

BUYING A HOME

This pamphlet outlines some key issues you need to consider when you purchase a residence without the assistance of a realtor as well as those situations where the seller is trying to sell a residence in a "for sale by owner" situation sometimes called a FSBO. This pamphlet is not intended to provide legal or other professional advice but is intended to familiarize you with some of the issues and terminology you may face when you purchase and/or sell a residence.

Offer and Acceptance or Real Estate Sales Contract

Under Iowa law, a contract for the sale of real estate is only binding if it is in writing signed by the parties. Since the sale of real estate often involves substantial sums of money and the legal issues can be complex, a buyer should consider retaining an attorney to review the real estate sales contract before it is signed by the buyer. A real estate sales contract needs to address price, payment terms, determination of and the manner of transfer of title, a description of the real estate and any fixtures or personal property included in the sale, the possession date and the closing date (which normally coincide), proration of property taxes and other matters.

Normally, an offer and earnest money are submitted by the buyer, and the seller will accept, counteroffer or ignore the offer. The amount of earnest money varies for each transaction. Earnest money should be held in the seller's attorney's trust account or the real estate broker's trust account until closing.

Disclosure Requirements

The Residential Property Seller Disclosure Statement form is required under Iowa law to be given to a buyer once the buyer tenders an offer to purchase a house. It should be completed by the seller to the best of the seller's knowledge. Both buyer and seller should sign two copies of the form and each should retain a signed copy.

With respect to the sale or lease of homes built before 1978, Federal Law requires that the EPA Lead Hazard Disclosure Statement be completed by the seller and signed by the buyer. In conjunction with providing the buyer with the Disclosure Statement, the seller should also provide the buyer with the EPA Lead Hazard Booklet.

Closing Process

Once an offer to purchase is accepted, the seller will need to locate the abstract of title for the real estate and get it updated and extended by an abstract company. The abstract lists all of the documents (e.g., deeds, mortgages etc.) that are part of the public record at the county recorder's office, the courts and other governmental offices that affect title to the property. The extension of the abstract by an abstract company can take several weeks. Abstract extensions to show marketable title in the seller are usually done at the seller's expense. In order to keep track of the abstract (they are expensive to replace), please be sure to get a receipt for the abstract whenever you deliver possession of it to anyone.

Certain matters can affect ownership and enjoyment of a residence which are not a matter of public record and which will not be shown in the abstract, such as rights or claims of parties in possession; the possibility of mechanic's liens or special assessments for recent improvements not appearing of record; to any state of facts which an accurate survey might reveal and any state of facts which might be revealed by a physical inspection or soil test of the property (e.g. nuisances, easements, diseased trees, location of driveways, encroachment of fences, buildings or other structures from adjacent parcels of real estate, and the availability of reasonable and convenient access to the property from an existing public right of way). Many of these matters can become apparent upon inspection or investigation of the residence. Title opinions are usually expressly made subject to such matters.

Buyers should investigate whether any solid wastes, hazardous substances, pollutants, above or below ground storage tanks, drainage wells, water wells, landfill sites or other environmentally regulated conditions exist on the property. Such conditions are not ordinarily shown in the abstract. However, such conditions may result in injunctions, fines, required cleanup or other remedial actions under federal, state or local laws. These laws may impose liens against the property and personal liability against the owner even though the owner did nothing to create the condition and acquired the property without knowing about it.

Once the abstract is extended, it should be delivered to the buyer's attorney for a title opinion. In many cases, if the buyer is obtaining financing, the buyer's lender will engage an attorney to examine the abstract and render the title opinion. Many buyers rely on the lender's attorney's title opinion and do not retain an independent attorney to examine the abstract. In these situations, please be cautious that the lender's attorney is most likely only responsible to the lender and not the buyer. Therefore, if the lender's attorney missed a title defect, the buyer may not have any recourse against the lender's attorney. One possible solution to this problem is to request that the lender allow the buyer to choose an attorney to examine the abstract for both buyer and the lender. The title opinion for the buyer should be at the buyer's expense. The title opinion will indicate, based on the abstract, whether the seller has marketable title to the property. Sometimes, the attorney examining the abstract will note objections in the opinion that raise questions about the seller's title. Most notably would be mortgages, outstanding property taxes and the like. Some objections can be readily cured before closing, but sometimes there can be serious objections that cannot be readily cured.

As a purchaser of real estate, you should consider whether to purchase the protection afforded by an Owner's Title Guaranty Certificate and the optional endorsements to such Certificates. These Certificates are issued by the Title Guaranty Division of the Iowa Finance Authority and may be purchased through a participating attorney. A Title Guaranty Certificate provides certain protection to a buyer that exceeds the protection

available through a title opinion, such as matters which cannot be abstracted or investigated because it is impossible or infeasible to do so, including survey errors, forged or altered documents affecting title, and the legal competency or authority of each person executing any instrument affect the real estate.

The seller is normally responsible for preparing the necessary transfer documents, which would include a Deed, a Ground Water Hazard Statement (GWHS), a Declaration of Value (DOV) and the Closing Statement. The deed conveys the property to the buyer. Normally a buyer will require a warranty deed in which the seller warrants title. A warranty deed warrants title against defects even if they were prior to when the seller purchased the property. Other types of deeds include: (1) a special warranty deed, which only warrants title against defects that arose while the property was owned by the seller; (2) a court officer's deed, which may require court approval and is typically given by an Executor or Administrator of an estate or a Conservator; and (3) a quit claim deed, which provides no warranties of any kind. A buyer should consult with his/her attorney regarding the type of deed appropriate for the transaction. The GWHS indicates whether there are any hazardous wastes, solid waste disposal sites, underground storage tanks, abandoned wells or private burial sites on the property. The DOV reports the purchase price paid by the buyers. On the DOV, any portion of the purchase price for personal property should be separately noted. The GWHS and DOV must accompany the deed when the deed is recorded by the buyer.

In order to prepare the deed, GWHS and DOV, the seller's attorney will need to have a copy of the title opinion, the names of the buyers, the social security numbers for both the seller and buyer, and if there is more than one buyer, whether the buyers want to hold the property in joint tenancy with full rights of survivorship or as tenants in common.

Closing Statement

If the Buyer's lender is providing financing, normally the lender will prepare a closing statement reflecting the purchase price, applicable credits (like accrued taxes, transfer taxes, earnest money, etc.), and the amounts due seller at closing. Remember, the property taxes paid in September and March each year are actually for the prior fiscal year ending June 30 and, therefore, property taxes are always one year behind. Accrued and prorated property taxes are normally taken as a credit by the buyer against the purchase price.

Under Iowa law, the seller is also assessed real estate transfer taxes when the deed is recorded. The real estate transfer taxes are basically \$0.80 per \$500 (\$1.60 per \$1,000) of the purchase price (after the first \$500). The transfer taxes are normally taken as a credit by the buyer on the closing statement. The buyer then pays the transfer taxes when the deed is recorded. The deed is usually recorded at buyer's cost.

Pre-Closing

The condition of title (as shown in the abstract) can change between the date and time of the last extension of the abstract, which is usually recited in the title opinion, and the date of closing. As part of the closing, buyers should obtain from the abstract company an oral update summarizing whether there have been any changes to the condition of title.

Post-Closing

After closing, the buyer or the buyer's lender will want to record the deed, DOV and GWHS. The abstract should be kept by the buyer or their lender.

Real Estate Professionals

You can also purchase and/or sell a residence by using a real estate licensee (e.g., salesperson or broker). If real estate licensees are involved, a sales commission is usually paid by the seller. There are some real estate documents that cannot be prepared by real estate licensees, such as deeds, installment contracts, etc. These documents should be prepared by an attorney. Your lender, real estate licensee, and attorney will all play different roles to assist you in the purchase and/or sale of your residence. You should make use of each of their skills and training and carefully consider their advice.

By no means does this pamphlet cover everything you need to know concerning purchasing and/or selling a residence, and every transaction is different. However, this pamphlet does give you a simple overview of the process.

Material provided by the Iowa State Bar Association