

## PROVIDING SETTLEMENT SERVICES

### **Between:**

### **Property:**

I have been requested to provide settlement services for the Seller and the Buyer in your pending residential real estate transaction. The Rules of Professional Conduct of the Florida Bar require this statement for the purpose of consulting with each of you concerning the implications of the common representation, including the advantages and risks involved, and its effect on the attorney-client privilege. Each of you must be agreeable to the common representation in order for me to proceed.

In the typical residential real estate transaction, there is substantial mutuality of interests among the parties. You have signed a Real Estate Sales Contract setting forth the terms upon which the Seller wishes to sell and the Buyer wishes to purchase the property that is the subject of your Contract. Your Contract, in addition to setting forth unique provisions concerning the selling price, financing details, closing date and payment of settlement costs, also sets forth general conditions for real estate transactions, which provide for agreement on a number of details common to most such transactions. As a provider of settlement services, I will examine title and issue title insurance commitments and policies (or arrange for the same), prepare the necessary legal documents that will consummate the transaction contemplated in your Contract and see to their proper execution, conduct the closing and arrange for the payment and disbursement of sales proceeds and costs and recording settlement documents in the Public Records.

If the firm is acting as escrow or closing agent in this transaction and will be holding funds in association with this transaction, please be advised that the funds will be deposited into the firm's escrow account at Bank of America. The Federal Deposit Insurance Company currently insures funds up to a total of \$250,000.00 per depositor, including any funds being held in an escrow account for you. If you have funds in excess of the FDIC coverage limits deposited in Bank of America, said excess funds are not insured and may not be recovered by you. The firm is not an insurer of your funds held in escrow, will not be held liable for any loss of funds, and has no responsibility to return said funds to you in the event of a bank failure.

In providing settlement services, I will consult with each of you as required so that you, in turn, may make adequately informed decisions. Should litigation or other legal proceedings involving third parties be required to, as an example, cure title defects, I will consult with the responsible party to arrange for such proceedings and for the payment therefor.

If any of the Sellers or Buyers so request, I shall immediately withdraw from the undertaking. I may also be required to withdraw if any event occurs which affects my impartiality or would have an improper effect on my other responsibilities to either the Sellers or the Buyers.

Under the Rules of Professional Conduct of the Florida Bar, I have a duty to keep all of the parties adequately informed and to maintain confidentiality of information relating to your transaction. You should be aware, however, that if for some reason not presently foreseen, litigation between you

should arise from this transaction, I may be required to give testimony in Court, and in such event the attorney-client privilege against such testimony would not be available. If litigation between you were to arise from this transaction, I would not continue to represent either the Seller or the Buyer, and the Seller and the Buyer would be obliged to obtain separate legal counsel. In general, my role as a provider of settlement services for your real estate transaction is not that of partisanship or advocacy for one side or the other, but rather as a legal intermediary between clients on an amicable and mutually advantageous basis. One alternative to common representation in your real estate transaction can be that each party would obtain separate representation, with the possibility of incurring additional costs, complication or even litigation.

To indicate your understanding and your desire for me to proceed with the delivery of settlement services for you in the manner outlined below, please sign below and return one (1) copy of this writing to me.

**MCLAUGHLIN & STERN, LLP**

260 MADISON AVENUE  
NEW YORK, NEW YORK 10016  
(212) 448-1100  
FAX (212) 448-0066

Date

Dear

We are pleased that you have asked us to represent you in connection with your estate planning and related matters. Under the Rules of the Chief Administrator of the Courts of the State of New York, attorneys are encouraged to provide their new clients with a written engagement letter and that is the purpose of this letter. We frequently represent multiple members of the same family and are very happy to have an opportunity to work with both of you. However, before undertaking any multiple representation, we generally review with the parties the potential for conflicts of interest and the limitations placed upon the attorneys in such circumstances.

Estate Planning Billing Practices

Our fees for services take into account several factors. In determining fees, the principal factor is usually time expended on the matter. However, we also take into account the sophistication of the matter and its value to the client. Each member of our legal staff has an hourly rate, based on years of experience, specialization in training and practice and level of professional attainment. My current hourly rate is \$475. In addition, I may be assisted in this representation by other attorneys in the firm whose billing rates range from \$325 to \$750, and possibly by one of our legal assistants whose billing rates range from \$150 to \$275.

These rates are subject to our periodic, firm-wide adjustments that affect all clients. In addition to our fees, we also bill all out-of-pocket expenses incurred by us on your behalf, including, for example, duplicating, messenger and delivery service and computerized research charges. Certain of these items may be charged at more than our direct cost to cover our overhead.

In some cases, we will provide an estimate of the expected total fee. This estimate is based on our experience in completing comparable work for other clients. As the work progresses, however, we often find that our initial estimate is not accurate. For example, if we are required to spend considerably more time than anticipated on telephone calls or in meetings or have to make substantial revisions to draft documents, our final fee may exceed our initial estimate. Our estimates will be based on our best, good faith approximation of the amount of time typically required to complete the requested work. In submitting our final bill, however, we will not be limited to the amount of the estimate. With respect both to fee billings and related expense items incurred, let me assure you of our commitment to completing your work in the most efficient manner possible consistent with maintaining a high quality of legal service.

**McLAUGHLIN & STERN, LLP**

Bills will be submitted periodically as phases of the requested work are completed, and are generally due upon receipt. Please let us know if other billing arrangements should be made.

Under the Rules of the Chief Administrator mentioned above, we are also required to explain that in certain circumstances, a client has the right to require arbitration of disputes relating to legal fees. We hope that no such disputes arise, but, in the event that they do, you or your advisor may want to review those Rules.

Family Representations

It is common for a husband and wife or parent and child to employ the same lawyer to assist them in planning their estates. As I am sure you know, whenever estate planning is undertaken for more than one individual in a family, be it husband and wife or parent and child, the possibility for conflicting interests exists. For example, when representing husband and wife, it should be understood that recommendations we may make in the course of the dual representation could affect the division of property in the event of a divorce. It is important for you to understand that, because I will be representing more than one of you, you are considered my client collectively. Accordingly, matters that one of you might discuss with me may be disclosed to other members of the joint representation. Ethical considerations prohibit me from agreeing with any one of you to withhold information from the others. In this representation, I will not give legal advice or make any changes in any of your estate planning documents without your mutual knowledge and consent. Of course, anything any of you discusses with me is privileged from disclosure to third parties.

If a conflict of interest arises during the course of your planning, I can point out the pros and cons of your respective positions or differing opinions. However, ethical considerations prohibit me, as the lawyer for both of you, from advocating one of your positions over the other. If actual conflicts of interest do arise between you of such a nature that in my judgment it is impossible for me to perform my ethical obligations to both of you, it would become necessary for me to withdraw as your joint lawyer.

Acceptance of Terms

After considering the foregoing explanation of our fees and the potential for conflicts of interest in a multiple representation, if you consent to my representing both of you jointly in accordance with the terms of this letter, please sign and return the enclosed copy of this letter. If you have any questions about anything discussed in this letter, please let me know. In addition, you should feel free to consult with another lawyer about the effect of this letter.

Again, we are pleased to have the opportunity to be of service to you and look forward to working closely with you.

Best regards.

Sincerely,

Consent

We have read the foregoing letter and understand its contents. We consent to having you represent both of us on the terms and conditions set forth. We agree that you may, in your discretion, share with both of us any information regarding the representation that you receive from either of us or any other source.

\_\_\_\_\_  
Date

\_\_\_\_\_  
[client]

\_\_\_\_\_  
Date

\_\_\_\_\_  
[client]