



McCormick, Murtagh & Marcus

ATTORNEYS AND COUNSELORS AT LAW

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THE TOP FIVE MISTAKES IN REFINANCING

With mortgage rates at all time lows, more and more people are looking into refinancing their homes. Refinancing can save you a bundle of money over the life of your mortgage if you do so correctly. Learn the top five mistakes to insure that you get the most out of your refinance.

Mistake #1. Failing to choose the best loan option.

There is more than one option out there when choosing to refinance your home. There are loans that have fixed rates, adjustable rates, hybrids, etc. The loan that is best for you depends on your economic and personal situation. The length of the term and the type of loan can be key to saving money in the long run. Shop around and allow your local lender to assist you in picking the refinance option that best fits your personal situation.

Mistake #2. Not doing a break-even analysis.

The key question is: Is it the right time for you to refinance? Though the media is encouraging refinances at the current low mortgage rates, only a break even analysis will tell you what is best for you. Simply divide the total cost of the loan by the monthly savings. This will give you the number of months you will have to stay in the property to break even on your refinance. For example, if you're cost for your refinance is \$1,500.00 and you saved \$75.00 a month in payment, then you will need to stay in the property for 20 months to break even. So if you plan to move within 2 years, this refinance might not be the best option. But if you plan to stay for over 3 years, then it would be beneficial.

Mistake #3. Paying too much for mortgage insurance.

If your down payment is less than 20% of the purchase price, the lender may charge you private mortgage insurance ("PMI"), a type of insurance that helps protect the lender against losses due to foreclosure. "PMI" adds a lot of money to your monthly mortgage payment without any financial benefit. Similarly, if you refinance and withdraw all of your equity, you could wind up paying PMI on your new loan. If you already pay PMI but feel you have built up enough equity, talk to your lender about getting it removed.

Mistake #4. Fixed versus Adjustable Rates.

When most people think of refinancing they think of refinancing at a fixed rate, but in some cases an adjustable rate can actually save you money even if the interest rate goes up. Adjustable rates are not always easy to follow but there are calculators that can help you decide if an adjustable rate can save you money over the life of the loan.

Mistake #5. Not shopping around for other refinancing lenders.

For convenience many people simply refinance with their current lender. This can be a mistake if your current lender does not offer the best rate or may not be able to offer you all the refinance programs available. Some people think it is easier to deal with your current lender but the truth is that the refinancing process is basically the same for all lenders so you will have to go through the same process with all lenders. So shop around! Caution: though the process is basically the same for all lenders, the fees charged are not. When comparing the loans, be sure to compare all of the fees and closing costs associated with the loan.



William Cullen Bryant House

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McCormick, Murtagh & Marcus have been specializing in residential and commercial real estate in the Southern Berkshires since 1933.



FIRST TIME HOMEBUYER

Home buying process can seem very complicated and daunting to the first time homebuyer. However if you take the process step by step, you will soon be holding the keys to your new home.

Step 1. Determine how much you can afford.

What you can afford depends on your income, credit rating, current monthly expenses, the down payment and the mortgage interest rate. Your local bank should have calculators on their websites that will assist you in determining your payments, whether you will qualify for a mortgage, and even whether it is in your best interest to rent or buy, and what percentage of your income should be allocated to housing costs.

Step 2. Shop for a loan.

Save money by doing your homework. Talk to several lenders, compare costs and interest rates. It is very important to seek out all costs including hidden costs added by non-local or internet based lending companies to determine the accurate fees associated with your loan. Lenders may also have information on first time home buying programs that you may qualify for and may assist you to offer lower down payments.

Step 3. Shop for a home.

If you seek a real estate agent to assist you in finding a home, clearly define the Realtor's role. Is the Realtor a buyer's agent or a dual agent (acting as both a seller and buyer's agent)? If the Realtor is an exclusive buyer's agent, the agent only represents the homebuyer and not the seller. A dual agent attempts to represent both the buyer and the seller in the same transaction. A dual agent must disclose his relationship to the parties. The listing or seller's agent represents the seller and the seller only.

Step 4. Make an offer.

If you are represented by an exclusive buyer's agent, discuss the process with your real estate agent. If the agent is a dual agent or seller's agent, be prepared to make an offer without assistance from the broker. If the Seller counters your offer, you may need to negotiate until both of you agree on the terms of the sale.

Step 5. Purchase and Sale Agreement.

Generally, the Realtor creates the Purchase and Sale Agreement. The Purchase and Sale Agreement is a contract for the purchase and sale of real estate between buyer and seller in which certain terms and conditions are laid out. Because it is a legally binding contract, if you have not discussed this contract with your attorney, request a 3-day attorney review as a condition of the contract.

Step 6. Hire an attorney.

In Massachusetts an attorney is required to close a real estate transaction. It is never too early in the process to hire your attorney. The attorney should be engaged to review the Purchase and Sale Agreement prior to signing or before the terms become binding. Once the Purchase and Sale Agreement is signed, your attorney shall assist you meeting specific contract obligations and contingency deadlines.

Step 7. The final step.

Schedule a closing date, sign papers and receive the keys to your new home.



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Call the attorneys at
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planning needs.



DUTIES OF THE EXECUTOR

At some point, you may be designated or asked to serve as an Executor of an estate of a relative or a friend. Depending on the size of the estate, your duties and obligations may vary to some degree. Nevertheless, the basic functions and responsibilities of an Executor are the same for most estates. The following is a fundamental guide to the duties of an Executor and what to expect during the estate administration process.

In most estates, Executors do not act alone. Executors usually act in conjunction with an attorney, tax advisor and in some cases an appraiser or an investment advisor.

In general, Executors administer estates. Their duties and responsibilities include collecting assets, managing assets, valuing assets, determining debts, filing tax returns, paying taxes, paying debts, distributing assets and closing the estate.

The first step in administering an estate requires the Executor to file a petition with the Probate Court. The petition will request that you be appointed Executor and that the Will be "allowed." When a Will is allowed, it means that the Court gives the Will legal effect. Once appointed, an Executor's first task is to collect the assets of the estate, which could include documents related to bank accounts, stocks, bonds, retirement plans, pension plans, and other personal assets such as jewelry, artwork and automobiles.

Once the assets are collected, the Executor must value the real and personal property of the estate. It may be necessary to hire an appraiser to determine the value of certain assets such as real estate, business interests, jewelry and artwork.

After the estate assets are collected and valued, the debts need to be determined. This may be done by reviewing checkbooks, credit card statements, medical bills and other such documents. If required, the Executor is responsible for filing state, federal and fiduciary income taxes and estate taxes.

Once the assets have been collected and valued, an Executor is responsible for compiling an inventory of the estate's assets for the Probate Court. The inventory is a listing of property solely in the decedent's name. After the inventory has been approved by the Court and debts and expenses are paid, including funeral expenses and the costs of administration, the Executor can distribute the assets. Once this is completed, the Executor will prepare a final accounting which documents all transactions in the estate during the course of the administration. Upon approval of the final accounting, the estate is closed.

Executors are entitled to fees for their services; a fee is either stated in a Will or determined by weighing various factors, including the size of the estate and time expended by the Executor. Often, Executors decide not to take a fee. Remember, an Executor is a fiduciary of the estate, which means you are to act in the best interest of the estate at all times.

Whether you are an Executor or a beneficiary under a Will, this firm can assist and guide you through the settlement of the estate.



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SHOULD I HAVE A SOLE PROPRIETORSHIP?

Many small business owners in Berkshire County continue to have sole proprietorships. Though this is the simplest business entity to set up and maintain, the disadvantages of a sole proprietorship usually outweigh their conveniences.

Generally speaking, a sole proprietorship is exactly as it sounds; it is a one-person business (if a husband and wife are running a business together, the Massachusetts Department of Revenue considers this a partnership). A sole proprietorship without employees can use the proprietor's social security number for tax matters. Sole proprietorships with employees must be registered with the Massachusetts Department of Revenue and obtain a Federal Employer Identification Number (FEIN). In addition, Massachusetts law requires that any person conducting business under any title or business name other than their real name apply for a "doing business as" or "d/b/a" certificate. For tax purposes, income from a sole proprietorship is reported on the sole proprietor's individual income tax return.

The greatest shortcoming of a sole proprietorship is that the proprietor can be held personally liable for any business-related obligation, including business debts, lawsuits and other claims and liabilities arising out of business ownership. It is for this reason that many business owners have chosen a corporation or limited liability company as their business entity. A corporation or limited liability company can shield you from liability for business obligations. Unlike sole proprietorships, owners of corporations and limited liability companies can protect their home and other personal property if their business fails.

Though there are additional expenses and operational requirements in creating and maintaining a corporation or a limited liability company, in the long run these costs will seem minute compared to the potential liability of a sole proprietor.

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