

Lesson 8: Property Law

Script:

There are two principal transactions that real estate lawyers deal with on everyday basis. By the way in the US we talked about **real estate** law while in the UK most of the time we talk about **real property** law; the two terms mean the same thing.

So, the first type of real estate transaction that we must talk about is a **rental agreement** also known as **tenancy agreement**. Once again the two terms mean exactly the same thing. The two parties involved in this type of a transaction are a **landlord**, meaning the person who owns the property, and the **tenant**, meaning the person who will be renting the property. In the UK often the two parties are called **lessor** (the landlord) and **lessee** (the tenant).

Rental agreements include some key common clauses and I would like to mention some of them now. One of these clauses is a **security deposit** clause which stipulates the amount of money that the tenant will have to deposit with the landlord as a security for the apartment. In case of serious damage to the property this security deposit may not be returned.

Good behavior clause deals with what is considered to be the appropriate conduct on the part of the tenant while renting the property, principally having to do with proper maintenance of the apartment.

Quiet enjoyment clause has to do with the tenant's right not to be unnecessarily disturbed by the landlord as long as the tenant complies with the good behavior clause and as long as the rental payments are made on time. However, the landlord retains the right to inspect the **premises**, meaning the apartment, if there are good reasons to do so and as long as appropriate **notice** is given to the tenant; this is usually dealt with in an **inspection of premises** clause.

A **subletting clause** deals with the tenant's right to rent the property to a third party under certain conditions. Many rental agreements are silent on this issue which can lead to misunderstandings and conflicts between landlords and tenants. **Early termination** on the part of the tenant, **default on payments** (meaning failure to pay rent on time) as well as **eviction notices** on the part of the landlord, meaning ordering the tenant to abandon the premises as soon as possible, are some of the other potential areas of dispute.

The second type of transaction that we must talk about is a **sale and purchase agreement**. This type of an agreement transfers the **title** meaning the ownership to the property from the seller to the buyer. This type of a transaction has several steps that must be followed.

First of all, once an offer to sell is accepted by the buyer an amount of money is transferred from the buyer to the seller and put into an **escrow** account. Simply put, it is an account held by a third party on behalf of two other parties (usually the seller's real estate lawyer) that are in the process of completing a real estate transaction.

The second step is the securing of financing by the buyer, most often in the form of a **mortgage** from a bank or another financial institution. Many buyers try to obtain a mortgage **pre-approval** even before they begin searching for a property, so that they know exactly what they can afford and what their budget should be.

The third step is a **property inspection** whereby the buyer inspects the property they are purchasing, usually with the assistance of a professional technician or plumber, to make sure that there are no **structural or hidden defects**.

The fourth step, completed either by the buyer or their lawyer, is inspection of title to ensure that there are no encumbrances or easements attached to the property. **Easements** are essentially special permissions given to third parties that allow them to use a part of the property such as a passageway, without possessing any part of that property. An **encumbrance** is a mortgage or other charge on a property which will have to be discharged (meaning paid) in order for the title to pass from one party to another.

Once it is clear that there are no serious problems with the property (both in terms of title and structurally), then on a previously agreed **closing date** both the title and the keys to the property are exchanged between the parties. At that time the buyer will have to pay the **land transfer tax** (a special tax that must be paid on properties over certain cadastral value) and the change of title will have to be registered in the **Land Registry** also sometimes referred to as the **Cadastral Register**. If there was a gain in the value of the property between the purchase and sale time then the seller will also be responsible for paying a **Capital Gains tax**.

This briefly summarizes a typical real estate purchase transaction.