FIFTH EDITION

How to Sell a Home on the East End

Most commonly asked questions and answers

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Should you have questions that are not answered in this brochure, please feel free to contact us.

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1. What type of benefits can a real estate professional offer?

A real estate professional will help you properly price your property by providing you with “comps,” i.e., comparables of recent sales in your area. A very important benefit of a real estate professional is his/her ability to qualify any potential purchasers to make sure they can truly afford to purchase your property before showing the property and screen real purchasers from “lookers.” Your realtor will also aid you in fielding and negotiating offers. Further, after accepting an offer and signing a contract of sale, your real estate agent, along with your attorney, will facilitate the closing.

2. How do I choose a real estate professional to work with?

The best way to start is by asking friends and colleagues if they have worked with an agent whom they can refer to you. You should interview a few listing agents to find an agent who is organized, truthful, trustworthy and easy to work with. If you cannot get a referral, you should scan advertisements in the local newspapers and find out who your local brokers are, call them and schedule appointments with a few different agents.

3. **What information should I provide to the real estate professional?**

Once you have found an agent to list your property, you should provide to your realtor every document you can about your property, including a survey map, if you have one, a copy of the deed, title report, real estate tax receipts, certificates of occupancy or compliance and information about any outstanding permits. The more information you provide the real estate professional, the more information your realtor will have to educate potential purchasers about your property so the purchaser can make an informed offer, which will save you time and effort later in the transaction.

4. **Should I try to sell my property without the help of a real estate professional?**

If it were easy, everyone would sell his or her property without the aid of a real estate professional. Unfortunately, it's not that easy. Potential buyers will invariably schedule appointments and never show up. When showing your property to an interested party, you will not know if the potential buyer has the financial backing to obtain financing or if you are showing your home to someone unable to purchase your property. You will save a lot of time and aggravation by allowing a real estate agent to do this for you.

5. **How do I determine a selling price for my property?**

Real estate professionals will help you determine your home's fair market value based on their knowledge of the current market conditions and providing you with comparative marketing analysis ("CMA" or "comps"). You may also order a fair market value appraisal of your property through a licensed appraiser.

6. **What should I know about appraisers?**

Appraisers are licensed by the state after completing coursework and internship hours that familiarize them with their real estate markets. An appraiser should be an objective third party, someone who has no financial or other connection to any person involved in the transaction. Such an appraisal could take four weeks to be completed and cost close to $1,000. As a result, sellers usually do not secure one and rely on the advice of the realtor.

7. What is the difference between a comparative market analysis (CMA) and appraised value?

A comparative market analysis or "comp" is used by real estate professionals to help home sellers determine a realistic asking price by comparing the seller's property to other similar properties that have recently sold in the surrounding neighborhood. An appraiser's report is much more detailed and is the only valuation report a bank will consider when deciding whether or not to lend to a purchaser to buy the property. A lender, however, will obtain its own appraisal when deciding to approve a mortgage for a potential purchaser.

8. What is an appraisal report?

Appraisals are very detailed reports that include details about the subject property, along with side-by-side comparisons of three similar properties. It also includes an evaluation of the overall real estate market in the area, statements about issues the appraiser feels are harmful to the property's value (such as poor access to the property), notations about seriously flawed characteristics (such as crumbling foundation), and an estimate of the average sales time for the property.

9. What does the appraisal mean to you?

A final loan commitment from a lending institution usually hinges on a satisfactory appraisal, to ensure that the loan is covered in case of a default. If the property appraises lower than the sales price, the purchaser's loan may be declined. If you have already signed a contract of sale containing a mortgage contingency (i.e., the purchaser can cancel the contract if he/she is not able to obtain a loan commitment) and the appraised price is not equal to or greater than the purchase price, the purchaser may be able to terminate the contract of sale and receive their down payment back.

10. What if the bank appraisal comes in low?

Don't panic. There are often steps you can take to make the deal work. Take the time to work through each issue one step at a time to see if you can get the appraised value up. Your real estate agent will help you in this process. If the appraised value and the purchase price are very far apart, you may have to adjust the purchase price in order to make the deal work.

11. Is an appraisal the same as a home inspection?

No. Appraisers do not test appliances, look at the roof, check the chimney or do any other typical home inspection tasks. A home inspection, by a licensed home inspector or engineer, is usually undertaken by a potential purchaser after you have accepted an offer to purchase and before you sign the contract of sale.

SELLING MY PROPERTY

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1. Should I upgrade my house before trying to sell it?

It is best to make all necessary repairs unless you want the house to be regarded as a "fixer-upper." Cosmetic items are fine to leave as is, but items that are obviously in disrepair give potential purchasers a reason to submit a lower offer or to move on to the next house.

2. What stays with the house and what goes?

All fixtures that are considered a part of the real property are normally left in place for the new owner. Typical fixtures include anything that is "built in," such as an air conditioner or range. The appliances are commonly left, but not always. The best way to handle this is to make a list of the items you feel should not be a part of the purchase price and give that to your realtor at the time of the listing. When the property is shown to potential purchasers, the real estate agent can point out the items you are taking with you that should not be considered a part of the purchase price. If you want to take special lighting fixtures or chandeliers, be prepared to replace them so as not to leave dangling wires or holes in the ceiling or walls.

3. What can I do to get the house ready for showings and command the best possible sales price?

Simple things can make your property the one that potential purchasers come back to for a second look. Everything from floor to windows must be spotless. Remember to clean the oven and other major appliances and make the bathrooms shine. Kill any offensive odors, eliminate clutter, and give the yard a good once over. Curb appeal is important, and so is the front entry area, since these make up the potential buyer's first impressions of the property.

THE LISTING AGREEMENT

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1. What are the types of listing agreements?

There are three primary types of listing agreements. Each one offers a different level of service, rights and responsibilities for both the agency and the seller. The three agreements are an “Open Listing,” “Exclusive Right to Sell” and “Exclusive Agency.”

2. What is an Open Listing?

An Open Listing allows any number of real estate agencies and/or you to sell the property. If an agency sells the property you would owe them a commission, which is typically 6% of the purchase price. If a real estate professional wants to show your house, you should come to a written agreement as to the commission before the house is shown so as to prevent any misunderstandings later. If you sell the property on your own, you would not owe anyone a commission.

3. How is an “Exclusive Right to Sell” different from an “Exclusive Agency” listing?

An Exclusive Right to Sell agreement is the most common and gives the agency the exclusive right to sell your property. You pay a commission to the agency no matter who sells it, even if you find a buyer on your own.

An Exclusive Agency agreement also gives a specific agency the right to market and sell the property. However, with an Exclusive Agency agreement, the seller retains the right to sell the property on his or her own and pay a reduced, or no, commission, depending upon the written agreement you reach with the agency

4. Which listing agreement is best?

It all depends on your individual needs. You will receive the best marketing and most showings through an Exclusive Right to Sell listing. Real estate agencies want to protect their investment and it isn’t usually worthwhile for them to sign an Exclusive

Agency since you may sell the property on your own, after they have spent time and money on their marketing efforts. Another problem is determining who “procured” the buyer; the agency through their advertisements and marketing efforts or your “FSBO” (for sale by owner) sign out front.

If you sign an Exclusive Agency agreement, it is a good idea to list any persons, who will be excepted under the agreement, who you may have shown or told about the property before signing the agreement, in the event someone you previously showed the property to, or told about the property, ultimately purchases the property.

5. Can real estate professionals show listings from other real estate agencies?

Yes. Most real estate agencies “co-broke” their exclusive listings. This means that they “broadcast” their listings to all the other local agencies and then usually hold broker open-houses for all the other agencies to familiarize themselves with your property. If another agency sells your home, they will split the commission. You will not, however, be responsible for any additional commission. The agencies will split whatever commission you agreed to with your listing agency.

6. Do I have to list my property with a real estate agency?

No, you can try to sell your property on your own. However, remember that you will not have the opportunity to qualify people to make sure they are able to get a mortgage, and many times people make appointments to come to see the property but don’t show up, wasting your time. Granted, you will save a commission payment, but you may end up with more headaches than you bargained for.

SIGNING A CONTRACT

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1. What is a down payment?

After you have accepted an offer to purchase your property, a contract of sale is prepared by your attorney and forwarded to the purchaser's attorney for review and signature. The purchaser must sign and return the contract of sale along with a down payment of the purchase price. Customarily, 10% of the purchase price is paid upon contract signing. It may be less than 10%, but it should be enough of a percentage to induce the purchaser to complete the transaction. The down payment is held by your attorney in his or her escrow account until the closing.

2. Under what conditions would the down payment be returned to the buyer?

In the event the seller is unable to transfer "clear title," meaning an inability to clear a lien, judgment or other encumbrance on the property, or provide the appropriate certificates of occupancy, by the time of closing, your attorney may be required to return the down payment to the buyer. These items will show up on a title report ordered by the buyer after the contract signing as discussed below. Also, if the contract includes a mortgage contingency clause (as defined above) and the purchaser is unable in good faith to obtain a mortgage commitment, the down payment will be returned to the buyer.

3. Under what conditions can I expect to keep the down payment?

The seller could expect to keep the down payment if the buyer backed out of the contract without cause. This is termed "liquidated damages" in the contract of sale and is considered compensation for the property being kept off the market for sale during the contract period.

4. What is a property disclosure document?

New York State law requires that the seller of improved property provide the buyer with a property disclosure statement that points out the condition of the property or facts about its location, such as the age of the house and its components, any known problems that may exist with the property, and any other information or knowledge the seller can provide to the buyer about the property in general. State law also provides that in lieu of giving the buyer a completed property condition disclosure form, the seller may credit the buyer $500 at the closing.

5. Do I need to provide a lead paint disclosure?

If the house you are selling was built prior to 1978, federal law requires that you disclose that the home could contain lead-based paint and give the buyers details about the past tests, if any. The EPA (Environmental Protection Agency) offers a free lead paint pamphlet, which must be given to the buyers in case they want to order a lead paint inspection. This pamphlet will either be provided by your real estate agent or your attorney upon contract signing.

6. Must I leave all appliances?

It is not mandatory that you leave all appliances when you sell your home unless they are permanent fixtures of the home, such as a built in range or counter top stove. These would be considered fixtures and a part of the real estate. However, large appliances (refrigerator or microwave) that are not attached are often thought to complete the home's functionality. It is important to make a list of items that will stay with the home and provide this list to your real estate agent and potential buyer.

7. Do I need an attorney, and how important is it to hire a local attorney?

It is not advisable to enter into a real estate transaction without an attorney. Your attorney will prepare the contract of sale and negotiate the terms of sale with the buyer's attorney, hold the down payment in his or her escrow account, protect you from any potential liabilities that may arise, help clear up any title issues and will move the transaction forward to a closing.

The East End of Long Island is comprised of townships that have enacted codes of regulations and ordinances that affect real estate within their districts. A local attorney has knowledge of the local zoning regulations and pending land use legislation that may affect your particular property. A local attorney's experience with local real estate and insurance professionals, as well as building and tax department personnel will often help expedite the transaction. If you wish, local counsel can report to and consult with your existing attorney.

AFTER THE CONTRACT IS SIGNED

1. What is a title report?

After the contract is signed by both seller and buyer, the buyer will order a title report on the property. A title report is a statement of the current circumstances of the right to or ownership of a parcel of land. A title company examines the public records, reviews the findings and renders an opinion as to who the fee owner is and lists anyone else that has a legitimate right to or interest in the property, such as a mortgage lender or easement holder. The report will also list any judgments or liens against the property that the seller will need to satisfy prior to closing. with your existing attorney.

2. What happens if the title is clouded?

It is the seller's obligation to clear all liens and judgments against the property before title can be transferred. If the seller is unable to clear any title issues within a reasonable time after the closing date provided in the contract of sale, the purchaser can void the contract and request that the down payment be returned, together with any actual costs incurred for a survey and title investigation.

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1. What is a final inspection or "walk through"?

One or two days before the closing, the buyer may make a final inspection of the house and property, checking that certain items are in working order, including all appliances, windows, systems, doors, and so on. If anything is not in working order, damaged or out of place, the buyer will contact his or her attorney to address and solve any issues with your attorney prior to or at the closing.

2. What are my closing costs?

Closing costs will include your attorney's fee, the real estate commission and New York State transfer tax. The transfer tax is .4% of the purchase price. If you are not a resident of the State of New York, you will also have to pay an estimated income tax at the closing. Also, if you have a mortgage on the property, the mortgage will be paid off with the proceeds from the sale of the property and the title company will file the necessary papers to have the mortgage removed as a lien on the property, for which you will pay a recording fee.

3. Who attends the closing?

Your attorney, the buyer's attorney, and the buyer's title company representative will attend the closing. Others who may attend include the attorney representing the buyer's mortgage lender, any real estate agents involved and, of course, the buyer and seller. If you do not want, or cannot, attend the closing, you may give your attorney power of attorney to sign any necessary documents on your behalf.

4. What happens at the closing?

Your attorney will have prepared all the necessary transfer documents, including the deed to transfer title to the property from you to the buyer and tax forms, to be presented to the buyer at the closing. When the balance of the monies owed has been received, you will sign the transfer documents to pass title to the property and those documents are then released to the buyer, and the keys to the house delivered. Also, any adjustments for fuel, gas and real estate taxes will be made. Your attorney will pay your closing costs, if you wish, out of the monies held in escrow and then will release the balance to you.

5. How are the real estate taxes apportioned between the buyer and seller?

Either you or your mortgage lender pays real estate taxes once or twice a year. The date of the closing is used as the basis for dividing the tax responsibility. If you have already paid the taxes, a portion of the money is returned to you using the date of closing as the apportionment date. If taxes have not been paid, the seller must pay for the portion of time he or she was in possession of the property, leaving the balance to be paid by the purchaser. This tax adjustment will be made at the closing. Also, the seller will be reimbursed for the price of any oil or gas that remains at the property at the time of closing.

6. How are liens and judgments satisfied?

At the time of closing, a portion of the proceeds of the sale will be used to payoff any outstanding liens and judgments. The title company will collect that money, make sure the money gets to the lien holder and that a satisfaction letter is recorded in the public records of the county where the property is located so that the lien is extinguished.

7. Should I notify the utilities (electric, phone, oil company, etc.) of the sale?

Yes. As soon as you know your closing date, you should notify the utility companies that as of a certain date you will no longer own the property and you should cancel your services as of that date.

8. Can I stay in possession of the house after the closing?

If the buyer is willing to allow you to stay in possession after the closing, you may be able to stay or rent the property from the new owner. If so, the buyer has to agree in writing at the time the contract is signed or before the closing. Speak with your attorney regarding this type of arrangement since your homeowner's insurance will have to continue until you vacate the property to insure against any casualty losses. It is usually a good idea to vacate the property at the time of closing so there are no issues remaining after title passes.

9. Should I allow the buyer to take possession before the closing?

This is usually not a good idea for several reasons, the most important being that the closing may be stalled for one reason or another or, at worst, the sale may never actually be consummated. This will put you in a position of having to make sure they vacate prior to putting your house back on the market, and possibly having to make repairs of any damage that they have caused.

Also, the buyers may take it upon themselves to start making changes or renovations without your approval. Moreover, the buyers might start making a list of extra repairs that they want done before closing. You don't want to put yourself in a position of having to collect damages or rent or go through an eviction proceeding. Speak with your attorney for further discussion so that an appropriate agreement can be made if you are contemplating renting to your potential buyer.

10. Who is responsible for paying the broker's commission?

Usually, it is the seller's responsibility, unless some other arrangement is made.

WHAT HAPPENS AFTER THE CLOSING?

1.
What is a closing statement?

2.
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1. What is a closing statement?

A closing statement is prepared by your attorney, which is an accounting of funds and other activities that transpired at the closing table. After the real estate transaction is complete, your attorney will provide you with a closing statement along with a copy of important documents signed at the closing to keep with your permanent records. You may wish to forward a copy of the closing statement to your accountant for tax purposes.

2. Will I be responsible to pay a Capital Gains Tax?

That depends on your circumstances. You may be able to exclude all or any part of the gain from the sale of your property if you owned your home for at least two of the last five years as your primary residence and you did not exclude gain from the sale of another house. If so, you can claim the maximum exclusion of $250,000 for a single owner and $500,000 for joint owners. Under Section 1031 of the tax code, if the home is not your primary residence, but an investment property, you may be able to defer your capital gains by exchanging the property for another investment property within six months. You should speak with your attorney and qualified tax professional for guidance in this area.

LIST OF CLOSING DOCUMENTS FOR BOTH BUYER AND SELLER

Contract of Sale
Title Report
Deed
Certificate of Occupancy
Survey
Mortgage
Note
Payoff letters
Satisfaction of Mortgage
Gains Tax Affidavit
Peconic Bay Region Community Preservation Fund
Real Property Transfer Report
Affidavit of Title
Pool Escrow Agreement
Warranty (if new home)
Numerous Affidavits required by Bank Attorney
Power of Attorney
Notice of Right to Cancel
Hazard Insurance
Fuel/Propane Adjustment
Homeowners Association Letter
Bank Undertaking
Bank Certification
Satisfaction of Judgment
Non-Foreign Certification
Form 1099
Form W-9
Escrow Agreement for Current Taxes
Photo Identification
Disbursement Authorization
Closing Statement

GLOSSARY

Agency - a relationship created when one person delegates to another person (the agent) the right to act on his or her behalf.

Agent - the person empowered to act by and on behalf of the principal.

Appraisal - an estimate of value based on current market conditions.

Broker - a natural person or legal entity licensed to act independently in conducting a real estate brokerage business.

Capital Gains Tax - a tax charged on the profit realized on the sale of a non-inventory asset that was purchased at a lower price.

Certificate of Occupancy - a municipal-issued document that states a structure meets local zoning and building code requirements and is ready for a particular use.

Clear Title - the sequence of property ownership that connects the present owner to the original source of title.

Clouded Title - outstanding liens and judgments recorded against the property.

Closing - the act of finalizing a transaction.

Closing statement - an accounting of funds to the buyer and the seller at the completion of a real estate transaction.

Comparables - the prices paid for properties similar to the subject property which are used to estimate the value of the subject property.

Comparable Market Analysis - a method of valuing a property to determine a realistic asking price by comparing the seller's property to other similar properties recently sold in the neighborhood.

Contract - a legally enforceable agreement to do (or not to do) a particular thing.

Deed - a written document that conveys title to land when properly executed and delivered.

Easement - the right or privilege one party has to use land belonging to another for a special purpose not inconsistent with the owner's use of the land.

Encumbrance - any impediment to a clear title, such as a lien, lease, easement, judgment or mortgage.

Environmental Protection Agency - a government agency created to protect human health and the environment.

Escrow - the holding of money or documents by a neutral third party or a party's attorney prior to closing. It can also be an account held by the lender (or servicer) into which a home owner pays money for taxes and insurance.

Exclusive agency listing - a listing wherein the owner reserves the right to sell his or her property himself/herself, but agrees to list with no other broker during the listing period.

Exclusive right to sell - a listing that gives the broker the right to collect a commission no matter who sells the property during the listing period.

Fair market value - a value placed on a property based on the market conditions and a comparative marketing analysis.

Fixture - an object that has been attached to the property so as to become part of the real estate.

Homeowner policy - an insurance policy designed for homeowners or tenants, including property damage and public liability coverage.

Insurance premium - the amount of money one must pay for Insurance coverage.

Judgment lien - a claim against property in favor of the holder of a court-ordered judgment.

Lead paint disclosure - for houses built prior to 1978, the seller must provide a lead paint disclosure form to the buyer stating whether lead paint exists in the house.

Lien - a hold or claim which one person has recorded against the property of another to secure payment of a debt or other obligation.

Liquidated damages - compensation for a property being kept off the market for sale during a contract period, typically in the amount of the down payment

Listing agreement - an employment contract between a property owner and a broker.

Lookers - people who have no intention of buying a property, and just want to see it.

Market value - the cash price that a willing buyer and a willing seller would agree upon, given reasonable exposure of the property to the marketplace, full information as to the potential uses of the property, and no undue compulsion to act.

Mortgage - a document signed by a borrower and recorded when a home loan is made that becomes a lien on the property and gives the lender the right to foreclose on the property if the borrower fails to pay the loan.

Mortgage broker - a person who brings borrowers and lenders together.

Mortgage company - a business that specializes in making real estate loans and selling the loans to investors.

Mortgage contingency - a clause allowing the purchaser to cancel the contract if he or she is not able to in good faith obtain a loan commitment

Mortgage lender - the party receiving the mortgage.

Open listing - a listing that gives a broker a non-exclusive right to find a buyer.

Personal property - a right or interest in things of a temporary or movable nature or anything not classified as real property.

Possession date - the date on which the buyer can move in.

Power of Attorney - the authority given to another to sign documents on one's behalf.

Property disclosure statement - Upon signing a contract of sale, the seller must provide a detailed disclosure statement about the house and any known defects, problems or issues. In lieu of providing the statement, the seller may provide the buyer with a credit of $500.00 at the closing of title.

Purchaser's closing statement - an accounting of all monies paid by the buyer prior to and at the closing.

Real estate - land and improvements in a physical sense as well as the rights to own or use them.

Real estate commission - the fee paid to a broker for his or her services.

Real property - ownership rights in land and its improvements.

Realty - land and buildings and other improvements to land.

Replacement cost - the cost at today's prices, using today's construction methods, of building an improvement having the same usefulness as the one being appraised.

Restrictive covenants - clauses placed in deeds and other recorded documents to restrict and control how future landowners may use real property.

Satisfaction of mortgage - a certificate from the lender stating that the loan has been repaid in full and recorded in the county clerk's office.

Seller's closing statement - an accounting of all monies received, and any money paid, i.e., transfer taxes and recording fees, by the seller at closing.

Tax Map - maps used by the county clerk's office that show the location and boundaries of individual properties within a given area, available for public inspection at the clerk's office.

Tax: Map Number - an identification number assigned to a parcel of land by the county taxing authority. The county is divided into map books and each book is given a number. On each page of the map books are area maps, each with its own number. Each parcel of land on the area map is assigned a parcel number. These numbers make up the section, lot and block number of a tax map number.

Thrift institution - a general term for savings banks and savings and loan associations.

"Time is of the essence" - a phrase that means that the time limits of a contract must be strictly and faithfully observed or the party violating the time limit may be held in default under the contract.

Title - the right to or ownership of something; also the evidence of ownership such as a deed or bill of sale.

Title insurance - an insurance policy against defects in title not listed in the title report or abstract.

Title report - a statement of the current condition of title for a parcel of land based on a title search.

Title search - an inspection of publicly available records and documents to determine the current ownership and condition of title for a property.

Transaction, settlement, or closing costs - may include application fees, title examination, abstract of title, title insurance, and property survey fees, fees for preparing deeds, mortgages, and settlement documents; attorneys' fees, recording fees; appraisal, and credit report fees. Under the Real Estate Settlement Procedures Act (RESPA), the borrower receives a good faith estimate of closing costs at the time of application for a loan or within three days of application. The good faith estimate lists each expected cost either as an amount or a range.

Variance - a permit granted to an individual property owner to use or build a structure that varies from the strict compliance with zoning requirements.

Walk through inspection - a final inspection of the property as made by the purchasers to insure conditions are as expected per the contract of sale.

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