

Real Estate Differences & Similarities (continued)

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ing price is \$500,000 or less. Sales in excess of \$500,000 bear a 1.425% of the purchase price transfer tax. A separate transfer tax return must be prepared and signed at closing. In certain communities in the Hamptons on Long Island a charge equal to 2% of the purchase price is imposed, subject to limited partial exclusions. Sellers of New York City co-op apartments and some condominium units must pay an additional 1% to 3% of the purchase price transfer fee to the Cooperative Corporation or the Condominium Association. This is commonly known as a Flip Tax. New York City also imposes a tax on commercial property sold. That tax is 1.425% of the purchase price where the consideration is less than \$500,000 and 2.625% of the

purchase price when it is greater than \$500,000.

In Berkshire County, Massachusetts the fee to record a deed is \$125 and the fee to record a mortgage is \$175. Since the recording fees had been considerably lower prior to Governor Romney's election, many view the relatively high recording fees partially as a tax. Additionally, there is an excise tax on every conveyance of property equal to \$4.56 for every thousand dollars of the purchase price. In Martha's Vineyard, an additional 2% of the purchase price is imposed on transfers. Other communities throughout the Commonwealth have different fees.

In New York State, added costs are imposed on property transfers. There is a state transfer tax to be paid by sellers. The tax is imposed on all sales at the rate of \$2.00 for each \$500 dollars

of consideration. There is a "Mansion Tax" exception is for sales over \$1,000,000 in which case a tax of 1% of the purchase price is due from the Purchaser. If the property is of mixed use (residential and commercial), the tax is applied only to the portion of the property that is residential.

The lawyers in our firm and our affiliate firm are experienced and well-versed in real estate law and the procedures necessary to smoothly navigate the technicalities and other requirements of closing a sale or purchase of real estate in their respective states.

This article was prepared by Barry M. Karson, "of counsel" to Lazan, Glover & Puciloski LLP. Barry is admitted to practice law in Massachusetts, New York and Florida and is presently in our Great Barrington office on Fridays of each week or by appointment.

Determining Whether Property is Buildable

Whether development of real estate is contemplated by the buyer of the property or by the current owner, the town zoning bylaw governs whether or not such a lot may legally support a building. After the determination is made that the property either complies with the zoning bylaw or is "grandfathered" from it, additional issues such as the location of any needed well or septic and the applicability of environmental laws, including those concerning wetlands and protected species, must be addressed.

In order to determine whether property complies with zoning, the prospective purchaser should first consult the zoning map for the town, located in the office of the Planning Board of that town, to ascertain into which zoning district the property falls. Typically, these districts include classifications such as residential or commercial. Be advised that there may be more than one classification of such district, and these will be separately designated with a different code, such as R1, R2, and so on. Then, the prospective buyer should obtain the zoning bylaw for the town, also located in the office of the Planning Board and do the following.

- Turn first to the Schedule of Dimensional Requirements. This is a chart that sets forth the minimum requirements for a building lot. The requirements include minimum lot size, width, front, side and rear dimensions, and maximum lot coverage of the buildings.
- Consult the Table of Use Regulations, which designates what uses may be made of properties in each zoning district.

- Review the remainder of the bylaw, to determine what other portions may affect construction on or the use of the property. It is critical to scrutinize even the footnotes to each section, as these may contain vital information.

If the property meets the minimum requirements of the bylaw for dimensional requirements and use regulation, the owner may apply for a building permit. However, if the lot does not comply with the zoning bylaw, the process becomes more complicated. The non-compliance may sometimes be remedied by a variance or special permit, but there are situations when the lot may simply not be built upon. If the property closing is set some time in the future, it would be prudent to confirm with the town whether any zoning changes that could affect your planned construction are pending.

Clearly, the determination of whether a lot is buildable before its purchase is critical. It is not uncommon, for buyers to rely on information provided by a real estate broker, a professional with knowledge of zoning issues. Such reliance is risky, however. Well-meaning brokers may not be aware of the complexities of zoning law, and may inadvertently mislead both buyers and sellers. If there is any doubt, the buyer should consult with an attorney versed in zoning law. Our firm advises property owners, buyers and sellers on issues of zoning, and also are available to real estate brokers who wish to confirm the information they intend to provide to the public.

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Real Estate Differences and Similarities — New York and Massachusetts

In both New York and Massachusetts, all real estate transfers must be made in writing. Typically, in each state the terms of the transaction are memorialized with a writing setting forth the purchase or sale details. The writing, a contract of conveyance, sets the price, describes the real property and any personal property included in the sale (i.e., appliances, furnishings, tools, etc.), sets forth the nature of financing the purchase price and sets a date for the transaction to be completed (the “closing” or “settlement”). In New York, courts have held that a broker’s “set-up sheet” (often called a binder), signed by the Seller and Purchaser describing the property, the price, as well as the terms and closing date constitutes a valid contract. The binder however, offers none of the protection that a real estate contract provides to each party. For that reason, we advise our clients to never sign broker’s set-up sheet and to demand a

prompt contract signing. If a prompt contract signing is not possible, we advise our clients to have the binder provide that it is subject to the attorney’s review, approval and changes.

The typical Massachusetts deed is known as a quitclaim deed. The typical New York deed is a warranty deed. The quitclaim deed gives title to the Purchaser “as is”, while the warranty deed gives assurances to the purchaser that the seller is conveying marketable (or insurable) title.

In both New York and Massachusetts, we believe it is prudent for a purchaser to obtain title insurance. In Massachusetts the purchaser’s attorney examines title to the property to determine that the property being transferred is free and clear of all encumbrances, liens, judgments and other bars to marketable title. Should the purchaser desire title insurance, typically the purchaser’s attorney is an agent for a national title insurance company such as First American Title Insurance Company or Chicago Title Insurance Company and issues a title insurance policy in favor of the purchaser. In New York the purchaser’s attorney hires a title abstract company or title insurance company to perform a title search and render a report. The New York attorney then analyzes the title report and reviews all exceptions to title and if necessary, negotiates with the title company to omit exceptions from the policy which he or she deems improper. The Massachusetts attorney representing a purchaser has considerably more work to do than the

New York lawyer as well as greater liability for errors. In each state, the purchaser’s attorney deals with the Seller’s attorney who has the obligation of clearing title defects before a closing occurs.

In New York City, certain cities on Long Island, certain cities in Westchester and in other parts of the state, real property transfer taxes of 1% - 2% of the purchase price are also imposed. Most localities charge a 1% of the purchase price transfer tax. New York City imposes a 1% of the purchase price transfer tax on the seller of a 1, 2 or 3 family residence, a condominium or a co-op apartment where the sell-

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Announcing Our Affiliation with New York Counsel

Ballon Stoll Bader & Nadler, P.C.
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Ballon Stoll partner Barry M. Karson, has become “of counsel” to our firm. Barry and other lawyers at Ballon Stoll expands our ability to provide personal and business legal services to our clients. Lazan Glover and Puciloski use of Ballon Stoll’s New York office is an additional convenience to our clients.

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Firm News

Barry Karson, a partner in the Manhattan firm of Ballou Stoll Bader and Nadler P.C. has become "of counsel" to Lazan Glover & Puciloski, LLP. Barry has a home in Monterey and has spent a great deal of time in the Berkshires during the last twelve years. Admitted in Massachusetts and New York, Barry will enable the firm to handle transactions in adjoining New York communities. He will be present in the Great Barrington office initially one day each week.

Like LGP, the firm of Ballou Stoll Bader & Nadler, P.C. is committed to accommodating the multifaceted needs of their clients, who generally prefer to retain one firm for all of their business and personal needs. Ballou Stoll, a 61 year old firm, has represented institutional clients such as banks and insurance companies, and also municipalities. With 22 attorneys, Ballou Stoll provides Lazan Glover & Puciloski with additional expertise in many areas including corporate, securities, trusts and estates, labor, entertainment, tax, copyright, intellectual property and matrimonial law. Each of the affiliated firms now has the ability to service their clients in New York and Massachusetts.

Partner Alex Glover has become a member of the Long Range Planning Committee of the Southern Berkshire Chamber of Commerce. All three partners and Barry Karson, members of the Massachusetts Real Estate Bar Association, attended the annual Convention in Framingham, Massachusetts this May.

"The Country Lawyer" newsletter is published by Lazan Glover & Puciloski, LLP and is designed as a news reporting service to clients and other friends. For help with these or any other legal issues, please call the firm today.

The information in this newsletter should not be construed as and does not constitute legal advice, is intended solely for your information and should not be relied on without a discussion of your specific situation with an attorney.



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Real Estate Tax Abatements

In Massachusetts, the fiscal year for local real estate taxes begins on July 1 and ends on June 30. It is your local board of assessors that determines your tax, which technically is due July 1 when the assessment list is committed to the tax collector. In practice however, real estate taxes are generally due in two equal installments during the fiscal year- November 1 (or 30 days after the tax bill is mailed) and May 1. Beginning June 30, 1991, the statutes permitted municipalities to adopt a quarterly billing procedure.

If the owner of real estate in Massachusetts believes he or she has been improperly assessed, the taxpayer can file an application for abatement (G.L.c.59, § 59) and, if necessary, appeal to the Appellate Tax Board (G.L.c.59, §§ 64-65). This administrative path is generally the one followed although the statutes do provide for other methods of contesting a board of assessors' determination.

Applications for abatement are based on one or more of the following:

- the board of assessors value exceeds the fair cash value of the property as of the valuation date
- the property is either partially or fully exempt from taxation
- when compared to other property in the municipality, the assessed property is disproportionately assessed
- the property has been improperly classified

By statute (G.L.c.59, §59) the board of assessors must grant an abatement "if they find him taxed at more than his just proportion or upon an improper classification, or upon an assessment of any of his property in excess of its fair cash value".

To start the abatement procedure, a taxpayer who must have an interest in the property must file an application for abatement with the local board of assessors within the statutory time period as well as meet the form and content requirements of abatement applications. A board of assessors has no jurisdiction to consider an abatement application unless it meets all the statutory requirements.

Generally, a person seeking an abatement of property tax must file with the local board of tax assessors on or before the last day for payment

of the first installment due shown on the municipalities tax bill. Therefore, applications are due on the later of November 1, February 1, or May 1 depending on the municipalities billing practices or 30 days after the mailing of the actual tax bill. There are additional rules relative to filing dates covering delays in receipt due to mail service and where the last day for filing falls on a Saturday, Sunday or legal holiday. It should be recognized that the filing deadlines are strictly enforced.

If a taxpayer is dissatisfied with

the board of assessor's review of an application for an abatement, they may appeal to the Appellate Tax Board by filing a petition within three calendar months after the board of assessor's decision or deemed-denied date, whichever is sooner. The time limits again are strictly construed. Although filing a petition with the Appellate Tax Board is the most common procedure for challenging an assessor's refusal to abate, a complaint may be filed with the clerk of the county commissioners where the property lies.

DO YOU REALLY NEED TITLE INSURANCE?

When purchasing real property in Massachusetts, buyers generally retain the services of a conveyancing attorney. In western Massachusetts, the purchaser's attorney typically represents not only the purchaser, but the purchaser's lender. The conveyancing attorney's role focuses on all of the legalities surrounding the purchase and to the extent possible, facilitating a smooth transaction.

One of the responsibilities of the purchaser's conveyancing attorney is certifying to the buyer that the property being purchased is that of the seller. The conveyancing attorney is responsible for making sure that at the closing of the real estate transaction, the property is unencumbered and that there are no easements or restrictions which will have an impact on the buyer's intended use of the property. Because we have no title companies to provide abstracts of title in western Massachusetts, the attorney (or his or her abstractor) must examine the title to the property in the appropriate Registry of Deeds which is a huge repository of documents going back to the 1600's as well as such other records including surveys and plot plans as the attorney may require to provide the buyer the assurance nec-

essary to proceed to close the transaction.

Irrespective of how good a search your attorney may perform, there are defects in title which can occur which cannot or may not be detected. These include forged deeds, deeds executed under duress, bigamy that went unknown, an error by a clerk in the county recorder's office, a deed by a minor or an incompetent person, a forged notarization, discovery of a later will after probate of a first will and some 60 or more other matters which may interfere with ownership of property.

By purchasing title insurance for a one time premium, a title insurance company agrees to reimburse the insured for loss suffered due to title defects that existed prior to the issue date of the title policy up to the amount of the policy. Most lenders require title insurance and if an owner's title insurance policy is issued simultaneously with a lenders policy, there is a significant cost savings. Our firm believes strongly that in most cases involving the purchase of real estate, one should obtain a title insurance policy. Two of our partners are agents for First American Title Insurance Company, one of our nation's largest title insurance companies.

