



## **CONGRATULATIONS ON YOUR DECISION TO PURCHASE A NEW HOME!**

Our office has been selected by your mortgage lender to conduct the closing for the purchase. This letter is to explain our role in the closing process and to inform you of some of the choices that you will be presented with. We encourage you to call or e-mail us with any questions you have, as we hope to make the process as seamless as possible.

**The Role of the Lender's Counsel.** As lender's counsel, it is our job to be sure certain legal matters critical to the mortgage loan are in order. The most important of these is the "examination of title". Essentially, the title exam is a review of the records at the county Registry of Deeds for a period of extended years (commonly at least fifty). The goal of the examination is to determine that the current owner possesses "good record and marketable title," and this can transfer "good title" to you at the time of closing.

Pursuant to Massachusetts's law, we are in most instances required to certify the state of title to you at the time of closing. Our "**Title Certification**" provided at closing will report matters that affect title found within the scope of the title examination. As lender's counsel, we will also order a mortgage "plot plan", which is a sketch of the property. The plot plan is not an instrument survey and is done to be sure that the house you are buying is located within the lot lines. Although a plot plan will uncover many issues, it will often not uncover minor encroachments. The only way to be entirely sure that there are no boundary issues is to conduct a full survey.

**Tenancy in Deeds.** If there are two or more persons buying the home, there are choices to be made on how to take title. The main question is one of survivorship rights. If in the event of the death of one owner, you would like the interest of that owner to pass to the surviving owner, then you want to elect to hold title as either joint tenants (for unmarried persons) or tenants by the entirety (a form of joint tenancy for married persons). In the event that you wish the interest of the deceased owner to pass through that person's estate (as provided in a will or by the laws of "intestate succession" – without a will), then you want to elect to hold title as tenants in common. If you are unsure, we encourage you to consult an attorney to help with this choice.

**Homeowner's (hazard) Insurance.** Prior to the closing, you will need to provide us with a "binder" for your homeowners insurance, and if the property is in a federally designated flood plain, a flood coverage binder as well. The amount of coverage must equal at least the lower of your mortgage amount or the replacement cost of your home. The fact that the insurance is for full replacement cost must be stated in the binder. Please let us know as soon as possible who



your insurance agent will be. We (or the lender) will contact your agent to provide the specifics of how the binder is to read. Please note that the policy must be prepaid for the first year, and a receipt for payment will be needed.

**The Closing – Time and Place.** After your loan is approved, we will contact all parties to schedule the time and place of closing. Most often, the closing occurs on the date specified in your purchase and sales agreement. Please let us know as soon as convenient if the parties are considering changing the date. The time and place of closing are often dictated by logistics. Although we will accommodate requests to close at the registry of Deeds or the real estate broker's office, it is easiest to close in our office, where changes can readily be made in the documents if needed.

You will hear from one of our real estate paralegals to schedule the final time and place. The closing takes approximately one hour. Be sure to bring definitive identification with you to the closing. A valid driver's license or passport are the preferred forms of identification. Let us know if this presents any issue for you in advance of the closing.

**The Closing – Funds Needed.** As the lender's counsel, we will provide you with the final Closing Disclosure ("CD"). You will receive a preliminary Closing Disclosure from your lender at least three business days prior to closing in order to meet TRID Guidelines. This preliminary CD may or may not match the final CD that we will provide as often times there are adjustments made after the lender issues the preliminary CD. The CD is an itemization of all amounts due to and from the parties. Although we strive to provide at least 48 hours advance notice of the final amount needed, this is at times difficult due to several factors, and we will often ask your patience. There are many times when the "CTC" (lender's clear to close) occurs less than 48 hours prior to closing, so we may not have the final numbers from the mortgage lender in a manner to allow as much advance notice as we would like.

Once you have the final amount, you may either wire that amount to our "IOLTA" closing escrow account, or can obtain a bank treasurer's check. We ask that the check be made payable to Kellem & Kellem, LLC. Our office will make all disbursements in connection with the closing from the funds you and the lender provide, including satisfying all liens against the property, paying various closing related costs, and providing the Seller with net sale proceeds. Please also bring a personal check with you to the closing in case of last minute adjustments such as fuel or utilities that need to be accounted for.

**Title Insurance – Owner's Policy.** Nearly all mortgage loans (with few exceptions) require the procurement of a lender's title insurance policy. If you review the good faith estimate provided by the lender, you will see the premium for this insurance. Generally, title insurance provides protection against most defects in the title to the property that is being purchased and mortgaged. The lender's policy protects only the interests of the



lender (in the event the lender ever becomes the owner of the property), and does not protect you. Given the amount of your investment, it is generally considered prudent to purchase for an additional premium an "owner's title insurance policy."

The owner's policy extends coverage to you as owner, is a one-time expense, and remains in force during your entire period of ownership of the property. Although the purchase of an owner's policy is not required, it is strongly recommended by most if not all real estate attorneys.

Over the years, there have been many instances in which the title examination does not uncover serious issues that exist with title, including forgery of deeds, mis-indexing of instruments, missing heirs with interests that have not been accounted for, and the like. Due to the magnitude of your investment, we ask that you do not decline owner's coverage unless you have discussed this critical decision with a real estate attorney.

Excellent web references for explanation of title insurance, the types available, and the costs, are included at the end of the information sheet attached to this letter. Please note that unless you notify us otherwise, we will assume you want owner's coverage and include it in your final numbers.

**Homesteads.** *Please see the attached "DISCLOSURE CONCERNING THE MASSACHUSETTS HOMESTEAD ACT M.G.L. c. 188 § 14".* We recommend that you consult your attorney for a more detailed explanation of the benefits of a homestead. Please let us know whether you wish us to prepare a homestead for you. The cost for our office to prepare and record a homestead is \$137.00.

**Copy of Closing Package.** As closing counsel, we will provide a set of all loan documents for your records (and bedtime reading). The copies should be retained in a safe place for as long as you own your home.

**Closing Information Sheet.** We have included a "Closing Information Sheet" along with this letter. Please fill in the requested information and return it to us by facsimile or e-mail. We look forward to working with you and your mortgage lender to ensure a smooth transaction.

## DISCLOSURE CONCERNING THE MASSACHUSETTS HOMESTEAD ACT

M.G.L. c. 188 § 14

### WHAT IS 'HOMESTEAD'?

A homestead estate exempts a certain amount of the equity of a home from attachment, seizure, execution on judgment, levy and sale for the unsecured debts of the owner of the home, except for the following:

- federal, state and local taxes, assessments, claims and liens;
- liens recorded prior to the creation of the estate;
- mortgages;
- orders of the probate court for support;
- a levy or sale for ground rents (where the homeowner does not own the land); and
- an execution from a court to enforce a judgment based upon fraud, mistake, duress, undue influence or lack of capacity.

Under the Act, the homeowner's equity in the home is protected for up to one year after a sale of the home, and, if the home has suffered a casualty that results in the payment of insurance proceeds, then the insurance proceeds are protected for up to two years, in order to allow the homeowner time to acquire a homestead in a new (or reconstructed) home.

Homestead protection is available for owner-occupied, residential one to four-family homes, condominium units, cooperative apartments and for manufactured homes. Co-owners of a home "share" the exemption amount.

### **AUTOMATIC HOMESTEAD:**

All homeowners are entitled to automatic homestead protection of up to \$125,000 of the equity in their homes. You do not need to do anything to have the benefit of this protection.

An automatic homestead can be subordinated to an unsecured debt of the homeowner of up to \$20,000, but the homeowner and any non-owner spouse must consent in writing.

### **DECLARED HOMESTEAD:**

By making a written declaration of homestead, recorded in the registry of deeds, a homeowner's homestead protection is increased to \$500,000.

Some other benefits of declaring a homestead include:

- a. A non-owner spouse who lives with the owner has the benefit of the homestead (until terminated in writing);
- b. A declared homestead cannot be subordinated to an unsecured debt;

- c. If an unmarried owner declares a homestead and marries thereafter, the declaration will automatically benefit the owner's spouse upon marriage; similarly, a divorce and/or remarriage will not affect the homestead of the spouse who remains in the home as his/her primary residence;
- d. A trustee of property held in trust can declare homestead for the beneficiaries of the trust who occupy the home as their principal residence.
- e. Elderly and disabled persons who declare homestead are each entitled to a separate exemption of up to V \$500,000, which is personal and not shared with any other co-owners of the home.