



January 24, 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 legal representation, and discuss your next steps on the road to your new home.

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.

**Documents to bring to us.** In order to prepare your sale for closing, we need the following documents:

1. **Original Abstract of Title or Title Search.** This is the single most important document we need and ordering a new one will take 4-6 weeks or more. If you do not have an original search, please let us know as soon as possible so we can try to find it or order a new one. As the Seller, you're required to update the title search to prove your ownership, including any limitations or restrictions on the ownership of the property (i.e. liens, judgments, tax warrants, easements, etc.). **Delay in getting us your original title search or telling us we need to order a new one will result in a delay in your closing.**
2. **Survey Print.** Although not required, having an old survey is helpful for the new surveyor and the purchaser's lender.
3. **Authorization.** If you have a mortgage or home equity loan or line of credit, we will need the enclosed Authorization signed and returned to us so we can order your mortgage payoff before the closing.

**Closing Costs.** As a seller, in the standard residential contract, you're required to pay the following closing costs:

1. Updating the abstract of title or title search: typically \$300-500 for an update, and \$750-1,000 for a full search if it's required.

2. Survey: \$400-600 for a standard residential lot (i.e. under half an acre, rectangle shape). Irregular lots or large lots require more work.
3. Transfer tax: \$9 per \$1,000.00 of purchase price in Erie County (i.e. \$900 on a \$100,000.00 purchase price), \$4 per \$1,000.00 of purchase price in other counties. If you're over 62, live in Erie County, and are selling your primary residence, you qualify for a reduction in transfer tax to \$4 per \$1,000.00 in purchase price.
4. Any applicable taxes are adjusted as of the date of closing, which may result in a reimbursement from the purchaser or you having to give the purchaser a credit for a tax period that has started but hasn't been paid yet, i.e. school tax period generally runs July 1-June 30<sup>th</sup>, but they're not paid until September or October, so if you close in July-September you may have to give the purchaser a credit from July 1<sup>st</sup> to the date of closing.
5. Water bills follow the property, so we will have to hold an escrow until after closing until the final water bill is received and paid.

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 6, 7, 8 and 12 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.

### **Sale 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. Seller's Attorney orders title search and survey updates. (3-5 days from satisfaction or release of Inspection Contingency)
5. Deposit received by Escrow Agent. (2 Days after satisfaction or waiver of the Inspection Contingency)
6. Purchaser applies for their mortgage. (5 Days from satisfaction or waiver of the Inspection Contingency)

7. Bank appraisal is completed and reviewed by the lender. (2 weeks from loan application)
8. 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)
9. 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.)
10. Purchaser's Attorney receives title search and survey from Seller's Attorney (4-6 weeks from the satisfaction or waiver of the Inspection Contingency)
11. Purchaser's Attorney receives title insurance commitment from title company (1-2 weeks from completion of step 8)
12. 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)
13. 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)
14. 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.
15. Purchaser does their final walkthrough (1-2 days before closing)
16. Purchaser receives cash to close amount (day before closing)
17. 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 purchaser, obtaining judgment or tax lien payoffs, 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](mailto: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.** If your purchaser is doing a home inspection, they have an unlimited right to cancel the contract during that period. The purchaser determines the scope of the home inspection, as long as it does not result in damage to the home, and must be satisfied with the results, or they can cancel the contract without penalty. If the purchaser notifies you that the results of the inspection weren't satisfactory, you can either cancel the contract or negotiate a satisfactory resolution to the inspection concern. You are typically not required to make repairs to sell your home, except when required by local law, as discussed below.

**Your obligations as a Seller.** As a Seller, you're selling the property in the condition it's in as of the contract date or home inspection, whichever is later. **You must maintain the utilities servicing the property in working order while the Contract is pending.** That includes performing routine lawn maintenance and snow removal.

While you're generally selling the property in as is condition, you may be required to make certain repairs to the property under town/city and/or county regulations. For

example, the county requires a septic and well inspection for properties that are serviced by well and septic. As such, you will have to order and pay for the test and ensure the system passes without conditions. If you have a septic system and well, and the weather does not allow testing (generally from the first snowfall until the spring thaw in April/May), **we will have to hold an escrow of between \$10,000.00 - \$15,000.00 to ensure the system meets county requirements.** If the system fails, you will have to ensure the system is repaired or replaced. **You will generally be required to perform these repairs, even if the contract specifically says you're selling the property "AS IS." If that is not your understanding, please mention it during the attorney approval period.**

Some towns and cities require an inspection of the plumbing system to ensure that storm water isn't draining into the sanitary sewer. You may need to make repairs to ensure that these municipal codes are in compliance. **If you cannot make repairs or don't want to make repairs, please let us know at attorney approval.** Please contact us if you have questions.

**Mortgages/Home Equity Loans.** Please provide us with the most recent statement on any open mortgage/home equity loan or line of credit as soon as possible. **If you have an open home equity line of credit with a \$0 balance, you may want to consider closing it now and providing us proof so it does not delay your closing or require an escrow.** Please be aware that if there's a delay in receiving your payoff, it may delay your closing or your final sale proceeds.

**Closing Dates.** The Closing Date in the contract is a **target date.** We cannot schedule the closing until both parties are ready, and if the buyer is getting a mortgage, the lender generally controls the closing. We will try to close on or about the closing date, but it's not always possible. You should keep making mortgage payments until the closing is officially scheduled.

**On the closing date, you must deliver the property to the buyer in broom clean condition and free of debris.** The buyer will do a final walkthrough a day or two before the closing. If you are coordinating a move and will need to stay in the house after closing, please let us know as soon as possible so we can **try** to work that out with the buyer's attorney. Please be advised that we cannot guarantee the buyers will allow post occupancy. **If you need post occupancy, please let us know during the attorney approval period.**

**Tenant occupied properties.** If the property you are selling is tenant occupied, you will have to transfer any security deposits in your possession to the buyer at closing.

Also, you'll have to continue collecting rent to the property until closing, **so if the closing is scheduled for the first of the month, you're responsible for collecting that month's rent.** If you want to change that, you'll have to negotiate another solution with the purchaser. Finally, if you agree to remove a tenant prior to closing (which might be required by the purchaser's lender in certain circumstances) you'll have to give notice pursuant to New York State law, which could delay the closing by several months. Tenants who have lived at the property less than one year are entitled to 30 days notice, but also a full rental period, i.e. one month. One to two year tenancy is a 60 day notice and more than two years requires 90 day notice. If you're required to evict the tenant, longer delays will occur.

**Sale Proceeds.** Generally, your proceeds will be available 48 hours after closing. If you need access to them before that time frame, we can arrange for a wire transfer for an additional \$100.00 fee.

**Septic System and Wells.** If your property has a septic system or well, you are obligated, unless the Purchaser agrees otherwise, to deliver a transfer certification from the county health department, if required. Generally, banks will require the well water be tested before they will let the Purchaser get a mortgage loan for the property. (Genesee County does not require health department approval for a septic system.) If the property is not occupied or the septic system cannot be tested during the winter, you will likely have to enter an escrow agreement where we will close, and you will agree to put \$10,000-\$20,000.00 in escrow until the Purchaser can get the system tested after they live there for 30 days or the county starts testing again in the spring. Also, if the test fails, we will have to get estimates to repair or replace the system and you will probably be responsible for the cost of those repairs. **This applies even if you are selling your property "AS IS".** If you want the Purchaser to accept the property and assume all responsibility for the septic system, you need to negotiate that prior to or at the time of the attorney approval, and the Purchaser may walk away from the deal.

**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 purchaser cannot agree on, litigation may be the only way forward, and it's unlikely to have a good outcome for either side.**

Very truly yours,  
**VALLONE LAW, PLLC**

*Eric T. Vallone*

By: Eric T. Vallone, Esq.

ETV/am  
Enclosure