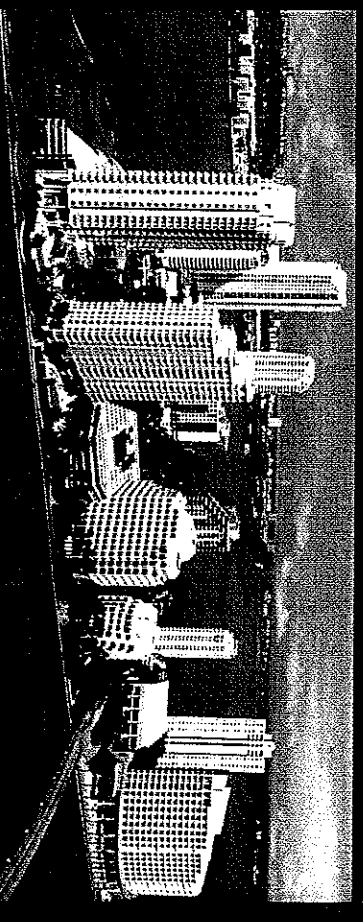


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Real Estate

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NON-RESIDENTS PURCHASING REAL PROPERTY IN THE U.S.

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The Attorney's Role in the Purchase of Real Estate

Unfamiliar vocabulary and complex legal and title issues can make purchasing real estate in the United States without the proper assistance a stressful experience. A qualified attorney can help alleviate the stress and ensure a smooth transaction. The attorney's role in the U.S. is more active than in Civil Law countries. Most U.S. real estate transactions involve an attorney who acts like a Notary Public in a Civil Law jurisdiction. The attorney advises the client of potential liabilities and tax consequences of the transaction, reviews all details of the transaction, and ensures that the documents carry out his client's actual intent. The attorney is an invaluable aide in protecting the client's investment and financial security. Each state in the U.S. has its own laws, which differ from state to state, and federal laws that apply to all states. This article concentrates on Florida law.

Title Insurance

A purchaser must receive "marketable title" to the property at closing, meaning ownership that is free and clear of prior indebtedness and other defects or encumbrances. An attorney helps ensure that the purchaser receives marketable title by conducting a title examination. This involves researching the public records to disclose matters that could adversely affect title.

Certain hidden defects may not appear in a thorough title examination. Title insurance insures marketable title in the U.S. and helps protect the purchaser against hidden defects by

covering the costs of defending title in court, if necessary.

The premium for title insurance is paid only once and is based on the purchase price of the property. The policy protects the purchaser forever, even after he sells the property. An attorney trained in the complexities of real estate law is the best-qualified person to issue your owner's title insurance policy.

Other Professionals Involved in the Transaction

Other professionals are involved in a real estate transaction. It is important to know their roles and whom they represent.

The Real Estate Agent or Broker

Real estate brokers advise their principals about current prices and availability of properties. They find and match properties with purchasers and often assist in negotiating the deal. Real estate brokers may serve as escrow agents by holding the purchaser's earnest money deposit in accordance with the sales contract.

Brokers specialize in either residential or commercial properties and in certain neighborhoods. The real estate broker is either engaged by a seller to list the property for sale ("Listing Broker") or by the purchaser to find the property and assist in negotiating the contract terms ("Buyer's Broker"). The seller pays both brokers' commissions, usually a total of 6% of the sales price. In commercial deals, the commission can be up to 10%. It is important to know if the

broker is representing the purchaser or is a "Transactional Broker" with no fiduciary duty to keep the purchaser's statements confidential from the seller.

The Lender

A purchaser can finance the purchase of real property by paying the full price in cash, buying subject to any loans already on the property, or obtaining a new loan from a lender or the seller. The amount of financing is usually 70%-80% of the property value, depending on the purchase price and the type of property. On commercial deals, the loan to value is usually 60%-70%. Most real estate transactions are financed by obtaining a mortgage through an institutional lender. Mortgage brokers usually charge a fee to assist the purchasers in finding the best rates and processing the necessary paperwork.

Lenders must follow various state and federal laws, including the Patriot Act, which requires lenders to know detailed information about the purchaser, including his source of funds and business activity. The lender will do a credit report and request reference letters to determine whether the purchaser is a good credit risk.

The Appraiser

Lenders require that property be appraised by a certified or licensed appraiser. The appraiser gives an opinion of the fair market value based on a visit to and evaluation of the property. Appraisers are assumed to be unbiased, no matter who pays their fees. Lenders usually lend based on the appraised value, not the contract price.

The Home Inspector and Surveyor

A purchaser hires a home inspector to provide an objective and thorough evaluation of the condition of the structure and its systems. An inspection is usually performed if the property is a resale. In new construction, the developer and purchaser inspect the property together before closing. The developer will guarantee the condition of the property for at least 1 year for most defects and up to 3 years for others. There may be a survey of the property to ensure that the property boundaries and legal description are correct and to show any easements recorded on the property.

Types of Property

There are generally two types of properties: investment and residential. Investment properties may be vacant land, rental property, offices, warehouses or industrial. Residential properties are typically single-family homes or condominium units.

j) Investment Properties

Attorneys have an important role in transactions involving investment properties. They negotiate and draft contracts and close the deal. They often also perform due diligence. Due diligence is the opportunity for the purchaser to inspect the property to determine if it is suitable for his or her needs.

As part of due diligence, the attorney scrutinizes all documents relevant to the deal to determine whether the client will get what was promised. To do this, the attorney must know the client's expectations. For example, the attorney representing a purchaser of an office building will match the projected rents described in the promotional material with the existing leases. If the purchaser decides the property is not suitable, the initial deposit will be returned and the agreement cancelled.

ii) Residential Properties

Residential properties are usually condominium apartments or single family homes. If the property is new construction, the seller is usually the developer.

Developers prepare the contracts for new construction, which generally require a 20-30% down payment during pre-construction and allow the developer 2 years or more to finish the building. Ten percent of the deposit is held in escrow by a third party; the developer may use the rest for construction. Because the additional deposits are at risk, it is important to choose a reputable developer. Most developer contracts do not have a financing contingency, so the purchaser can lose the deposit if he or she cannot obtain a mortgage loan or pay cash. Some new construction is sold "decorator ready," without any flooring or finishes; the purchaser must budget the amount needed to finish the apartment.

Condominium unit or single-family home resales are initially handled by real estate brokers. They use a form contract drafted by an association of real estate agents and lawyers. The contract can be changed and should be reviewed by an attorney before it is signed. Often, all parties will sign the contract before the purchaser brings it to an attorney; it is then too late for the attorney to change the terms.

Due diligence in residential contracts usually consists of an inspection period to determine that all structures, appliances and other amenities are in good condition. This generally lasts no more than 10 days. Most residential contracts have a 30-45 day financing contingency allowing the purchaser to obtain a loan commitment from a lender.



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iii) Costs.

Costs involved in the purchase of a real estate property vary. Lender fees include the appraisal fee, credit report and bank fees. Lender fees range from 1%-2.5% of the Purchase Price ("PP"). Lenders require prepayment of some interest and real estate taxes. If the property is new construction, the developer usually charges 1.5%-2% of the PP to cover some closing expenses. Title charges, lender fees and governmental taxes will be approximately 1.5%-2% more. Total closing expenses and prepayments in a residential purchase are 2%-3.75% PP. In commercial transactions, additional expenses include an environmental report and appraisal fees which are more costly than in residential deals.

The carrying charges on a property include annual real estate taxes, insurances, and, if the property is in a condominium or homeowners' association, maintenance fees. Real estate taxes vary by city but range from 1.5%-2% of the PP. Maintenance fees depend on the type of building and size of the unit. Insurances required for single family residences in Florida may include hazard, liability, flood and windstorm. In condominium buildings, the insurance for the common areas is included in the maintenance fees. Insurance costs also depend on the amount of coverage provided.

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Free Trade Agreements & the H-1 Visa

Significant free trade-related immigration changes became effective when the U.S. implemented Free Trade Agreements (FTAs) with Chile and Singapore on January 1, 2004. These Agreements permit the temporary entry of business professionals to facilitate trade in services by creating a new H-1B1 nonimmigrant classification for professionals and extending E-1/E-2 treaty trader/treaty investor benefits for citizens of the two countries.

The Chile and Singapore FTAs differ from standard immigration law regarding the H-1 nonimmigrant visa category by eliminating the petition requirement before the U.S. Citizenship and Immigration Service. Applicants from Chile and Singapore can now apply at U.S. consular posts or embassies in their home countries, with evidence of an offer of employment letter, relevant credentials and an H-1B1 attestation.

While other H-1 visa holders must leave the U.S. after 6 years, a Chilean or Singapore national admitted

under the FTAs may extend his or her H-1 initial stay indefinitely, in 1-year increments, as long as he or she continues to demonstrate no intent to remain or work in the United States permanently. Additionally, treaty nationals from Chile and Singapore need not hold a relevant license to be admitted to the U.S. under the visa program; however, visa holders admitted will be expected to comply with applicable state and federal licensing requirements after their admission to the United States.

The number of visas apportioned to Chile and Singapore are deducted from the total worldwide cap of 65,000 visas established by Congress; hence the rest of the world is now apportioned 58,200 visas for fiscal year (FY) 2006 while 6,800 are set aside for workers from Singapore (5,400) and Chile (1,600). Any unused H-1B1 visas from the Chile and Singapore FTAs are to be "added-back" into the H-1B annual worldwide pool at the end of the fiscal year. On August 10, 2005, the visa cap for H-1B visas was reached for FY 2006; however, the visa set-aside under the H-1B FTAs was not reached and still remains available for nationals of both countries. Our law firm does not expect the cap for the FTA H-1B1 visas to be reached in FY 2006.

The news is encouraging for nationals of Chile and Singapore. While nationals of other countries are faced with an insufficient quota of H-1 visas, Chilean and Singapore nationals enjoy an untapped quota of visas. According to the Office of Immigration Statistics, of the 386,821 foreign nationals admitted in 2004 as H-1B workers, only 2,031 were from Singapore and 2,038 were from Chile, and only 326 foreign nationals were admitted under the Chile and Singapore FTAs. In contrast, nationals from other countries who represent the majority of foreign nationals entering the U.S. under H-1B status, such as Argentina (9,969), Brazil (9,812), Colombia (11,026), Venezuela (11,498), France (15,447), Germany (14,259) and Australia (24,077), cannot benefit from the additional H-1B visas which are set aside only for Chilean and Singapore nationals.

The news for non-treaty countries is not bright. If the U.S. implements additional free trade agreements like these, more nationals of non-treaty countries will be denied visas, because the FTAs claim visa quota from the worldwide H-1 quota. Unless Congress changes this mechanism of visa apportionment by adding additional H-1B visas to the worldwide quota, competition for available H-1 visa slots could become much more intense, requiring nationals from non-FTA countries to file H-1 visa petitions well in advance of their scheduled first day of employment.

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