

“Do I Really Need a Real Estate Attorney?”

By: Realtor.com Team & Bob Kelly (6/8/12)

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“In almost every real estate transaction I write [about,] the question is always the same. “Is it necessary for me to hire a real estate attorney?” The answer is both simple and complex. Every state and sometimes regions within states have differing requirements. Some states leave that as an option open to the buyer and seller while others mandate it as a necessity. Your local real estate agent should be able to advise you what the protocol is in the area in which you are buying. That is the simple answer.

The complex answer has to do with in what situation you find yourself.

Buyers

- Are you an out of town buyer?
- Are you buying a property that is a short sale or bank owned?
- Are you buying a property that is part of an estate sale?
- Are you buying a commercial property?
- Are you buying a property that could potentially have some structural issues?
- Are you buying a property in a problematic area such as a flood zone or areas with adverse conditions (tornado prone, radon, toxicity levels, etc.)?

Sellers

- Are you selling a property that is in some state of distress?
- Are you the heir or executor of a property whose owner is now deceased?
- Are you selling a house with a non-cooperative partner?
- Do you have that gut feeling that something could possibly go wrong based on knowledge you have about the property?
- Do you have judgments or liens in your background?

If you answered yes to any of the above questions then hiring an attorney to guide you through the process would definitely be beneficial. If none of those apply to you and you have discussed your situation with your realtor, then you are probably fine to use your realtor’s knowledge and expertise to take you through to closing. As part of a realtor’s licensing education they are taught and tested on the real estate

contracts used within the state that holds their license. Many states also require continuing education courses and/or certifications on subjects such as ethics, buyer's agency, distressed property sales and the list goes on and on. All of these measures are in place to protect all parties, buyers, sellers as well as agents.

The second question I am usually asked is, "My second cousin's uncle is an attorney and would do it for me either free or at minimal cost, can I use him?" The easy answer is that you are free to use whomever you choose. The more significant issue to remember is that real estate law is a specialty with many nuances not covered under general contract law. Also a lawyer could live in an area outside of where the contracts are being written and not know what is considered reasonable and customary for that particular area. I have seen scenarios where "Uncle Lou" the general attorney in an effort to protect his home buying nephew makes changes to the contract that were not reasonable. This inflames the seller and the whole transaction blows up with the end result of everybody losing.

Hiring a real estate attorney when needed is a smart choice. Their mission is to negotiate to make this transaction come together in a peaceful manner that is fair and amenable to both sides. A real estate attorney takes over after the selling price and terms have been established by the realtors in the contract and all parties have signed. He will review the contract itself, negotiate repairs based on the home inspection report, and collaborate with the title company. He will also be with you at settlement along with your realtor and possibly your lending agent. All of these people are working for you to make sure you are protected.

Depending on where you live hiring a real estate attorney can typically cost from \$800 – \$1,000; check for the costs in your specific area. For the die hard bargain shoppers who are always trying to disprove the adage "you get what you pay for" I wish you good luck with Uncle Lou. If it were me, this is one area I wouldn't want to take my chances.