
Volunteer Lawyers Project
Nebraska State Bar Association

Buying a Home



Buying a home is one of the biggest financial decisions a person will make in his or her life. 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. Common alternatives include condominiums and townhouses. These are multi-family dwellings where all of the owners share both the benefits and upkeep of common areas, while owning their own living units individually. If you are buying one of these alternative dwellings, be sure you know what you are getting for your investment, what future assessments you can expect for upkeep of the property, and the restrictions and requirements of the association that manages the property.

Whatever kind of home you are looking for, you should consider the restrictions on the property. Common restrictions include zoning ordinances (local laws which limit the use of property in specific areas; for example, can you operate a business out of your house); 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 “purchase agreement,” which is a legally binding contract. The contract should set out all terms of sale. Real estate transactions are required to be in writing, under the Statute of Frauds. Anything left out of the writing, even if agreed upon in the discussion leading to the sale, is unenforceable. As with all legal documents, real estate contracts are complex; it is good practice to use a real estate attorney to draft them for you or, at least, review the proposed agreement.

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

- Parties to the agreement (Buyer and Seller)
- Legal description of the property and an indication that it is to be sold (not just the street address)
- Purchase price and method of payment (including down payment, any special terms and provisions as to the types of financing the buyer will accept, and whether financing is a precondition to the contract)

- List all items included in the sale (including removable items such as appliances and drapes)
- Title insurance (including who pays for it) or date abstract is to be furnished to the buyer for examination by his attorney.
- Payment schedule (dates payments are to be made and amounts of payments)
- Date possession is to be given
- Type of deed to be delivered
- Closing date (date deed is to be delivered)
- Home inspection (is there a home inspection and is the sale conditioned on it)
- 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
- Signatures (both parties should sign, including spouses, and notarized)

This list is not intended to be complete; it only includes the basic things that should be included in the contract. Failure to include necessary items can result in problems for both the parties. Some examples of problems include: a contract which does not have the seller furnish an abstract or title insurance, leaving the buyer with the expense; a contract describing property by street address may result in a question of the property to be sold; failure to recognize existing restrictions may result in a buyer finding himself obligated to accept land he cannot use in the manner he had hoped, due to zoning, easements or other restrictions.

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. Generally, brokers are agents for the seller; if buying, know who the broker represents. Brokers 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. However, these forms may not be right for you. Ask an attorney to review them to meet your needs.

What is an abstract of title and title examination?

In the past, a common method of showing marketable title to real estate was the use of an “abstract” and “title examination” of that abstract by an attorney.

An abstract of title 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. Possession of an abstract does not create ownership of the real estate it is related to.

A title examination is when a lawyer examines an abstract and writes an opinion to the buyer stating the lawyer's conclusions as to the ownership of the land, any existing defects in or charges against such ownership, and what would be required to make a good record title.

Today, this method of examining an abstract is less common in real estate sales. Instead, people obtain title insurance to protect from defects in title, essentially guaranteeing marketable title to the real estate.

What is title insurance?

A convenient alternative to an abstract of title examination by a lawyer is to buy a title insurance policy on the property from a title insurance company. Who pays for this policy is negotiable; it should be included in the purchase agreement (often, the cost is equally divided between the buyer and the seller). 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 that the buyer 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.

May a warranty deed be substituted for title insurance or title examination?

A warranty deed is not a substitute for a title examination. A seller may deliver a warranty deed to the buyer of the property being transferred. This deed guarantees that the seller is providing the buyer with good title, free from encumbrances other than those stated in the deed, and possession to the buyer as against all others. Practically speaking, this protection may be limited, 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. However, title defects can remain hidden for years and cause problems for buyers long after the land is paid for and after the seller has died or become insolvent. Thus, a title examination or the purchase of title insurance should be done.

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 acknowledging of the papers; delivering the purchase price; and delivering and recording 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. Lawyers can help spot these issues and fix them when drafting documents.

While the sales contract implies marketable title, once a buyer has accepted the deed, they are essentially saying they are satisfied that title is marketable. Therefore, 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.

Additionally, any promises made in the purchase agreement, which cannot be completed by the closing should be stated to survive the closing. If this is not stated, and they are not described in the deed, then they may be extinguished at closing.

What expenses may I expect?

Without a contrary agreement, 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, taxes may be prorated).

The expenses of the seller normally include:

- The portion of the title insurance attributed to the seller, set forth in the purchase agreement
- 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 portion of title insurance attributed to the buyer, set forth in the purchase agreement
- 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).

Mortgage Discrimination

The Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA) protect you against discrimination when you apply for a mortgage to purchase, refinance, or make home improvements

Your Rights under ECOA

The ECOA prohibits discrimination in any aspect of a credit transaction based on race or color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), the applicant's receipt of income derived from any public assistance program, and the applicant's exercise, in good faith, of any right under the Consumer Credit Protection Act, the umbrella statute that includes ECOA.

Your Rights under FHA

The FHA prohibits discrimination in all aspects of residential real-estate related transactions. This includes making loans to buy, build, repair, or improve a dwelling; selling, brokering, or appraising residential real estate; and selling or renting a dwelling. It also prohibits discrimination based on race or color, national origin, religion, sex, familial status (defined as children under the age of 18 living with a parent or legal guardian, pregnant women, and people securing custody of children under 18), and handicap.

If Your Application Is Rejected

If your mortgage is denied, the lender must give you specific reasons why or tell you of your right to ask for them. Under the law, you have the right to:

- Know within 30 days of the date of your completed application whether your mortgage loan is approved. The lender must make a reasonable effort to obtain all necessary information, such as credit reports and property appraisals. If your application is rejected, the lender must tell you in writing.

- Know specifically why your application was rejected. The lender must tell you the specific reason for the rejection or your right to learn the reason if you ask within 60 days. An acceptable response might be: “your income was too low” or “you haven’t been employed long enough.” A response of “you didn’t meet our minimum standards” is not specific enough.

The information in this brochure is for educational purposes only. It is not legal advice or a substitute for legal advice by a lawyer. If you want legal advice, you should contact a lawyer licensed to practice law in Nebraska.

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