

Residential Real Estate Purchases

**Frequently asked
questions of lawyers
by Purchasers
of homes in central
New Jersey**



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Disclaimer

This publication is intended for informational purposes only. It is not provided as legal advice. No attorney-client relationship is intended to be created by publishing or reading this material. If you are proposing to purchase property, or facing legal issues in relation to a property purchase, seek professional legal counsel to get your questions answered with your particular fact situation in mind.

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Introducing Lee B. Roth Esq.



Attorney Lee Roth, after graduating from an Ivy League law school, spent three years practicing law with an elite firm before establishing his own practice on Main street in Flemington more than 50 years ago. Although he has taught other lawyers trial technique, including jury trials, and has lectured lawyers in a variety of practice areas, his own areas of concentration in his law firm have been in the fields of real estate, land use, wills, estate planning, and estate administration. Other lawyers in the firm that he established more than 50 years ago handle other areas of practice.

Lee Roth has been designated a “Super Lawyer” in the field of real estate law. He has been the chairman of the New Jersey State Bar Association, Real Property, Probate, and Trust Law Section. He has lectured frequently for the Institute for Continuing Legal Education. He has chaired an American Bar Association committee in the real estate field. He is the recipient of the prestigious “Horn award” for service to the real estate practice in New Jersey by the State Bar Association. He has published books and articles in the real estate field.

Although some might think, with his background he would only involve himself in large commercial transactions, the bulk of his practice is in representing people buying and selling homes in Hunterdon and neighboring counties. He has been involved in more than 2,000 transactions in his years of practice.

He brings to each transaction his background and experience in contract law, the law of title insurance, and experience in settling disputes in and out of court.

Residential Real Estate Transactions

Frequently Asked Questions

1. Do I need to work with a real estate broker?

There is no requirement that a buyer of a home work with a real estate broker. There are advantages in doing so. How did you find the house that you're interested in? If you did not find it through a broker you need to determine if the house you're interested in is listed with a broker. If it is, you might as well deal directly with that broker. The listing broker will be receiving a commission from the sale whether you work with that broker or not. The listing broker is expected to have knowledge of the property, has an interest in seeing that a sale takes place, and thus is expected to be helpful as you go through the various steps of the transaction, for example during your inspections of the property. If the property is for sale by owner without a broker involved you may be able to negotiate a better deal with the owner if he is not thus required to pay a commission. But that is rare these days.

2. Should I go to my own broker or the listing broker?

There was a time when each party to a transaction had their own broker who acted as their agent. Under those conditions there was a fiduciary duty owed to the principal working with his own individual broker or agent. Today we find that almost all real estate brokers want to be free to be on both sides of the transaction so that they can earn the full commission. They do not have to split it with another brokerage organization. They cannot do that unless they are a "dual agent" which means that they do not represent either party.

Under those circumstances, if you sign a document allowing the broker you're working with to be a "dual agent", rather than your own individual agent, you need to know that they are not obligated to keep

confidential anything that you tell them. Thus, if in negotiating price, for example you've told the broker that you need to find a property to move into in a short time span, they are free to pass that information on to the seller who can use it in the process of negotiating the price.

If you are not working with a particular broker who helped you find the property, you might want to go directly to the listing broker. Under that condition the listing broker gets to keep the full commission. If you are working with an independent agent or broker, so that the listing broker will have to split his or her commission, you will be competing in the negotiating process with any prospective buyers who are the customers of the listing agent or broker.

3. What will my neighbors be like ?

Everyone wants to live in a good neighborhood, with pleasant neighbors, and with people that are compatible from a number of viewpoints. Some people want a quiet neighborhood. Some people want a neighborhood where there are a lot of children for their own children to play with. If you're working with a real estate broker they should be able to tell you something about the neighborhood. The person who is selling their home should be able to tell you something about the neighborhood and the neighbors. It is recommended that you visit the home for five or more times in your process of purchasing it. You don't have to tour the home each time, but you need to look around and see what's going on in the neighborhood. It's also important that you visit at different times of day and on different days of the week. We had one example where a home was located on the other side of a row of thick evergreen trees next to a very noisy pistol range. Only by visiting the property on the weekend, when the range was active, would a buyer have known of that situation.

4. How do I find out about the school district?

Not only do people want to live in a good neighborhood, but they want to live in a neighborhood that is supported by a good school and school system for their children. If you have a real estate broker that

you work with they can provide you with a lot of information about the local schools. Today it's amazing what we can find out through searching the Internet and looking at school websites. Of course there's nothing like visiting the school itself. Experience tells us that administrators are proud of their school and will be happy to give you a tour and tell you what they have to offer. If your children are of high school age, or soon to be there, you may want to get a copy of the student handbook and a copy of the book that spells out their curriculum. Larger schools tend to have a broader curriculum in terms of more advanced classes, a variety of language classes, and other offerings that you might want for your children. On the other hand small schools tend to have a more comfortable atmosphere from the viewpoint of many students. If your children are into sports you want to look into those offerings as well.

5. How do I find out how much I should pay to buy a home when I find one that I like?

If you are dealing with and through a real estate broker they should be able to give you a list of "comparable" housing offerings that have closed in recent times as well as a list of houses that are offered at the moment and their prices. You want to inquire as to how long houses have been on the market before they sold at the indicated prices and what is the difference between the original listed price and the final selling price. An alternate is to find and hire an actual appraiser who can advise you, but for that service you will pay a fee.

6. How and where do I find the money to purchase a home?

In purchasing a home most buyers are expected to have some money for a deposit. They may have saved that over time. They may have received a gift from family members. Occasionally people actually have the amount of money saved up or otherwise available to buy a property without a mortgage. These are usually older people who are downsizing.

The average transaction these days involves borrowing money in the amount of 80 to 90% of the value of the property being purchased. People seek mortgages loans through the real estate broker they are working with, through online mortgage lending services, and through local lenders such as banks, savings and loans, or mortgage companies. The Internet provides a wealth of information as to what is available and what the costs are. Depending on your credit standing you may be able to get money at a lower interest rate than if you had some credit difficulties in the past. Some lenders are more liberal than others in terms of their requirement of credit standing. Most money borrowed is in the form of a note which is secured by a mortgage on the property.

7. Am I better off with a local bank or an online mortgage lender?

There was a time when we would recommend local banks as the best source of funds because they knew and were familiar with the real estate in their market area. There are still banks that are active in their market area and a few that are even aggressive in the home loan market. Today with the Internet there are broad offerings and opportunities. Many real estate brokerage organizations have favorite lenders that they will want to steer you to. In some cases they will help you borrow the money because they want to earn their commission. In some cases there is a strong affiliation between the brokerage organization and the money lender. There may even be fees and commissions payable to the broker. Feel free to inquire of anyone who is referring you to a particular loan source as to what if any benefit they are getting from the transaction. You need to not only be interested in the cost of the loan, but in the quality of service in getting to closing and in handling your needs after the transaction has closed.

8. What if I am unable to get a mortgage loan?

Sometimes people have difficulty borrowing the money needed to purchase the home that interests them. That might be because of

their credit standing. That might be because they've reached beyond their means and have sought a house that is more expensive than they can afford. It is well to talk to mortgage lenders before you actually sign a contract to buy a house.

That conversation can help you know the range of property you can purchase. You can learn if you qualify for a mortgage that is a percentage of the purchase price that is reasonable and works for you. You might get a prequalification letter from a lender which gives the seller some assurance that you will be able to proceed with the transaction before he takes his property off the market.

It is usually an obligation of the listing broker, where there is one, to determine that a buyer is qualified to purchase any particular property. After all they don't want the property off the market while a buyer seeks a loan unsuccessfully. Every contract that I have been involved in, with rare exception, has a provision making the purchase of the property conditioned on the ability of the buyer to arrange a mortgage loan. With such a clause in a purchase contract there should be no fear of losing a deposit, or facing some other penalty, as part of the transaction.

9. Will my house be served with a public water system or private well?

Every home has to have a system for bringing water to the occupants. Many people prefer a home where there is a private well because of the quality of water that can be obtained. Public water systems often involve water that's been treated with chemicals, a treatment process that is almost always avoided with a private well.

Of course there is some risk with a private well. The well itself may go dry requiring the owner of the property to either dig deeper or dig a new well. Of course there's an expense, sometimes a considerable expense, if that should happen. The law these days in New Jersey requires that the water from a private well be tested prior to the transfer of property. There is no requirement that the well pass

any particular test. The only requirement is that the information from testing be made available to the purchaser. Thus where a well is involved we commonly see a clause in a contract that makes proceeding with the transaction conditioned on a satisfactory water test.

Where there is a public water system such testing is avoided. Of course with a public water system there is a periodic bill for the use of the water. With a private well the cost is the electricity to pump the water.

10. Will my house be served with a public sewer system or private septic system?

Any house needs to have a way to dispose of home wash water, laundry water, and human waste. With the public sewer system it's quite easy and generally very reliable. Of course there is a periodic bill for the sewer system service. In the more rural areas of the state, where houses are more spread out, there is less likelihood that you will find a public sewer system. In those areas there will be a private septic system.

You'll want to become familiar with what that system is so that you know what you're getting into. Basically the waste from the home goes into a tank buried in the yard. The solids in that tank tend to sink to the bottom and the liquids run off through a pipe that goes out into a series of trenches filled with stone. These trenches are called *laterals*. With the septic system there are several risks. One is that a high water table can interfere with the operation of the system. Another is that the stone filled trenches can become clogged and require servicing and might even require replacement.

Although there is no requirement that you have a septic system inspected or tested it is well to do so before buying a house serviced with such a system. Should the system fail you'll face a very substantial cost.

11. What are the limits on how I can use my property?

Almost every municipality in the state of New Jersey has passed what are known as zoning laws. These are laws that limit the use of private property. Zoning laws establish particular areas in which defined activities can take place. If a use is not allowed in a particular zone through the wording of the ordinance, that use is prohibited.

Common zone classifications are residential zones allowing for lots of different sizes and for different types of housing. You also may be in a commercial and business zones and industrial zones and zone for public purposes. When you engage in the process of searching for a house to buy and live in you want to find out, either from a broker that you're working with, or directly from the municipal offices of the municipality in which the property is located, what the zones are and what's allowed in each of them.

It would be well to look at a zoning map and see where the property you are interested in lies within a particular zone. If it's on the edge of a zone you may have a use incompatible with your own zone developing in your immediate neighborhood. For example, if you're at the edge of a residential zone, and the next zone is industrial, you might have warehousing or something else developed in close proximity to your house.

Much of our residential zoning allows what is known as in-home occupations. These are minor business uses that are thought not to interfere with the life of neighboring residences. For example one might be able to perform some accounting services from a home, provided that there are not more than some defined number of people working in that business, and provided that there are not more than a certain number of customers coming to the business in any given defined time period.

You'll want to inquire of any broker you're working with, and with the seller of the property, and perhaps with the municipality itself, or with a lawyer representing you, to know if some particular

use you have in mind is allowed. Realize that just because somebody is conducting some activity that is not strictly a residential activity in the immediate neighborhood, does not mean that the zoning limitations would allow you to engage in that activity today. They might be operating under a grandfathered provision of the zoning law, or they might be operating outside of the law.

12. Can I run my business from my home in my zone?

In addition to zoning limitations possibly restricting your ability to run a business out of your home, there may be restrictions and limitations built into the title to the property that prevent you from running a business. There are areas where one can have an in-home occupation under the zoning law, but the developer of a housing development, or someone else, has imposed restrictions on the properties in the development prohibiting what would be allowed under the zoning ordinance.

Such limitations would be discovered in the course of a title search. You can expect your lawyer to read the title search, study the limitations that are exceptions to good marketable title, to review those limitations with you, so that you know whether they are acceptable to you or not. A properly reviewed contract will allow you to walk away from the purchase if there are unacceptable limitations built-in to the title if you have talked to your lawyer during attorney review about your intentions.

13. Can I have animals as pets at my new home?

Another kind of limitation that can occur is a restriction against having certain kinds of pets in your home. I've seen title reports of restrictions that limit the size of animals, that limit the keeping of animals other than what are defined as *common household pets*, and some that provide that there can be no inhabitants other than human beings. It's not uncommon to find these restrictions in relation to properties where people live in close proximity to each other. Properties that are condominium homes, townhouse homes or other

more tightly structured facilities that may have these limitations built in to their rules and laws.

14. What is a condominium home?

There are developments that are known as *common interest developments*. These are properties where people may own the buildings, or they may only own inside walls and the space within those walls, but the surrounding land is owned in common, or is a common interest, with neighboring owners. In fact the exterior walls and roof are likely not owned by the owner of the Condominium homes. A condominium home is much like an apartment. The difference is that the living space is owned by an individual as opposed to being owned by a landlord and rented to individuals. The extent of ownership is defined in a recorded document referred to as “the master deed”.

15. What is a townhouse home?

A townhouse is another type of building or ownership within a common interest development. It differs from a condominium in that the whole building and perhaps a small portion of land maybe actually owned by the individual owner. Again the extent of ownership is defined in the “master deed” which defines the interest, and all the rules relating to the occupancy and use of the property that is part of the development.

It’s important to read the recorded documents relating to any common interest development. In these documents you find the rules and regulations and the limitation of use. For example they may or may not allow the occupant to have a garden of one kind or another in his front yard. They may or may not allow the external storage of a boat or recreational vehicle. They may or may not allow the parking of a commercial vehicle on the property.

16. What is a homeowners association?

A homeowners association is an organization made up of all of the owners of the properties that are part of a common interest development. You might think of it as a small local government. Its rules are usually recorded along with the initial deeds. The individual owners elect their own officers, set a budget for the maintenance of the project, and contain provisions for the management of the property and its organization. There may be swimming pools, tennis courts, sports fields, or other components of the total common interest development. How they may be used, who may use these things, and how the costs are managed are determined by the homeowners association and its representatives elected from among the property owners that are part of the development. This small local government can impose a tax on the property within its jurisdiction to pay the costs of operating the association.

17. What is a title search and should I order one?

A title search is an examination of the public records they tell us who actually owns what interests in any given property. A full search requires that someone, usually a title abstractor, often working for a title company, reviews the chain of title going back for a period of 60 years. A proper search will show who each of the owners were during that time, will show what if any liens were recorded that affect the title or ownership of the property, and if those liens continue to exist or have been discharged and canceled.

Ownership interest might be utility easements, the rights of persons to make some use of the property, limitations on the use of the property, and financing arrangements of any of the owners during the past 60 years. These outstanding interests can be complicated and may continue to exist through the current time. For example there could be an easement to allow a pipeline company to put an oil or gas or water pipeline through the property.

If such an easement exists an owner would not be able to install a swimming pool or tennis court or make any other use, other than use permitted in the easement document, of the easement portion of the subject property. There could also be recorded restrictions against use. Those restrictions might prevent any kind of commercial operation or use of the property, could prevent the keeping of animals, or might impose some other limitations.

Your lawyer is the proper person to order a title search and to read and interpret the report the searcher generates for you so that you understand what the extent of your ownership would be if you proceed with the purchase of the property. Usually the search itself is ordered through a title insurance company or the agent for a title insurance company. There are cases where an individual, having purchased property, thinking that their title to the property is absolute and guaranteed, because they received a title policy from the agency that did a search for them, found out otherwise. What they did not understand was the title policy was full of exceptions to title so that their actual use of the property, and its re-sale ability, was severely limited.

18. Do I need to have title insurance?

There is no law that requires the purchaser of the property to buy title insurance to guarantee their ownership. If you are borrowing money from any conventional source to enable your purchase, you will likely find that the lender will require that you provide title insurance to ensure the interests of the lender. In that sense you will have to pay for lender title insurance. It makes sense to pay slightly more money and get an owner's policy in addition to the lenders policy. I would never purchase a property without obtaining title insurance guaranteeing title as reflected in the policy itself. I also would not recommend that anyone order their own title insurance unless they are sufficiently experienced in law to fully understand its provisions and limitations.

19. Do I need a survey, and what will it tell me if I get one?

A survey of property is an opinion by a licensed land surveyor as to what the property consists of, where it is located, and whether or not there are encroachments on the property lines. That opinion is usually reflected in a map of the property drawn by the surveyor and impressed with the surveyor's seal. If you are borrowing money from a conventional lender you will no doubt be required to obtain a survey certified to the lender, as well as certified to the provider of your title insurance.

For an extra cost you might want to have the corners of your property marked physically on the ground by the surveyor. This helps you understand the limits of your physical ownership. These marked corners would be the basis upon which you are able to locate any buildings, fences, or other improvements on the property. Your survey also provides a way to be sure that there are no encroachments. You would not want to find out, after buying a property, that a neighbor's building encroaches on your property, or that you have fences or buildings not totally within your property lines. A certified survey provides you with the information to know where your lines are and where they are in relation to physical structures.

20. When I find a house that I like what is the next step in purchasing it?

One of the first steps after finding a home that you would like to acquire is the preparation of a contract to purchase. The contract itself is one of the most important documents that you will deal with in the entire process of purchasing a home. It sets all the rules between the persons who sign it. It will set out the price that you will pay, the timing of payment, the conditions that allow you to terminate the contract should you have difficulty getting your financing or if you find the condition of the property to be unsatisfactory on inspection. It will also set the rules as to the quality of title you must expect.

It is essential that you fully understand the contract and that it accurately reflect what you anticipate in relation to your total transaction.

21. Who writes the contract to purchase?

If you are dealing with a licensed real estate broker they will likely prepare a contract by filling in a preprinted form provided to them by their office or by the Realtor® Association. Although preparing a contract for someone else is the practice of law, licensed Realtors® have been allowed to engage in that practice, even though not lawyers, since the mid-1980s. They are required to include in the contract they prepare a provision that allows a New Jersey lawyer, hired by either purchaser or seller, to review the contract on behalf of the lawyer's client and to either accept it as written or to reject it within three days of it being signed by the last party to sign the contract. Before you sign a contract you want to make certain that it contains all of the provisions required to reflect your intentions. It is much simpler to proceed with a complete and comprehensive agreement rather than to deal with the purchase with the thought in mind that your lawyer can change it as part of attorney review.

22. Do I need to pay a deposit and how much should it be?

Among the terms of your contract will be the financial terms. They include the total price, how much money you pay as a deposit, how much additional money will you need, and when you need it. The agreement will likely be conditioned on your ability to obtain financing. The deposit itself is an amount determined through free and open negotiation.

There was a time when people were expected to have 20% of the purchase price saved up when they entered into a contract to buy a house. At that time people were usually asked to deposit 10% of the purchase price. Times have changed. People often are seeking financing or mortgages that are as much as 90 to 95% of the purchase price. In many of these cases the deposit will range from \$1,000 when

signing to 10% of the purchase price. Frequently the deposit will be paid in two steps: a small amount is paid on signing the contract, with the balance of the deposit to be paid following the expiration of the three-day attorney review period that is built into the contract. The deposit itself is usually paid into an escrow account, a special trust bank account of the lawyer, real estate broker, or title company, where it is held until the closing of title itself.

23. Will I lose my deposit if I do not proceed to closing?

A deposit that is paid under the terms of a contract that place the money in an escrow account is not likely to be lost either because of a failure to proceed to closing, or because of the financial failure of the seller of the property. The terms of the contract determine both the timing and the conditions under which the deposit is held, including the conditions under which the deposit may or may not be released from escrow.

24. Should I hire a lawyer to review the contract?

The New Jersey Supreme Court has recommended in one of its published cases that all buyers of homes should be represented by a New Jersey real estate lawyer. The court did not require that people hire a lawyer to represent them in the course of their transaction. But the recommendation that any buyer of property hire a qualified independent lawyer to represent their interests could not have been stronger.

Some times a broker, or other person, will suggest that a lawyer is not needed. They will say that they and a lender and a title company can handle the transaction at less cost. But none of these people or organizations can provide legal advice or answer legal questions. They, and their lawyers, are looking out for their interest and not to protect the interest of the parties to the contract.

A lawyer is the only person involved in the transaction who has the single interest of looking after the client he or she represents. A real estate broker's primary interest is that a transaction closes so they

receive in their commission. That does not mean that an ethical broker will not want to see their customer satisfied — they hope a satisfied customer will make referrals to them for future transactions.

The lender who provides money for the transaction has as their central focus protection of the funds they lend. Their interests are protected by their in-house lawyers who see that the documents, including their commitments, notes, mortgages, title insurance commitments, and other parts of the transaction protect them in the event the money they have loaned is safe and secure and will be paid back to them with the specified interests etc.

The title insurance company wants to be sure that their commitment, and thus their responsibility, does not go beyond what they find of record in the course of their title search. They will often provide protection to the lender, and remove exceptions for a lender that they will not provide to a buyer, unless a lawyer for the buyer asks for that protection for the buyer too.

The lawyer has the responsibility to find out what his client expects, and to see that the transaction meets that expectation, or that the client knowingly changes his or her expectation. Although lawyers like to receive referrals from real estate brokers, lenders, and title companies or agencies, their responsibility is directly to their client, and no other party to the transaction.

25. How do I know what the condition of the house is, and what will it be at closing?

There are three ways that a buyer of a home will assess whether it meets the buyer's expectations in terms of its physical condition. The first way is a physical inspection that the buyer makes of the property. There will be obvious faults and deficiencies. A broken window, water collected in the corner of the basement, peeling paint, obviously worn conditions of the roof or walls, and a generally rundown appearance are obvious to anyone. Those conditions are usually taken into consideration in negotiating the price, and a buyer will expect that

there may be costs in correcting those conditions. A buyer may negotiate directly, or through a broker, for terms in the contract that are a condition of going forward with the purchase, that the seller will take care of those deficiencies.

A second way of assessing condition is by carefully reading a disclosure statement that most real estate brokers collect from the seller and have the seller sign and certified to. A smart seller will disclose deficiencies that are known to the seller so they can be factored into the price negotiation and not complicate the transaction with negotiations after the contract is signed. Some sellers will not sign a disclosure statement, but leave the buyer to his own inspection.

The third way to know the condition is to hire a professional inspector. Generally real estate brokers, and others involved, are not engineers or experts in heating and cooling systems, plumbing, and other physical aspects of a property. In fact brokers usually say so in the contracts they prepare, providing that the buyer may not rely on them as to any aspect of the condition of the property. Use of a professional inspector is recommended.

26. Can I rely on the Seller disclosure statement?

It is not recommended that you rely on the disclosure statement signed by the seller for more than general information. It's true that if a seller misrepresents the condition of a property you may have a claim against the seller. But do you really want to have to assert a claim after the transaction has taken place and you've paid your money to buy the property?

It is true that if a seller actively misrepresents the condition of the property you will have a claim that could be pursued. But the cost of pursuing such a claim after the transaction is closed is not a good alternative to making a proper inspection of the property yourself and with a professional inspector.

27. Do I really need to hire a professional inspector?

There is no requirement that anyone hire a professional inspector. But unless you're qualified to inspect the heating system, to inspect the plumbing and wiring, to inspect the roof for its tight seal and general integrity, to inspect the septic system as to its function and expected life, to inspect the physical structure of the foundation, the roof and supports, crawl around the edges of the house looking for termites, or to know whether the water supplied to the house is satisfactory in all respects, it is suggested that a professional inspector or inspectors be engaged.

Buying a house involves a substantial expenditure of funds and the long term commitment for a series of payments. It is likely that some point in the future you will be selling the house. You don't want that purchaser requiring that you fix things that should've been fixed prior to your purchase. You need to be aware in entering into an agreement with a professional inspector of any limitations they place on their responsibility as part of their inspection. You want to know that your professional inspector is insured and will stand behind his work and his opinions. An inspection agreement that limits the inspector's responsibility to the fee you pay for the inspection is not a good agreement.

28. Need I be concerned about environmental issues?

We are all concerned about the environment in which we live. We all have to think about, and realize, that there will come a time when we will sell our home or pass it on to someone else. If there have been oil or gasoline tanks that leaked, a property has an environmental problem or issue. You want to have any underground oil or gasoline tank removed. You want that removal done under supervision of properly licensed people and you will want certificates from them that the exercise of removal has been done in a proper fashion.

You will also want to know that your house is not full of radon gas. Although radon itself is a harmless gas, it does break down over a short time. If it's allowed to collect, and is not removed, it is a carcinogen that can lead to cancer. There are limits that are acceptable, and limits that are not. It has been a problem in much of Hunterdon County, but fortunately is not terribly costly to correct. Sealing the basement and providing a system that withdraws this gas that may seep into the house is generally reasonable. But as a buyer, if that step is necessary, you want it performed by the seller before you move into the property.

29. Is there a problem if my house is heated with oil?

There is nothing wrong with oil heat itself. The problem with a house heated with oil relates to the possibility of oil leaks and spills. An underground tank can leak, leading to very expensive cleanups of the environmental condition created by the leak. There also can be oil spills in the area where the tank is filled.

In modern times people will install oil tanks in concrete vaults constructed for the purpose. They also obtain insurance policies from their oil suppliers. As part of the inspection process you can inspect any such installation to know that it is in tact and that the integrity has not been breached and is not likely to be breached. Under such conditions there's nothing wrong with oil.

30. Will the property be mine on the date the contract says the transaction will close?

Generally the date scheduled to conclude a residential purchase is considered to be a target date rather than the actual or guaranteed date that the transaction will take place. There's good reason for this. Difficulties with moving out of the property can happen. Health issues of either the buyer or seller can lead to a delay of a few days or more. Complications with the financing arrangements can interfere with meeting the proposed deadline. The way the date for closing needs to be handled is through the parties staying in touch with each other and

knowing that all is in order and likely to take place at a particular time.

As a buyer you do not want to rely on the contract date without assurances well beyond what is usually in a residential real estate contract.

Time can be made certain in the contract, and by proper notice under certain conditions, but doing so in New Jersey is unusual and doing so can lead to more problems than are solved. Timing of the closing, or conclusion of the transaction, should be discussed with your lawyer during the attorney review time period if an exact time is important to you.

31. Will the seller of the house have moved out by the time of my closing?

You have a right to expect the seller to have moved out of the house by the time your closing takes place. Only if the contract provides to the contrary, or if you agree to the contrary after signing the contract, can the seller remain in the property.

In the event that there is a reason for the seller to stay in the property you need to fully discuss the situation with your lawyer and have an occupancy agreement drawn up that provides compensation do you, and provides guarantees and penalties in the event the contractual move out date is not met. Generally you do not want to close title until the seller has moved out, and you have made a final inspection that satisfies you that the property is in the condition that it should be in.

32. What if the seller damages the house in the process of moving out of it?

It's always possible that the process of moving out causes damage to the house itself. It is possible that in the process of moving out a seller takes appliances or other component parts of the property

contrary to what the contract provides. These are the reasons for a final “walk-through” just prior to the actual closing.

If damage is found, or something expected to remain as been removed, it is necessary to negotiate with the seller for proper compensation. It is possible to negotiate an arrangement whereby some of the sale proceeds are held in an escrow account until damage is fixed, or removed items are returned and replaced.

It is recommended that you not close title until these things are accomplished, but we recognize that delay is not always possible from a purchaser’s viewpoint. You may have a moving van sitting in the driveway, or other needs to move in before damage is corrected. An agreement that money be held, that provides for work to be done, and provides a basis for releasing the funds held, is an important part of the transaction. Although it will involve a cost beyond that estimated as your cost for closing, it is worth protecting yourself through such a deposit and an agreement.

33. What if I find physical problems with the house after the closing?

If after you close on the house, and move in, you find physical problems that you did not know about or were not disclosed in either the seller’s disclosure statement, if there is one, or found by your professional inspector, you need to determine the extent of those problems. If they’re very minor problems you might contact the seller and see if they’re willing to fix them. If they’re not willing to fix them, be aware that the cost of requiring the seller to fix such problems might exceed the cost of your fixing them yourself. If the seller has actively concealed problems there are remedies available through a court proceeding, but they take time and involve costs. That’s why we recommend as strongly as we can proper inspections, and if problems are found, arrangements for fixing the problems before closing.

34. In what form must I bring my money to the closing?

Funds required at the closing must usually be in one of three forms: the two most usual are a certified check or a bank check payable to the closing agent or to yourself to be endorsed over to the closing agent. The third common form is a wire transfer sent from your bank to the closing agent. For wire transfers there must be confirmation of its receipt before the closing can be concluded.

Some contracts allow cash. Because of the difficulties in handling cash, and because of the fact that cash beyond a certain amount is reported by all banks to government authorities, and can lead to investigations as to the source of the cash because of concerns of money laundering or drug trafficking, using cash beyond modest amounts is usually frowned upon.

Third-party checks are generally not acceptable. Your check for small adjustments can be written at the closing and is usually accepted. But checks for larger amounts, even if drawn on a company credit union, or a large company itself, are usually not acceptable. It's well to talk to your lawyer about the form of funds needed when you get close to the closing if you do not have not a certified check or a bank check, but do so in time so you have an opportunity to be sure you can have your funds in proper form.

If you're planning on cashing in investments or an investment account to have money needed, make sure that you do so sufficiently in advance of the closing so that your money can be in the proper form.

35. What do I expect to happen at the closing?

By the time we get to the closing table all details relating to the transaction should be worked out. We should know exactly what the title to the property is, and we should know of any exceptions to title that are not acceptable so they have been dealt with and eliminated.

We should know that the property is in a condition acceptable to you the buyer. We should know that the seller has moved out of the property and has left it in what we call a “broom clean” condition.

We should have worked out all of the financial aspects of the transaction in advance. In fact most lenders will not make money available unless they’ve seen the title closing statement three days in advance of the closing with all of the figures accounted for.

If all of this is in order, the closing itself only involves the signing of all of the documents that are involved. That will include documents provided by the bank, which are usually a note, mortgage securing the note, an affidavit of title providing final information about you under oath, and a closing statement itself.

We will make a final review of the documents brought to the closing by the seller, which will usually include a deed, affidavit of title, possibly additional affidavits, and related documents required by the lender and by your title company. These days we have present at our closings an officer or a representative of the title company who will go over the final title report with us, and will actually serve as closing or disbursement agent for the funds involved.

That representative of the title company will usually take the original of the deed and mortgage for recording. We will have copies of such documents and provide them to you, and put copies in our own file.

Probably the last step will be your receiving the keys to the house which will be yours at the conclusion of the closing or settlement.

36. When will I get my deed and title insurance for the property?

It can take anywhere from 30 to 90 days to get a deed back from the recording office. The time it takes is dependent upon the county in which the property is located, the efficiency of the County Clerk or recording officer staff, and the number of other transactions that have

taken place that lead to the need for them to record deeds and mortgages etc.

In some cases the recording office makes microfilm copies of all of the documents. They retain the originals in their office until the microfilm is returned to them from a service agency and they know that they have copies of the recorded documents on film. We forward your deed to you within a week of receiving it in our office. The title policy is issued after the deed and mortgage had been returned. Sometimes we will hold the deed until we get the original title policy so we can send both the deed and title policy to you together.