

Buying a Home



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The decision to buy a home is one of the biggest financial decisions most people make in a lifetime. If you are considering buying a home or other real estate, there are several things you should consider.

Before You Buy

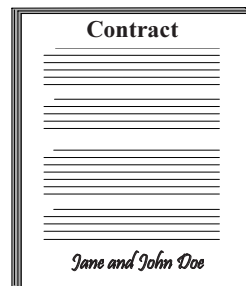
Homebuyers today are offered a variety of alternatives to the traditional single-family dwelling. Perhaps you are considering buying a condominium or a townhouse, which are multi-family dwellings where the owners share both the benefits and the upkeep of common areas, while owning their own living unit. If so, be sure you know what you are getting for your investment, and what future assessments you can expect for upkeep of the property.

Whatever kind of home you are looking for, you should consider such items as restrictions on the property (for example, if you were planning to run a business out of your home, you should determine whether this would comply with local zoning ordinances); easements (where someone else may have rights to use the property); protective or restrictive covenants (which may impose further restrictions on the use of the property); taxes and insurance rates in the area; and any special assessments (such as paving, lighting or sewers) that may be levied.

What is a contract?

As soon as possible after the buyer and seller have agreed on the sale of the property, it is customary and necessary for them to sign a written contract of sale providing for the transfer of the property. This often takes the form of a printed "offer to purchase," which is a legally binding contract. The contract should set out all terms of sale.

Anything left out, even if agreed upon in the discussion leading to the sale, is unenforceable. A contract for the sale of real estate, like all legal documents, is a complex and technical document which should be drafted by your lawyer.



The contract should be simple but complete, and should cover such items as:

- ✓ Legal description of the property (not just the street address)
- ✓ List all items included in the sale, including removable items such as drapes and appliances
- ✓ Purchase price, including down payment and any special terms and provisions as to the types of financing the buyer will accept

- ✓ Date abstract is to be furnished to the buyer for examination by his attorney, or terms relating to title insurance
- ✓ Dates of payments
- ✓ Date possession is to be given
- ✓ Date deed is to be delivered (date of closing)
- ✓ Apportionment of taxes and special assessments
- ✓ Whether property is to be conveyed free and clear of all encumbrances (mortgages, taxes and assessments)
- ✓ Who is to bear the loss if the property is damaged or destroyed before the sale is completed
- ✓ Damages to be paid if the contract is forfeited

This list is not intended to be complete; it merely illustrates the basic items that should be included. Failure to include all necessary items could result in problems for both the buyer and seller. For example, a contract which does not provide for the seller to furnish an abstract of the title saddles the buyer with the expense. A contract describing property by street number only leaves unsettled the question of exactly how much land is being sold. And a buyer could find himself obligated to accept land he cannot use in the manner he had hoped, because of zoning, easements or other restrictions.



Seller and buyer agree the buyer's purchase offer is conditioned upon a satisfactory home inspection conducted by the buyer or by a home inspection service retained at the buyer's expense.

A contract of sale should be signed and acknowledged before a Notary Public by the seller and his or her spouse.

What is a real estate broker?

Both the buyer and the seller may engage real estate brokers to act on their behalf in arranging the sale of property. Most brokers are aware they may not engage in the practice of law; however, they may prepare printed form contracts which are binding on the buyer and seller if properly signed by each.

Before signing such a printed form contract, it is advisable to consult with an attorney for assurance that the contract accurately reflects the agreement of the parties. Your lawyer can also explain clearly what your rights and obligations would be under the terms of the contract.

What is an abstract of title?

An abstract is a summary of the public records showing the history of all transactions relating to a piece of real estate, from the United States patent to the most recent transfer of property.

The possession of an abstract is no indication of ownership of the land to which it relates. Anyone may acquire an abstract to any piece of land. The cost of the abstract depends on the number of transactions involving the land.

What is a title examination?

It is not the function of the person preparing the abstract to determine the legality or sufficiency of the title. This is done through a title examination which is a careful study of the abstract by a qualified lawyer.

In virtually all communities you will find lawyers who have the skill and technical learning to examine abstracts. When such an examination is completed, the lawyer writes an opinion to the buyer stating his or her conclusions as to the ownership of the land, the defects in or charges against such ownership, if any, and what would be required to make a good record title.

Because a single abstract may involve many legal questions, such as the validity of divorces, effectiveness of mortgage foreclosures and administration of estates, the lawyer who examines the title must study a number of legal documents such as deeds, mortgages, wills and court decrees. Only a lawyer is qualified and authorized to pass on the many complex legal questions involved in a title examination.

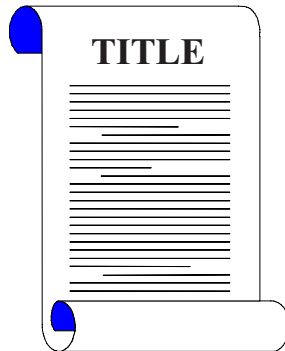
May I use my lender's title examination?

Loan companies and other moneylenders often have their own lawyers examine the title to property on which they contemplate lending money. Buyers sometimes assume this examination frees them from the necessity of an independent title examination. It does not. The lawyer is responsible for the title opinion rendered, but only to the client for whom the title is examined.

A mortgage lender's interest in a property is different from that of the purchaser. The lender knows most mortgages are paid and small title defects will not cost him any money. He may be satisfied with a title which contains some possibility of trouble for the buyer. The buyer, therefore, should have an independent examination to warn him of any possible further costs involved in perfecting the title.

What is title insurance?

An alternative to a title examination by a lawyer is the purchase of a title insurance policy on the property from a title insurance company. Who pays this policy is negotiable matter which should be covered in the contract of sale. The buyer retains the policy in place of an abstract.



For an insurance premium payable only once (at the time of acquisition), the title insurance company insures the buyer that he is obtaining good record title from the seller. The insurance policy itself is an important legal document.

Most basic title insurance policies do not provide insurance coverage for mechanics' liens, boundary discrepancies and unrecorded documents, among other things. A buyer should always have a lawyer review the policy before closing the sale so the buyer clearly understands what is covered and what is not, and to help the buyer determine whether additional coverage may be desirable.

The cost of title insurance is customarily equally divided between the buyer and the seller.

May a warranty deed be substituted for a title examination?

A seller will usually deliver a "warranty deed" to the buyer of the property being transferred. This is a deed from the seller guaranteeing that he or she is providing the buyer with good title, free from encumbrances other than as stated in the deed, and possession to the buyer as against all others. It is not absolute protection since it is only as good as the continuing financial responsibility of the seller. A warranty deed from a financially responsible seller is comfortable and desirable. It is not a substitute for a title examination. Title defects can remain hidden for years and then cause problems for buyers long after the land is paid for and after the seller has died or become insolvent.

Closing the Sale

Closing a real estate sale is a technical operation which includes carefully drafting papers to carry out the intent of the parties; meeting the requirements of the title opinion; the proper signing, witnessing and acknowledgement of the papers; the delivery of the purchase price; and delivery and recording of the papers.



The cost of legal advice is small compared to the large sums which could be lost by a buyer acting without the advice of an attorney in closing the sale. Unnoticed or misunderstood language in legal documents could impose a heavy financial burden on an unsuspecting buyer. A lawyer is trained to discover and recognize these hidden problems.

Prior to the buyer delivering the purchase price, the public records should be examined to make certain that no title transactions have been recorded after the last extension of the abstract, but before the actual delivery and recording of the deed giving the buyer title to the property. In other words, the abstract or title insurance commitment

should be updated to the date of closing to make certain there are no additional liens or encumbrances which could adversely affect the title to the real estate.

What expenses may I expect?

Without an agreement to the contrary, the seller and buyer customarily assume certain expenses in the sale of real estate. The manner in which they are apportioned should be set out in the contract of sale. For example, real estate taxes for the current year are usually prorated to the date of sale.

The expenses if the seller normally include:

- ✓ The cost of compiling or extending an abstract of title for the buyer.
- ✓ The cost of preparing the deed.
- ✓ Nebraska Documentary Stamp Taxes for the deed.
- ✓ The correction of any defects in the title as disclosed by the title examination made by the buyer's lawyer
- ✓ Recording the release of seller's mortgage or deed of trust prior to closing.
- ✓ Repairing any termite damage evidenced by a termite inspection

The expenses of the buyer normally include:

- ✓ The cost of a title examination by a lawyer
- ✓ The cost of preparing a mortgage, if any
- ✓ The expense of recording the buyer's deed to the real estate
- ✓ Cost of survey
- ✓ Cost of termite inspection

If you plan to buy a home, your lawyer can advise you as to the type of deed that will best suit your circumstances, and the way in which you should take title to the property (in joint or single ownership, for example). Good legal advice is important and can save you both time and expense at all stages of the transaction, from the time of drawing the contract to the recording of the deed.

This pamphlet, which is issued to inform, not to advise, has been prepared and published by the Nebraska State Bar Association. It is distributed by those who want to help you obtain your rights under the law.



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