

Real estate broker / agent vs. lawyer

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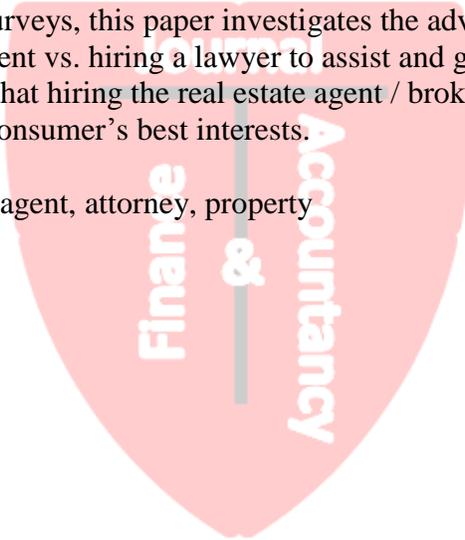
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ABSTRACT

Using questionnaire surveys, this paper investigates the advantages and disadvantages of hiring a real estate broker / agent vs. hiring a lawyer to assist and guide you in real estate transactions. The study finds that hiring the real estate agent / broker in most real estate transactions would be in the consumer's best interests.

Keywords: real estate broker, agent, attorney, property



INTRODUCTION

This study investigates the decision of hiring a real estate broker / agent vs. hiring a lawyer to assist and guide consumers in real estate transactions. The purpose of this research is to determine who the consumer should hire in the event of a real estate transaction. Real estate transactions generally include the purchase, sale, or lease of properties. The purchase of real estate, whether it is land or a home, is possibly the biggest investment a person will make in his lifetime. In the sale, purchase or lease transactions of real estate, there are many factors that a consumer needs to be aware of. For example, a consumer needs to decide who he will hire to assist. He also needs to consider other factors, for example, location, price, size, features. If he is selling, there could be different variables involved, one being the personalities of the potential purchasers. If he decides to sell the real estate on his own with the help of a lawyer, he needs to be his own salesperson. He will be the one dealing with potential purchasers, negotiating price and terms, and closing the sale. If he chooses to hire a real estate broker, it is important to know that he will be paying for his services in the form of a commission which is usually around 6% of the sales price (www.realtor.com, Dec 2013). These are just some of the factors the consumer needs to be aware of when deciding who to hire for his best interests. Further discussion in depth on this topic is provided later in the paper as the authors “clear the air” so to speak on who the better hire is for the consumer’s situation.

BUYING

There are a few important steps involved in the buying process. These steps would be deciding what the buyer wants, knowing what he can afford, making an offer (when the time comes), securing finances and last but not least, closing the deal. Before a buyer can start looking at real estate, the authors would suggest writing down a list of what he wants. Some people have higher priorities than others. An idea of a beginner list might involve location, types of houses, and age of the houses. The factors a buyer should consider looking deeper into when deciding what he can afford is the down payment, qualifying for a loan and his comfort level with the numbers. Once he has found the right home and the time comes to make an offer, he will need to think about preparing a contract, handling negotiations, setting up inspections, and option periods. Unless the buyer pays for the home in cash, he will need a loan. This is where secure financing comes in. It is important to consider variables such as interest rates, points, and total lender fees, term of the loan, and penalties for early payment. The buyer will often have to consider an appraisal since most lenders require it to verify that the home is in fact worth the cost of the loan. Physical surveys, required repairs and insurance are also among the list. After weeks, months, or years of decision making and searching, he is finally ready to close the deal. There will be many documents to sign, and each will need to be read and explained to the buyer in detail to ensure his understanding. He will present a cashier's check to the seller, sign another document that itemizes closing costs (the lender will have given him an estimate in advance), and pay his share of the closing costs. In return, he will receive a deed, and the transferred ownership rights. . (TexasRealEstate.com)

SELLING

Selling a home can be extremely complicated. In most cases the sellers are not just selling a piece of property, they are also trying to find a new place to live. Some common steps to be taken in the process of selling the home would be setting a price, marketing the property, and considering the offers. If the seller's asking price is too high, he may not be able to find a buyer for the property. This could be the step that makes or breaks the entire selling process. At this point most sellers resort to hiring an appraiser to estimate and report the value of their property. It is important to note that an appraiser's estimate of value is only accurate on the day it is reported. The internet is no place to determine the value of your home. Websites such as Zillow.com or other quick value estimator sites are not accurate and have no access to comparable sales in Texas. It is important to know that the majority of people buy on emotions. It is also important to remember this when a seller is staging his home for a viewing. It would be smart to reduce clutter and remove personal items such as pictures. Potential buyers would like to walk into a house and visualize where furniture would be placed, for example. When a seller receives an offer, he needs to review it and understand the pros and cons. It can become increasingly difficult if he is lucky enough to receive multiple offers. It is important to analyze the options carefully and decide which one is best for the seller's situation. (TexasRealEstate.com)

REAL ESTATE BROKER / AGENT

As the Texas Occupations Code Title 7, Professions Related to Real Estate Chapter 1101, and the Real Estate Brokers and Salespersons the Real Estate License Act (TRELA) Subchapter A define, "A Broker is defined as (A) a person who, in exchange for a commission or other valuable consideration or with the expectation of receiving a commission or other valuable consideration, performs for another person one of the following acts: (i) sells, exchanges, purchases, or leases real estate; (ii) offers to sell, exchange, purchase, or lease real estate; (iii) negotiates or attempts to negotiate the listing, sale, exchange, purchase, or lease of real estate; (iv) lists or offers, attempts, or agrees to list Real estate for sale, lease, or exchange; (v) auctions or offers, attempts, or agrees to auction real estate; (vi) deals in options on real estate, including buying, selling, or offering to buy or sell options on real estate; (vii) aids or offers or attempts to aid in locating or obtaining real estate for purchase or lease; (viii) procures or assists in procuring a prospect to effect the sale, exchange, or lease of real estate; (ix) procures or assists in procuring property to effect the sale, exchange, or lease of real estate; (x) controls the acceptance or deposit of rent from a resident of a single family residential real property unit; or (xi) provides a written analysis, opinion, or conclusion relating to the estimated price of real property if the analysis, opinion, or conclusion: (a) is not referred to as an appraisal; (b) is provided in the ordinary course of the person's business; and (c) is related to the actual or potential management, acquisition, disposition, or encumbrance of an interest in real estate property; (d) includes a person who: (ii) is employed by or for an owner of real estate to sell any portion of the real estate; or (ii) engages in the business of charging an advance fee or contracting to collect a fee under a contract that requires the person primarily to promote the sale of real estate by: (a) listing the real estate in a publication primarily used for listing real estate; or (b) referring information about the real estate to brokers." (pg 100 principles) "The business of bringing together people who are interested in making a real estate transaction is brokerage.

Typically the broker acts as an agent of the buyer or seller (or both) in negotiating the sale, purchase, or rental of property. A salesperson is a licensee employed by or associated with a broker who conducts brokerage activities on behalf of the broker for a fee or commission.”(pg 2 principles) . Simply put, the difference between a broker and an agent is that the broker runs the real estate office, oversees everything the agent does; whereas the agent is out in the field directly working with buyers and sellers. This creates an apprenticeship in the industry. In some cases there are agents with more real estate experience than the broker in which they are working for. In fact, many states require an agent to work a certain amount of years under a broker before they can receive a brokerage license. (Dallas Real Estate Blog)

Real estate brokers do not give legal advice. Texas Law prohibits nonmembers of the state bar from practicing law in the state. Although the legal rights and contractual obligations of the parties to a real estate transaction are the broker’s fundamental concerns, it is not the broker’s responsibility to offer legal advice. In fact, the license act authorizes the Texas Real Estate Commission to suspend or revoke a brokers or salespersons license for the unlawful practice of law. To ensure valid sales contracts, licensees should advise sellers and buyers to secure legal counsel if they do not understand the provisions of the various contract forms that the act requires licensees to use.” (pg. 99 principles)

REAL ESTATE ATTORNEY (LAWYER)

“Real estate lawyers serve two primary functions in the real estate world. They either act as litigators or handle the legal aspects of real estate transactions. Real estate lawyers deal in real property and mediate real estate transactions gone sour. Some real estate lawyers are highly specialized, litigating fraud cases such as disclosure fraud and mortgage fraud or concentrating on land use, subdivision and zoning laws. Other areas of expertise can be in residential or commercial real estate. A real estate lawyer whose primary focus is real estate transactions applies himself to the preparation and review of documents, the negotiation of terms and conditions, and the transference of titles. They may be called upon by companies who are unsure of how real estate laws and regulations could affect their business when buying or selling real estate (Lawyeredu.org)”. “When a breach of contract transpires or a real estate fraud occurs, real estate lawyers step in and go to court to represent their client in the case. The work hours can be long as they serve the various needs of their clients (Lawyeredu.org)”. A Real Estate Attorney should be very analytical with exceptional verbal/written communication skills. It is also important for them to have a broad understanding of business law and strong negotiating skills. In the Real Estate market it is all about who you know. It is crucial to have a web of connections. “Therefore, a real estate lawyer should be a capable networker. Time management and organizational skills are of the essence because frequently, a real estate lawyer is handling multiple cases and documents at any given time (Lawyeredu.org)”.

Also, according to LendingTree.com “What do Real Estate Lawyers do”,

“Further, some title insurance companies and mortgage lenders require you to use a lawyer to ensure that, among other things, the title is good, there are no liens against the property, and that the deal will close as anticipated (Lendingtree.com)”. A lawyer’s role can be as broad as you want with a few exceptions that will be mentioned. It’s important, but not required, to ask for your selected attorney to describe his qualifications, work style, and fees in writing before you begin the process so you have a good understanding.

If you’re buying a home, your lawyer should:

- Help you understand the purchase contract, including how you will take title on the property.
- Check that there are no covenants, easements, liens, etc. registered against the property that will impede your use of it.
- Prepare and register all the legal documents.
- Clarify the terms of the mortgage and work with your bank, if necessary, to modify them.
- Scrutinize the adjustments, including taxes owing and utilities costs paid, prior to the transaction closing.
- Attend the closing and review all the papers you will be required to sign.
- Arrange title insurance protection to protect you from losses due to title defects.
- Ensure you receive a valid registered ownership subject only to the liabilities you have accepted.

If you're selling a home, your lawyer should:

- Review the binder and review or prepare the purchase and sale agreement, including negotiating its terms.
- Prepare the deed and power of attorney if necessary.
- Deal with title issues as they arise and help correct them.
- Attend the closing and review all the papers you will be required to sign.
- Arrange for transfer of security deposits.
- Arrange for insurance certificates if needed.

According to lendingtree.com, legal fees are typically higher when a person buys than he sells because the role of the buyer's lawyer is more extensive. Most fees range from \$500 to \$1,500 for an average home whether the person is the buyer or the seller. Some lawyers charge a flat fee for specific services and others bill by the hour. If the person is paying by the hour, it is important to make sure he has a good understanding on what the final cost will most likely be, also make sure he keeps good records accounting for all the charges. "Usually, a lawyer can easily estimate costs related to a real estate transaction and his or her fees will only go higher if something goes wrong (Lendingtree.com)". Also, Real Estate Attorney's salaries are not dependent on whether the deal closes or not. Regardless of the outcome, the person will still owe the attorney for his or her time (Lendingtree.com).

REAL ESTATE BROKER / AGENT PROS AND CONS

Whether a consumer is buying or selling real estate, hiring a real estate broker to assist him in the process is a viable option. But as with many decisions in life, there are up and down sides. The pros to hiring a real estate broker to assist the consumer in buying or selling property can be many. They are professionals in the field. They have many connections, access to comparable sales, knowledge of real estate law and contracts, people skills. So they can negotiate for the consumer and there will be less paper work and red tape on his part. They can also assist the consumer in setting an accurate price for the specific market he is in. It is extremely important to accurately price the consumer's property before putting it on the market. If the consumer set the price too low, he will lose value on his home. However, setting the price too high will cause the property to stay on the market for a long time, and thus lose money. In Texas sales prices are not released, making it extremely difficult in a For-Sale-by-Owner situation (FSBO) to set an accurate price. A benefit to hiring a broker / agent is that they have access to comparable sales and help the

consumer at setting an accurate sales price for your home. They can also assist a buyer by narrowing his or her search to their specific needs.

A Con with hiring a real estate broker / agent is that the consumer will have to pay a commission if his transaction is successful. Unlike other services which are paid for by the hour or a flat fee when the work is completed, most real estate broker / agents are paid by a commission at the end of the transaction. There are also flat fee broker / agents in the industry as well. Some people believe that this develops a conflict of interest, resulting in the broker / agent just trying to “push” the sale. According to realtor.com, a commission is a form of payment to the agent for services rendered. The commission is negotiable between the listing agent and his or her client. A typical commission is 6% of the sales price but some brokerages offer a commission discount to sellers. A lot of the time a seller will agree to pay a percentage of the commission to the listing agent and the remaining percentage to the buyer’s agent. It can be negotiated unevenly. In a sense this could also be considered a pro for the real estate broker / agent because if the consumer’s transaction falls through he will not owe the commission. The real estate broker / agent only receives a commission when the deal goes through. The other cons involved with hiring a real estate broker / agent are just being one of many clients; having at least one “middle man” in the transaction process; and lastly being at the mercy of someone else’s time line. A lot of these will also apply to the real estate attorney as well.

REAL ESTATE ATTORNEY PROS AND CONS

The Pros to hiring an attorney are that a buyer/seller is not using the agent, which is believed to be a conflict of interest by many. Fact shows that the seller stays in complete control of the process. According to nono.com, the real estate attorney will have more understanding of the situation if a legal problem were to arise, since they are professionals in real estate law. They can make sound judgments with any legal question the consumer may have. The real estate attorney has no financial interests in seeing whether the consumer’s particular real estate deal go through because they are paid by an hourly rate, instead of a flat rate. They are fluent with the modern legal language and can protect your interests in a contract. Lastly, when a consumer hires an attorney, he calls the shots in regard to every move they make, including how much or how little work needs to be done.

Most of the Pros to hiring a real estate attorney can be a double edged sword. For example, while a seller stays in control of the entire process, he can also take full responsibility for negotiations and showing his property to potential buyers. Even though it is a Pro that the real estate attorney has no financial interest in seeing the seller’s real estate transaction going through, he or she will still have to be compensated for their work. If the seller hires a real estate attorney his salary is due regardless of the outcome. A second con to hiring a real estate attorney is that they have no access to comparable sales which means they cannot help you set a value on the property.

QUESTIONARE RESULTS

To add to the credibility of the research and final decision, the authors distributed 50 questionnaires to people who experienced the real estate transactions. The questionnaire was anonymous and consisted of two questions: When dealing with a real estate transaction (buying, selling, or leasing) did you use a real estate broker / agent or an attorney? And what were your opinions on the process (such as, were you happy with the service?) As with any questionnaire or

survey system there were mixed results and emotions regarding both sides. Out of the 50 questionnaires released, 26 subjects had used a real estate broker / agent, five used a real estate attorney, eight used both a broker / agent and an attorney at one time or another and 6 used other methods of buying, selling, or leasing real estate (such as A Title Insurance Company, For Sale By Owner, or direct purchase). The remaining five had never been involved in a real estate transaction. Out of the 26 subjects that have previously hired a broker / agent, 24 were satisfied with the service they received, and two were dissatisfied with the service received. The two who were dissatisfied explained that they thought it was a waste of money and believed they could complete the task on their own, or believed the broker / attorney was only concerned with making the sale and not the wellbeing of the purchaser. Regarding the five subjects who previously used real estate attorneys, all of them were satisfied with the service they received. Out of the eight subjects that used both a real estate broker / agent and an attorney, six were satisfied with the service received by both sides, and two were satisfied with the broker. One mentioned there was no need for an attorney in their particular situation.

CONCLUSION

In a perfect world, where money is no object, it would be definitely in the consumer's best interest to hire both a real estate broker / agent and an attorney to help guide, protect, and generally look after his best interest in a real estate transaction. In many states the consumers are legally required to hire both (www.nolo.com). This study applies to the states in which people have to make that decision of who to hire when buying, selling, or leasing real estate. From the research gathered, the authors conclude that it is in the consumer's best interest to hire the real estate agent / broker in most transactions. With that being said, there is still a time and a place to hire a real estate attorney. An example of this could be if a consumer is selling, buying, or leasing real estate from a family member or close friend in which there is no need for an intermediary, but there is still a need for legal protection and guidance. There will always be a need for real estate brokerage services regardless of whether sales prices are made public in the state of Texas. It makes sense to hire a professional in the field. If a consumer has a plumbing issue in the house, he would not hire an electrician to fix the problem. So why would it make sense to hire an attorney to assist your real estate transaction? An attorney's specialization is real estate law and his or her fluency in legal language. A broker / agents' specialization is in the sale, purchase, and leasing of real estate. Based on the research gathered, the authors can conclude that the broker / agent is the most advantageous choice.

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