

Purchase Agreement

A house is one of the most important purchases most families make in a lifetime. Once you have found a house within your budget, one that meets your needs, and you have an idea of the size mortgage you can get, you are ready to negotiate the purchase. Before you sign a binding contract, consider the following points.

Existing House

If you want to buy an older house, you negotiate with the seller directly or through a real estate agent.

As a potential buyer, you will probably make the first offer less than the seller's asking price. The real estate agent or your attorney can help you decide on a realistic purchase offer. (Remember, the real estate agent is the seller's agent, not the buyer's. So do not reveal your "top dollar" to the agent in the negotiations.) The final negotiated price should reflect the condition of the house and its value to you.

A written purchase offer, also called a contract or earnest money agreement, is a legally binding document. It should be drawn up and/or checked carefully by your attorney before you sign anything. Be sure you understand all clauses and conditions of the contract before you sign it.

In addition to the price you offer the seller, your purchase offer should include a legal description of the property, the names of the parties involved, approximate closing date and date of possession, amount of deposit or earnest money, and other clauses relating to the sale of that particular property.

The purchase offer should also include the following conditions:

- The contract is subject to your ability to get necessary financing. This clause specifies the amount of the mortgage, interest rate, and term. If you can't get the financing you specify, your full deposit is refunded.

- If the appraised value is less than the agreed price, the contract is void and your full deposit is refunded.

- The seller is responsible for providing a marketable title by a warranty deed or a special warranty deed to the property and may cover the cost of any required survey.

- The contract should specify who is to pay the fees related to closing as well as taxes, assessments, and other charges against the property.

- The property should be free and clear of restrictions and zoning regulations that would prohibit or restrict your intended use.

- Include all items of personal property, for example, appliances, furnishings, carpeting, draperies, and fixtures (such as wood-burning heater, fireplace equipment, or curtain rods) you intend to be in the house if your offer is accepted.

- The seller is responsible for insuring the property until the closing. The seller maintains the property, making necessary repairs as needed until the closing.

- The electrical, mechanical, plumbing, and other systems included with the sale shall be in working order for at least 30 days after the closing. All wiring and plumbing, including the septic system if applicable, shall conform to all codes.

- The roof is to be free of leaks and if there is a basement, it is to be free from seepage.

- The structure is to be free of termites and other wood-destroying insects, as well as free from insect damage, water rot, dry rot, and these kinds of things.

- A detailed list of any defects the seller must correct before the closing.

- A specified fee is charged for each day the seller continues to occupy the property after the closing.

- If the seller doesn't go through with the contract, the buyer is entitled to damages. The

damages may be specified as the amount of the deposit or more.

- Specify your deposit is to be returned to you, noting when it will be returned if any of the conditions of the contract are not met or if the seller is unable or refuses to perform conditions of the sales agreement.

This list does not exhaust all the considerations that must be made. Different localities may have different legal requirements, and individual pieces of property may raise other, more complex questions.

To gain the greatest amount of protection, it is best to have your attorney draw up your purchase agreement. Depending on the circumstances, your attorney may suggest other items be added to the purchase contract.

The seller may accept or reject your offer. If it is accepted, you and the seller will sign the contract and you will be expected to put up earnest money (make a deposit). Earnest money deposits vary from \$500 to \$1,000. The deposit is held in escrow by the broker or attorney until the closing, when it is applied to your down payment. You forfeit the deposit to the seller if all terms of the purchase offer are met and you decide not to go through with the sale.

Counter Offer

If your offer is not acceptable, the seller may make a counter offer, when the seller offers the house at a price lower than the asking price but higher than your offer. Depending on the difference between the seller's price and your offer, you and the seller may negotiate until an agreement is reached, if possible. These negotiations center on the price and the conditions set forth in the purchase offer and usually are handled by the brokers involved.

New House

If you build a new house, you will sign a contract with the builder to build your house by detailed construction specifications. The contract also states, among several other things, a specified lot for the house, as well as a certain date the house is to be completed and you can move in.

When the contract is signed, you will make a deposit (earnest money). The deposit is applied to your down payment at the time of closing.

The contract might be a standard form offered by the builder. Have your attorney review the contract, or have him/her draw up a contract for you and the builder. In either case, **do not sign anything** until you completely read and understand all clauses and conditions of the contract.

Before negotiating with a builder, be sure of his/her reputation as a competent builder. Also, you need to have a written commitment from a lending institution for your mortgage, if you need a mortgage.