



Chapp Law Firm, P.C.

Aadvantage Legal Services
32540 Schoolcraft Rd., Suite 120
Livonia, MI 48150
(734) 266-3700

QUARTERLY NEWSLETTER

SPRING 2004

Saving Money in Real Estate Closings



A home is the biggest purchase most people will ever make, but a lot of buyers don't realize that the home's price is only part of what they'll have to pay. Closing costs in home purchases can add another 2 to 7 percent to the total. That's a lot of money. Sellers may face closing costs as well.

Fortunately, you can take steps to keep a lid on these costs. Whether you're buying or selling, your lawyer can watch out for your interests. Read on for some tips on ways to save.

Q. What happens at the closing?

A. The real estate **closing** (sometimes called the **settlement**) is the final stage in the process of buying a home.

The closing is a meeting at which the buyer and seller, usually accompanied by their respective lawyers and real estate agents, complete the sale. At this meeting, the seller sells, the buyer buys, and the lender lends. The buyer usually signs the promissory note and mortgage and obtains the lender's proceeds. The buyer is then able to make all the required payments due to the seller. The seller produces all documents necessary for the transfer of good title and delivers a deed that transfers the title to the buyer.

Q. What are closing costs, and who pays them?

A. These costs vary depending on local custom and the specific terms of the

purchase agreement. They usually include all or most of the following:

Appraisal fee--This is the fee paid for an appraisal of the property. It is required by the lender and is often paid for by the borrower (buyer). The Federal Housing Administration and Veterans Administration establish the appraisal fees for mortgages that they guarantee.

Survey fee--The purchase contract should specify whether the seller is obligated to provide a survey. If the seller is not, the buyer may need to obtain and pay for a survey, for his or her own use and to satisfy the lender.

You may be able to avoid this fee if the lender agrees to accept a recent survey done for the seller, along with an affidavit of the seller stating that the property lines have not changed since the completion of the survey and there have been no additional improvements to the property since the survey was taken.

Continued on Page 4

IN THIS ISSUE	
Saving Money In Closings	1
Your Guide To "Will Substitutes"	2
Corporations 101 --the Basics	3
The Walk-Through	4
HIPPA Legislation	5
Check Out Our Website	5

Your Guide to “Will Substitutes”

Everyone knows that a will distributes property, but most people don't know about the many other ways of passing property at or before death. It's not that these substitutes completely eliminate the need for a will. Almost everyone needs a will to cover property not conveyed in other ways and to nominate guardians and conservators for minor children. But there may well be advantages in passing some property outside of the will. This article looks at a few possibilities. We can advise how they could fit into your estate plan.

Q. Does a will cover all my property?

A. Not necessarily. Because property can be passed to others by gift, contract, joint tenancy, life insurance, or other methods, a will might best be viewed as just one of many ways of determining how and to whom your estate will be distributed at your death.

Q. What are will substitutes?

A. These days, it's common for a person to have up to a dozen will substitutes—that is, various ways of distributing property regardless of whether the

person has a formal will. Retirement plans, joint ownership, and trusts are but a few of the ways you can transfer property at or before death quickly and inexpensively.

Be sure to keep in mind the kinds of property that a will may not cover and include them in your estate planning. A good estate plan should coordinate these benefits with your will. Using them well can give property to your beneficiaries more efficiently than a will can.

Q. My wife and I own our house in joint tenancy. Can't I use joint tenancy to pass property without having to draw up a will?

A. Yes. Joint tenancy is a form of co-ownership. If you and your wife buy a house or car in both your names and as joint tenants, each of you is considered a joint tenant and has co-ownership. When one of the co-owners dies, joint ownership usually gives the other co-owners instant access to the jointly held property.

Q. How can I use life insurance in my estate plan?

A. When you name beneficiaries other than your estate, the money passes to them directly, without probate.

Q. How do retirement benefits affect my estate plan?

A. Many of us are entitled to retirement benefits from an employer. Typically, a retirement plan will pay benefits to beneficiaries if you die before reaching retirement age. After retirement, you can usually pick an option that will continue payments to a beneficiary after your death. In most cases, the law requires that some portion of these retirement benefits be paid to your spouse. This right may be waived only with your spouse's properly witnessed, signed consent.

IRAs (Individual Retirement Accounts) provide a ready means of

cash when one spouse dies. If your spouse is named as the beneficiary, the proceeds will immediately become his or her property when you die. Like retirement benefits, they will pass to the named beneficiary without having to go through probate. The rules governing IRAs have been changing recently; check with our office to see how such plans can be best coordinated with your estate plan.

Q. Should I give some of my property away before I die?

A. Making gifts during your lifetime can be a good idea, especially if you have a large estate. They can help you avoid high estate and inheritance taxes. In some states, they might enable you to reduce a relatively small estate to one that is small enough to avoid formal probate procedures. Another advantage of giving property away before you die is that you get to see the recipient's appreciation of your generosity.

But watch out for a few pitfalls. These gifts will be subject to gift taxes if they're larger than the amount provided by law. Current law allows you to give up to \$11,000 per person per year (\$22,000, if a couple makes the gift) before the gift tax applies. You can make gifts to any number of people, whether or not related to you.

Q. What about trusts?

A. You can place property in a trust while you are alive. This is called a **living trust**. It can be a way to manage the property while you are alive (and even if you are incapacitated), and at death the property can pass to beneficiaries, without going through probate. Another advantage is that property can pass to beneficiaries over time, not all at once. This might be especially helpful for children or grandchildren who may not be mature enough to handle an outright bequest.

Some Examples of Property That Does Not Pass Via a Will

- property held in joint tenancy with rights of survivorship
- life insurance payable to a named beneficiary
- property held in a trust
- retirement plans payable to named beneficiaries, including IRAs, Keogh accounts, and pensions
- bank accounts payable to named beneficiaries upon the death of the depositor
- transfer-on-death stock accounts payable to a named beneficiary
- some community property
- income savings plans

Corporations 101- Basics Businesspeople Have to Know

Running your own business? Confused about your options when it comes to business structures? There are certainly some features that you want. You probably do want the ability to share and transfer ownership. And you probably don't want to be personally liable for the company's debts. A corporation may be the answer for you and your business. This article will take a quick look at some of the advantages and disadvantages of the corporate structure; you should talk to our office for advice tailored to your specific needs.

What Is a Corporation Anyway?

A corporation is simply a business structure that you can create by filing articles of incorporation in your state. The equity ownership interest in a corporation is called stock, and the owners of shares of stock are called shareholders or stockholders.

The most important characteristic of a corporation is that it is a separate legal entity. This means that the corporation is treated as a legal person in its own right, separate from its directors and shareholders. A corporation can own property, and sue or be sued in its own name. Pretty much all of the advantages of incorporating a business—and all the drawbacks too—stem from this characteristic.

Limited Liability

Limited liability is one of the greatest advantages of a corporation. It means that shareholders can only lose as much money as they put into the corporation. For example, imagine Alan and Bob are starting a small business, and each put up \$5,000 in return for stock in their company, AB, Inc. In theory, the creditors of the company cannot come

after them personally for payment because a corporation is a separate legal entity. Even if the business is deader than a three-day-old halibut, Alan and Bob can only lose their investment.

Of course, limited liability in the real world is a little more complex than that. Banks and others who lend money to small new corporations know very well that they can't routinely get their money back if their claims are greater than the assets of the corporation, and are unlikely to lend \$100,000 to a company whose coffers contain a measly \$10,000. Therefore, creditors often require investors to give personal guaranties, or to co-sign a note or other obligation in their capacity as individuals.

Importance of Perpetual Existence

In certain partnerships, if one partner leaves, the remaining partners may have to agree continue the business, or the partnership will dissolve. In a corporation, on the other hand, shareholders can come and go with impunity—the separate legal entity of the corporation means that it can survive even if a shareholder or director leaves. The life of a corporation is indefinite—which means that investment in a corporation may be somewhat safer than investments in other, less permanent business organizations.

Transfer of Shares

Being able to freely transfer shares to anyone gives an investor the right to liquidate his or her investment at any time. But this transferability can be a disadvantage in a small corporation. Take the example of AB, Inc., a small company where it's essential for the success of the company that the two shareholders get along. If Alan wanted

to sell his shares in AB, Inc. to Zoran, but Bob dislikes Zoran intensely, it could be a disaster. In most small corporations, shareholders enter into a share transfer restriction agreement to limit the transferability of shares.

Taxation of Corporations

The fact that a corporation is a legal entity opens up the unwelcome possibility of double taxation: a tax on the earnings of the corporation as an entity, plus the tax paid by the shareholder on dividends paid by the corporation. Small business owners can get around this if they meet the requirements of subchapter S of the Internal Revenue Code. S corporations do not pay any taxes—the income and deductions are passed through to the shareholders, who report their share on their individual tax returns. Our office can give you more detailed advice on eligibility requirements.

Types of Corporations

Besides the distinction between S Corporations and those that file under Subchapter C of the Internal Revenue Code, there are several types of corporations to fit the needs of various enterprises. General business corporations are often among the larger enterprises. Close corporations are often smaller enterprises in which all or most of the shareholders are actively involved in the management of the business. State law typically allows such corporations more flexibility in management. Professional corporations are limited to licensed professionals such as physicians or architects, and professionals licensed in the field are the only shareholders.

“Piercing the Corporate Veil”

Sometimes it is unfair for the people behind a company to escape liability for its debts. Don't worry—this happens rarely, usually only in cases where a company director has acted fraudulently, or where the business fails to follow the proper corporate formalities. In such circumstances, courts will sometimes allow creditors to “pierce the corporate veil”—a rather Victorian expression meaning that creditors can look behind the edifice of the company and seek compensation from the company shareholders or directors.

Saving Money In Real Estate Closings

Continued from page 1

Loan discount fee--This is the lender's charge to the buyer to obtain the loan, sometimes referred to as points or the loan origination fee. The buyer may have paid some of this fee in advance to secure the loan.

Inspection fees--Charges for general inspections or inspections required by local laws. The buyer or seller may be responsible for these fees depending on the contract and local law and custom.

Title fees/title insurance—Title searches or title insurance are important to assure that the buyer has received good title to the property, without defects that would lower its value. The contract needs to spell out who is to pay the cost of title insurance or fees. Often, it is divided between the seller and buyer. In some states, the seller pays for the buyer's title insurance policy and the buyer pays for the lender's policy. In other states, the buyer pays all charges related to title insurance.

Transfer taxes--A tax imposed by the state, county or city where the property is located, on the transfer of the deed and in some cases, on the mortgage.

Recording fees--The buyer usually pays the costs of recording the deed in order to change ownership and recording the buyer's mortgage. The seller pays the cost of recording the release of the seller's mortgage by the seller's lender and recording the release of any other liens found in the record of title.

Q. Are there other costs?

A. There may be. Other common fees include:

- loan origination fee to cover the lender's administrative costs in processing the loan;
- credit report fee to cover the cost of a report from a credit bureau showing the buyer's credit history;
- mortgage insurance application fee to cover the cost of processing the application for private mortgage insurance that may be required on loans with

a down payment of less than 20% of the purchase price;

- mortgage insurance premium;
- hazard insurance premium; and
- closing fee payable to the closing agent

Buyers may also have to put money into escrow with their lender to assure future payment of such recurring items as real estate taxes and insurance. Also, there are often separate lender document fees that cover the preparation of final legal papers such as the promissory note and mortgage or deed of trust. Finally, there may be conveyance taxes, which are charges levied on the transaction by the municipality or state. In some jurisdictions, you may have to buy tax stamps covering such charges. These taxes may also be charged on the amount of the mortgage.

Q. What costs is the seller responsible for?

A. Generally, the seller is responsible for paying the real estate agent's commission on the sale, real estate taxes on the property to the date of closing, certain transfer taxes and any liens that may be outstanding on the property, including any money due the current lender.

Q. What's the best way to keep costs down?

A. Know your rights, get good advice, negotiate, and shop for the best deal.

The purchase contract can allocate many fees to either the buyer or the seller. You and your lawyer can try to shift as many of these as you can in the negotiating process on the contract.

Many of the fees relate to obtaining the mortgage. Though federal law requires lenders to tell you the annual rate of the loan (APR), there are a large number of additional fees that can be applied and add greatly to your costs. You'll typically pay these at the closing. Unfortunately, the lender is not legally required to give you the final APR (which factors in these fees) until the loan is consummated, usually at the closing.

When you're shopping for your loan, ask about all these fees and find out how much they add up to. Experienced

lenders will provide a rough estimate of closing expenses before you apply for a loan. Factor that into your comparison shopping. You may well be able to find a lender with as good an APR that doesn't charge these fees.

A federal law—the Real Estate Settlement Procedures Act (RESPA)—steps in to protect you after you have chosen a loan. It requires a lender to give you a good faith estimate of closing costs within three days after you apply for a loan. This estimate includes the cost of appraisal, credit reports, title work and other services.

Unfortunately, this is only an estimate, and fees may go up at the closing. Lenders are required to provide you with a more detailed list of costs at least one day before settlement.

Your best bet is to protect yourself from high closing costs. Comparison shop for a loan, try to shift closing costs while negotiating the purchase, ask questions about anything you don't understand, and be an alert consumer all the way through the transaction.

The Walk-Through

As a buyer, you would be wise to inspect the property just before closing to insure that:

- the property is in the same condition as it was when you signed the contract, ordinary wear and tear excepted;
- all repairs that the seller agreed to make have been completed in a good and workmanlike manner
- all personal property that is to be included in the sale is at the property; and
- the seller has vacated the property and caused no damage in moving out.

If there are any problems, you should quickly notify our office or your real estate agent. The problem needs to be addressed prior to closing: if something is missing, the buyer needs to see if the item will be returned before closing. If the condition of the property is not right, repairs should be made. If agreeable to both parties, the buyer and seller may decide to reach a financial compromise to address any deficiency.

New HIPPA Legislation Affects Estate Plans

The law is always changing and creating new challenges for attorneys and clients. This year, the **Health Insurance Portability and Accountability Act (“HIPPA”)** has caused a great amount of commotion. Family members of people receiving treatment have been surprised on several occasions because the prior Patient Advocate Designations, Living Wills, Medical Directives, and Durable Powers of Attorney (collectively referred to as “Medical Power of Attorney”) **did not** include the new provisions now required if such document is in compliance with HIPPA. Family members may be barred from obtaining medical records regarding the patient’s medical expenses and care if HIPPA provisions are not included in such Powers of Attorney or if the patient does not have a separate HIPPA Waiver. *We are advising all of our clients to call us to review their estate plan documents especially for the purpose of amending the Medical Power of Attorney and/or preparing a separate HIPPA document.*

Check Out Our Website



In order to better serve our clients, we have made changes to our website. We invite you to view at your leisure our recently updated site at www.chapplaw.com. For your convenience we have provided many useful links on our new site on the Web Resources page. These include links to federal, state, and local government departments and resources; business sites on which you can check stock quotes; and general information sites ranging from airport information to people/business finders. Also we are in the process of adding more information including the company newsletter and FAQ page.

Copyright © 2004 Chapp Law Firm, P.C. The contents of this newsletter may not be reproduced or distributed without the express written consent of Chapp Law Firm, P.C. This publication is intended to provide information only and does not constitute legal advice.

The articles titled Saving Money in Closings, Your Guide to “Will Substitutes”, and Corporations 101- Basics for Businesspeople were prepared by the ABA Division for Public Education. These articles do not necessarily represent the official policies of the American Bar Association or Chapp Law Firm, P.C., and the information contained in the newsletter should not be acted on without professional advice. The ABA articles focus on broadly applicable legal principles. Contact your lawyer for the specific law in your state. Copyright © 2004, American Bar Association, 541 North Fairbanks Court, Chicago, IL 60611-3314.