make cosmetic improvements to the house and sell it for top dollar. This process is called “flipping.”

Sellers should be very wary of offers of a quick, hassle-free sale. Dealing with a traditional real estate broker and listing the house for sale on a multiple listing service will generate much more money for the seller. In any event, a seller dealing with a quick sale real estate investor should have the paperwork reviewed by an experienced real estate lawyer before signing anything.

| The Real Estate Broker

Most sellers prefer to hire a real estate broker to find potential buyers and to guide them through the process. These real estate professionals are familiar with the area and with the inventory of houses that are for sale. They can help sellers determine a fair price for their house. They guide sellers through the closing process and are a good source of information. They can expose your house to a large group of buyers by putting it on the local Multiple Listing Service (MLS). You should look for a real estate broker or agent with whom you are comfortable, who has a good knowledge of your area, and who you think will be able to attract potential buyers to your property. You may want to interview several sales agents and brokers before you decide on one that you are comfortable with. If you do not know a real estate broker or sales agent, here are some ways to find one:

1. Ask people you respect to recommend a real estate sales agent with whom they have had good success.
2. Do an Internet search for real estate brokers in your area and review their credentials.
3. Drive through your area and look at “FOR SALE” signs. Look for brokers who have multiple properties listed in your area.

There are three basic types of real estate brokers in Florida: the buyer’s broker, the seller’s broker, and the transactional broker. Historically, real estate brokers worked only for the seller, striving to get the highest price and the quickest sale for the seller. However, in recent years roles have changed. While there are still seller’s brokers, some brokers have redefined their role to become buyer’s brokers - helping the buyer get the best house for the lowest price. In addition, because they were concerned about potential liability, the real estate brokers petitioned the legislature to create a new type of broker, the “transaction” broker.

Transaction brokers do not owe a fiduciary duty to either the buyer or the seller, but supply information to both the buyer and the seller and help facilitate the transaction. In your first

meeting with a sales agent or broker, he or she should tell you which of these three roles he or she is playing in the transaction. The transaction broker has become the most common in sales of Florida houses. If there is no written agreement about the type of brokerage, the broker is a transaction broker.

When you hire a real estate broker to represent you in selling your house, you give that broker a “listing” of your house. Usually to list a house with a broker, you are required to sign a listing agreement. There are three types of listing agreements: an open listing (in which the broker gets a commission if he or she finds a buyer); an exclusive listing (in which the broker gets a commission if any real estate broker finds a buyer); and an exclusive right of sale (in which the broker gets a commission if the house is sold during the term of the listing agreement, whether the broker had anything to do with the sale or not). Unfortunately for sellers, most residential real estate brokers in Florida will not take a listing unless the seller executes the standard for listing agreement prepared by the Florida Association of Realtors (FAR). The FAR listing agreement is an exclusive right of sale listing agreement. While you may not be able to negotiate many of the details of the listing agreement you sign, you should read it carefully. If there is a provision of the agreement which is particularly worrisome to you, you can ask that the provision be crossed out. The broker may or may not agree to the changes you propose in the listing agreement.

One of the provisions of the FAR listing agreement that causes frustration for sellers is the one relating to the buyer forfeiture of earnest money deposits. If the buyer backs out of the contract and forfeits the deposit, under the FAR listing agreement, the broker receives half of the forfeited deposit.

Real estate brokers charge a commission, or a percentage of the purchase price, for their services. Commissions are usually in the 6% - 7% range in Florida. However, there are several ways that brokers will discount their commissions. Brokers may agree to give you a discount if the property is sold by an agent working for that broker rather than through another broker who learned of the property through MLS. Some brokers offer limited services, listing the property on MLS for a flat fee, and providing in the MLS listing that the selling agent will receive 3% - 3.5% for finding a buyer. Finally, there are some brokers who advertise total commissions of 1% - 2%. Be wary of brokers who offer very low commissions. Although these brokers will list the property on MLS, agents from other brokerages will be reluctant to show houses for which they will get little compensation. Frequently brokers offering deep discounts on their commissions tie the seller into using affiliated businesses such as title companies.

Things to remember in dealing with real estate brokers:

- Real estate brokers and agents may over value your house to make you think that they are able to sell your house for more than other brokers who are competing for your listing. Other brokers will undervalue your house, knowing that if you list it well below market value, they can get a quick sale and put quick money in their pocket.

Any estimate of value should be backed up by comparable sales in your community within the last month. Do not accept a sales agent's off-the-top-of-his-head estimate of what your house is worth.

- Real estate brokers and sales agents will want you to sign a long-term listing agreement. However, if you sign a long-term listing agreement, they may not have to actively market your house to keep your business. You should enter into only a short term listing agreement so that you can find another broker if the one that you select initially is not performing to your satisfaction.
- Buyer's brokers and transaction brokers have interests in the deal that are different from those of a seller. You should not discuss the minimum price you will accept or reasons that you have an urgent need to sell with these types of brokers.
- Real estate brokers frequently have affiliated business relationships with title companies. They may have a financial incentive to steer you to these businesses. You should comparison shop for these other services rather than blindly accepting the broker's recommendation.
- Do not be intimidated by real estate jargon. If your sales agent uses a term that you are not familiar with, ask the agent what the term means.
- Be very wary when a sales agent talks about using "creative financing" to help someone buy your house.
- Do not sign any document that says anything that is not true, even if the sales agent tells you that "everybody does it" or it is "just a formality." If this happens with your sales agent, you should immediately stop doing business with the sales agent and report him or her to the Florida Real Estate Commission (FREC).

The Real Estate Contract

Buyers generally make an offer on your house by presenting you with a proposed real estate contract. This contract sets out the buyer's plan for buying your house. The buyer's goals are different from yours. The buyer wants to buy your house for as little as possible, while you want to sell it for as much as possible. The buyer also wants the other provisions of the contract to be favorable to the buyer. You should not be reluctant to change those provisions of the contract proposed by the buyer with which you do not agree. The fact that a contract is a "standard form" does not mean that you cannot change the pre-printed provisions. Almost all aspects of a closing are negotiable, and you want to make sure that things in the contract that you sign are the way that you want them.

The real estate contract is the road map of how your closing will take place. It also tells you how certain problems will be handled. Your real estate broker or agent will review the contract with you to explain the offer that the buyer is making. However, you should read it carefully on your own. If you do not understand the provisions and the sales agent's explanation does not make sense to you, you should hire a lawyer to review the contract with you.

In Florida, sellers have a duty to disclose all material defects in a property that are not obvious to a buyer. If your sales agent has not had you fill out a disclosure form on which all of the defects in the property are listed, you should disclose these defects in the contract. You do not have to disclose items that you have corrected, but you do have to disclose all the defects that you know about. If there is any question about what to disclose, you should disclose more rather than less. If you fail to disclose defects, the buyer may be able to get out of the contract or sue you after the closing to rescind the sale or to force you to pay for the cost of repairing the defect you did not disclose.

Sometimes sellers sell their property in "AS IS" condition. This means that the seller is not making any warranties about the condition of the property and that the buyer has to accept all of the defects and problems with the property. Selling the property in AS IS condition, however, does NOT relieve the seller of the duty to disclose all known defects to the buyer.

Things to look out for in a contract:

- Check the spelling of your name to make sure that it is correct.
- Make sure that the contract contains both the street address and an accurate legal description of the property you are selling. (A tax collector's folio number is NOT a legal description.)
- Make sure that the deposit the buyer puts down is large enough so losing it is an incentive for the buyer to go through with the contract.
- Make sure that the closing date set by the contract gives you enough time to move out of the house.
- Make sure that you really want to part with the personal property listed as part of the sale in the buyer's proposed contract.
- Make sure that the contract provides a reasonable limit on the cost of repairs to the property that you have to make.
- Make sure that the contract provides that the winner in any litigation or arbitration is entitled to recover attorneys' fees.
- What the contract says is what the contract really means. If someone tells you that

a provision of a contract is just “boilerplate” that does not really mean what it says, do not believe it and check with an attorney.

- The written contract should contain everything that is important to the deal. Verbal promises of the buyer or the real estate agent probably cannot be enforced.

| Seller Financing

In the past, seller financing was an attractive alternative to commercial financing. Taking back a purchase money mortgage could give the seller an attractive rate of return on his or her money and a buyer who was not otherwise able to qualify for a loan or who was forced to pay high interest rates was able to buy a house with reasonable financing. However, because of mortgage abuses that led up to the Great Recession, Congress passed the Dodd-Frank Act. Dodd-Frank put many restrictions on mortgage lending, including mortgages given by sellers of homes. Violations of the Dodd-Frank requirements will make the mortgage unenforceable and may subject the mortgagee to substantial fines and penalties. If you are asked to take back seller financing, you should not do so without consulting an experienced real estate attorney.

| Home Inspections and Surveys

It is likely that your buyer will have your home inspected after you enter into the contract. Most contract forms have provisions requiring you to make non-cosmetic repairs to the property that are disclosed in such an inspection. Many sellers, at the time they first put their home on the market, hire an inspector to inspect their house. This way, the seller will be able to repair defects ahead of time, will not be surprised by the buyer’s inspection report, and will not have to delay the closing to complete repairs. There is also a trade organization, the American Society of Home Inspectors (ASHI), that sets experience and educational standards for its members.

You should expect the following things from a home inspection report:

- There should be a list of what the inspector inspected and what the inspector did not inspect. For those things the inspector did not inspect, there should be an explanation of why they were not included in the inspection. If they were outside the expertise of the inspector, there should be a recommendation of the type of inspector needed.
- There should be color photographs of all of the defects found by the inspector.
- For each defect, the report should provide an approximate cost of repair and an

explanation of the type of craftsman needed to make the repair.

- Defects should be identified as cosmetic or non-cosmetic.

In addition to a home inspection for defects, the buyer will also get the house inspected for termites and other wood destroying organisms. Termites are a major problem in Florida. They can infest all types of houses. Annually, they cause millions of dollars in damage to Florida homes. This inspection should be performed by a licensed pest control company.

Home inspection reports do not usually contain a search for open building permits or unpaid utility liens. You should make sure to get such a report and get any open permit problems fixed prior to closing. The lawyer or title company handling your closing can order one for you.

Surveys are similar to inspections in that they can show problems with the property that you are selling. A survey is a scale drawing of a piece of real estate. It will show the footprint of the house, driveways and sidewalks, easements, fences, encroachments, set-back distances, and other things. You may have a survey from when you bought your house. If you have such a survey and there have been no changes to your property or the neighboring property since the time of your survey, you should give this survey to the buyer. The buyer may be able to use your survey rather than getting a new one. This will save the buyer money and may expedite the closing.

Title Insurance

A title insurance policy tells you the condition of your title to your property and insures that you own the property. The premium for title insurance is paid once, at the closing, and it insures you for as long as you own your property. In Florida, title insurance is underwritten through large insurance companies and issued through both commercial title agencies and attorney title agents. The cost of title insurance is regulated in Florida by the Office of Insurance Regulation and will vary little whether it is written by an attorney agent or a non-attorney agent. There is no uniform custom in Florida on who pays the cost of the title insurance policy. In most Florida counties, it is customary for the seller to pay for title insurance covering the buyer at the time of closing. However, in other counties, particularly those in South Florida, the custom is that the buyer pays for title insurance. Your real estate agent or closing agent will be able to tell you the custom in your area. If you received a title insurance policy at the time you bought your house, you may be able to get a previous policy discount when you sell your house.

The issuance of title insurance is a two step process. The first step is the issuance of a commitment. The commitment is issued after an initial title search and before closing. A title insurance commitment has three parts: Schedule A contains the name of the owner of the property, the name of the buyer of the property, the name of the mortgage lender, and the legal description of the property. Schedule B-I of the commitment contains the list of things that must be done to clear the title to the property prior to closing. This usually includes the seller deeding the property to the buyer and the buyer giving a mortgage to the mortgage lender, but it may include other steps that must be taken to remove clouds on the title. Schedule B-II contains a list of all of the exceptions to the title. These may include easements, restrictive covenants, and other items. When the closing agent gives you the title insurance commitment, the closing agent should also give you copies of all of the documents listed in Schedule B-II of the commitment.

The second step is the issuance of the final title insurance policy. After the closing takes place and the deed is recorded, the title search is updated through the recording of the deed to make sure that no intervening clouds on the title have appeared. The effective date on your title insurance policy is the date on which your deed is recorded. There are two parts to your title insurance policy: Schedule A of the policy lists your name as the owner of the property and gives the legal description of the property. Schedule B of the policy lists the exceptions to the policy. Schedule B of the policy should be identical to Schedule B-II of the commitment.

Title insurance agents, like mortgage brokers, are sometimes involved in fraudulent activities. If any of the following happens at your closing, you should stop the closing and consult an attorney before proceeding:

- The purchase price on the Closing Disclosure should be the same as the purchase price that you agreed to in your contract. It should not be higher or lower.

- All payments of money in connection with the closing should be disclosed in the closing documents. There should not be any “under the table” payments to anyone.
- All of the documents you sign at closing should contain only true statements. If you are asked to sign anything that is not true, you should refuse to go on with the closing

Avoiding Traditional Scams

Unfortunately, Florida is home to many con artists and their real estate scams. Most of the scams involve defrauding mortgage lenders (since they are the ones putting the most money into the typical real estate transaction). Both state and federal task forces have been formed to fight these scams. People involved in scams are being prosecuted, convicted, and sent to jail. As a seller, you do not want to unwittingly become a participant in a scam. If you suspect that a scam is being perpetrated as part of your sale, you should hire an attorney to review the transaction for you. Some of the situations that may indicate that a scam may be taking place are:

- You are told by someone that “creative financing” is being used to help the buyer qualify to buy your house.
- You are asked to raise the purchase price of your house and give the amount of the increase to the buyer for a down payment.
- There is talk about “lending credit” or “borrowing credit” in connection with the transaction.
- You are asked to sign a deed to someone other than the buyer named in your contract.
- You are asked to sign documents with blanks in them which will be filled in later by someone else.
- You are asked to sign any statement that is not true.
- You are asked to pay anyone “under the table.”
- You are asked to take out a big mortgage to “get your equity out” of the property prior to closing.
- You are told that buyer will be assuming your mortgage without notifying your lender or getting its permission for the assumption.

Avoiding Hackers, Terrorists, Money Laundering, and Russian Oligarchs

Over the last two decades, outside forces have made residential real estate closings more complex and more dangerous. Residential real estate closings involve large amounts of money and participants who are inexperienced in the mechanics of the real property transactions and money transfers. The large dollar amounts and the naivete of most buyers and sellers, make residential transactions appealing targets for hackers who want to steal the money in the transaction, for criminals who want to launder their ill-gotten gains, and people who want to buy, sell, or finance real estate for nefarious purposes. Florida, because of the high number of real estate transactions that take place here, is the epicenter for this type of activity.

At the end of the twentieth century, residential real estate closings were relatively simple and relatively safe transactions. Money for the transaction, whether from the buyer, the escrow agent, or the mortgage lender, was delivered to the closing agent in the form of cashier's checks. The closing agent would deposit these checks into a trust or escrow account and pay the closing costs, the seller's mortgage, and the seller's proceeds from that account.

The advent of sophisticated word processing programs and high-quality color printers changed this procedure. At the start of this century, scammers started flooding lawyers, real estate brokers and closing agents with phony cashier's checks, seeking disbursements before the checks had been rejected by the supposed issuing bank. Because of this scam, closing agents stopped accepting cashier's checks and began using wire transfers as the exclusive method of collecting and disbursing money in real estate closings.

Unfortunately, this change in procedure led to a new type of computer hacking scam. Hackers began targeting the email accounts of lawyers, title companies, and mortgage lenders. The hackers intercept emails containing wiring instructions and change the routing and account numbers in the instructions so that the money is sent to the hacker's offshore account rather than the account for which it was originally intended. Once the money is wired to a hacker's bank account in an offshore bank, it is very difficult to recover even a portion of that money.

To prevent this type of loss, you should never rely solely on emailed wiring instructions. If you send wiring instructions to a bank or closing agent, you should either deliver the wiring instructions in person or confirm them by telephone with someone you know and whose voice you recognize. If you receive emailed wiring instructions, you should confirm those instructions by telephone with someone you know or whose voice you recognize. You should be particularly wary if you receive an email changing the wiring instructions. Your closing agent will give you more detailed instructions how to protect the wire transfers in your transaction. You should follow these directions and communicate often with your closing agent to avoid becoming a victim of hackers. If you lose money to hackers, you should notify the FBI immediately.

The involvement of terrorists, money laundering, and Russian oligarchs should not jeopardize your closing in the way that scammers and hackers can (unless, of course, you are a terrorist, money launderer, or Russian oligarch). However, the involvement of these people has drawn the scrutiny of the federal government. Federal agencies, like the Office of Foreign Asset Control (OFAC) and the Financial Crimes Enforcement Network (FinCEN) have adopted regulations that require closing agents to use additional safeguards to keep residential real estate transactions from being used for illegal purposes. These regulations may cause you to have to sign additional paperwork at your closing or may delay your closing. If you have questions about OFAC or FinCEN and their impact on your closing, you should ask your lawyer or your closing agent.

| When Should You Hire a Real Estate Lawyer?

Depending on whom you ask, the answers to this question will range from “You never need a lawyer in a residential real estate transaction” to “You should always have a lawyer in any kind of real estate transaction.” Frequently, real estate brokers will tell you lawyers “fly speck” a deal, looking for little problems to justify their fees. In some cases, they may be right. However, real estate brokers and agents, mortgage brokers, and title insurance agents (whether they are attorneys or independent title companies) all have a financial stake in the closing; if the closing does not take place, they do not get paid. In answering this question for yourself, you should remember that a lawyer with no role in the transaction other than to represent you is the only real estate professional whose payday is not dependent on whether the closing takes place. You pay the lawyer for advice and representation, and the lawyer’s duty is to protect you, help you solve problems, and to prevent as many future problems as possible. If you want unbiased advice, you should hire a lawyer to give it to you.

There are, however, some red flags that indicate you need to hire a lawyer to represent you:

- If you feel bullied or intimidated in negotiating with real estate agents or buyers, you should engage a lawyer to act as your “hired gun” in the negotiations.
- If there are any provisions in the real estate contract that you do not understand or do not agree with, you should hire a lawyer to review the contract for you. It is better to take the contract to the lawyer to review before you sign it. If you wait until after you sign it, you may not be able to undo unfavorable provisions in the contract.
- At any time in the process, if someone asks you to do something that does not seem right to you or that you do not understand, you should put the transaction on hold and consult with a lawyer before proceeding.
- If the title search discloses a defect in your title that must be corrected.

How Do You Find a Good Real Estate Lawyer?

Finding a good real estate lawyer can be difficult. The lawyer who handled your sister's divorce or represented your neighbor's son in a DUI might not know anything about real estate. There are four sources that can simplify the process for you:

- Ask friends and real estate professionals that you respect to recommend a real estate lawyer with whom they have had good experience.
- Visit The Florida Bar website at www.floridabar.org. Click on "Find a Lawyer." Click on "By Certification." Search for a lawyer in your geographic area who is board certified in real estate law. To become board certified in real estate law, a lawyer must be experienced in real estate law, must pass a peer review by other lawyers and judges, must have a certain number of hours of advanced continuing legal education in real estate law, and must pass an eight hour written test. Certification is the only objective proof of a Florida real estate lawyer's credentials.
- You can consult an on line source such as www.avvo.com or www.martindale.com. These sources use ratings from other lawyers and other criteria to rate lawyers. However, the criteria used by these sources, to some extent, are subjective.
- Throughout Florida, lawyers have formed real estate councils to share information and to provide service to the public. The members of the real estate councils are attorneys who devote a significant portion of their practice to real estate. You can find information about the real estate council in your area and get information on the real estate council members in your area at www.flarecs.com.

Glossary of Real Estate Terms

Abstract - An abstract is a written summary of all of the documents relating to the title to a piece of property from the earliest public records until the present. Abstracts are examined by attorneys who then write a report and opinion of title. While abstracts are still used in some counties in Florida, in most cases, they have been replaced by title insurance.

Adjustable Rate Mortgage - An adjustable rate mortgage is a mortgage on which the interest rate will go up or down periodically depending on the changes in an index rate to which the mortgage is tied. Beware of “sucker rates” that are very low for the first few months and rise substantially thereafter.

ALTA - American Land Title Association. ALTA is a trade group for the title insurance industry. It has promulgated standard forms of title insurance coverage that are used in many states. Florida uses some but not all of the ALTA title insurance coverage.

Amortization - Amortization is the process by which a mortgage is paid off over a period of time. For example, a 30 year amortization is one in which the monthly payments due on a mortgage are sufficient to pay all of the principal in 30 years.

ARM - Adjustable Rate Mortgage.

ASHI - American Society of Home Inspectors.

Closing - A closing is the final step in the real estate sales process. It is the meeting at which all of the money for the purchase is paid by the buyer and the mortgage lender and all of the documents to be recorded in the public records are executed. It is sometimes called “closing of escrow.”

Closing Agent - The closing agent is the person or entity that conducts the closing. In Florida, the closing agent is usually an attorney or a title insurance agency.

Closing Disclosure (“CD”) - The form promulgated by the Consumer Finance Protection Bureau (CFPB) to disclose closing costs in a real estate transaction to consumers. CFPB is a federal governmental agency and formulated the CD for use nationwide. Because of the desire of the CFPB for uniformity, the cost of title insurance is not accurately disclosed on the CD. Your closing agent will explain the discrepancies and may give you another form (DFS-H1-2146) that accurately discloses the cost of title insurance.

Closing Statement - A closing statement, which is sometimes called a “settlement statement”, Closing Disclosure (CD) or some other name gives a summary of the financial

aspects of a closing and shows how all of the money is disbursed. It is prepared by the closing agent and is reviewed and signed by both the buyer and the seller at the closing.

Cloud on the Title - When you buy a home, you want to receive “clear” title to the property. This means that no one else has a claim against the property or the right to use or occupy the property. To make sure that this is the case, a search of the public records is done prior to closing. A cloud on the title is a document in the public records that indicates that someone else may have an interest in or a claim against the property. All clouds on the title should be dealt with prior to closing.

Consumer Finance Protection Bureau (CFPB) - The CFPB is the federal agency that is charged with protecting the interests of the consumer in most residential mortgage transactions.

Declaration of Condominium - The declaration of condominium is the document that is recorded in the public records to create the condominium. It contains limitations on the way that the condominium property may be used and should be reviewed before closing.

Declaration of Covenants and Restrictions - Subdivision restrictions are contained in the declaration of covenants and restrictions for that subdivision that is recorded in the public records. This declaration contains restrictions on the way that property in the subdivision may be used. It also may set up a homeowners’ association and provide for assessments that every homeowner in the subdivision must pay.

Deed - The deed is the legal instrument that transfers title to real estate from the buyer to the seller. Deeds are recorded in the public records of the county in which the real estate is located.

Deposit - Customarily, a buyer will post a deposit, also called “earnest money,” with an “escrow agent” at the time the buyer makes an offer to buy a house. While there is no legal requirement that a buyer post a deposit for a contract to be valid, posting a deposit gives the seller an indication that the buyer is making a serious offer.

DFS-H1-2146 - Form promulgated by the Florida Department of Financial Services to accurately disclose the cost of title insurance in Florida real estate transactions. This form is necessary because the CD promulgated by the CFPB does not accurately disclose these costs.

Documentary Stamps - A tax that is due on certain documents, such as deeds and mortgages, that are executed in Florida. This tax is usually collected at a real estate closing, and the charge for it is one of the closing costs.

Easement - An easement is a right to use a piece of property owned by someone else. For example, an easement may give the electric company the right to run power lines from the street to your house or give a neighbor the right to walk across your property to get to the beach. Easements on the property you are planning to buy may or may not interfere with the way in which you plan to use your property. Before buying, you should review any easements affecting your property to make sure that they are acceptable to you.

Encroachment - An encroachment exists when a structure built on one piece of property overlaps the boundary line of the property and extends onto the property of a neighbor. Encroachments are one of the things that are shown by a survey of the property.

Escrow - Escrow is a procedure in which a third party, usually the closing agent, takes the closing documents and the funds necessary to purchase the property and deals with those documents and funds according to instructions given by the buyer, the seller, and the mortgage lender. When all of the funds have been distributed, all of the necessary documents recorded, and all of the other instructions carried out, escrow closes.

Fee Simple – Fee simple is the most complete ownership of real estate possible. The owner of the fee simple has an unconditional right to dispose of or mortgage the property, and the property passes to the heirs of the fee simple owner on the death of the owner.

Fixed Rate Mortgage - A fixed rate mortgage is one in which the rate of interest stays the same for the entire term of the mortgage.

Florida Real Estate Councils - Groups of local real estate lawyers throughout Florida. For information on the real estate council (REC) in your area and a list of local real estate lawyers who are members of the REC in your area, go to www.flarecs.com.

Homestead Exemption - Homeowners receive a tax exemption on real estate taxes on the house in which they live. To qualify for the exemption, after you buy the house, you must be living in the house on January 1, and must make application for the exemption with the county tax collector by March. There is currently legislation pending before the Florida legislature to make changes to the homestead exemption. You can get details on the current state of the homestead tax exemption from your real estate agent or lawyer.

HUD – “HUD” is the acronym for the United States Department of Housing and Urban Development. HUD sets standards for residential real estate closings through the Real Estate Settlement Procedures Act and the Interstate Land Sales Full Disclosure Act.

Intangible Tax - Intangible tax is a Florida tax that is charged on mortgage notes, among other things. This tax is collected at real estate closings.

Joint Tenancy with the Right of Survivorship - A joint tenancy with the right of survivorship is a form of co-ownership of real estate in which the two or more owners agree that the last of them to survive will own the property by himself or herself. In a joint tenancy with the right of survivorship, the heirs of the first deceased owner have no interest in the property.

Loan Estimate - A Loan Estimate is a three-page form that you receive after applying for a mortgage. The Loan Estimate tells you important details about the loan you have requested. The lender must provide you a Loan Estimate within three business days of receiving your application.

Mortgage - A mortgage is the instrument used in Florida to secure a loan made in connection with real estate. The parcel of real estate is pledged to insure that the loan is paid. If the loan is not paid, the real estate can be sold to pay off the loan.

Negative Amortization - A mortgage with negative amortization is one in which the monthly payments are not sufficient to pay all of the interest that is due on the mortgage. With this type of mortgage, the principal balance that is owed on the mortgage increases each month.

Official Records - The official records, which are sometimes called “public records,” of each county are the records relating to the real estate in that county. Original deeds and mortgages are copied into the public records so that everyone can identify the owner of a particular piece of property.

ORB - Official Records Book.

Option ARM - An option ARM is an adjustable rate mortgage in which the borrower is given the choice of several different payment options. Usually one of the options is the regular amortized monthly payment, a second option is the payment of interest only, and the third option is a payment of less than the amount of interest owed (which results in negative amortization).

Plat - A plat is a detailed map of a subdivision that is prepared by a surveyor and recorded in the official records of the county in which the subdivision is located to provide the public with detailed information about that subdivision and a description of the lots contained in the subdivision.

Proration - A proration is a division of certain expenses (such as taxes or homeowners’ association dues) between the buyer and the seller based on the number of days that each owns the property.

Quit Claim Deed - A quit claim deed is a deed which transfers all of the title that the grantor has in a piece of property but without any warranties. Quit claim deeds are frequently used to correct title problems.

Recording Fees - A recording fee is a fee paid for recording a document in the public records. In Florida, the charge is determined by the number of pages recorded.

RESPA - RESPA is the acronym for Real Estate Settlement Procedures Act. This is the federal law that governs the way that houses are sold and closings are conducted through the United States.

Settlement Statement - A settlement statement, which is sometimes called a “closing statement,” a Closing Disclosure (CD), or “some other name gives a summary of the financial aspects of a closing and shows how all of the money is disbursed. It is prepared by the lender or the closing agent and is reviewed and signed by both the buyer and the seller at the closing.

Short Sale - A short sale is a sale in which the sale price is less than the balance of the

mortgage on the property. For a short sale to take place, the mortgage lender has to agree to release the property from the lien of its mortgage for less than it is owed.

Special Warranty Deed - A special warranty deed is a deed in which the grantor gives only a limited warranty. The grantor agrees that it will defend the buyer's title against only those people who claim they got title to the property from the same grantor as the buyer. In Florida, special warranty deeds are most often used by developers and by mortgage lenders who have taken property back through foreclosure.

Specific Performance - When a buyer and a seller enter into a real estate contract and the seller refuses to convey the property to the buyer at the closing, the buyer can sue the seller to force the seller to do what it promised to do in the contract. Similarly, when a buyer refuses to close, the seller can sue to force the buyer to go through with the deal. This legal action to force one of the parties to comply with the terms of the contract is called an action for specific performance.

Survey - A survey is a scale drawing of a piece of real estate. It will show the footprint of the house, driveways and sidewalks, easements, fences, encroachments, set-back distances, and other things. You should review the survey carefully before you close on your house to make sure that it does not reveal any problems.

Tenancy by the Entirety - Tenancy by the entirety is a type of co-ownership available only to married couples. In a tenancy by the entirety, the surviving spouse gets full title to the property. In addition, in a tenancy by the entirety, most judgments against just one spouse do not attach to the property. In Florida, when a husband and a wife buy real estate together, they own it as tenants by the entirety unless some other type of ownership is stated in the deed.

Tenancy in Common - Tenancy in common is a type of co-ownership without survivorship. When one of the co-owners dies, the share of the deceased owner passes to the heirs or beneficiaries of the estate of deceased owner, rather than to the other co-owner. When unmarried people own property together, they own it as tenants in common unless some other type of ownership is set out in the deed.

Three Day Rule - The CFPB now requires that mortgage lenders deliver a Closing Disclosure to borrowers at least three days prior to the closing.

Warranty Deed - A warranty deed is a deed used to transfer property in which the grantor warrants, among other things, that the grantor owns the property, has the right to convey it, and will defend the buyer's title against anyone who makes a claim against the property. A warranty deed is the type of deed used most often in real estate transactions in Florida. A form for a warranty deed has been adopted by the Florida legislature and is set out in the Florida Statutes (this form is called a "statutory warranty deed").

About the Author

Marshall C. Deason, Jr. has more than 40 years of experience in representing people buying and selling homes in Florida. He is board certified in real estate law by The Florida Bar. Mr. Deason has earned an “AV” rating from Martindale-Hubbell and is listed in Best Lawyers in America. He has served as an adjunct professor, teaching courses on Florida real estate law at both Stetson University College of Law and Cooley Law School of Western Michigan University. Prior to becoming of counsel to Older Lundy Alvarez Koch & Martino in Tampa, Mr. Deason has been a member of both Florida and multi-state law firms, served as vice president and general counsel of a publicly held real estate development company and worked as an attorney/advisor at the U.S. Department of Housing and Urban Development in Washington, D.C. He is the co-author of several books and practice manuals published by The Florida Bar and other organizations. Mr. Deason is a past president of the Bay Area Real Estate Council (BAREC). He has been a frequent speaker at continuing education programs for lawyers on the topics of real estate, business organization, and legal ethics. Mr. Deason received his law degree, cum laude, from Cumberland School of Law of Samford University and served there as executive editor of the law review.



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