

Real Estate Transactions in New York State

Fundamentals of a Real Estate Sale or Purchase Transaction
*(including an Overview of Attorney Escrow Accounts and Differing
Upstate and Downstate Practices)*

Custom and Practice Vary Widely by Geography

- Upstate
 - Use of Abstracts of Title in Upstate Transaction
 - Attorney title agents
- Downstate
 - Corporate title agents
- Out of State
 - Non attorney settlement agents
 - UPL restrictions on title agents
 - Promulgated rates

County by County differences in Real Property Indexes

New York Real Property Law §316. Indexes.

Each recording officer must provide, at the expense of his county, proper books for making general indexes of instruments recorded in his office, and must form indexes therein, so as to afford correct and easy reference to the records in his office. **There must be one set of indexes for mortgages or securities in the nature of mortgages and assignments of rent; and another set for conveyances and other instruments not intended as such mortgages or securities, and executory contracts for sale, purchase or exchange of real property, or memoranda thereof, and instruments canceling or extending such contracts.** Each set must contain two lists in alphabetical order, one consisting of the names of the grantors or mortgagors and assignors, followed by the names of their grantees, mortgagees or assignees, and the other list consisting of the names of the grantees or mortgagees and assignees, followed by the names of their grantors, mortgagors, or assignors, with proper blanks in each class of names, for subsequent entries, which entries must be made as instruments are delivered for record. **This section, so far as relates to the preparation of new indexes, shall not apply to a county where the recording officer now has general numerical indexes.**

A recording officer who records a conveyance of real property or assignment of rent, sold by virtue of an execution, or by a sheriff, referee or other person, pursuant to a judgment, the granting clause whereof states whose right, title or interest was sold, must insert in the proper index, under the head, "grantors" or "assignors", the name of the officer executing the conveyance, and of each person whose right, title or interest is so stated to have been sold. Such indexes shall form a part of the record of each instrument hereafter recorded.

A county clerk may adopt a new indexing system utilizing electro-mechanical, electronic or any other method he deems suitable for maintaining the indexes.

New York Real Property Law §316 (emphasis in bold added).

“Land Records”

- Indexing by property ID; Indexing by searching the grantor/grantee index
- Public records that affect title but are not in the “land records”
 - Judgments
 - Patriot Act
 - Bankruptcy

Watson v. Muirhead (57 Pa. 161)

- Real Estate Transactions: “Conveyancing”
- Due diligence is not a guarantee of clean title
- Risk remaining after due diligence is “casualty” risk
- “Upstate” and “Downstate” practice in their approach these risks

Three Main Parties to Most Residential Transactions

- Buyer
 - Seller
 - Lender
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- Commercial versus Residential

Seller's Attorney

- Prepares Contract of Sale
- Prepare Closing Documents for transfer of title, deed, transfer tax returns, other closing documents required by Contract to be Signed and/or Delivered by the Parties
- Arrange for Satisfaction or Assignment of Existing Mortgages
- Notify All Parties Required to Attend of Date, Time, Place (or Coordinate Escrow Arrangements if Not a "Sit Down" Closing)
- Clear Title
- Meter Readings as Required
- Compute Adjustments
- Remove Occupants if Contract Requires Vacant Possession
- Perform Any Repairs or Complete Construction if New Building, Cure Any Violations Required by Contract
- Instructions to Buyer for Payment of Balance of Purchase Price and Adjustments Due Seller

Buyer's Attorney

- Orders Title Insurance
 - Negotiates exceptions with Seller and with Title Agent
- Advises client to have real property inspected (engineer, termites, etc.)
- Orders Survey
- Review contract of sale provided by Seller
- Orders ancillary searches such as Municipal / Departmental Searches
- Prepare Closing Checklist Using Contract as Roadmap
- Clear all Loan Commitment Conditions, Arrange Funding
- Review All Closing Documents
- Confirm Any Title, Survey, Certificate of Occupancy, Zoning Issues Resolved
- Confirm any Municipal Code Violations Resolved
- Determine Amounts Owed at Closing, Arrange Checks, Wire Transfers
- Secure Casualty, Property Insurance
- Open Utility Accounts as Needed
- Notices to Existing Tenants of Transfer
- Final Inspection

Lender's Attorney

- In a Refinance, the Lender's Attorney runs the whole show
- In a Purchase, the Lender's Attorney often plays a lower profile role, but is still a very important participant in the process
- Protecting the client:
 - Funds Disbursement
 - Closing Protection Letters
 - Fidelity Bonds
- Settlement Statement

The Transaction: Beyond Title Concerns

- Non-Title Searches
- Due diligence on use
- Zoning
- Boundary Disputes

Transaction Step-Through

1. Clearance
2. Closing
3. Recording

Attorney Escrow Accounts

- IOLA = Interest on Lawyer Account Fund
- The Lawyers' Fund For Client Protection
- All IOLA Account must contain the attorney's name followed by the acronym IOLA and must end in one of the following phrases; Attorney Trust Account, Attorney Escrow Account or Attorney Special Account. For details, see [A Lawyer's Guide to Opening an IOLA account](#).

Qualifying Funds

- **Q. What are “qualified funds”?**

Funds held in trust by an attorney that are “too small in amount or are reasonably expected to be held for too short a time to generate sufficient income to justify the expense of administering a segregated account for the benefit of the client or beneficial owner” are “qualified funds” and are appropriate for deposit in an IOLA account. See Judiciary Law 497 §2 and Section 7000.2(d) of the Trustees Regulations.

- **Q. Who determines whether funds are “qualified funds”?**

The determination is made solely in the judgment of the attorney who holds the funds in trust. New York has a statutory hold-harmless provision. New York attorneys shall neither be liable in damages nor held to answer for a charge of professional misconduct because of a deposit of moneys into an IOLA account, pursuant to the attorney's good-faith judgment that such moneys were qualified funds. §Judiciary Law 497(5); 21 N.Y.C.R.R. 7000.8(b).

Regulation of Real Estate Transactions

- RESPA: Real Estate Settlement Procedures Act of 1974
 - State “mini-RESPA’s”
- New York’s recent Title Laws and Regulations
- Unauthorized Practice of Law (UPL)

Other Special New York State Real Estate Transaction Concerns

- State Transfer Taxes
- State Mortgage Taxes and Exemptions
- Local versions of Transfer and Mortgage Taxes

Ethics in Real Estate Transactions

- Undue influence
- Capacity
- Fraud against the lender
- Home Equity Theft
- Foreclosure rescue scams

Tips for the Real Estate Practitioner

- Visit and volunteer with your local bar association's real property section.
- Look to local CLE manuals and materials for practical advice and forms.
- Sign up for free Continuing Education offered by title companies, banks, appraisers, etc.... Learn as many different roles as possible.
- Listen, observe, and be modest in what you allow yourself to think that you know... There is always more.