

FREQUENTLY ASKED QUESTIONS (F.A.Q.)

Regarding

Real Estate Law

by Larry Linville



1. Does a real estate purchase and sale agreement need to be in writing?

Yes. The Statute of Frauds requires all contracts for the purchase and sale of real estate to be in writing. This includes all the critical terms of such an agreement, including price, closing date, a legal description of the property, and method of payment of the sale price. A purchase and sale agreement which lacks these critical terms in written form is potentially unenforceable.

2. An easement crosses the property that I am interested in buying. Should I still buy the property?

It depends on how the easement affects your planned use of the property. An easement is the right to use property owned by another person. Most easements are designated for vehicular access, pedestrian access, and/ or utilities such as water or gas lines. An easement can be a burden on a property when another person has a right to cross your property to access their property. An easement can also benefit a specific property if you, as the property owner, have the right to cross another property to reach your property. Easements can also be used for many other purposes including protecting views and conserving natural property. These types of easements are known as conservation easements.

3. Why should I obtain title insurance before purchasing property?

Title insurance is an essential part of a real estate transaction. Title insurance protects the new owner and new lender on the property against claims that the title to that property is somehow defective. Potential claims include, but are not limited to, the deed to the property was forged, the property you are purchasing doesn't belong to the seller, the property has no access, or a construction lien is about to be recorded against the property that you are unaware of. Title insurance costs relatively little in proportion to the protection it provides you at the time of purchasing real estate. It is something that should never be left out of any real estate transaction.

4. What is meant by placing a real estate transaction "into escrow"?

Escrow is the procedure by which an independent third party such as an independent escrow company, a title insurance company, a law firm, or other entity acts as an escrow agent in a real estate transaction. Both buyer and seller deposit the purchase and sale agreement along with funds to close the real estate transaction with the escrow agent. The escrow agent prepares the necessary legal documents to transfer the property from seller to buyer as well as an accounting of the funds necessary to complete the transaction. The escrow agent will also use a preliminary commitment for title insurance to clear any necessary items from the title to the property which the seller has agreed to clear up and remove prior to closing. An escrow agent is paid a fee for these services, which is usually split 50/50 between buyer and seller.

5. My neighbor has just come to me and told me that he has a new survey showing that the property line for his property is 5 feet inside my fence. What should I do?

In this type of situation, you may be entitled to claim the property situated on your side of the fence based on the doctrine of adverse possession. You also may be entitled to the property inside your fence based on other boundary line doctrines, such as a parol boundary line agreement. These types of boundary line disputes are factually distinct and often require immediate legal advice to determine what your best course of action is in order to preserve your property, as well as to resolve and determine a permanent boundary line between your property and your neighbor's property.

6. How many years must I possess a piece of property adverse to my neighbor to constitute adverse possession?

In the State of Washington you must possess property adverse to your neighbor for a total of 10 years. There are other requirements that must be met in order to prove a successful adverse possession claim. In some cases, the adverse possession period is only 7 years if you have paid property taxes on the strip of disputed land. This is very rare because property taxes are often allocated by the county to the record owner of the property. It is also important to note that the 10 year period for adverse possession can be created by adding onto your possession period the time of possession by your previous seller.

7. Can I obtain a boundary line adjustment or a lot line adjustment on my property in order to add square footage to my lot to potentially subdivide it?

In many cases, a boundary line adjustment can be performed on your property to add square footage to your lot. This may potentially create an opportunity to later short plat or subdivide your property into more than one parcel, depending on the zoning in your area. In other instances, it is sometimes possible to apply for a planned unit development or a rezone with the city or county jurisdiction regarding your property for future development. Each of these cases is specific to the property, its zoning, and the jurisdiction (i.e. city or county) where the property is located. You should consult an attorney on these issues before any significant financial or development decisions are made regarding your property.

8. Can I place a lien on somebody else's property if I am in a contract dispute with them regarding a business contract?

No. There is no general right to place a recorded lien against another person's real estate unless you are a contractor, surveyor, engineer, or other professional performing actual work on the other person's real estate for which you are owed compensation. In those cases, you can file what is known as a construction/materialmen's lien against the property you are working on, as long as proper notices are given and the claim of lien is properly recorded.

9. What is a deed in a real estate transaction?

A deed is simply the written document that transfers, or "conveys", real estate from the seller to the buyer. In order to be valid, the deed must be in writing, contain words of conveyance to transfer the property, identify the seller, identify the buyer, include a legal description, and be signed and acknowledged (notarized) by the seller. Usually when a deed is given for real estate, the deed is then recorded in the County records to give notice to the entire world that the seller has sold the property and the buyer now owns the property.

10. What if a foreclosure is begun against my property by a lender. What can I do?

Once a foreclosure has been filed against your property for non-payment on a loan or on a judgment, the foreclosure can be stopped by making payment to reinstate the loan to the trustee conducting the foreclosure, or to a party seeking to collect on the judgment. Also, you have the option of selling the property so that you can pay off the loan in full before the foreclosure date. Another possibility is bankruptcy, which will delay, but not usually stop, a foreclosure if you remain in default. It is important to act fast and to remain aware of the deadlines in the foreclosure because once a foreclosure sale occurs, it is almost impossible to get that sale invalidated.