

A HOME FOR YOUR FAMILY 10

Negotiating for Your House

You have found the house you want!
Now what do you do?

If you have done your homework, you will be familiar with the location, know whether the floor plan will work for your family, and have a list of repairs or improvements that may need to be made. Now you should be able to determine how much you are willing to offer for the house. You need to set a limit and stick with it.

The purchase process begins when you complete a form called an “offer to purchase.” The offer to purchase lists things like the price you are willing to pay and other conditions of the sale. The offer to purchase is presented to the seller by your real estate agent.

Take this form very seriously because its conditions are legally binding! You can withdraw your offer only if the seller has not already signed it. If the seller accepts your conditions and signs the offer to purchase, the form becomes a sales contract. You cannot change any of the conditions of the sales contract without additional negotiations and possibly loss of money.

Standard forms make the process of preparing an offer easy and almost risk free. The standard form provides much of the legal language your offer should contain and identifies many of the items you will want to include. However, you must make many important decisions. If you have questions, consult a real estate attorney. It is easier and safer to consult an attorney while you are completing the offer to purchase to make

sure there are no mistakes in the beginning than to try to correct mistakes after the sales contract has been drawn up and accepted.

NEGOTIATING POINTS

Purchase Price

The value of every house is assessed by local governments for tax purposes. This assessed value can give you an idea of the market value of the house you are considering. Consider the cost of necessary repairs that will require extra investment on your part. You can use these to justify offering a lower price. A seller with a house that has been on the market for a long time may be willing to accept a lower price. If houses are not selling in a community, the seller may be more willing to compromise on price in order to sell. Sellers generally set asking prices so they have room to negotiate. Your offering price opens these negotiations.

Contingency Clauses

Contingency clauses (sometimes called “jump out” contingencies) can protect you from possible problems or events in the future. Listed below are three of the many contingency clauses. The more experienced your real estate attorney or agent, the greater protection he or she can build into the offer to purchase.

The *subject-to-financing clause* allows you to safely make an offer to purchase before you know what financing terms you

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can obtain. If you cannot secure the loan, mortgage terms and maximum interest rate you are willing to pay, you can legally withdraw your offer.

The *subject-to-inspection clause* allows you to modify your offer to purchase if you are not pleased with the results of a professional inspection of the home. Two out of five houses for sale have at least one serious defect that could cost at least \$500 to repair. The inspection may be of the entire house or just a part, such as a septic system. You will probably be required to arrange for and to pay for the inspection, but if repairs are needed the costs can be covered when the offer is modified.

A *house sale contingency clause* permits trade-up home buyers time to sell their present house to finance a new one. Many sellers object to this qualification, but when real estate is moving slowly and the seller needs to get a commitment from a buyer, it is sometimes accepted.

The following six clauses are usually included in standardized offer-to-purchase forms.

1. The property is not subject to any public improvements, such as major highway construction, that will significantly reduce the property's value.
2. The property is not subject to any administrative or legal orders to correct faults, such as a building inspector ordering changes in an out-of-date plumbing system.
3. The owner is not aware that the property has mechanical or structural defects, such as a faulty air conditioning system or leaky roof.
4. The seller guarantees the property is not in a flood plain.
5. The seller agrees to repair any property damage that occurs between the date of the accepted offer and date of sale.
6. The seller guarantees that the property title is free and clear of any title defects that have not already been mentioned by providing a warranty deed. A warranty deed does not guarantee the soundness of the structure or mechanical systems.

ITEMS TO INCLUDE IN THE SALES CONTRACT

Non-fixtured Items

List the items you want to be included in the house's sale. These non-fixtures may include curtains, appliances, and workbenches. Items that are physically and permanently attached usually are automatically included in the house's sale except when the seller specifically indicates these exclusions in the sales contract. It is best to specify any items you want included so there will be no misunderstanding.

Closing Date

Your offer to purchase should also include your proposed closing date. On this date you will meet with the seller and formally purchase and pay for the house.

Life of the Offer

The standard form includes a provision for you to specify how long the seller may take to respond to your offer. This prevents the seller from keeping you in suspense while waiting for a better offer.

Earnest Money

In most cases you will be expected to provide a deposit or earnest money payment with the offer. Five percent of the house's purchase price is an average amount for earnest money, though it could range from \$500 to several thousand dollars. The check should be made to the real estate agent who will keep the money in escrow until the negotiations are complete. Always get a signed receipt. Be sure your contract indicates that you, the buyer, will receive the interest on the downpayment. And be sure that you will get your money back if the sale is not completed due to the seller or certain contingencies that you have written into the contract. If you decide to back out of the contract, you will probably forfeit the deposit to the seller.

PRESENTING THE CONTRACT

Once you have completed and double-checked the contract, it is presented to the seller. If the seller accepts everything in the contract, including the price and all of the contingencies, the offer becomes binding on both the buyer and seller subject to the contingencies. If the seller wishes to negotiate, a counteroffer is made with either a new contract or with notations and substitutions made on the original document. You then receive the revised contract and can either sign it, if acceptable, or reject it and make a

second offer. Most agreements are reached after several rounds of offers and counteroffers.

ADDITIONAL NEGOTIATING TIPS

Watch what you say within earshot of either a real estate agent or a seller. Everything you say can, and will, be used in the bargaining process. For example, if you submit a contract with a figure lower than the asking price, don't let the seller's real estate agent know that you are willing to pay more. Never confide your negotiating strategy. A real estate agent is legally bound to the seller. The alternative is to use a buyer's broker or agent who will represent you, the buyer.

Don't respond to any suggestions or counteroffers unless they are presented in writing. For example, if a seller or his agent tells you that your offer is too low, insist on a written counter-proposal indicating the price (or other changes) that would make your offer acceptable. Don't feel pressured into raising your price on the spot.

If the seller agrees to make repairs (based on negotiations following a home inspection report), insist that they be done by contractors that you, the buyer, select and under your supervision. Otherwise the work could be poorly done with incompetent labor and/or inferior materials.

Never submit a contract to a buy a house after seeing it only once! Return for another look the following day or weekend, and again, if necessary. Visit the house immediately after a rain or heavy snow, if the weather cooperates, to see if there are visible water problems. Don't be embarrassed to revisit the houses you like most. Remember, you don't really "see" a house on the first visit but find yourself focusing on features like wallpaper, a great master bathroom, or garage space. You may have little or no memory or even an inaccurate impression of the rest of the house. Returning to the house several times will also give you an opportunity to engage the sellers in conversation about the neighborhood.

Try to get the seller to take over as many of the purchase and sale expenses as possible. Do not let tradition or custom get in your way. The fact that the "buyer always pays for the survey" does not mean the seller cannot pay for it. Keep in mind that Federal Housing Administration (FHA) and Veterans Administration (VA) loans do not

allow the financing of points. Any points in financing these loans must be paid in cash by you or by the seller. A seller's willingness to negotiate may depend on the market and how anxious he or she is to sell. In a tight market or if the seller has to move, he or she may be willing to pay points.

Shop around for the best mortgage terms. The lender with the lowest interest rates may also have the highest closing costs. You may be able to negotiate with your lender to waive or reduce certain fees if the competition among lenders is strong.

Negotiate with attorneys on their fees. Most attorneys base their fees on a percentage of the price of the house. You may be able to negotiate an hourly rate with your attorney.

SUMMARY

Negotiating to buy a house is the process of telling sellers and their real estate agent at what price and on what terms you are interested in their property. Expect to haggle by insisting on the price and conditions that you desire. Many buyers don't realize they are allowed to bargain on any feature of the deal, and traditional real estate professionals don't always tell them. This is where the services of a buyer's broker or agent can be valuable.

Expect to make compromises. Read books and articles, consult friends, and hire professional advisors when needed. Do not be afraid to ask questions. Doing your homework will help you buy a house with the confidence and knowledge that you have made the best decisions.

Adapted from:

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