

Elm Grove Office
15255 Watertown Plank Rd.
Elm Grove, WI 53122-2395

Telephone (262) 784-5415
Fax (262) 784-0975

Delafield Office
830 N. Hwy 83
Hartland, WI 53029-9321

Telephone (262) 646-5894



de la Mora & de la Mora
ATTORNEYS AT LAW

Hector de la Mora
Linda de la Mora
R. Valjon Anderson
Lisa A. Polinske
Danielle Bergner

E-Mail:
delamora@delamoralaw.com

Website:
www.delamoralaw.com

Real Estate Questions & Answers *Wisconsin Law*

Completion of the transfer of real estate from seller to buyer requires consideration of various issues by both parties, including, title to the property, condition of the property, and tax implications. This description was developed to address a number of questions which may arise in the context of real estate transactions.

How important is the offer to purchase?

The offer to purchase becomes a legally binding contract between the buyer and the seller once signed by both of the parties. It settles questions as to when ownership rights will be transferred, when the buyer will receive occupancy of the property, the deadline for the buyer to obtain financing, and the amount of taxes and municipal charges to be paid by each party in the year of the sale. The offer to purchase may provide for a property inspection and tests of such things as water, well, septic and radon tests. It also outlines the obligations of both parties if the tests are not satisfactory or if the transfer is not completed. Your attorney should examine the offer before you sign to avoid problems that cannot later be corrected.

What is Title Insurance?

A title insurance company will insure title to the property, subject to exceptions for such things as future real estate tax assessments, utility easements, and zoning restrictions. If title to the property is later challenged, the title company will defend the title at no cost to the policy holder. If title is found to be other than as insured, the title company will reimburse the policyholder for any financial loss, up to the face amount of the policy.

What is the difference between a quit claim deed and a warranty deed?

A warranty deed conveys the property and guarantees and warrants that the title is free and clear of all encumbrances except for those specifically mentioned in the deed. Exceptions from warranty generally include municipal and zoning ordinances, recorded utility easements, recorded building and use restrictions, and taxes levied in the year of closing. A quit claim deed transfers whatever title the seller has, if any, without warranting or guaranteeing the quality of the title. In most instances, the buyer will want a warranty deed.

What is the Real Estate Condition report?

Wisconsin law requires that all sellers deliver a condition report to the buyer of residential property within ten days of acceptance of an offer to purchase. In the condition report, the seller indicates whether he or she has notice or knowledge of defects related to the roof, electrical system, plumbing system, heating and air conditioning system, well, basement, and foundation or any other problems. If the seller indicates the existence of any defects, the buyer may rescind the contract within two days of receiving the condition report.

Why should a buyer request an inspection?

Although the seller is required to provide a property condition report to the buyer, an inspection permits an independent qualified third party to inspect the property and express an opinion as to its condition. The inspection generally includes the roof, basement, plumbing, electrical system, heating and air conditioning system. If the inspection reveals significant defects, the buyer has various options, depending on how the contract was originally drafted. These options may include the sellers repairing items, a reduction of the purchase price or the cancellation of the contract.

How should spouses title real estate?

In Wisconsin, most spouses will want to title real estate as survivorship marital property. Survivorship marital property passes directly to the surviving spouse at death. The alternative is marital property, in which case the decedent's half of the property passes under his or her will. In the case of a homestead, if husband and wife are named in the deed, it is considered to be held as survivorship marital property, unless otherwise indicated.

Are taxes going to be due on real estate proceeds?

When real estate is sold, a gain is recognized by the seller to the extent the sale proceeds exceed the seller's basis in the property (the amount the seller paid for the property plus any capital improvements). In some cases, this gain can be deferred for tax purposes if the seller enters into a like-kind exchange, also known as a "starker exchange," with replacement real estate.

In addition, a seller can exclude up to \$250,000 of gain (\$500,000 for a husband and wife filing a joint return) from the sale of a principal residence. Generally, the seller must have used the property as his principal residence for two of the five preceding years. A seller can only take advantage of this exclusion once every two years.

What is the purpose of the real estate transfer return?

A real estate transfer return must be filed when property is transferred. A transfer tax equal to three-tenths of one percent of the sales price must be paid by the seller on a sale. The transfer return serves to notify the municipality who is responsible for the payment of the property taxes and other assessments on the property when a change in ownership has occurs.

When is a mortgage required to be repaid?

When property is sold, any outstanding mortgage typically becomes due in full. Prior to the closing, a payoff letter indicating the mortgage balance on the date of closing will be requested. The balance must be paid in full before the seller receives any of the sale proceeds. Once paid, a mortgage satisfaction is recorded releasing the lien against the property.