House Purchase Contracts

As a first-time or trade-up home buyer, you may be uncomfortable with the "bargaining" aspects of buying. Once you decide on an offering price for a house, you will be asked to sign a legally binding purchase contract. If the seller accepts your offer, this contract commits you to buy the house at the price offered and under specific terms.

Any purchase contract should be drawn up or carefully reviewed by an experienced real estate attorney before you sign it. An attorney protects your interests and can save you money and problems. At the very least, include on the document the words, "subject to my attorney's approval." Make sure you understand every clause of the contract before signing.

A deposit (earnest money) towards the down payment must be submitted with the contract to the seller. Insist that your real estate agent place the deposit in an interest bearing escrow account until closing. The contract should specify whether the deposit is to be returned to you or kept by the seller if the sale is not completed. It should also spell out what happens to interest earned on the earnest money.

FINALIZING THE DEAL

The seller is required to make a decision (within a specific time period, usually 24 to 48 hours) about whether to accept the terms specified in the contract. If the seller rejects your offer, you have the option to withdraw or counteroffer. Negotiations continue until both parties have reached an acceptable agreement. It is not unusual to have a contract go back and forth several times before agreement.

There is no such things as a "standard" contract. If the terms are not in writing, they are not binding. Verbal promises mean nothing.

Be sure that the contract is written in your name(s) (for example: John J. Jones and Betty B. Jones). A contract can be sold or transferred to a third party before closing if circumstances change (job relocation, divorce). It is advisable to restate this contingency clause in the contract.

A home purchase agreement should include:

- The names and addresses of both buyer and seller.
- The legal description of the property to be purchased (address, lot and block number).
- The mortgage amount needed to finance the house.
- The deposit amount and the party who will hold it in escrow until closing.

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- The approximate closing date.

- Provisions to extend the closing date in case either the buyer or seller cannot meet the terms of the contract.

- Conditions for disposition of the deposit in case either party fails to close.

- The amount of real estate agent's commission (if any) to be paid by the seller.

- Who will pay specific closing costs.

- Adjustments to be made at the closing (property taxes, "points" paid by buyer, seller, or builder).

- Items included in the sale such as: area or room-size rugs, draperies and window treatment hardware, a wood-burning stove, fireplace equipment, lighting fixtures, outdoor or indoor furniture, etc.

- Special conditions of the sale. For example, if the house has problems, what will the seller do to correct them?

- Mandatory and optional inspections the buyer can make before closing such as termite, home inspection, radon, and water.

- Property easements (the rights of others to use the land).

CONTRACT CONTINGENCIES

Contingencies are a normal part of a real estate contract, and many are negotiable. The more experienced your attorney and/or real estate agent, the greater protection you have and the more money you can save. Following are examples of some buyer-protection clauses (sometimes called "jump out" contingencies) that should be included in a purchase agreement.

- This offer is subject to the buyer's obtaining adequate financing. This could specify the maximum interest rate that you will pay or, that if the appraised value is less than agreed upon purchase price, the contract can be voided and full deposit refunded or the contract renegotiated.

- This offer is subject to a satisfactory home inspection and buyer's approval of that report. The inspection should be completed within a designated number of days.

- This offer is subject to the buyer's approval of a title insurance policy to be obtained at the seller's expense.

- This offer is contingent upon the seller's providing the required survey certificate to the buyer at the seller's expense.

PUNCH LIST

A home inspection may result in a "punch list" of items to be completed by the seller. The seller should agree to complete these items, at no charge to you, within 10 days of the settlement date. If they are not completed within the time period, you will be reimbursed for any expenses incurred in completing the punch list. Examples of punch list items are:

- This offer is contingent upon sale of the buyer's home.

- Time is of the essence in this agreement (if the buyer has a critical deadline.)

- This offer is subject to the buyer's written approval of an itemized list of personal property items to be included with the sale of the house.

- If the buyer refuses to complete settlement, then the seller can keep the buyer's deposit as "total" liquidated damages. As a buyer, you should exclude a clause for "specific performances." If the buyer backs out of the contract, he or she is responsible for the total purchase price and not just liquidated damages (the down payment).

- If the seller should default on the contract, the buyer is entitled to damages. This could be the amount of the deposit or more (for example: furniture storage fees).

- All systems (heating, air, plumbing, septic) and any appliances included in the sale should be in working order for at least 30 days after settlement.

- All dates and times should be automatically extended 30 days if necessary for mortgage approval.

TITLE SEARCH

When you buy a home, providing clear title is not a "cut and dried" process. Unless you can prove that the seller really owns the house, a lender will not grant a mortgage on the house. Proof of "clear" title or ownership is documented by a title search. A title search will show if any other party has rights to the property through a mortgage, judgment, unpaid taxes, or liens.

A title search involves an examination of public records by your real estate attorney or by a title insurance company. Records can be dispersed among several local government offices including recorders of deeds, county tax assessors, and surveyors. Other items that affect ownership, such as records of death, divorce, court judgments, and conflicts over wills, must be reviewed also.

A mortgage lender will require a title insurance policy to protect against title defects. The one-time cost of the policy is usually based on the amount of the mortgage and is often paid by the buyer. This is negotiable, however. The required insurance policy covers only the lender so it is advisable to take out an owner's policy as well.

You may be able to save money on title insurance by:

- Determining if the house you are buying was held by the owner for only a few years. If so, contact the seller's title company for a "reissue rate".
- Asking your attorney to pass on to you any discount he or she receives from a company he or she frequently uses.
- Shopping around—not just for the premium, but also for a policy with the lowest exclusions.

CLOSING COSTS AND PROCEDURES

The final step in a home purchase is the "closing" or "settlement." This is a meeting of the buyer and seller, their respective attorneys, a representative and/or attorney from the mortgage institution, and the real estate agents representing the buyer and seller.

Closing activities include signing the deed and mortgage, paying the closing costs, and turning over house keys to the new owner. You are expected to have a certified check for the mortgage amount and some closing costs. You can write a personal check for other expenses (e.g., attorney fees, prorated taxes). Plan to have at least $1,500 in your checking account in case there are other costs to be paid.

The Real Estate Settlement Procedures Act (RESPA), a federal statute, protects buyers at settlement, as well as when they apply for a mortgage. The lender must provide both a "good-faith" estimate of the costs of settlement services and a copy of the Housing and Urban Development (HUD) "Settlement Costs" booklet within three days of application. One business day prior to the settlement date, you should receive a statement showing exact closing figures.

Closing costs vary in type and amount from one locality to another, as well as between lending institutions due to:

- Local real estate practices.
- A possible shift of some costs from buyer to seller.
- The type of mortgage obtained.
- How thorough you were in shopping for the best financing terms and other agent services.

Typical closing costs are 2 to 6 percent of the amount borrowed. Specific settlement services included in "closing costs" are:

- Real estate agent's commission.
- Mortgage origination or application fee. Usual costs are $275 to $350. This fee covers lender's administrative costs to process the loan and an appraisal of the property.
- Loan discount or "points". This is a one-time charge used to adjust the yield on the loan to market conditions.
- Credit report fee. This is charged by lender, usually $50 to $75 (sometimes included in the application fee).
- Property survey.

- Recording fee. This is a charge made by the county to record home purchase documents.

- Homeowner's insurance. Lenders require at least an amount to cover the mortgage. Usually a paid-up one-year policy is needed at the closing.

- Title charges. Includes title examination, title search, document preparation, and fees for title insurance.

- Pest and other inspection fees.

- Attorney fees. There may be more than one. A lender may charge an attorney review fee for mortgage documents. Your personal attorney will charge a flat, hourly, or percentage of purchase price fee to handle the closing, usually $400 to $1,000.

- Settlement costs between you and the seller. Prorated taxes, prorated garbage disposal bill, etc.

- Escrow fees. The lender often sets aside an amount of money to be held for paying taxes, insurance premiums, etc.

- Private Mortgage Insurance (PMI). This is required by some lenders if the down payment is less than 20 percent. It guarantees that if the buyer defaults on the mortgage, the lender will receive the full balance of a loan. (This does not apply when government insurance is involved.)

- Miscellaneous (notary fees, special inspection fees, mail).

A closing can be intimidating, especially for the first-time buyer. It can be completed in as little as half an hour or it can extend to two hours. To avoid surprises, follow these "before" and "on" closing day checks:

Before Closing Day:
- Confirm the closing, date and time with seller, bank, real estate agent, and attorney.
- Receive good faith estimate of closing costs within three business days of mortgage application.
- Notify utilities (gas, electric, water) of change of ownership.
- Notify telephone company when to begin services.
- Make final walk-through inspection of home.

On Closing Day:
- Receive copy of final settlement costs.
- Have attorney check court records for any last-minute liens on property.
- Have electric, gas, and water meters read for final charges.
- Make final walk-through inspection of home.
- Bring loan commitment letter and home purchase contract to closing.
- Receive home insurance policy.

Adapted from:

Shelby, Wanda W. and Eleanor J. Walls. 1991. *Home Purchase Contract: How to Buy a Home.* Arkansas Cooperative Extension Service, Little Rock, AR.
Peart, Virginia. *Home Purchase Contracts.* Florida Cooperative Extension Service, Gainesville, FL.

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Prepared by Glenda M. Herman
Extension Housing Specialist

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