

MJH Mildred J. Hamilton Attorney at Law

471 Oak Street
Florence, New Jersey 08518
telephone (609) 499-1380
fax (630) 604-4478
MHamilton@mjhamiltonesq.com

Member of the New Jersey Bar

Lisa G. Mayer, Of Counsel

Dear Seller:

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 sales of property in New Jersey in the form of a Q&A. I am aware that the letter is lengthy, but I have attempted to be thorough. My real estate practice is focused on the Mercer, Middlesex, Monmouth, Ocean and Burlington County areas, but I practice throughout the state. I can assist with everything from contract review, repair request responses, title and survey review, closing preparations, 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 can I expect to pay?

My fee shall be set forth in a retainer agreement. This fee may be increased to reflect travel more than (45) miles from Florence, or preparation of a Use and Occupancy Agreement, a Power of Attorney, or clearing judgements. 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.

There are also a few additional closing costs in most sales. First, there is a **Real Estate Transfer Fee**, which is the obligation of the Seller. Currently, this fee is calculated on a multi-tier schedule:

approximately **\$1,000 for the first \$200,000.00** and roughly **\$11 per \$1000.00 thereafter** (on a sliding scale). Please advise me if you are 62 years old or older and living at the property, as there is a reduced rate for seniors. A calculator for this fee can be found on my website.

Additionally, there are two potential tax consequences if the property has not been your principal residence (especially if the property was rented out). First, if you have not lived in the property as your principal residence for at least 2 of the last 5 years or you will not be a resident of New Jersey next year, the closing agent will be obligated to deduct and send a tax withholding to the State of New Jersey in the amount of 2% of the gross sales price of the property. Second, there might be a federal capital gain issue if the property was not your principal residence for at least 2 of the last 5 years regardless of whether you will remain a resident of New Jersey after the closing.

Next, the **mortgage pay-off** frequently surprises people because they forget that mortgages are paid for the month prior to payment and that interest continues to accrue until the lender is in receipt of the pay-off. This interest is in addition to the principal balance. As a result, the pay-off for newer loans can be greater than the amount borrowed. Also, any home equity or bridge loans must be paid off at closing (please note that both home equity loans and bridge loans are mortgages, although most people do not realize it). Please realize that most mortgage payments are not posted by your lender until about ten (10) days after the payment is mailed by you; and most attorneys will receive the pay-off letter from your lender about a week before closing. This means that unless you can make your mortgage payment to your lender at least two (2) weeks before the closing, you will probably not get your "overpayment" returned to you until sometime after the closing. If you have any questions regarding making a payment, call me.

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

If I have not already asked you for your **deed, title policy, and survey** or if you have not already provided them, please send them to my office at **MHamilton@mjhamiltoneq.com**. Additionally, if anyone on the title has been divorced, I need a copy of the divorce judgment to provide to the title company. Besides the documents referenced above, the title company will need certain marital information (as it does with your purchase); the government will require certain information; and the other attorney will need mortgage payoff information. 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 **seller 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.

In anticipation of closing, you must contact your municipality to obtain a **certification for smoke detectors, carbon monoxide detectors, and fire extinguishers** showing that you have complied with the State requirements. Additionally, the municipality in which your property is located may require an inspection for a **Certificate of Occupancy**, and you will need to make the necessary repairs to obtain the Certification of Occupancy unless you have requested otherwise at the time of signing the contract. You will need to make arrangements for a Certificate of Occupancy inspection. Finally, if your house is serviced by a well, you should obtain a **well water certification**. You should make arrangements to have these inspections performed about one month before the closing so that any needed corrections can be completed prior to closing. Your real estate agent can help you to arrange these inspections

and certifications. Furthermore, please confirm whether you did any work to the property which required permits; if you did, advise as to what you did, when you did it, and whether you obtained permits for the work. If you did not obtain permits, you will be expected to obtain permits and approvals prior to the closing.

Q: Is my closing date guaranteed?

It is important to know that the closing date in the contract is **not an absolute deadline**. Assuming that the Buyer's mortgage commitment comes on time, the closing is usually within ten (10) days of the date originally set. Additionally, please note that the buyers generally expect to conduct their final walkthrough inspection about two (2) hours prior to the scheduled closing. It is expected that the property will be vacant and broom cleaned prior to closing. You must schedule your movers accordingly. Please advise me if you expect any problems in complying with this timing.

If you do not plan to attend the sale, notify us enough in advance so that we can prepare and you can sign the Deed, Affidavit of Title, IRS form, Seller Residency Certification, FIRPTA, and a Power of Attorney prior to the closing. Also, advise us as to how we should get the proceeds to you after the closing. You may have the proceeds overnighted to you or by wire transfer. These services may be at a charge from the title company. If you choose to receive a wire transfer, you will have to contact the title company directly to arrange for that. *I will not email wire instructions on your behalf.* Please be aware of fraud when arranging a wire transfer. *I will never ask you to wire funds to my office.*

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

Very truly yours,

Mildred J Hamilton

Mildred J Hamilton, Esquire