

## For Sale By Owner (FSBO) Transactions

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When a homeowner decides to sell their home, they often hire a real estate agent. One reason to hire an agent is that agents have access to the Multiple Listing Service (MLS) system, and this enables the agent to make the property's availability known to other agents. Agents also often help sellers with the legal documents associated with the sale, finding an inspector, and so forth.

Agents typically charge a commission for their services. For instance, if a seller's agent charges a 6% commission on a property that sells for one million dollars, the agent receives a commission of \$60,000.00, although the seller's agent usually splits this with a buyer's agent if there is one.

Because some sellers don't want to pay a commission, they choose to sell their home in a For Sale By Owner (FSBO) transaction. When a seller sells their home without an agent, or when a buyer buys a home without an agent in a FSBO transaction, an experienced lawyer can usually facilitate the transaction for far less than the amount of a typical commission. Here are some things I assist sellers and buyers with in FSBO transactions:

1. **Drafting a Contract.** It is folly for a person to sell their home (or buy a home) without a clear written contract that specifies the parties' rights and duties. Putting aside that Colorado's Statute of Frauds requires contracts for the sale of real estate to be in writing, a written contract helps avoid disputes concerning what the terms of the agreement were. While the Colorado Real Estate Commission's standard Contract to Buy and Sell is a good starting point, the parties are free to modify it. When representing a seller, I frequently modify that document to try to limit the seller's potential exposure for claims based on allegations of nondisclosure, misrepresentation, or concealment. When representing a buyer, I strive to draft a contract that protects the buyer.

2. **Advising on Required Disclosures.** Colorado has several statutes that require home sellers to make written disclosures of certain matters to the buyer. I advise sellers on these requirements and help draft the required disclosures. Full compliance with these statutes helps protect the seller from subsequent claims of nondisclosure, misrepresentation, or concealment. Similarly, I review disclosures for potential buyers and advise buyers on additional due diligence tasks they may want to perform before closing.

3. **Reviewing Title Commitments and Resolving Title Issues.** In nearly every transaction the buyer wants a title commitment. The commitment typically lists exceptions that the title policy won't cover, and it's vital that a qualified lawyer review those exceptions. For instance, a commitment might list an easement as an exception. In that case, the buyer will want to know how that easement might impact their right to use the property if they purchase it. When a commitment lists an exception that a buyer considers problematic, I can sometimes assist my client (seller or buyer) in resolving that issue.

**4. Reviewing Surveys, ILC's, Plats, Covenants, and So Forth.** A qualified lawyer can assist a buyer in reviewing surveys, improvement location certificates (ILC's), subdivision plats, HOA covenants, and similar documents so the buyer can decide whether they want to move forward or engage in additional due diligence before closing. Where a contract requires a seller to provide such documents to a buyer, I can assist a seller with that, if necessary.

**5. Reviewing home inspection reports and similar documents.** Most buyers don't realize that a home inspection is not all inclusive. I served as general counsel for the International Association of Certified Home Inspectors for fourteen years, so I know what a typical home inspection does NOT cover. I can review inspection reports, advise buyers on recommended additional due diligence, and refer them to appropriate experts.

**6. Reviewing Closing Statements.** The title company should provide the seller and buyer with a settlement statement prior to closing. It's important to have qualified counsel to review these to make sure that the proposed distribution of funds at the closing matches what the contract requires.

**7. Serve as a Resource.** Many FSBO sellers and buyers have little experience with residential real estate transactions. Sometimes their beliefs about such transactions are wrong. Sometimes they don't know what they don't know. And sometime issues arise where they just need some guidance. With 41 years of experience in real estate law and litigation, I take pride in assisting parties in FSBO transactions.