

YOUR REAL ESTATE **TRANSACTION**

What do you need to know ?

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Initial Considerations . . .

Purchasing and selling real estate is one of your a major investments. The recent problems nationally and worldwide show that there are pitfalls in the real estate market.

The legal issues involving real estate transactions include contracts, agency, lending, and involve real estate condition reports, marital property, taxation, environmental, zoning, personal property, leases and more. The parties involved in the transaction, beside the buyer and seller, include attorneys, brokers, bankers, mortgagors, title insurance companies, and governmental agencies, such as inspectors, the Internal Revenue Service and the Wisconsin Department of Revenue, and often security interest holders, leaseholders, easement holders, and others.

Before You Sign the Offier . . .

YOUR 'OFFER TO PURCHASE' IS A CONTRACT. The "Offer" is a contract – pure and simple it is a contract. And contracts are binding. And have legal consequences.

In Wisconsin, a law called the 'Statute of Frauds' requires that every contract for the sale of land be in writing to be enforceable. The following elements are to be included in your Offer to Purchase:

- [1] An adequate, accurate, and complete [legal] description of the property;
- [2] The contract terms;
- [3] Legally identifiable parties;
- [4] Identified form of purchase [i.e. as marital survivorship property, joint, tenancy in common, solely owned, or other];
- [5] Disclosure of each encumbrance and exception, including leases, hazards, life estates, other tenant rights, easements, and building code requirements;
- [6] Conditions prior to sale which include clauses regarding financing, survey, zoning, sale of existing property, or review environmental issues; and
- [7] The fact that all warranties and representations survive the closing.

BEFORE YOU SIGN THE OFFER. The most important time to consult with me is before signing the Offer to Purchase. Once the Offer is signed it is a binding contract for thousands of dollars. This contract offer is of greater significance than the Closing itself. Once the 'Offer' is signed by both parties it becomes a legally binding contract which can be enforced in Court with serious monetary consequences – and may also be enforced by specific performance! Therefore, do not tender a deposit or sign a receipt before the Offer to Purchase is completed to your satisfaction.

Do not rely on the so-called "standard" Offer, without any Addendums, as a 'standard' form may not address issues – or address your specific issues as clearly as you need.

Your specific needs may include insulation certification, formaldehyde, mold, a property condition report, survey, inspection, sewer construction, zoning, blueprints, financing and other sale contingencies, marital property law problems, hazardous materials, and tenant rights.

Counter-Offer and Amendments . . .

COUNTER-OFFERS, AMENDMENTS, AND SATISFACTIONS. If Counter-Offers, Amendments, and Satisfactions are required, I will assist you in reviewing each one, or preparing one as necessary for your protection. If a straightforward statement is required, such as confirming financing, or the parties mutually changing the date of the closing, I can give you a simple form which you can complete yourself.

Remember that every change to the Offer, and every satisfaction of a condition [such as a party having satisfied the financing contingency], requires a written notification to the other party which should be signed to maintain the contract as legally binding!

Signing the Offer . . .

After the Buyer has the Offer to Purchase and all its addendums drafted, prepared and assembled to satisfaction, then:

- Number the pages [as Page 1 of 18, and so on],
- Photocopy a minimum of five duplicate original sets, and
- Then sign all of them.

If there are any changes made after the Buyer signs, but before the Seller accepts, then initial each change on each copy.

Distribution of the Offer . . .

After the Buyer has signed all of the copies of the Offer to Purchase, it is ready to be distributed. Keep one duplicate original Offer, then deliver four Offers to the other party.

When the other party accepts, they should be told to return three completely signed duplicate original Offers to you. These three sets of signed duplicate originals are then distributed by as follows:

- Retain one signed Offer,
- Deliver the second signed Offer to this office, and
- Deliver the third signed Offer to your mortgage lender.

(Seller's) Preparation for Closing . . .

If you are the Seller, then prior to the Closing, I will prepare the following documents for you.

However, if you have a Realtor, this will be part of his or her service, and, for me to approve them, you must ask your realtor to forward the copies to me (usually done by fax).

- Deed
- Closing Statement
- Real Estate Transfer Return
- Affidavit as to Construction Liens and Possession
- Affidavits as required by the contract
- Title Policy Commitment
- 1099 Documentation

If necessary I will prepare additional documents:

- Escrow Agreement
- Note and Mortgage

(Buyer's) Review Before Closing . . .

If you are the buyer, then, at a minimum of five business days prior to closing you should have:

- 1] Received the Title Insurance Policy Commitment;
- 2] Received a copy of the most recent Tax Bill from the Seller;
- 3] Obtained a Survey of the property [if required in the contract];

- 4] Received written confirmation that all contingencies in the offer have been satisfied [if required in the contract];
- 5] Received confirmation that there are no liens and encumbrances;
- 6] Reviewed the municipal assessment letters;
- 7] Determined if any Escrows will be needed for occupancy, delivery, special zoning, title opinions, costs, taxes, assessments, rent, water, sewer, association, unused fuel, or miscellaneous expenses [if required in the contract];
- 8] Reviewed the proposed Affidavit as to Construction Liens and Possession;
- 9] Received the mortgage payoff statement[s] from the seller's lender;
- 10] Ordered name and billing changes for all utilities;
- 11] Purchased fire and liability insurance and obtained a binder;
- 12] Checked with your tax preparer regarding tax consequences;
- 13] Rechecked your Offer to Purchase, including all Addendums, Modifications, Satisfactions, Amendments and Counter-Offers;
- 14] Reviewed the proposed Deed as to legal description, who will take title and in what form, and checked compliance with the contract;
- 15] Reviewed the proposed Wisconsin Real Estate Transfer Return;
- 16] Reviewed the 1099 Real Estate Transaction Statement for IRS tax filing.

REAL ESTATE DOCUMENT REVIEW FOR BUYERS. A popular service in my law practice has been my review of the Closing documents two days prior to the actual Closing. My service consists of reviewing the documents and providing you with a written commentary and checklist.

If you wish this service, you must confirm it in advance, and then provide these documents to this office:

Offer to Purchase including all Amendments and Counter-Offers,
Closing Statement,
Deed,
Wisconsin Real Estate Transfer Return,
Title Commitment with all Attachments,
Judgment Affidavit [if delivered to you],
Affidavit as to Construction Liens and Possession,
1099 Real Estate Transaction Statement for IRS tax filing [if delivered to you],
Survey [if required by the Offer],
Assessment Letters,
Prior year's paid Tax Bill,
Payoff Letter, and
Mortgage [Financing] documents.

Please call for my fee for this specific service.

Our Mission . . .

I want to share our Mission Statement with you:

Our standard of operation and service is excellence. We believe in substantial ongoing professional education. We believe that proactive law can protect the majority of Clients, and that education of Clients by presenting and explaining options are part of well representing Clients. We believe that no Client should ever have a question or a concern as to how his or her matter is being handled. We believe that Clients should remain in control of the solution to their matter. We treat and care for a Client's problems as if they were our own and will loyally, honestly, and confidentially carry out our professional services.

Our Professional Business Relationship. Our professional business relationship is based upon trust which includes the willingness to discuss all relevant issues and, perhaps, painful in presenting the truth of a matter. When you retain us to advise and represent you, you and your business receive:

- [1] care and concern about each of your matters;
- [2] ethical standards affecting our relationship;
- [3] professional competence;
- [4] fair professional legal fees;
- [5] an efficient staff;
- [6] negotiating skills;
- [7] ability to anticipate additional causes of action; and
- [8] quality services.

Prior to our Conference. Prior to our initial conference you may wish to:

- Prepare a list of all Buyers and Sellers, other attorneys, brokers, bankers, mortgagors, title insurance companies, security interest holders, leaseholders, easement holders, and other persons involved in your matter including the full legal name, complete address, [and, if necessary, Social Security Numbers, dates of birth], e-mail address, and telephone numbers of each person or organization, LLC, or corporation involved, and their EIN numbers;
 - Organize the Offers, Schedules, Amendments, and all your memorandums, documents, and papers in date order;
 - Prepare a brief statement of the problems which you are aware of or want to avoid; and
- Bring all other relevant information regarding your matter.

How I can help you. I look forward to discussing your real estate matter with you toward the goal of helping you. Because the principle of excellence has endured at our firm, we hope you will be well served by our relationship.

Real Estate Services: I provide full real estate services, including:

- Commercial
- Land Contracts
- Leases
- Residential
- Escrow Agreements
- Undeveloped Land.

My Task: To Professionally Represent You. Difficulties are often encountered in negotiating and drafting, therefore, it is impossible to predict the total cost of your matter. My task is to properly represent you and assure you the best possible legal counsel under the circumstances.

Other Booklets which may be helpful to you. I have a number of other Booklets which may be of interest to you. They cover estate planning, professional practices, non-profit organizations, and more. Feel free to contact me for further information.

Affiliated with Schober Schober & Mitchell, S.C. to better serve you. I am an Of Counsel member with the law firm of Schober Schober & Mitchell, S.C. This association benefits you in many ways, because I continue to work and serve you, and all of the resources of Schober Schober & Mitchell, S.C. are available to you and to me. The Business Journal has ranked Schober Schober & Mitchell, S.C. in the top 30 Milwaukee-area law firms.

Sincerely,
Barry W. Szymanski

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This booklet has been prepared to give a general overview of the legal issues in this area and is not intended to provide the type of legal advice that is given when an Attorney confers with a Client and is able to discover exactly the needs and requirements of the Client's matter and thereafter provide specific professional advice for the Client's benefit.

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"Serving you with Excellence"