LEGAL BRIEF
REAL ESTATE GUIDE

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REAL ESTATE GUIDE

Brokers/Agents: In the typical real estate sale, there are two agents, a listing (seller's) agent and a selling (buyer's) agent. Technically, there may be some difference between them regarding whose agents they are; however, you should not place great reliance on them to protect your interests. An agent you retain may intend to help you and represent your interests, but, in the end, he or she is a salesperson interested mainly in getting the sale closed and getting the commission. With that in mind, don't rely on any agent to negotiate the best possible or other aspects of the sale for you, such as timing of closing, time you can move in, etc.

Brokers/Agents for Buyers: Many people begin the process of buying a house by getting an agent to represent them. Whether you should do that or try to do it on your own depends on how much time you are willing to devote to the search for a house and whether you expect to buy a new house. Doing the search yourself may save you money if you find a house for sale by owner, including a new house for sale by the builder. If the seller doesn't have to pay a commission to your agent, you should be able to get some break on the price.

Brokers/Agents for Sellers: Sellers benefit from listing their houses for sale with a real estate office by getting the house listed in the multiple listing service publications and in advertisements paid for by the broker. Another benefit is having the agent to put together the documents necessary to complete the transaction. Unless you are knowledgeable going into the transaction, learning what documents are necessary and getting them filled out adequately could be a major headache.

Purchase and Sale Agreement/"Earnest Money Agreement": From a lawyer's perspective, real estate transactions are odd and backwards, in a sense. Clients entering into big contracts generally consult with their lawyers before signing a binding contract with all the essential terms in it. In residential real estate transactions, the parties usually sign the binding purchase and sale agreement (sometimes called an "earnest money agreement") with only the advice of a salesperson, then consult with a lawyer before closing. As a rule, a closing done by an established escrow office is less risky than entering into the purchase and sale agreement in the first place.

If you do enter into a purchase and sale agreement without consulting a lawyer in the process, use a standard form (provided by an agent or obtainable from an office supply store) and make sure all the blanks are filled in correctly before you sign it. A promise the other party makes, but which is not written into the agreement will probably not be enforceable; however, anything written in the agreement (whether you understand it or not) probably will be enforced.

If you sign a purchase and sale agreement, then decide not to complete the transaction, you could be sued for the amount the other party lost because the transaction didn't go through. The real injured party will not be the seller or buyer, but the real estate agent who spent money out of pocket for advertising, etc. If you are buying with a Veterans Administration (VA) loan, your liability is limited to $300.

Closing: At closing (signing the deed, mortgage, etc.) legal title to the property passes to the buyer. An escrow agent will usually handle this procedure. The buyer and seller pay closing costs as agreed in their purchase and sale agreement.

Form of Ownership: If two or more persons are buying the property jointly, the escrow agent will ask how you want your ownership characterized. This has important legal consequences. It determines your rights to the property while you are alive and affects what happens to your interest when you die.

In Nevada, all joint holders of property are deemed to be "tenants-in-common" unless another characterization is specified in the deed. NRS 111.060. Tenants-in-common have separate interests in the property that may be sold independently (unless there is an agreement to the contrary) and that will go to their heirs instead of the other tenant-in-common upon the death of a joint holder.

Married couples who purchase real estate together may designate their interest as community property. The details of community property law are too complex to summarize here, but in Nevada your ownership would be less independent of your spouse than under tenancy-in-common; it does not include right of survivorship, which means that your spouse would not automatically inherit your interest upon your death. If you want to hold the property as community property with the right of survivorship, the deed must specifically say that. (Note: in most other community property states, ownership of community property automatically includes right of survivorship.)

Finally, parties may own property as joint tenants, which includes the right of survivorship. This form of ownership will rarely be advisable. If you wish to give someone other than a spouse the right to your share of the property upon your death, a will can do that and it is revocable. In joint tenancy, you have given the other person an interest you can't take back without his or her consent.

Homestead Exemption: Under Nevada law, you can protect up to $550,000 of your equity in your primary residence (including mobile homes) from judgments and in bankruptcy. It will not, however, protect the equity from seizure by the state for failure to pay real estate taxes, foreclosure by your mortgage holder, nor foreclosure of a lien filed by someone who you hired to repair or improve your home (mechanic's lien).

The exemption forms are recorded just like deeds by the County Recorder. In Las Vegas every new home owner will receive several flyers offering to file the form for you at a cost of $25. This form is easy to fill out and costs only a few dollars to file, so if you decide to record one, consider doing it yourself.

Nevada Taxes: Nevada charges a transfer tax (like a sales tax) on the sale of real property. The tax rate varies by county. In Clark County, this tax is $5.10 for every $1000 of the sale price.

Like most states, Nevada generates substantial revenue from real estate taxes. Currently, the property tax rate is averages between 1-4% of the property's value depending on location. Nevada exempts $2000 of assessed value from property taxes for veterans who are residents of the state and who served in combat theaters. NRS 361.090. The exemption is not automatic, but you should receive notices from the county treasurer about how to go about claiming the exemption (which may be applied to automobile registration fees if you don't own a home).

Federal Tax Considerations: Mortgage payment interest is deductible from federal income taxes when you itemize deductions. The large amount of interest paid in the early years of a loan allow many people to itemize deductions, resulting in considerable savings on taxes.

Federal tax regulations allow you to avoid paying capital gains taxes on profit made in the sale of a primary residence. You can exclude up to $250,000 ($500,000 if married filing jointly) of the gain on the sale of your home if you meet certain conditions: 1) during the 5-year period ending on the date of the sale of the home, you owned the home for at least 2 years and lived in the home as your main home for at least 2 years, and 2) during the 2-year period ending on the date of the sale of the home you did not exclude from income the gain you earned on the sale of another home.

MORTGAGE CALCULATION TABLE

Multiply the factor from the table by the number of "thousands" in the amount of the loan. For example, for a loan of $106,000 at an interest rate of 8½% for 30 years, multiply 106 (number of thousands) by 7.69 (factor from the table) to get a payment of $815.14. REMEMBER, this is mortgage payment (principal and interest) <u>only</u>. Your monthly payment will probably include taxes and insurance also, which may add several hundred dollars more to the monthly payment.

Interest Rate	15 Years	30 Years
7	8.99	6.65
7½	9.27	6.99
8	9.59	7.34
8½	9.85	7.69
9	10.15	8.05
9½	10.45	8.41
10	10.75	8.78
10½	11.06	9.15
11	11.37	9.53
11½	11.69	9.91
12	12.01	10.29

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