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Dear Purchaser:

Thank you for choosing me to represent you in your real estate transaction. In this letter, I will attempt to address many of the issues that arise in purchases of property in New Jersey in the form of a Q&A. My real estate practice is focused on the Mercer, Middlesex, and Somerset County areas, but I practice throughout the state. I can assist with everything from contract review, repair requests, title and survey review, closing processing, and more.

Q: How can you assist with changes to my real estate contract?

Through **Attorney Review**, I am able to request changes to or disapprove of your real estate contract. The Attorney Review clause allows Realtors to prepare residential real estate contracts, allows the buyer and seller to sign the contract, and then allows each party the right to have an attorney review the contract within three business days after it is signed, and to disapprove the contract or to make changes to it.

Either attorney in a transaction may cancel the contract or initiate changes to it provided that he or she sends a letter to the other side within three business days from the date that the last party signs and delivers the contract. Once either attorney sends a letter under the Attorney Review asking for changes to the contract, the Attorney Review does not end until both sides reach an agreement. This means that the Attorney Review may end within the three days if agreement is reached within that time or may extend beyond those three days until such time as agreement is reached, if at all.

Q: What do I need to have ready to purchase a property?

Before we are out of the Attorney Review on your purchase, there are a few issues which you must review for yourself and with me.

- Let me know if you have a house to sell in order to be able to buy this property. This may affect whether you should proceed with this contract.
- If the property you are purchasing involves an association, review the by-laws and conditions, covenants & restrictions before the end of the Attorney Review. If you cannot review the By-Laws and Conditions, Covenants & Restrictions before the end of the Attorney Review, in

my Attorney Review Letter I will try to require that the Sellers provide them to you and give you three days to review them; but if you fail to do so within that time, you will lose your right to cancel the contracts for reasons related to the documents.

- For resale properties, before the Attorney Review is completed, advise me whether there is an **underground oil tank**. This involves testing, insurance, and possible removal.
- For resale properties with finished basements, additions, or decks, alert me and check with the municipality to confirm that permits and approvals were obtained from the Township.
- If there is a condition of the property which concerns you that is **cosmetic** or involves something which is at the **end of its "useful life" but is not otherwise defective** (like an old roof or HVAC unit which is otherwise operating properly), advise me before we are out of the Attorney Review as we will not be able to raise it later under the inspection contingency.
- If you are purchasing a new property, check the builder's reputation to determine 1) how closely the builder delivers on time, 2) how closely the builder delivers what it promised, and 3) how thoroughly the builder completes any post-closing punch list issues. The builder will likely perform in the future as it did in the past.

Q: How do inspections work?

If you are purchasing a resale, you must arrange for an **engineering/ home inspection** to be completed with a report faxed and mailed early enough that we can discuss the results and I can send a letter to the other attorney within **fourteen (14) days** of the end of Attorney Review. If we do not give timely notice, you will lose your right to raise inspection problems. If the property is new construction, it would be unusual for a builder to allow an engineering inspection; however, the Township Building Department will conduct its own governmental inspections during the progress of the construction.

There are some other issues which you should consider at the time you schedule the **inspection** of a resale. If there is a **well** or **septic**, the lender will want inspections of each (generally the Seller should pay for the well report). If there is a septic system, you should obtain a full, invasive inspection. If the property has synthetic/artificial **stucco**, you should hire a certified EIFS inspector. If there is an **underground oil tank**, the tank and surrounding soil should be tested (you should either ask that the Seller have the tank removed or obtain oil tank insurance). If the property has a **fireplace**, you should consider using an inspector who can do a Level 2 (camera up the chimney flue) inspection to look for cracks. Some lenders want a **wood-boring insect** certification prior to the closing. Please make arrangements to have the inspector(s) send the report to me as soon as it/they are available.

As referenced above, once your inspection is completed, you must call me regarding any problems even before you receive the written report, as we must notify the sellers within the time required by contract. Of course, I will need the report when you receive it so that I can provide it to the other side. If I receive the report without hearing from you, I may not know that certain items are of concern to you. I can advise you and decide with you, but not for you, as to what items should be raised with the other side.

Q: What do I need to keep in mind when choosing a lender?

As soon as you have selected your lender, you should let me know the name of that lender, its address and phone number, the name of the contact person, and the amount borrowed. Before you finalize on a lender, you might want to check with us, as some lenders are particularly difficult to deal with, which could cause you delays. Also, please let both me and your lender know whether the property which you are buying is a single family dwelling, a townhouse, or condominium and the name of the development.

There are some additional mortgage issues to consider if the property which you are buying is new construction. If you are purchasing new construction, although your new construction closing may be in the distant future, please note that the mortgage contingency in most contracts is only for forty-five (45) days. If this is the case in your contract, and you do not apply for the mortgage until closer to the closing, you may lose your mortgage contingency. While it is true that your mortgage commitment will likely expire well before your new construction closing, even if your closing is more than 90 days from the time that you apply for the mortgage, it is better to have the commitment extended by the lender than to lose your contingency.

Under normal circumstances, lenders expect that all parties will appear at the closing. Not all lenders accept Powers of Attorney, and those that do accept them require that the Power of Attorney be executed by the non-attending party and reviewed by the lender in advance of closing. Advise us and the lender well in advance if you believe that a Power of Attorney will be necessary.

Q: What documents do I need to provide to you?

Both the title company and the lender will need certain **marital information** to complete their searches. So that I may comply with these information requests and expedite the closing, if you ask us to represent you, I will send you a **purchaser questionnaire form** for you to provide me with the information which I will need to process your file. This form can also be found on my website.

Q: Is my closing date guaranteed?

The closing date in the contract is **not an absolute deadline**. If you are purchasing a resale property, by New Jersey case law, effectively either party can delay the closing by up to ten (10) days without financial consequence to the other party. Assuming that the mortgage commitment comes on time, the closing is usually on time or otherwise within ten (10) days of the date originally set. On the other hand, if the property is new construction, you are at the mercy of the builder and must close when the builder is ready. If there are construction delays, which is likely, the builder will not be liable to you for your added costs associated with those delays.

An additional point should be made about new construction. Just as almost every New Jersey builder's contract allows the builder to delay the closing, they also require that the buyers must close upon substantial completion of the property. The issuance of a Certificate of Occupancy is evidence of substantial completion. I have never found a builder agreeable to altering this language. Therefore, if

the builder receives its Certificate of Occupancy, it can force you to close even though there may be several items that do not meet with your satisfaction. These items generally are placed on your "punch list" inspection sheet. The fact that you are made to close should not prevent you from going after the builder after the closing to compel him to complete the items if they are not otherwise completed after the closing.

Since the builder can compel the closing, it would be extremely rare for the builder to agree to an escrow for uncompleted items. I should add that generally most builders eventually complete most, if not all, of the "punch list" items. As mentioned previously, before the contract becomes final, you should always attempt to check the reputation of the builder (e.g., with neighbors who have purchased from the builder) to determine the builder's past history for closing on time and for completing what has been promised.

Q: Where should I get title insurance from?

Some lenders and builders will entice you to order title insurance through them. In spite of what they say, the title insurance industry is a regulated industry in New Jersey; therefore, **the charges of all title companies are exactly the same**. Also, be careful about their quotes. It is my experience that they only quote the charge for the insurance aspect of the bill without adding the search, endorsements, and examination portions. So that your title insurance is not ordered from two different title companies, do not authorize the lender to order your title work unless you first discuss it with me. Otherwise, you may pay twice for the title work.

Generally, there is not sufficient time to close on the contract date if we wait for the mortgage commitment before ordering the title and survey. It is my practice to order these immediately after the conclusion of the Attorney Review, regardless of the status of the mortgage commitment, so that I can have them and submit them to the lender with sufficient time to close as scheduled. There is some financial consequence to this approach. If the closing does not occur, a cancellation fee will be charged by the title company and the full survey fee also will be due, both totaling about \$1,000.00.

Q: What can I expect to pay?

Regardless of whether your purchase is new construction or a resale, my fee shall be set forth in a retainer agreement. A standard closing takes fewer than six (6) hours of my time for all aspects of the closing - including about four (4) hours for contract review, initial consultation, addressing of engineering issues, title review, document preparation, and submission to your lender, and an additional two (2) hours for closing and post closing functions. My legal fee may be increased to reflect preparation of a Use and Occupancy Agreement or Power of Attorney, or closing a second mortgage. We also charge separately for messenger or overnight services, or other out-of-pocket expenses. If you do not close on your property, you will not be charged the full fee, but you will be charged a cancellation fee as per the retainer agreement.

In addition to our legal fee and disbursements, it is your obligation to pay for other costs such as **inspections, homeowners' insurance, title company charges, lender charges, survey fees, recording fees, and other charges.** There are also closing costs, detailed below.

Q: What are the closing costs?

As a rough rule of thumb, the closing costs are **approximately 3% of the sale/purchase price** of the home, assuming that you are borrowing 80% of the purchase price, there are no mortgage origination/discount fees, and there is no mortgage insurance (PMI).

When you first start the process, you will have the following costs (approximations):

Bank application	\$500.00
Engineering inspection	\$750.00
Insect inspection	\$75.00

Approximate costs at closing are as follows:

Points	Calculate
Prepaid interest (varies with closing date)	Calculate
4.5 months taxes (payment and escrow)	Calculate
PMI - usually betw. .4% + .8% (if applic.)	Calculate
Misc. bank charges (varies)	~ \$700.00
Title Insurance (About \$2,000 for \$300,000 home about \$3,000 for \$600,000 home about \$4,000 for \$900,000 home)	Calculate
Survey (without corner markers)	\$700.00
Attorney fee	Per retainer
Telephone, Fax, postage & photocopy	N/C
Recording fees	\$350.00
Condo/Homeowners fee (if applicable)	Calculate
Oil in tank, if oil heat	Calculate

Be aware that Buyers pay a "**mansion tax**" of 1% of the gross sales price of a property for properties with a sales price more than \$1,000,000.00 regardless of whether the property is new construction or a resale.

Most lenders want a **homeowner's insurance policy** with a one year's paid receipt prior to closing. They will not accept a binder or application. The policy should have a mortgagee clause naming the lender and giving its address. You should discuss the specific requirements with your lender. If the property is a condominium, please let me know the name of the condominium, and I will attempt to obtain "blanket" insurance from the Association (regardless, you should obtain insurance to protect yourself for liability and your belongings).

Q: How should I pay for the closing costs?

You will need to bring a **cashier's or certified check** to the closing (New Jersey Court Rules and Statutes prohibit us from accepting your personal check). This check may be made payable to the title company. Unfortunately, most of the figures needed for the closing come from the lender, and the lender does not often give us final figures until the day before closing, even if the lender provides you a closing disclosure 3 days prior to closing there may be changes. If you check with us in advance, you can bring an estimated cashier's or certified check to closing if we cannot give you the actual amount due in time for you to get the exact check which you will need. If your check is for more than we need, the title company can write a check back to you. If the check is not enough, they can accept a personal check as long as the amount is not for more than my fee.

Feel free to call me with any questions which you have. I look forward to working with you.

Very truly yours,

Mildred J Hamilton

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