What Is a Real Estate Lawyer?

Before we get too far, it would be best to describe what I mean by a real estate lawyer and a transactional practitioner. With regard to a real estate lawyer, there is substantial overlap of the worlds of the transactional practitioner and the litigator, and I have attempted in my professional practice to try to inhabit both worlds. In addition, the elements of title insurance, property rights, agency law, taxation, domestic relations, and many more areas of law affect the rights and responsibilities of owners of real estate and parties to transactions. For this reason, an attempt to define what a real estate lawyer does by specific practice area is virtually impossible.

Sometime during the 1990s, I joined an ad hoc group of attorneys who had an interest in the practice of real estate law in general and transactional work in particular. They wanted to develop an overview of the then-current state of the art of real estate law. Because their offices were primarily in Chicago and the collar counties, the group referred to itself as the Northern Illinois Real Estate Committee, or NIREC. Due to the presence of several healthy egos in the room, I casually dubbed the group “The Real Estate All-Stars.” During its first few meetings, the group experienced a difficulty common to such organizations of communicating exactly what concerns it had other than in terms of anecdotes and the fact that fees earned by such attorneys were much lower than those of our brethren who handled litigation, considering the amount of time required of the attorney. The difficulty in developing a theme and identity for the group led me to try to quantify the level of service I was accustomed to providing for clients. I decided one day to try to list what a real estate transactional attorney actually did in a transaction. I managed to get through the list of tasks undertaken by an attorney for a buyer in a residential transaction, but the process was exhausting (if not exhaustive), and I did not then attempt to compile a similar list of tasks undertaken by an attorney for a seller. The list ultimately appeared, with my approval, in a version of the Residential Real Estate Handbook published by the Illinois Institute for Continuing Legal Education (IICLE) and is reprinted in Appendix 1 of this book with the permission of the IICLE.

It was not until the 2011 version of the Residential Real Estate Handbook published by the IICLE that I wrote a chapter on the duties of an attorney representing a seller. The chapter did not provide a list of discrete tasks but rather a guide to procedure in a transaction, with commentary on engagement agreements, brokerage agreements, disclosures, standard contract provisions, pre- and post-closing issues, and related materials, in a “soup-to-nuts” fashion. The material for the chapter was based primarily upon a chapter previously written by the late Stuart Wolf, whose work I acknowledged and whose counsel is sorely missed by the real estate bar. Stuart, an extremely competent attorney who served as General Counsel to the Illinois Real Estate Lawyers Association for many years, enjoyed teaching younger lawyers and consistently cajoled the real estate bar to maintain the highest standards of legal competence and ethical behavior.
To try to define what a real estate lawyer does merely in the context of the residential transaction practice area is inappropriate. Even those lawyers who refrain from handling litigation need to have a working knowledge of many issues affecting transactional practice including (in no particular order):

- Title insurance
- Real estate brokerage
- Mortgage lending
- Leaseholds
- Real estate taxation
- Real estate assessment
- Easements and licenses
- Special flood hazard zones
- Eminent domain
- Surveys
- Easements, building lines, and other restrictions
- Appraisals
- Owners’ associations
- Trusts (including Illinois Land Trusts)
- Short sales
- Methods of taking title
- Settlement services
- Contractual rights and remedies
- Bankruptcy
- Powers of attorney
- Land use and development
- Newly constructed real estate
- Ordinances affecting real estate
- Professional inspections
- Consensual and nonconsensual liens and priority issues
- Attorney review and modification provisions
- Disclosures
- Escrow agreements
- Estate and gift taxation

The list could go on, but you get the point. The practice of real estate law in the transactional setting involves many different areas. Add to these other issues that involve litigation, such as mortgage foreclosure, interpretation of contracts, legal and equitable remedies, receivership, and environmental law. As in the area of Domestic Relations, the lawyer who calls himself or herself a “real estate lawyer” needs to have a working knowledge of a great many practice areas.