

LawFacts

What you should know about.....



Buying a Home

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What should I consider when buying a home?

The purchase of a home is, to most people, the biggest single investment of their lives. The savings of years of hard work are invested in this one venture. It is, therefore, extremely important for a prospective purchaser to use the greatest caution in selecting a home that will not only provide comfort, but will cause as little worry as possible, both while it is lived in and when it is time to sell.

A house may seem to be ideal in appearance and cost, but it may contain hidden defects that will later detract from its value. This may be true not only of the appearance of the house and its construction, but also regarding the title to the land on which it is located. For example, there may be a right-of-way over the land that permits someone to drive across the property, or zoning regulations may permit the construction of a factory or commercial building on an adjacent lot, or there may be private restrictions affecting the use or ownership of the property or imposing monetary assessments. It is possible that a title problem may prevent a later sale of the property and be very expensive to remove. These are just a few of the difficulties that you may encounter, but they show the importance of checking every detail before you buy a home.

Ask yourself:

- Has the seller given you, either before or after your execution of the Purchase Agreement, the official Residential Property Disclosure Form?
- If the home was built before 1978, has the seller given you the Lead Paint Disclosures required by federal law?
- Are there any serious hidden physical defects in the property? If so how can you be protected against such defects?
- Are there personal property items such as pool tables, area rugs, washers and dryers, or lawn equipment that you would like to include in the purchase?
- What zoning regulations affect the property?
- Have the utilities been installed and paid for?
- Are there any easements or restrictions on the property?
- Are there any unpaid real estate taxes or special assessments, and if so, who pays them?
- How are current real estate taxes and special assessments to be prorated?
- Are there mechanics' liens or other monetary liens against the property?
- Is the seller to furnish a "marketable" title?
- What type of title evidence is to be furnished and who is to pay for it?
- What kind of deed must the seller give?

- What are the terms of payment?
- When can I have possession?
- Who will be responsible for fire or casualty loss if that occurs after signing the contract, but before title is transferred?
- Is title insurance advisable?

What is a purchase agreement?

A purchase agreement is a document that is just as important as the deed itself. It should contain an accurate description of the property and all of the terms of the sale, including the price, the terms of payment, the type of deed to be given, the date of possession, provisions for the furnishing of title evidence, proration of real estate taxes and casualty losses, and matters on which the buyer may want to make the purchase contingent, such as financing, inspections, the sale of an existing residence, etc. In many cases, provisions for items of personal property or fixtures may be needed.

Is a purchase agreement enforceable?

To be enforceable, a purchase agreement must be in writing and must be signed by both the seller and buyer and, if the seller is married, by the seller's spouse. The reason for this is that the seller's spouse has an interest in the property (known as dower rights) that cannot be taken away without consent. Therefore, you should be sure that the agreement you sign is properly binding on both the seller and the seller's spouse.

What is Ohio's Residential Disclosure Law?

Under Ohio's Residential Disclosure Law, the seller of a home, except in limited circumstances, is required to disclose to prospective buyers certain information concerning the condition of the home. The information must be disclosed on a form prescribed by Ohio's Department of Commerce. This form is known as the Residential Property Disclosure Form. The form must be signed by the seller, and the buyer must acknowledge receipt of the form. The seller's disclosure contained in the form is limited to conditions known to the seller and is *not* a substitute for a professional inspection of the home.

The buyer *should* require the seller to provide the form before the buyer enters into a purchase agreement. However, the form *may* be given after the agreement is signed by the buyer. If the form is provided after the buyer has entered into the contract or if the form is not provided to the buyer, the buyer, without incurring any liability to the seller, has the right to rescind the agreement. This rescission right must, however, be exercised before closing and within certain limited time periods. The Residential Disclosure Law establishes other rights, obligations and limitations for both the seller and buyer. To fully understand these rights, obligations and limitations, you should consult an attorney.

Can I get an FHA loan?

You may qualify for an FHA loan even if you have had past credit challenges including a recent bankruptcy. FHA loans are also available to someone who has experienced a foreclosure (usually after two or three years).

FHA loans are generally offered at regular market interest rates, but allow purchasers to buy homes with only about 3.5 percent of the purchase price down. Even though an appraisal and inspection are required, FHA repair demands have been significantly reduced, making FHA loans more appealing to potential sellers as well. Although a mortgage insurance premium is required, it is usually funded into the original loan and is far less than the premiums charged for private mortgage insurance.

Should the title be examined or reviewed by an attorney?

Yes. Before closing, it is essential for the buyer to receive adequate title evidence and have it reviewed by an attorney. The type of title evidence that is provided and who pays for it are matters of contract and community custom. In most communities, an Owner's Title Insurance Commitment and Policy will be provided. A mortgage lender will probably require a lender's commitment and policy. Obtaining an owner's policy and a lender's policy at the same time should reduce the cost. Title insurance is the best protection for a buyer. In a few communities, abstracts of title or an attorney's title opinion may be acceptable forms of title evidence. Both of these forms of title evidence require an examination of various public records and a review of the documents searched. Because the review involves technical knowledge of the law, it should only be done by an attorney.

Should I employ the attorney who examines the title?

To be sure that a title will be examined with your best interests in mind, hire your own attorney. Mortgage lenders may have their own agents examine the title to property for which they intend to lend money. Buyers sometimes assume that this examination eliminates the need for an independent title examination. It does not. A mortgage lender's interest in the property differs from the buyer's interest. The lender demands a margin of value above the amount of the loan, so if foreclosure becomes necessary, some expense in clearing the title would not harm the lender. The mortgage lender knows that most mortgages are paid and that small title defects in those cases will not cost any money; therefore, the lender may be satisfied with a title that still contains some possibility of trouble for the buyer. An independent examination warns the buyer of any possible further cost that may be required to clear the title so that it will not cause problems while the buyer owns the land, or require expense at the time of sale, or cause expense and problems for heirs.

What is title insurance?

Title insurance is a contract between you and an insurance company. Under the terms of the policy, the company ensures that you hold a marketable title to the real estate described in the policy. Title insurance policies cover you against most defects of title; however, exceptions to coverage may be contained in the policy, and you and your

attorney should carefully check what these exceptions mean. The policy provides the maximum amount that the company will pay. This amount, as well as the amount of the premium, is usually based on the purchase price of the real estate.

Should I consider buying a property through a short sale?

A short sale involves a seller whose loan is currently in default or is in danger of becoming in default, and has a payoff balance greater than the home's value. To avoid foreclosure, the seller may ask his or her lender to accept less money than what is owed in order to sell the property to a potential buyer. Although short sales are becoming increasingly common, you should take great care to make sure the seller's lender will accept a short sale, and that the terms of the sale and closing are exactly what the seller's lender was told before agreeing to a short sale. There are income tax and potential future collection issues that may affect a seller who has enjoyed the benefit of a short sale agreement. A final closing settlement statement that differs in terms of purchase price, concessions, costs or fees from what the seller's lender originally agreed to could void the short sale agreement.

Should I buy REO property?

"REO" stands for "real estate owned" and generally refers to property that a lender has obtained following a foreclosure action. Although a bank will always have an inventory of REO property, more REO opportunities are available in a slumping economy and these properties can usually be purchased at great values. Because the REO property has been through a recent foreclosure, you, as the buyer, should get an owner's policy of title insurance. You should also confirm that there are no outstanding utility charges or assessments for government-ordered maintenance or clean-up.

Do I need closing protection coverage?

Ohio law now mandates that closing protection coverage be offered to all parties in a closing transaction – the seller, the buyer, and the lender. For a nominal cost, you may elect to buy closing protection coverage for yourself. An insurance company provides this protection to protect you in case the closing agent steals the closing funds or fails to follow closing instructions provided by the parties. Your purchase of title insurance alone does not protect you against theft or dishonesty, and you may want to buy closing protection coverage before you hand over funds to the settlement agent.

What does closing involve?

Ohio closings occur either in escrow or at a round table meeting. In an escrow closing, the closing agent distributes the funds after they are cleared, and then records the purchase documents at the county courthouse. Some areas of Ohio use the round table closing format. In a round table closing, the parties sit down together at the Realtor's office, the lender's place of business, or the closing agent's office to sign documents and exchange funds. Funds are given to the seller at the end of the closing and purchase documents are recorded after the funds have been disbursed. Local custom usually determines the closing format.

Whether you are involved in an escrow closing or a round table closing, a buyer should ask to see the settlement statement, proposed deed, loan documents and title commitment before closing. In this age of .pdf scanning and email, it is relatively easy to see all your closing documents well in advance of closing so that you may discuss any concerns with your lawyer and request necessary changes.

You should take extreme care when closing a real estate sale. At the closing session, be sure all papers are checked to make sure that the intent of the parties has been carried out.

For your protection, you should consult with your attorney to determine if you need legal representation at the closing.

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