



Engagement Letter

January 19, 2024

Re:

Dear :

Thank you for choosing me to help you close your real estate transaction. I am writing you this letter to give you some basic information on Western New York real estate transactions, confirm the terms of our representation, and discuss your next steps on the road to your new home. In any legal representation.

I apologize for this letter being so long, but I include the answers to many common questions so that you can refer to this letter during the transaction when things come up. If anything is unclear, please call me or the paralegal handling your file.

Real estate transactions have a certain pattern, but no two are the same. It is impossible to anticipate what might happen during a transaction, or what issues might be important or not, at the beginning of a deal. As such, this letter is general advice that's applicable to many (but not all) transactions and should be used for guidance only. It is not specific legal advice to your situation. (Attorneys love disclaimers.) Below the milestones in a typical mortgage financed transaction. For cash deals, steps 5, 6, 7 and 11 don't happen, but there are still many stages of the transaction to get to closing. I'm including this information so you have a general idea of where you are in the process and what's left to be done.

Purchase Transaction Milestones

1. Contract signed by all parties.
2. Contract approved by both attorneys or attorney approval period expired. (3 Business Days from attorney's receipt, maximum of 5 Business Days from when everyone signs the Contract).
3. Property Inspection contingency satisfied or waived. (3-7 days from Attorney Approval)
4. Deposit received by Escrow Agent. (2 Days after satisfaction or waiver of the Inspection Contingency)

5. Purchaser applies for their mortgage. (5 Days from satisfaction or waiver of the Inspection Contingency)
6. Bank appraisal is completed and reviewed by the lender. (2 weeks from loan application)
7. Loan Commitment issued. (Usually 2-4 weeks from loan application, sometimes shorter or longer depending on whether the bank does the appraisal before or after the Loan Commitment)
8. Purchaser secures their Homeowner's Insurance binder and paid receipt. (You must pay in full for the first year before Closing if you're getting a mortgage loan.)
9. Purchaser's Attorney receives title search and survey from Seller's Attorney (4-6 weeks from the satisfaction or waiver of the Inspection Contingency)
10. Purchaser's Attorney receives title insurance commitment from title company (1-2 weeks from completion of step 8)
11. Purchaser receives clear to close from the lender (varies based on Lender, but the loan has to be clear to close 3-10 Business Days before closing can be scheduled with most lenders)
12. Seller's Attorney provides any required title curatives (mortgage payoffs, tax receipts, releases of liens, etc.) (usually shortly after receipt of the title commitment, but title problems can cause substantial delays)
13. Closing is scheduled. (The Closing Date in your contract is a **target date**. Closing is not scheduled until all of the prerequisites have been met.
14. Purchaser does their final walkthrough (1-2 days before closing)
15. Purchaser receives cash to close amount (day before closing)
16. Closing!

Attorney Fees. The cost of hiring an attorney is scary to many people. That's understandable. Unfortunately, we do not always know how much work will be involved in a file at the outset, so it is impossible to tell you exactly what your legal fee will be. Our minimum legal fee is \$795.00 and is paid at the closing of your home or the closing of our file. We charge the minimum on most of our files. We do need to reserve the right to add additional fees (usually less than \$250.00 more than the minimum) for extraordinary circumstances, such as negotiating early or post-closing occupancy agreements, disputes between you and the seller, or other problems that require work beyond the standard real estate deal. If you feel our fee is unfair, please call me to discuss it and I will make every effort to resolve the dispute, so we are both satisfied. If I cannot resolve your dispute, you have the right to submit the fee dispute to the Erie County Bar Association for arbitration.

One of the ways we can keep costs down is by handling most of the routine communication on your file with the paralegal we have assigned, **Rachel Zimmerman**. Her email is rachel@vallonelawfirm.com. Email is often the quickest and most efficient means of communication with our office. If you require or prefer an alternate solution, we can discuss other arrangements.

Attorney Approval. Your contract contains an Attorney Approval Contingency for both parties. As such, the contract is not enforceable if either attorney disapproves and cancels the contract within the contingency period. The contingency period is three Business Days (not including weekends or holidays) and starts on the Business Day after I receive the Contract, or two Business Days after you receive a fully signed contract, whichever is earlier. (i.e. if the Contract is received on Monday, the approval period expires Thursday at 5:00 P.M.) It is important that we speak by phone or email during the attorney approval period so that we can discuss the terms of the contract and make sure you understand them as best as possible. This letter is part of the attorney approval, and reviewing it prior to our phone call may save time and make for a more productive conversation.

In the attorney approval letter, we can either approve the contract, disapprove the contract (cancelling the deal), or conditionally approve the contract. A conditional approval means that either party can cancel the contract until the approval is unconditional, so I try to avoid conditional approvals. Sometimes, they're required to fix an error in the contract (i.e. forgot to include appliances, etc.), but I prefer to avoid them in the interest of getting you an enforceable deal. **If you have concerns about the deal itself, we should discuss them fully at the attorney approval stage before you're obligated to proceed with the deal.**

Home Inspections. The housing market in 2020 and 2021 has been one very short on inventory with strong demand from buyers. While you certainly have a right to insist on a home inspection before buying a house, waiving an inspection may be the difference between your offer getting accepted over another offer. Only you can decide whether waiving your inspection is the right choice. **Often, after the home inspection contingency is satisfied or waived, you're going to be obligated to purchase the property, even if you change your mind later.**

The home inspection is your chance to learn as much as you can about the condition of the home you're buying. **The seller is selling you the house in "as is" condition as of either the Contract date or the date of the home inspection.** This means that, in most circumstances, the seller will not be responsible to fix any problems that come up after closing, even if the seller knew about them and didn't disclose them!

Even in cases where the seller knowingly concealed defects from you, your options to recover from the seller are often difficult and expensive once the closing has occurred. As such, we strongly urge you to carefully consider whether waiving the home inspection is right for you.

After the Inspection is completed by the inspector, that's not the end of the inspection process. At that time, you have to make a decision about what you want to do with the results of the inspection. You have three options: 1. Satisfy the contingency and move forward with the deal as written, 2. Cancel the deal and walk away, or 3. Ask for a price reduction, credits, or repairs. You determine the scope of the inspection, as long as the inspection doesn't damage the property, so if you decide you want to have an electrician inspect the electrical work in the house, you may do so. However, you'll probably have to extend the inspection period (which the Seller would have to agree to) and pay an additional fee to the electrician. Sometimes, the seller will agree to have an electrician (or other specialist, roofer, HVAC person, structural engineer, etc) look at a certain element of the home, however, you should be cautious about doing that, as there can be differences of opinion based on the professional chosen, their understanding of the scope of work, and other factors that may affect their recommendation.

We often get calls from buyers after closing when problems arise. They usually ask if the seller is responsible for fixing something. Many times, when a contractor finds out you recently purchased the home, they will say things like, "this house couldn't have passed inspection like this," or "this work isn't to code," which creates the impression the seller should pay for the work. **New York has a strong history of caveat emptor, or "let the buyer beware," in real estate transactions.** As such, you as a buyer will be responsible for fixing most things after closing, even if you didn't know about them and the seller didn't disclose them. Waiving your home inspection comes at the risk of a court later saying that you should have known about whatever problem arose after closing, even if a home inspector may not have found it.

Appraisal. Your lender will to an appraisal of the property to ensure that the value meets the bank's collateral requirements. **The appraisal is not a substitute for the home inspection.** The appraiser is simply looking for value, and not necessarily for major repairs that need to be done after closing. Also, unless you're getting an FHA or VA loan, **the Contract is not contingent on a satisfactory appraisal,** so a low appraisal may not entitle you to reduce the purchase price of the property.

Closing Date. The closing process involves buyers, sellers, home inspectors, lenders, attorneys, title companies, surveyors, town and city inspectors, appraisers,

insurance agents, and other subcontractors, many of which play a role in every deal. As such, the contract closing date is a **target**. While we try to close on or around that date, we cannot schedule the closing until the lender, if applicable, has cleared the file to close, and the title has been cleared for closing. Sometimes, title issues arise which delay the closing. There's no one person in control of the entire process, but we will make every effort to close on or shortly after the contract date. If the Seller refuses to close after the closing date passes, **the earliest date we could force them to close is seven Business Days after the date on the Contract by declaring Time of the Essence. In order to declare Time of the Essence, we have to be ready, willing and able to close (i.e. mortgage cleared to close, title cleared to close) so keep that in mind when making moving plans. We strongly urge you not to give notice to your landlord until your closing is scheduled.**

If you're getting a mortgage, the Contract contains a provision for interest rate protection, i.e. you can get out of the contract if you cannot lock in your interest rate at or below the rate specified. If you elect to "float" your interest rate, i.e. not lock in at the time of your application, you lose the interest rate protection and must accept any available rate that you qualify for. **When you lock in your interest rate, the expiration must be after the Closing Date in the Contract.**

Interest rate lock extension fees. Often times, the Seller may not be able to meet the Contract Closing Date or rate lock extension date, which may result in you being required to pay an interest rate extension fee. Unless the seller agrees to reimburse you at Closing, you will have to pay this fee in order to close. You can then sue the Seller in small claims court after closing, but you any litigation is uncertain.

Early Occupancy. Sometimes, sellers will agree to allow buyers to move into a house prior to closing. This will require a written agreement, and you will have to get insurance on the property, and you will be responsible as if you are an owner of the property. Keep in mind that the seller's homeowner's insurance may not cover any casualty loss, and your homeowner's insurance may not allow you to get that coverage, so early occupancy is somewhat risky. Further, a seller is not required to give you early occupancy, and a seller will typically charge you rent for the days you move in early.

Post Occupancy. Sometimes, sellers will ask to stay in the property after closing to facilitate their move. We will usually draft an agreement with certain dates (if you've agreed to certain dates with the Seller), a rental amount that's usually your mortgage payment broken down to a daily rate, and other terms and conditions. Please contact us if you have questions or concerns.

Owner's Title Insurance. In Western New York before COVID-19, we typically recorded the deed to the transaction shortly after the closing, so purchasing owner's title insurance was optional. Since COVID, recording is taking several days or more, so we have decided to require the buyer purchase owner's title insurance on every closing. Owner's title insurance is sold at a statutory rate based on the purchase price (and loan amount if applicable), and is a one-time premium that covers you for as long as you (or your heirs) owns the property. **As such, it is our policy that any purchaser we represent must purchase Owner's Title Insurance at closing.**

Cash to Close. Generally, the amount you need for closing will be available a day or two before closing, however, it's a collaboration between our office, the lender's attorney, and the bank. Sometimes, figures will not be available until the day of closing, but we will make every effort to get you figures as early as we can. **You will need to get a certified check or bank draft for closing.**

Access to the Property. Generally, you get access to the property after the Closing, which is when you sign your mortgage documents, and the Seller delivers the Deed. Generally, we will not have keys at your closing, so you will have to arrange to get those from your real estate agent, if you have one.

Tenant occupied property. If the property you're purchasing is occupied by a tenant or tenants, you're taking the property subject to those tenancies, meaning you have to abide by any lease that's still in effect. **If the seller has to remove a tenant prior to closing, they may have to give up to 90 days notice to the tenant, so the closing date will have to be adjusted accordingly.** Even after the expiration of the notice period, if the tenant has to be evicted in court, it will require even more time, so please adjust your moving timeline accordingly.

Water Bills and Utilities. You must call the applicable utility companies prior to closing to have the utilities switched into your name for the date of closing. Water bills are the only utility that follows the property, so when you call to switch over the water, they may tell you the seller has a remaining balance. The seller's attorney will collect for the water bill and hold an escrow as part of the closing process, so that bill will get paid. It might take a couple weeks or so, but rest assured we will take care of it.

Septic System. If your property has a septic system, the Seller is obligated, unless you agree otherwise, to deliver a transfer certification from the county health department, if required. (Genesee County does not require health department approval for a septic system.) The county approval only shows the system is working at the time of the test, and is not a guarantee of the condition of the system. If the property is not

occupied or the septic system cannot be tested during the winter, you and the seller will enter an escrow agreement where we will close, and you will agree to get the system tested after you live there for 30 days or the county starts testing again in the spring. Please know that you will have to schedule the test as soon as possible in the spring. Also, if the test fails, you will have to get estimates to repair or replace, and the seller will choose the lowest estimate to get the work done.

Enforcing the Contract and Litigation. Most things in real estate transactions are resolved between buyers and sellers negotiating in good faith and coming to reasonable solutions both can live with. However, sometimes the other party is not reasonable, or trust erodes during the transaction, resulting in irreconcilable differences. Unfortunately, if you can't come to an agreement to resolve those issues, you may not be able to close and might have to have a court decide the matter. Courts strongly prefer that parties in litigation settle their differences, and it's rare that one party gets a total win in litigation. This involves great expense, which can sometimes cost more than the original dispute. Litigation is rarely going to result in a satisfactory conclusion to a real estate transaction, whether before or after closing, so I am including this note up front in case we need to discuss the possibility later in the transaction. **If there's a dispute that you and the seller cannot agree on, litigation may be the only way forward, and it's unlikely to have a good outcome for either side.**

Please know that I am always on your side and negotiating for your desired results in this transaction. However, sometimes, in conversations or emails between you as the client and me as the attorney, I have to make the other side's legal arguments so that you can understand the relative positions and make an educated decision.

Very Truly Yours,
VALLONE LAW, PLLC

Eric T. Vallone

By: Eric T Vallone, Esq.

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Enclosures