

Richard D. Klein
Jonathan P. Bellezza
Steve Siliato

Diamond Law Group
5173 Merrick Road
Massapequa Park, NY 11762
(for all mail and overnight delivery)

25 W. Main Street
Smithtown, NY 11787

Tel: (516) 663-5151
Fax: (516) 663-5152
admin@diamonddlawgroup.com

Retainer Agreement

Dear Valued Clients,

"A Lawyer's Time and Advice is His Stock and Trade." Abraham Lincoln.

Thank you for considering our firm to represent you in your real estate endeavors. The intent of this retainer is to outline the transaction process as well as to confirm our mutual obligations to one another; not to overwhelm you.

Our office will put your interests first at every step of the transaction, respond to any inquiries promptly and provide great service. We will offer our very best counsel at every step of the way and make sure your legal rights are protected. We shall be transparent about the process and thoroughly explain any potential issues so you can make informed decisions.

We charge a base fee for a simple contract and closing. This will be determined on a case-by-case basis.

Half of this fee is due initially before any work whatsoever is commenced on your behalf. After e-signing this Retainer Agreement you will be instructed on how to submit this portion of the payment online. *Once the Contract has been signed by both parties, this initial Retainer payment shall become non-refundable. Prior to this point, the fee is 100% refundable.*

The balance shall be due at closing and shall be payable via check along with your other costs at such time.

What Is Included:

Most basic real estate transactions can be completed within five (5) hours. Included in our legal fee is up to five (5) hours of attorney (both Partner and Associate) and paralegal services, commencing with your retainer of the firm to conclusion of the transaction, including any travel time.

Contract Review:

- A real estate contract is written evidence of a meeting of the minds between you and the seller. The contract contains all of the terms and conditions of the transaction and describes the parties' respective rights and obligations. The contract will also contain contingency provisions and representations of you and the seller that describe what will happen if the transaction does not go exactly as stated in the contract.
- Should you wish to negotiate credits and/or repairs based upon the report your **agent** will assist you in brokering the terms.
- Once your due diligence has concluded we shall then request the proposed contract from the seller's attorney.
- Upon receipt and review of the proposed contract, we will negotiate revisions with the seller's attorney on your behalf to ensure you are adequately protected.
- Upon verification that the seller's attorney has approved our revisions our office will contact you to schedule an appointment/teleconference (as necessary) so that we may thoroughly review the terms. You must submit your contract deposit at that time typically via personal check or wire transmission. If you have any particular questions, you may find it helpful to organize a list so that we may better assist you at the contract signing.
- After you sign the contract we shall send the 'partially executed' contract to the seller's attorney so that the homeowner may execute the same. It should be noted that neither party is bound by this partially executed contract.
- Thereafter it will be returned to our office at which point you shall be 'officially' in contract (our office shall follow up with them in order to ensure the contract is returned expeditiously). Unless you have sent a wire, it is at this time that your down-payment check will be deposited by the seller's attorney in a non-interest bearing escrow account to be held until the closing.

Title Search:

- ***This does not apply to coop. transactions.***
- This is a detailed examination of the historical records of a property. The purpose of the search is to make sure that you are purchasing the house from the legal owner and that there are no liens, judgments, tax arrears or other claims filed against the property or property owner which would adversely affect the ownership, marketability or value of the property.
- The typical timeframe for this to be received is approximately one month though depending on the municipality, it may very well be longer.
- If a title claim is made against your property, your title insurance company will pay all legal fees, court costs and related fees in order to defend the claim for as long as you own the property. Your lender also requires that you obtain insurance to insure that their new mortgage loan will be in the first lien position.
- Title insurance is a one-time premium and the rate is regulated by the State of New York, so all title companies charge the same fee. However, you should request a 'Loan Estimate' from your mortgage professional that will outline all of your closings costs, including lender's fees and title charges.
- The contract will generally state that the sale is conditioned upon the seller transferring "good and marketable" title to the property. This means that the seller must transfer title free and clear of all judgments, mortgages and other liens which may exist against the property.

- Our office will review the title report upon receipt and shall send a list of defects to the seller's attorney to ensure they have proper notice of any issues which require correction. Thereafter we will continue to follow up with the seller's attorney to verify that they are resolved in a timely fashion. Of course we shall update you along the way.
- You understand we do not warranty whether your municipal approvals are accurate. We also do not warranty the condition of the premises. You should always have an engineer inspect the home prior to signing any contract and consult with the local municipal building department.
- You also may wish to purchase a new survey. Our office will request an old survey from the seller to utilize, however, old surveys may not disclose the location of fences which could affect title or the premises as they currently exist. In the event a new survey is needed our office will not order the same until your commitment is received so as to avoid any unnecessary expense to you.

Financing:

- If your real estate contract is subject to you being able to obtain a mortgage commitment from a lender you will typically be given between thirty and forty-five days to obtain financing. You must act in good faith, promptly apply for a mortgage loan, and fully cooperate with the request of your lender during this process. If you cannot obtain a mortgage commitment, usually either party may cancel the contract, and the contract down-payment shall be returned.
- If you wish for our firm to represent the lender please check with us to see if we are capable of doing so. If so, we can discount the fee normally assessed to another attorney for this purpose. This option also saves you a lot of time as your lender's attorney will need to review documents that our office already has in operating in our role as the buyer's attorney.
- Further, if you also must sell an existing home, the boilerplate Contract specifically states that this new purchase is **not** 'subject to' the sale of any present properties. Therefore if you are declined for a loan due to this reason, your down-payment may be at risk.

Clear to Close:

- Once your loan officer has cleared all of your commitment conditions and the lender's attorney has approved the file for funding, we will be able to schedule a mutually agreeable closing date with all parties.
- Generally speaking, your lender must have you acknowledge the Closing Disclosure 72 business hours (including Saturday) before we can close. This is a preliminary estimate of your closing costs.

Coop Board Approval (if applicable)

- If you are purchasing a coop, the transaction is also generally contingent upon you obtaining 'board approval'. Most coops. have a board interview; others do not. You will schedule an interview and once approved that will be the final contingency for the transaction.

Closing:

- Our office will prepare a financial closing statement that outlines the entirety of the transaction in a manner that is easily understood. At closing we shall review all of your loan and title documents so as to ensure that you are fully aware of all that transpires at such time.
- Please be aware that simply because a closing date has been scheduled, that does not automatically mean you will be receiving actual possession of the premises on the day of closing.
- Additionally, we highly recommend that you schedule a walkthrough inspection of the premises, as close to the closing as possible, with the seller or your real estate agent in order to ensure that the property is in acceptable condition. It is imperative that you contact us immediately if there are any issues at the walkthrough so that we may resolve them prior to the closing since the seller will have zero liability after the fact, per NYS law.
- The location of the closing typically will be held at the office of the attorney for the lending institution or coop. managing agent/attorney, as applicable.
- The duration of a typical closing should be less than two (2) hours, depending on the lender (or coop. managing agent/attorney, as applicable).
- During the actual closing, you will sign the bank's loan documents to complete the loan transaction including the Note and Mortgage. Meanwhile the seller will sign all documents needed to transfer ownership in the home to you, including the Deed.
- In order for us to calculate your approximate closing costs, we will require an invoice from the title company, the seller's certified check request and the lender's fees.
- Typically we will have this information 24-48 hours prior to the scheduled closing date. Please note that it is not uncommon for us to receive this information on the day of the actual closing.
- Also calculated into your closing costs are real estate taxes. First, most lenders will require you to pay fifty percent of the annual tax bill in order to have sufficient funds set aside to make the first tax payment after closing of title. Second, you must reimburse the seller on a prorated basis for any real estate taxes the seller has prepaid beyond the closing date.
- *If you are purchasing a coop./condo., closing fees applicable to each party will be obtained via letter from the Management Company just prior to closing and a 'common charges' letter that will be utilized to 'prorate' common charges at closing.*
- The final cost associated with closing is a credit to the seller for any heating or cooking fuel (oil/propane) left in a storage tank. This does not apply to homes heated by gas.
- Please be advised that despite the fact our estimated closing costs are generally accurate, closing costs are always subject to change at the closing itself. For this reason, you must bring your personal checkbook. Finally, you must bring government issued photo identification (i.e. driver's license or passport) to the closing.
- You should also put any utilities in your name the day of closing or possession, whichever is later.

What is not included:

Sometimes we are called upon to perform services that go above and beyond a simple closing or services which extend past the closing. These fees are due irrespective of fault. In other words,

even if the seller and/lender are to blame these services will become billable to you as compensation for our time on your behalf. These supplemental services include but are not limited to:

- 1) Negotiation of engineer's inspection issues which are generally handled by your real estate agent
- 2) Clearance of any title issues, including but not limited to, judgments or liens against you.
- 3) Negotiation of any open permits, building violations or Certificate of Occupancy issues.
- 4) Per escrow service that extends past the closing (i.e. post-closing possession issues, CO issues, etc.).
- 5) Preparation and clearance of one (1) Power of Attorney.
- 6) Closings scheduled within 24 hours' notice.
- 7) Adjourned closings.
- 8) Tardiness of any party attending the closing by one (1) hour. This includes you failing to attend the closing with the proper certified funds.
- 9) Closings that extend past two (2) hours due to any reason whatsoever including any 'dry' closings (where no actual funding or exchange of keys takes place).
- 10) Closings that extend thirty (30) days beyond the 'on or about' closing date billable every two weeks.
- 11) Preparation or defense of 'Time is of the Essence' documentation and correspondence thereafter.
- 12) Short Sale Purchase.
- 13) Bank Owned Property (commonly referred to as an "REO") Purchase.
- 14) FSBO Purchase.
- 15) New construction purchase.
- 16) Involvement of any tenant, foreclosure or divorce situations.
- 17) Any closing "via mail/wire".
- 18) Negotiation of any walk-through issues.
- 19) Pre-contract negotiations that take longer than two (2) weeks to conclude.

Each of the above is billable at **\$350.00** per hour. *We will notify you when one of these fees has been incurred.* Within our sole discretion we may discount the final fees due at closing.

We do not practice litigation of any kind.

In the event that a dispute arises between us relating our fees, you may have the right to arbitration of the dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts, a copy of which will be provided to you upon request.

This is to confirm that you have read this letter, agreed to our engagement, and received a copy, which has been fully discussed and explained to your complete satisfaction. You have been made fully aware of the implications of the above and sign below acknowledging my complete unequivocal acceptance and understanding of said rights and obligations.

Of course, we will always be available to discuss any of the matters set forth in this letter or anything else you may question or be concerned about regarding the subject transaction.

Very truly yours,

DIAMOND LAW GROUP

Received and Agreed to this [] day of [], 20[].
