



# Tips on Buying a Home in Florida

Advice from an Old Real Estate Lawyer

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## Introduction

Buying a home can be an exciting process, but it can also be stressful, intimidating, and cause problems that will haunt you for years to come. As you progress in the buying process, you will encounter new experiences. You will have to deal with real estate agents, mortgage lenders, 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 be asked to spend a lot of money for the house that you buy. It will be easy to get overwhelmed, and even the most careful buyers will need guidance. Finally, because real estate closings have become a target of internet thieves, you will have to be very careful in how you transfer the money for your closing.

For more than 30 years, I have helped guide Florida home buyers through the real estate purchase maze and helped them solve the problems that come up in the process. I am writing this guide to help buyers better understand the process and to help them avoid many of the pitfalls.



## The Basics

You are buying a house to live in. This is your primary objective and the one which you must keep in focus during the entire process. Your home should meet the needs of your life style - it should have the right number of bedrooms and bathrooms and should not require more renovation or maintenance than you are able and willing to provide. It should be located in an area that is convenient to your work, to grocery stores, and to the activities in which you participate. You should be able to afford the monthly mortgage payments, the cost of insurance, the real estate taxes, and the cost of maintaining the house.

You will hear a lot of talk about real estate as an “investment.” It is possible that the value of the house you buy will increase. It is also possible that, because of events beyond your control, your house will go down in value. You are buying the house principally as a place to live. Investment potential should be a secondary concern.

Buying a house is providing shelter for your family; it is not a romantic interlude. Try not to overlook the problems with a house because you “fall in love with it.” The romantic luster will wear off your house, and “divorcing” a house that you no longer love can be a difficult and expensive process.

### Steps in buying 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 buyer finds a house to buy.
2. The buyer makes an offer to buy the house from the seller.
3. The seller accepts the buyers 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 the 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. After the closing the buyer receives a copy of the recorded deed and a final title insurance policy.





## The Real Estate Broker

Most people use a sales agent working for a real estate broker to help them find a home. These real estate professionals are familiar with the area and with the inventory of houses that are for sale. They help guide buyers through the purchasing process and are a good source of information. You should look for a sales agent with whom you are comfortable and who has a good knowledge of the area in which you want to buy. You may want to interview several sales agents 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 a buyer's real estate broker in the area in which you are planning to buy.

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 working 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 a broker or sales agent does not have you sign a form authorizing him or her to act as a buyer's agent or give you a written disclosure that the agent is seller's agent, the agent is acting as a transaction broker.

There are some houses that are advertised as "for sale by owner" with no real estate broker involved. The advantage to buying a house directly from the owner is that you may be able to get the house at a lower price because the seller does not have to pay a real estate commission. The problems with buying a house directly from a seller are that you do not have the benefit of the broker's knowledge about the area and that you do not have anyone to help guide you through the closing of the sale.

### Things to remember in dealing with real estate brokers:

- Real estate brokers and sales agents get paid a commission based on the amount that you pay for the house that you buy. It is in their financial interest to get you to buy the most expensive house you can afford for the highest purchase price possible.



- Real estate brokers and sales agents get a larger commission for houses that are listed by their office than they do for houses that are listed by another office. It is in their financial interest to steer you to one of their listings rather than one listed by another broker.
- Seller's brokers and transaction brokers have interests in the deal that are different from those of a buyer. You should not discuss bidding strategy or how much money you are willing to pay with these types of brokers.
- Real estate brokers frequently have affiliated business relationships with mortgage brokers, insurance agents or title companies. They 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. (Be aware, however, that each time a lender orders a credit report on you, it can have a detrimental effect on your credit score.)
- 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 you buy a house you could not otherwise afford.
- 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.

## **The Real Estate Contract**

When you decide on the house you want to buy, you make your offer to the seller by preparing a real estate contract. You can prepare the contract yourself, but in most cases, buyers are helped by a real estate sales agent or a lawyer in preparing the contract to present to the seller.

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. You should read it carefully, or, if you do not understand the provisions, hire a lawyer to review the contract with you.

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 your offer are the way that you want them. Several of the "standard form" residential real estate contracts in use in Florida are slanted in favor of sellers and real



estate brokers. If your broker proposes to use such a form, you should change many of the printed provisions so that they are fair to you.

## 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 buying. (A tax collector's Personal Identification Number (PIN) or folio number is NOT a legal description.)
- Make sure that the deposit that you put down is small enough that you can afford to lose it if problems develop with the deal.
- Make sure that the contract gives you a reasonable amount of time to have the property inspected and to get a mortgage commitment.
- Make sure that the contract contains a "mortgage contingency." This is a provision in a contract that says that if you are not able to get a mortgage to purchase the property, you are able to get your deposit back. Some of the pre-printed standard form contracts severely limit the rights of the buyer to get back deposits. You should insist on a mortgage contingency provision that has no limits on your rights to receive a refund of your deposit if the mortgage lender backs out of the deal.
- If the contract provides for mediation and arbitration instead of litigation to resolve disputes, it will be very difficult for you to protect yourself if the seller decides to sell the property to someone else. You should delete the provisions calling for arbitration.
- 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 seller or the real estate agent probably cannot be enforced.



## Home Inspections and Surveys

There are many types of construction defects in houses that are not apparent to buyers visiting the houses with sales agents. Prior to buying a house, most buyers hire a qualified home inspector to give the house a comprehensive inspection. This is true whether the buyer is buying an older house or new construction and whether it is a detached single family residence, a townhouse, or a condominium unit in a multistory building. Most real estate brokers have lists of competent home inspectors with whom they have worked. There is also a trade organization, the American Society of Home Inspectors (ASHI), that sets experience and educational standards for its members.

A buyer 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 need to make the repair.
- Defects should be identified as cosmetic or non-cosmetic.
- The inspection should include a test for radon contamination.
- If the house was built before 1978, the inspection should include a test for asbestos.

An “open permit” search should be done on the property to see if additions to the house have been inspected by the building inspector. This search is usually done by the closing agent rather than the home inspector.

Unfortunately, contracts for home inspection usually limit the damages you can recover if the inspector makes a mistake or misses a defect. You should not count on recovering any money for a home inspector for a mistake or oversight.

In addition to a home inspection for defects, you should 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 damage to Florida homes. This inspection should be performed by a licensed pest control company.

Surveys are similar to inspections in that they can show problems with the property that you are buying. 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 go over your survey carefully with your surveyor or



with someone else who is familiar with surveys to see if anything shown on the survey causes a problem. Title insurance does not usually cover any defects that are shown by a survey of the property.

## Getting a Mortgage

Most buyers have to borrow money to be able to afford a house. Buyers usually borrow money through some type of lending institution. Sometimes they deal directly with the lending institution and sometimes they go through a mortgage broker. If you do not know where to look for a mortgage, you should start with the bank at which you have your accounts or ask someone you respect for the name of a mortgage broker or lender with whom they have had success in the past.

Once you have located a mortgage lender or mortgage broker, there are several steps in obtaining a mortgage:

1. Before starting to look at houses many people meet with a mortgage lender or mortgage broker to “pre-qualify.” In the prequalification process, the borrower gives the mortgage broker certain preliminary information, and the mortgage broker determines how large a mortgage for which the borrower will likely qualify. With this information, the buyer will know the price range in which to shop for a house.
2. After their offer to buy a house is accepted by the seller, buyers make formal application for their mortgage. In making this application, buyers usually have to furnish copies of their recent tax returns, proof of employment, a copy of their real estate contract, copies of their banks statements, and other information requested by the lender.
3. The lender then reviews the application and the information and makes a decision as to whether or not to make the loan. If the lender decides to make the loan, it issues a loan commitment saying that it will make the loan and listing any other things that the buyer must do for the lender before the closing. The lender will give the borrower a Loan Estimate which will give borrowers an approximation of the closing costs they can expect in the transaction.
4. The buyer then gives the lender contact information to the closing agent so that they can coordinate the closing.
5. Prior to the closing the closing agent sends the lender the title insurance commitment to review.
6. At least three business days prior to the closing, the lender delivers a Closing Disclosure (“CD”) to the buyer to give the buyer a chance to review the charges. This



three day advance CD may not contain all of the closing charges – those that do not alter the interest rate on the mortgage may not be included.

7. Shortly before the closing, the lender sends the closing agent documents to be signed at the closing and a list of instructions to be carried out by the closing agent before the proceeds of the mortgage can be released.

8. As part of the closing process, the closing agent complies with the lenders instructions and the loan proceeds are released so that the transaction can take place.

There have been a series of abuses in the mortgage industry and criminal prosecutions for mortgage fraud are increasing. So that you do not become involved in mortgage fraud, you should be wary of the following things:

- Do not lie on a mortgage application. If your mortgage broker tells you that “everybody stretches the truth on mortgage applications,” find somewhere else to get your mortgage. Making false statements on a mortgage application is a crime.
- Do not leave any blanks in your mortgage application for the mortgage broker to fill in.
- Beware of any mortgage broker or mortgage lender who talks about “creative financing.”
- Do not participate in any deal in which you inflate the purchase price and the seller gives you the cash you need to close.
- Do not “lend” your credit to someone else to close a loan. Do not “borrow” someone else’s credit to buy a house.
- At the closing, you may be asked to sign a printed copy of your loan application. Review it carefully to make sure that the representations you made in your original application have not been altered.

New and inventive mortgage scams are being introduced every day. If something related to your mortgage does not seem right or seems too good to be true, put the transactions on hold and do not sign any documents until you have reviewed the transaction with an attorney.

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.



## 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.

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 pay in your contract. It should not be higher or lower.
- 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.



## Reviewing Neighborhood Rules and Restrictions

All condominiums and most recently developed subdivisions have rules and restrictions which limit the ways in which you can use your property. The purpose of these rules and restrictions is to give the neighborhood a uniform residential character. These rules and regulations are important and can be enforced by both the community association and your neighbors. Before you decide to buy a house in a particular neighborhood, you should review the rules and restrictions carefully. Your sales agent can get you a copy of all applicable rules and restrictions. You cannot rely on a review by a sales agent or an attorney because a restriction may be legal or customary and not important to most people, but vitally important to you. Some of the common subdivision restrictions that cause problems are:

- If you have children or grandchildren who like to play basketball, there may be a restriction against putting up a basketball hoop in the driveway.
- If you have a truck that you use for work that has the name of your business on the side, there may be a restriction against parking the truck in your driveway.
- If you own a motor home or a boat on a trailer, there may be a restriction against parking it on your property.
- If you like to air-dry your clothes rather than drying them in an electric clothes dryer, there may be a restriction against doing so.
- If you want to build a fence around your yard, there may be a restriction against doing so, or a limitation on the type of fence that you build.
- If you want to build an addition onto your house or re-landscape your yard, you may have to obtain approval of an architectural committee before doing so.
- If you want a satellite antenna for your television, you may be prohibited from installing one.
- If you have a big dog, there may be a limitation on the size and weight of dogs allowed in the neighborhood.
- If you want to change the color when you paint your house, you may have to get permission from the architectural committee before doing so.





## 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 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 who does not have a financial stake in whether or not 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 the seller or the real estate sales agent, 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. You should take the contract to the lawyer to review before you sign it.
- 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.



## 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](http://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 a Florida real estate lawyer's credentials.
- 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](http://www.flarecs.com).
- You can consult an on line source such as [www.avvo.com](http://www.avvo.com) or [www.martindale.com](http://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. 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 a Florida real estate lawyer's credentials.



## 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](http://www.flarecs.com).

**Homestead Exemption** - Homeowners receive a tax exemption on real estate taxes on the house in which that 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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