

JBN Attorneys

- James H. Bunce
- Kent A. Noble
- Frederick A. Johnson
- James P. Johnson
- Matthew P. Jones
- Brian F. Johnson

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Johnson, Bunce & Noble, P.C.
Executive Offices—Parkway Plaza
7800 N. Sommer St.
Suite 425
Peoria, IL 61615-1994

Phone: (309) 691-9650
Fax: (309) 691-9651

Web: www.peorialawyers.com

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Residential Real Estate Sale and Purchase

Almost everyone will buy or sell a house at least once in their lifetime. For many, this sale or purchase will be the largest transaction in their lifetime. Surprisingly, many people do not have an attorney through this process. All too often, people call JBN attorneys after the closing and ask for help. Unfortunately, at that point it's too late to undo what's been done.

I was recently approached by someone at a social event who asked me why they had to pay his escrow company thousands because there was not enough money in escrow to pay the real estate tax bill. The prior owner's taxes were under a senior freeze (senior citizens can apply for a tax freeze on their property). His question was "who's at fault?" I first asked him who his attorney was. After he

responded that he did not have an attorney, I said, "You're at fault." A competent real estate attorney would likely have seen the discrepancy before closing and made adequate arrangements with the escrow company to collect additional money. He asked if his real estate agent should have handled this. The answer is no. A realtor's job is not to handle the legal aspects. The real estate agent's job is to market the house and guide the transaction through to closing, not handle the legalities. Although real estate agents are highly qualified in marketing and getting the best price, they are not lawyers.

What exactly does a lawyer do in the real estate transaction? The answer is too long for this article, but I will briefly summarize some main points.

First, lawyers define the

specific terms in the contract. Many people think that form contracts cover everything they need. However, a seller or buyer is only obligated by what's in the contract. For example, if a buyer wants a home inspection and repairs made, the contract must say so. Without a specific provision, the buyer cannot get adequate compensation or repairs after a home inspection.

Attorneys also review the real estate agent's listing agreement. There are rarely problems with these agreements, but when they do arise, the attorney can point them out and usually resolve them.

Tax issues are also most often addressed by the attorney. Capital gains taxes may need to be paid on certain property, and an attorney can counsel and guide his clients to positive tax results.

A review of the subdivision restrictions, deeds, covenants, and other title issues are also handled by the attorney. For example, if my client wants to buy a condominium, and has a pet, I would review the condominium documents to make sure that pets are allowed. Obviously, the answer is something that the buyer would want to know before the move-in day.

Defects in title, liens, and mortgages can typically be cleared off the record with the attorney's help. When I receive the title commitment (a document that tells the potential buyer what the title company is and is not willing to insure and what affects the title to the property) from the title company, I will review it, look at who's in title and check for mortgages



and liens against the property. Any discrepancies must be cleared up before closing.

A growing area in real estate litigation involves disputes over the Residential Real Property Disclosure Act's required disclosures. In a residential transaction, the seller is required to provide the buyer a statement listing defects and other problems. Sometimes, the seller may either make intentional or negligent omissions. When this happens, buyers have a remedy under Illinois law. Attorneys can help a seller fill out this form correctly and help buyers pursue their options.

Attorneys should be involved in real estate transactions. All too often, they are not involved and it's too late. Many times, at least at JBN, the attorney's fee for looking over or drafting documents and seeing a transaction through to closing is among the lowest fees on the settlement statement. We are proud of our reputation for being easy to work with, hardworking for our clients, and for our outstanding relationship with real estate agents in the area. For more information please call (309) 691-9650 or go to our website: www.peorialawyers.com.

This article was written by JBN associate attorney Brian F. Johnson. You can reach him at (309) 691-9650 or at bjohnson@peorialawyers.com

How a Title Company Works in the Real Estate Transaction

Usually you will hear a buyer or seller say that they have a closing at the title company. Most people have no idea what a title company is or what they do.

The title company (JBN's title company is JBN Title Services, Inc.— online at: www.jbntitle.com) works behind the scenes to gather information, retain and distribute the mortgage funds, and get the documents signed. Most importantly, the title company helps a buyer or lender know that they have clear title. A title company does not, however, provide legal advice or services. Attorneys are hired to handle the legal issues.



Once a title company is hired to facilitate a real estate closing, the title company's agents will start to gather the necessary information.

Typically, a title company will also sell title insurance. A policy of title insurance

“Most importantly, the title company helps a buyer or lender know that they have clear title.”

will insure the status of title in land subject to certain exceptions in the policy. Just as a homeowner's insurance policy insures against certain types of loss, a title insurance policy insures a certain ownership in property.

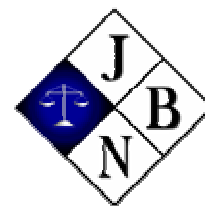
Usually a commitment is issued at the onset of the real estate transaction. A commitment will usually tell the seller and buyer what affects the title to the property.

After the commitment is issued, the company's closing agent will contact all of the parties and put together the “closing package.” This package contains documents from the title agency, deeds, mortgages, notes, and other documents that need to be signed at closing.

At the closing, the title company's closer will gather the parties, get all of the documents signed, and distribute the proceeds. After the closing, the title company will make copies and send the documents to the proper parties.

After the closing, the title company will issue the policy of title insurance. Note that the commitment is only the first step and shows the parties what the title company is and is not willing to insure. The policy, on the other hand, is the actual insurance for the property.

To find out more, please contact JBN Title Services, Inc. at (309) 691-9650 or online at www.jbntitle.com.



DISCLAIMER: The law easily changes from one case to another. Nothing in this newsletter should be relied upon in lieu of consulting an attorney. Please consult our office for legal advice tailored to your specific factual situation.

ONLINE NOTE: This newsletter is also available online at: www.peorialawyers.com

NEXT ISSUE:

- Debt collection—how businesses can obtain past due debts
- A brief overview of the litigation process

Other information and reminders:

- Tax season is around the corner. JBN provides tax preparation service to all types of clients
- JBN launches online personal injury evaluator on www.peorialawyers.com

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