

What Does a Real Estate Attorney Do?

By Harrison Barnes from Los Angeles Office

The [real estate attorney](#) is involved in the buying and selling of property, the legal issues related to owning or transferring the property, and the tax implications of real estate. Attorneys specialize in real estate transactions or act as litigators. Attorneys who specialize in real estate deal with property and mediate sour transactions.

In addition to litigating fraud cases, some real estate attorneys focus on land use, subdivision, and zoning law or practice in fraud cases like disclosure fraud. Real estate experts may also specialize in residential or commercial properties.

The Real Estate Attorney and Broker Issues

The heart and soul of real estate is the transaction EUR" the buying and selling of property. The [real estate broker](#) helps individuals do this. However, there are many legal issues a broker can encounter along the way. According to the National Association of Realtors®, these include misrepresentation, violation of fiduciary duties, fair housing compliance, misleading advertising, employee versus independent contractor status, environmental issues, unauthorized practice of law, and the Americans with Disabilities Act.

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Misrepresentation

The broker often makes statements about the condition of the property. Sometimes, those statements are not correct. [Examples include representations about structural features, easements, unpermitted renovations, and environmental issues.](#)

The real estate attorney helps the [broker avoid misrepresentation](#) claims by having the broker use seller disclosure forms and reviewing them with the seller.

Violation of Fiduciary Duties

More than twenty years into this century, the law still allows dual agency EUR" that is, when the real estate agent represents both seller and buyer in a transaction. Such an arrangement is ripe with the opportunity to breach fiduciary duties. So, it is no surprise that it happens all the time.

To prevent this issue, the real estate attorney counsels the agent on the latest agency disclosure laws.

Fair Housing Compliance

Sometimes sellers refuse to sell to someone of a certain race or gender identity. Although brokers should refuse to do business with these people, sometimes they do, and then they run afoul of fair housing laws.

[The real estate attorney encourages their broker clients to take all the education and training they can on fair housing laws and comply with them.](#)

Misleading Advertising

Each state has strict advertising laws that must be complied with, and recently Internet advertising has been under intense scrutiny.

Employee versus Independent Contractor

Brokers have real estate agents working for them. Most of the time, these are legitimately independent contractors. However, occasionally, an arrangement will lead to where a person is actually an employee instead.

Environmental Issues

Sometimes, a property comes with asbestos or lead-based paint issues. These can lead to lawsuits if the broker does not recommend the right experts to evaluate those hazards.

Unauthorized Practice of Law

Brokers may not engage in the unauthorized practice of law. They can fill in forms created by an attorney but may not draft documents or give legal advice.

The real estate attorney is there for their broker client to answer any legal questions they may have.

Americans with Disabilities Act

Brokers must take reasonable steps to serve clients with disabilities. This includes making their office accessible through the use of ramps and similar measures.

The Real Estate Attorney and Property Attributes

Many property owners considering selling their property may have concerns about an issue on their property or activity near it. For significant or complicated matters, they retain a real estate attorney for counsel and assistance.

Nuisance

A landowner has the right to the use and enjoyment of their property without unreasonable interference. Occasionally, new activity nearby interferes with that enjoyment. For example, assume an owner in a residential zone lives near the boundary of an area zoned for business. A lumber mill opens nearby and makes constant noise night and day. The real estate attorney can help negotiate limitations on activity to

reduce the nuisance.

Easements

Easements can become a big issue. When purchasing property and reviewing all the encumbrances on the land, the buyer may miss the existence of a private easement. This can be very detrimental if it allows other people to invade the owner's privacy. There are ways to restrict easements and, in some cases, eliminate them. The real estate attorney helps the property owner with this.

Negative Easements

Just as a normal easement can cause consternation, so can negative easements. These prohibit a landowner from doing something on their property.

Prevalent today are negative environmental easements. These have goals such as preserving water quality, forest growth, or maintaining wildlife habitats.

Water Rights

Given the scarcity of water in some parts of the country, water rights are often a hot issue. Whether in a riparian rights or appropriative rights jurisdiction, disputes arise over who has the right to take how much water from a water source. Water law is complicated, and the real estate attorney helps their client with issues related to these rights.

Cell Towers

Cell towers dot the entire landscape of America. But what if a carrier wants to install one near a client's property? The concern is the cell tower's impact on property value. The real estate attorney can help fight against the installation at the local level with the planning commission or local city council.

Eminent Domain

A person has the perfect property. They love the house and surrounding land. Then the government comes by and asks to buy your property. They are planning a highway interchange nearby and need to buy the property to have enough clearance for the project.

In this case, the real estate attorney helps the property owner avoid eminent domain. If that is not possible, they help the owner get the best price for the real estate.

Finding Mentors in Large Firms for Young Lawyers

Title

Title insurance is supposed to protect an owner from defects in the property title. But it does not always, leaving the property owner with a serious problem. Common issues include:

Public records errors

Undisclosed liens

Missing heirs

Forgeries

Unknown encumbrances and easements

Boundary disputes.

If any of these issues arise, the landowner will need to consult a real estate attorney for assistance.

Zoning

Zoning laws are prevalent throughout the United States. A property owner may have purchased land, not realizing that zoning restrictions prohibit them from using the land as intended. The real estate attorney can

help with trying to obtain a variance.

The Real Estate Attorney and Depreciation of Commercial Real Estate

Like most assets, commercial real estate depreciates. Depreciation refers to the reduction in value that an asset experiences with time.

While the land itself does not appreciate, the buildings on the property do. The depreciation of the property is one reason to invest in it. There are several aspects of tax depreciation, including how it works and exactly what assets on the land can be depreciated.

How Tax Depreciation Works

Assume a person owns downtown real estate worth \$2 million. The building is worth \$500,000. The Internal Revenue Service allows owners to depreciate their real estate over 39 years. This depreciation begins when the property starts generating revenue, not when it was purchased.

Here, in the first year, you would calculate your property's depreciation as:

$$\text{\$500,000} / \text{39 years} = \text{\$12,821}$$

Therefore, it would reduce the taxable income on the property by \$12,821 in the first year.

Depreciation Methodologies

There are several different depreciation methodologies based on generally accepted accounting principles. The simplest is the straight-line depreciation method used in the example above. However, there are three other common types: declining balance, sum-of-the-years' digits, and production units.

The real estate attorney is knowledgeable about these tax laws and can assist the property owner with any questions.

Law School Professor

Those with years of practice in the real estate arena may become [law school professors](#). Many law schools today offer LL.M.s in real estate law. Examples include the University of Miami School of Law, Chapman University's Fowler School of Law, and Fordham Law School.

How Do I Become a Real Estate Attorney?

[A law degree and bar membership is required. Before law school, experience as a real estate agent or broker is helpful but not necessary.](#) For those attorneys in other fields interested in [getting into real estate law](#), an LL.M. is an option for continuing education.

Skills Required for a Real Estate Attorney

Recruiters and employers often request the following qualifications when hiring real estate attorneys:

- Knowledge of legal terminology and ability to work long hours.

- Providing support to clients in cases where they are dissatisfied requires negotiation skills.

- Possessing analytical thinking skills and being able to solve legal problems.

- Ability to effectively and accurately communicate ideas and propositions to clients, judges, and other legal professionals through written and verbal communication skills.

- Being competent and acting with good judgment when dealing with client matters.

- A high degree of organizational and self-motivation skills.

- The ability to network and collaborate.

- Experience in title insurance underwriting, curative, and claims.

An analytical thinker with strong conceptual and research skills.
 Good judge and detail-oriented leader.
 Meeting deadlines and working under pressure.
 Networking expert with excellent interpersonal skills and communication skills.
 Experienced in real estate law and proficient with Microsoft Office programs.
 Working knowledge of litigation, lease transactions, and property management.
 Experience in insurance underwriting.
 The ability to meet tight deadlines and work under pressure.
 Expertise in the use of Microsoft Office and computer technology.
 Strong legal background and business acumen.
 Expertise in finance and specific real estate knowledge.
 An investigative researcher who is skilled at analyzing information located.
 A good understanding of foreclosure and conflict resolution
 Ability to work long hours and familiar with legal terminology.

See also:

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[*Junior to Mid-level Broker-Dealer Attorney*](#)

[*The Case Of A Unduly Conspicuous Advertisement By A Law Firm And The First Amendment*](#)