

# Buying a Home





## **INTRODUCTION**

Buying a home may be the biggest single investment of your lifetime. Your life's savings may be invested in this one venture.

Thus, it is extremely important that you, the prospective buyer, use the greatest caution in buying a home.

For your protection, consult a lawyer before you sign a purchase contract. The lawyer's training and experience will help you avoid trouble. Not all lawyers have experience in reviewing real estate contracts so be sure to ask about the lawyer's experience.

## **THE PURCHASE AND SALE AGREEMENT**

One of the first documents given to a prospective buyer by a real estate broker is the purchase and sale agreement or contract. Few people realize that this paper is the most important step in purchasing a home — the details of this agreement determine the terms of your purchase. Detrimental provisions in the contract may not be corrected or avoided later in the transaction so the best time to retain an attorney is before the contract is signed. Before signing, read the agreement carefully. The law usually requires judges to treat you as if you read every word of a document before you signed it, so you should try to read everything carefully before you sign a document. Some of the items you should consider discussing with a lawyer are such items as the following:

1. Exactly what land, buildings and furnishings are included in your offer? Is the stove, refrigerator and the like included? Which items are included and excluded? Sometimes it is not always easy to know whether something is being sold with the home or not.
2. What payments are due under the contract?
3. When can you take possession?

4. Is the seller to furnish you with a good, marketable title? If not, you may be purchasing the property even though other people may have previously asserted claims to all or some of the property or there may be claims that have been brought by those involved in construction or remodeling of a home.
5. Which kind of deed should the seller give? Be sure to discuss the difference between a warranty deed and quit claim deed.
6. Who pays for the title insurance for the property in the event the offer is accepted?
7. Have utilities been installed and paid for?
8. Should a surveyor be employed to locate the improvements on the property and confirm that there are no encroachments onto or from abutting properties? Who should pay for the cost of the survey?
9. If a loan is to be obtained from an outside lender, who will pay the loan closing costs? There are usually local customs as to which costs are paid by the buyer or the seller but it is better to make this explicit in the contract.
10. Can the buyer cancel the contract and obtain a refund of the deposits if the buyer is denied a loan, and if so, under what conditions?
11. If termite damage is found, will the seller have to pay the cost of repairs and treatment? If so, is there a limit?
12. What are the zoning regulations or other restrictions, on the use of the property?
13. What is the time within which the offer to purchase should be accepted or refused? Is the date of such acceptance to be vital to the offer?
14. If your offer is accepted, what steps should be taken with respect to insuring the improvements to protect you, the prospective buyer, pending the final closing?

15. Who should be required to sign and accept the offer to make it binding?
16. Are boundary lines properly specified?
17. Are timber, mineral and water rights, if any, properly covered?
18. Who is responsible for paying of property taxes?
19. What are the remedies if the buyer or seller defaults?
20. Should the purchase be contingent on any outside matters such as the availability of financing on acceptable terms or the sale of the house which you presently own?
21. Whose responsibility is it to pay for the real estate broker?
22. Whose responsibility is it to pay for governmental special assessments that arise prior to closing? Payable after closing? What about homeowner or condominium association assessments?
23. How long should the buyer have to inspect the property?
24. Does the seller know of any defects? Is there a disclosure form that the lawyer recommends?

Your lawyer may not be able to answer some of these questions until examining many public records, including court and governmental files.

It is important that your purchase agreement be prepared or reviewed by your own lawyer before you sign to assure the agreement covers your requirements. Remember that even printed form agreements are negotiable, but this requires knowledgeable and independent professional guidance.

## **THE TITLE TO REAL ESTATE**

A real estate title is a right to partial or whole ownership to land and improvements upon the property. If you can prove your title against all

the world and the evidence or proof of ownership is contained in proper public records and if it is for whole ownership, it is a marketable title. A marketable title is free from reasonable doubt.

When purchasing a home, you should request a “marketable” title. Your lawyer, after proper investigation, can tell you whether the seller is able to convey such a title to you. No one can advise you without a proper investigation.

## **WARRANTY DEED**

A warranty deed is a conveyance of title plus some warranties or guarantees. The usual guarantees or warranties by the seller are: good title, freedom from encumbrance other than as excepted, possession to the buyer as against all others, and a promise to defend title.

These guarantees alone are not adequate protection since they are no better than the present and future financial responsibility of the seller. A warranty from a financially responsible seller is comforting and desirable but is not a substitute for a title examination and title insurance. Title defects have a way of lying dormant for years and perplexing a buyer long after he has paid for the land and after the seller has disappeared or died.

## **NECESSITY FOR TITLE EXAMINATION**

A title examination is a study of title evidence from the public records, which can be from an abstract of title or computer records. (An abstract of title is a collection of public records relating to the ownership of a parcel of real estate. In many counties, centralized computer records have replaced abstracts.) Your lawyer examines the applicable title information to determine who owns the lands, defects in or claims against the ownership and any action needed to secure good record title.

This may seem to be a simple operation. It is not. It requires interpreting numerous deeds, mortgages, wills, court decrees and other instruments; considering the time sequence of transactions and events affecting the title; and applying laws and court decisions to the various situations disclosed in the applicable title information.

The examination of a title requires a thorough knowledge of many areas of law and even when certain laws went into effect or were amended or repealed. An examination of applicable title information may involve evaluating a variety of problems such as the validity of divorces, the effectiveness of foreclosures, the scope of restrictions, the presence of federal and state tax liens, and the effect of old claims against the land.

Whether examining an old U.S. patent or passing on a deed of recent date, the process of examination is, at every step, the consideration of legal problems. Experience can speed up the work, but attorneys almost daily encounter new situations requiring new legal research.

## **TITLE INSURANCE**

Your lawyer can bolster the title examination by issuing or obtaining for you an owner's policy of title insurance. In such a policy, the title insurance company contracts with the insured person named in the policy to protect the title as insured against financial loss and the cost of defending the title in court.

But like any insurance policy, the coverage is no greater than as stated in the policy. Any policy can list matters substantially affecting title that are exceptions to the coverage and are not insured. Another type of policy, mortgagee's or lender's title insurance, protects only the holder of the mortgage and not the owner. You should not forego owner's title insurance coverage because your lender has its own loan policy. In fact, obtaining both

the owner's and lender's title policies at the same time is not much more expensive than obtaining a single policy.

Your lawyer representing your interest can advise the extent of protection given by your owner's policy. Even if your attorney does not issue your title policy (as is the practice in certain counties and often when purchasing new residences from developers), your attorney can advise you whether the exceptions from coverage listed in the title insurance commitment will be appropriate under the contract or detrimental to you when they are included in the final title policy. Some attorneys include the policy's cost in an overall charge for all legal services. Other attorneys separate the charge with the cost for the policy being based on the real estate purchase price. This price is the maximum amount for which you are insured. There is only a one-time charge for an owner's policy and its protection continues long after you sell the property so you should hold onto the policy indefinitely.

## **JOINT OWNERSHIP**

Buyers often have the title to a home placed in a joint ownership arrangement with special words inserted so that title passes automatically to the survivor when one of the joint owners dies. This arrangement is known as "joint tenancy." In Florida, when land is owned jointly by husband and wife, it is known as an "estate by entirety." Owning property in this manner may be a good idea for some, but, again, it may not be good for you. You should determine the income, gift and death tax consequences before having your home placed in joint ownership. Your attorney can advise you regarding this important decision.

Joint ownership occasionally leads to lawsuits over a right of occupancy, the right to the rents if not occupied by all the joint owners, and the duties of the various owners as to payment of mortgages,



taxes, and cost of repairs and upkeep. If the joint owners are parent and child, or brothers and sisters, the subsequent marriage of one of them may lead to conflicts and complications.

## **IS THE BUILDING UNDER CONSTRUCTION?**

If the home you are buying is still under construction or has been completed recently, special care is required to make sure that all building costs have been paid by the sellers and that you are fully protected as to the provisions of the Florida Construction Lien Law. You should consult your lawyer for full information as to your rights and responsibilities under this law.

This may be true also when repairs on a house have been made recently or building material recently delivered.

Failure to protect against construction liens can result in the property being subject to liens even though the full contract price was paid.

## **FINANCING YOUR HOME**

Many financing arrangements are available to today's home buyers: variable rate mortgages, conventional mortgages, government insured VA and FHA loans, as well as specialized mortgages designed for specific financial institutions.

Your attorney can help you determine the most advantageous plan, based on your needs and capabilities to repay, including certain tax advantages appropriate to your personal financial situation.

Regardless of the type mortgage loan, you should be aware of specific terms the lender may require such as:

- prepayment penalties
- limitation of your right to sell without lender's consent

- maintenance of insurance levels
- tax and insurance escrow payments
- limitations on your use of the property
- lender's right to change interest rates if you assume an existing mortgage
- lender's right to change interest rates during term of the loan

You should also determine if, in the future, you'll be allowed to borrow additional money secured by the same mortgage. You'll want to ask your attorney to explain all costs of the loan, including service charges, appraisal fees, survey costs, escrow fees, and lender's attorneys' fees.

Remember, when you sign a mortgage note, you are ordinarily responsible for the full payment of the total indebtedness. Even if you later sell to someone who agrees to assume payment of the mortgage, your responsibility continues unless the lender releases you.

## **CLOSING YOUR PURCHASE**

Closing a real estate sale is a technical and complex procedure. The careful drafting of papers to carry out the actual intent of the parties is part of the job. Meeting the technical title requirements is another step. The proper signing and acknowledgement of papers is another. Delivery and recording of the papers are usually the last steps.

As a careful buyer, you should insist that your lawyer be present at the closing, checking each detail to assist you making your purchase the trouble-free ownership to which you are entitled.

If you need a lawyer and don't know how to find one, many areas in Florida have lawyer referral services listed under "attorneys" or "attorney referral services" in the yellow pages of the telephone book. This service will give you an appointment

with a lawyer for a nominal fee. If there is no lawyer referral service in your city, the statewide Florida Bar service can locate a lawyer for you. You can call this service at (800) 342-8011, which operates only in cities where there is no local program. They will refer you to an attorney for an initial one-half hour consultation for a nominal sum.

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