

Understanding the Basics

Buying and Selling a Home in the Berkshires of Massachusetts

Realtors, Attorneys, and the Contract



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INTRODUCTION

Our goal is to dispel confusion and provide some guidance to those unfamiliar with buying and selling real estate in the Berkshires of Massachusetts.

We represent individuals and families who have lived here for generations, as well as those who have relocated here on a full or part-time basis. Many of our out-of-state clients come from New York, New Jersey, Florida, and Connecticut. We often hear that the real estate practice and law here in the Berkshires are foreign to them – even to clients who are lawyers - and that buying or selling a home here is quite unlike their past experiences in other states. Even those who have participated in property transactions in Eastern Massachusetts can be surprised by the differences they encounter when dealing with real estate in the Berkshires.

This guide is not a substitute for experienced counseling by lawyers, realtors, architects, surveyors, and other professionals, all of whose advice may be necessary to successfully conclude a real estate transaction. We hope, however, that what we have written can make your purchase or sale of real property smoother and easier to understand, and to help you avoid the pitfalls, stress, disappointment, and financial loss that can result from uninformed decisions.

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In many states, title insurance agencies, notaries, and escrow companies conduct real estate settlements or closings. That is not the case in Massachusetts. Here, our state's highest court has ruled that real estate closings must be conducted by an attorney who is licensed to practice law in Massachusetts. It is the attorney's obligation, among other things, to review titles and give title opinions, prepare deeds and other instruments, ensure that funds are received and disbursed correctly, that deeds, mortgages, and other instruments are recorded correctly, and that prior mortgages or other liens are discharged. Real property law in Massachusetts is derived from ancient legal principles dating back to England, but it is also ever-changing. Attorneys must know both the base legal principles and the breaking news of constantly developing changes in real property law.

Few real estate transactions occur in the Berkshires without the involvement of a real estate agent. Realtors are integral to the process of buying and selling property for many reasons. Realtors perform myriad critical services during the course of a transaction, some of which we will describe – but understand that this chapter only scratches the surface of a realtor's contribution to the team.

Real Estate Agents

The value of a real estate agent to a buyer and seller is significant, but not all aspects of our local realtors' contributions are readily apparent. It is the realtor who has intimate knowledge of our different towns, their neighborhoods and school systems. Realtors know where hospitals, dentists and doctors are located; the distance to a food store, house of worship, dry cleaner, or the post office; where the dog park is located; and how long it will take to get to Tanglewood, the Stockbridge Bowl, Lake Garfield, Jacob's Pillow, the Berkshire Museum, Mass MoCA in North Adams, or the outlet mall in Lee.

Most properties for sale in the Berkshires are listed with the Berkshire Multiple Listing Service, also known as the MLS. The MLS is a cooperative marketing network created by realtors to help the public buy and sell homes. Information pertaining to a seller's property is entered into the MLS database by a seller's agent, and then all MLS member realtors can access that information. There is a high degree of cooperation among realtors. Nearly all realtors are able to show every home listed with the MLS to a prospective buyer.



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In choosing a realtor, whether you are a buyer or seller, always try to choose a person who understands your interests and appears knowledgeable and experienced. A good realtor is able to weed out properties that would not be a good fit, and can suggest properties that you might not have considered, but which could be the right choice. It is also important to choose someone with whom you are comfortable working. Spending hours (and sometimes days) with someone who does not understand your needs or whom you find, for one reason or another, to be disagreeable, can make the buying or selling process unpleasant. Once you have chosen an agent with whom you are comfortable, it is most often best to stay with that agent. Going from one realtor to another often reduces an agent's desire to put forth the effort required to find you the right property or to properly market your property.

What does a listing agent do?

A realtor who lists a property for sale is referred to as the "listing agent." When a home is listed for sale, the owner or owners enter into a contract called a listing agreement. In the listing agreement, the seller agrees to pay the realtor's agency an agreed-upon commission upon the sale of the home. If an agent representing a buyer is involved in the sale, the listing agent will typically share that commission with the buyer's agent.

What does a seller's agent do?

Berkshire realtors are invaluable resources for sellers as well as buyers. Because of their knowledge of the local market, they can assist in pricing a property to enable a seller to sell within a reasonable period of time. They know prices of comparable properties, they possess the skills and resources necessary to market the property, and they are able to recognize features or improvements that can make the property more attractive to a buyer. Also, they know which publications or other methods are best to reach a proper audience for the property they want to sell.

Many Berkshire-area realtors are now paying more attention to the quality of photographs they use in their advertisements, brochures, and in the MLS. Employing professional photographers, including photographers who can produce drone footage of the property, has become more common, especially for realtors who handle high-end properties.



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If it is obvious to a seller's real estate agent that certain repairs or improvements are necessary to achieve a better price, the agent will not only suggest that such repairs or improvements be performed; they may also suggest individuals or companies with whom the agent regularly works and who can accomplish those repairs or improvements quickly and at a reasonable price.

Most realtors suggest that a property be "staged" by rearranging, removing, or adding to its furnishings to create a better impression on a prospective buyer. Sometimes, staging may require re-painting a room to a neutral color, clearing off tabletops and removing collections of family pictures. When a realtor recommends staging a house, it can feel like an insult to a seller. The truth is the opposite. The seller may have a home that is perfect for them, but the realtor can see a broader appeal of the property and want buyers to envision themselves in the home.

Once the house is ready for the market, the realtor really goes to work through formal advertising and by spreading the word through the realtor's contacts.

Why use a buyer-broker?

Most people are familiar with the role a seller's real estate agent plays in the process of selling a home. However, it is just as useful for prospective buyers to work with a buyer-broker, a realtor who knows the buyer and the market well. It is a good idea to identify a realtor early on to work as a partner in the home-buying process. The best way to find a good fit is by word of mouth and personal recommendations.

If a buyer is interested in seeing a particular property or several properties, the buyer's agent will arrange a time and date for the buyer to see each property. If the property is listed with a broker other than the buyer's agent, the buyer's agent will arrange to show the property with the listing broker. Ideally, a buyer's agent will schedule a series of appointments for a particular day or days. For this reason, it is important that a prospective buyer arrange to be available for a large enough block of time so their agent may schedule appointments that are sufficiently spaced to avoid having to rush from property to property. A buyer should note that since agents in the Berkshires generally do not use "lock boxes" (where keys are left to enter a home), especially in the southern portion of Berkshire County, there will typically be both a buyer's agent and seller's agent present when a property is shown to a prospective buyer.



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The realtor's role after the contract is signed

When a prospective buyer finds the property they want to purchase, the buyer's real estate agent will typically prepare a Purchase and Sale Agreement using a standard form from the Berkshire Board of Realtors. The Purchase and Sale Agreement sets forth the proposed purchase price, closing date, the amount of the deposit, any contingencies, and any special conditions such as whether certain items in the house are requested as part of the offer. The buyer's real estate agent then presents the proposed Purchase and Sale Agreement to the seller's agent, who presents it to the seller. The buyer and seller may then negotiate certain terms. Before signing the agreement, the prospective buyer and seller should each have their lawyers review it to assist in negotiating any changes the lawyers feel are necessary or appropriate. The initial attorney review of the Purchase and Sale Agreement should be quick and practical, and should not overly interfere with the process.

If the parties are able to reach an agreement and the agreement has been reviewed by their respective attorneys, the parties then sign the agreement. Each party's real estate agent will then assist them by providing a list of home inspectors, recommending lenders who may provide financing and arranging for potable water tests, septic system inspections and radon tests. Again, the real estate agent can be a key source of important information and may also be able to recommend professionals such as movers, builders, and architects.

Realtors are the "boots on the ground" – the professionals who are familiar with the property and who bridge the gap between the seller and the buyer. Realtors work hard to resolve inspection issues, negotiate extensions of time that may sometimes be necessary, get professionals in to make quick repairs when an issue arises, meet with the fire chief to get the required smoke detector certificate, and generally keep the process moving forward. Realtors are there from the beginning through the closing as an integral part of the team working towards the successful purchase and sale of a property.

Real Estate Lawyers

The selection of a real estate lawyer is an important decision. Real estate closings in Massachusetts must be conducted by a Massachusetts licensed attorney, and the attorney is required to participate substantively in the entire transaction. An attorney's role is not simply



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ministerial. Instead, it is the attorney who must guide the parties through the sometimes complicated and unique laws concerning the purchase and sale of real estate, as well as issues relating to ownership, or title, of the property. If desired, a knowledgeable and experienced attorney can also guide a client through the labyrinth of regulations and laws governing property rights, zoning, building codes and environmental laws. It is important that the attorney (and not the law firm's non-legal staff) oversees the process and handles all legal aspects of the negotiation of the Purchase and Sale Agreement, as well as the work from the signing of the contract to the closing itself, and after, if necessary.

It is important to select a real estate lawyer early in the process of buying, selling, building, or financing a home to make sure you are comfortable with that attorney and avoid mistakes that may be difficult to undo. Leave yourself enough time to investigate the attorney's background and, if possible, speak to the attorney's former clients.

One useful source for selecting an attorney is Martindale–Hubbell, a traditional publication that is now available online. It is free and easy to access at martindale.com. Martindale-Hubbell provides information for prospective clients about lawyers and law firms. It can be an excellent starting point to learn about lawyers in a community, as well as their background and level of expertise. Another useful tool with a sophisticated search function is lawyers.com. However you choose your attorney, seeking counsel before signing any legally-binding documents is crucial. Purchase and Sale Agreements may seem like routine forms – and this is true, until it isn't. Only an attorney can make that distinction and protect your interests.



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