

## PURCHASE AND SALE OF A HOME

The purchase and sale of a home may be the most significant financial decision of your life. This pamphlet discusses some of the more important aspects of that decision.

### I – START WITH A PURCHASE AGREEMENT

The purchase agreement is a binding contract for the sale of the land and structures, like the house (called “real property”), and other items sold with it, like appliances (called “personal property”). The purchase agreement contains, among other things, the seller’s agreement to transfer ownership (called, “title”) to the property to the buyer at a future time (at “closing”), after all necessary documents are drafted, inspections are completed and all other conditions or requirements are fulfilled. The agreement must be in writing and must be signed by the buyer and the seller. Before you sign the agreement, make sure it includes everything important to you. An oral agreement for the sale of real estate is not enforceable. At a minimum, the purchase agreement should identify the parties, include an accurate legal description and address of the property, identify personal property sold along with the real property, and state the price, time of payment and type of payment (e.g., by cash, mortgage, or land contract).

**Offer and Acceptance.** In most home purchases, the buyer makes an offer by signing the agreement and giving it to the seller to consider. The seller can accept or reject the buyer’s offer or propose changes to it. If both parties agree upon all terms and sign the purchase agreement, they have a binding contract, subject to contingencies (see below). Any changes to the offer by the seller constitute a counter-offer. If the buyer agrees with the changes, the buyer and seller should initial any handwritten written changes, or sign a revised version of the agreement which should indicate that the prior agreement is no longer valid or binding.

**What You Are Buying.** When you buy a home, you also buy the land, other structures on the land, and any property rights associated with the land. The sale may also include household appliances or other personal property. It is important that both seller and buyer have a clear idea of what is being sold with the house. The purchase agreement should list these items.

**Deposit.** The buyer will usually pay an earnest money deposit when the purchase agreement is signed. The purchase agreement should state the amount of the deposit, where it will be held (e.g., with a real estate broker or title company), and how the deposit will be applied, returned to the buyer or forfeited to the seller. For example, the deposit may be returned to the buyer if the seller cannot transfer good title to the property, the home inspection is not satisfactory, or another condition or contingency is not satisfied.

**Contingencies.** Purchase agreements may be contingent on various things. Common contingencies include obtaining a mortgage loan to help finance the purchase of the property, review and approval of documents by an attorney, and satisfactory inspection of the property. A contingency allows one party to cancel the agreement under certain circumstances. For example, if the purchase agreement is contingent upon securing a loan and after signing the agreement the buyer is unable to obtain a loan, the buyer, under a properly worded contingency, can cancel the agreement and receive back their deposit. The purchase agreement should spell out contingencies as clearly as possible.

**Financing.** Many buyers go to a bank or mortgage broker to obtain a loan to pay for a portion of the purchase price. Sometimes the seller acts like a bank and sells the home on a land contract, where the buyer pays for the home in installments. If you are considering a land contract, please obtain our pamphlet on land contract sales and consult with an attorney. Another option is for the buyer to sign a lease with a purchase option. This permits the buyer to rent the home for a period of time before deciding whether to buy it. The lease should clearly state if and how any portion of the rent will be applied to the purchase price.

## II – DETERMINE THE PHYSICAL CONDITION OF THE PROPERTY

**Inspections.** The purchase agreement should give the buyer an opportunity to inspect the property thoroughly before deciding whether to complete the sale. Often a buyer employs a professional inspector to examine the property for structural defects, roof and basement leaks, heating, mechanical, electrical and plumbing problems, pest infestation and environmental matters such as the presence of asbestos, radon or nearby contaminated property. Some cities require a government inspection of the home for well, septic or possible code violations. A city inspection, while important, is not a substitute for a private inspection, which is sometimes thought to be more thorough.

**As Is.** Many purchase agreements provide that a used home will be sold in "as is" condition. This means that, with certain exceptions, the buyer assumes the risk of any problems with the home that are discovered after closing. For this reason, a detailed inspection is especially important in an "as is" sale.

**Seller's Disclosure Statement.** Michigan law requires the seller of an existing home to provide the buyer with a Seller's Disclosure Statement *before* the parties execute a binding purchase agreement. A disclosure statement reports what the seller knows about the condition of the property. If a Seller's Disclosure Statement is provided *after* the purchase agreement is signed, the buyer has the right to cancel the agreement by providing notice of cancellation to the seller, usually within 72 hours after receiving the statement.

**Lead-Based Paint Disclosure.** If the sale involves a home built before 1978, federal law requires the seller to provide the buyer with a lead-based paint disclosure form, stating whether the seller is aware of the presence of any lead-based paint in the home. The seller must also provide the buyer with the EPA pamphlet, "Protect Your Family From Lead in Your Home," and allow the buyer an opportunity to inspect the home for the presence of lead-based paint. The parties may agree, in writing, to waive this inspection.

## III - TITLE – WHO HAS RIGHTS IN THE PROPERTY?

"Title" is the legal term for ownership of property. When you buy a home, you receive title to the home and the property.

**Reasons for Title Concerns.** When you buy a home, you want to make sure that you own clear title to the property. Examples of title concerns include rights of tenants, unpaid taxes or assessments, existing mortgages and land contracts, judgments or tax liens. Title to the property may also be affected by easements (which may allow others limited rights to utilize a portion of the property) or building and use restrictions (which limit how the property can be used).

**Deed.** A deed is the legal document used to transfer title to real property. There are various types of deeds; however a warranty deed is typically used when buying a home because it gives the buyer the most protection. By using a warranty deed, the seller guarantees certain things regarding title to the property.

**Title Insurance.** Before closing, the buyer should receive a *Commitment for Title Insurance* which lists the current owner, the property's legal description and recorded easements, building and use restrictions and liens on the property. If there are any problems with title, the purchase agreement should detail how such problems will be resolved between the parties. At closing the buyer should receive an *Owner's Policy of Title Insurance*, which is designed to insure the buyer's ownership of the land. The purchase agreement should state who is responsible for paying for the Owner's Policy of Title Insurance. If possible, the buyer should obtain title insurance "without standard exceptions."

**Survey.** A survey should be obtained to confirm the exact location of the property lines and improvements. Better surveys will also show the roads, easements and any encroachments onto or off the property. A quality survey is often necessary for the buyer to obtain title insurance without standard exceptions. The purchase agreement should indicate which party pays for the survey.

**Other provisions.** Where the property is to be split into 2 or more parcels, located on a private road or encumbered by certain types of mortgages, special language must be included in the purchase agreement. Post closing occupancy and escrows, and other terms and conditions relating to the deal, should always be addressed in the purchase agreement.

## IV – CLOSING

At closing, the buyer pays the seller and the seller transfers title to the property to the buyer by delivering a deed. Most closings are handled by a title company, mortgage company, or a lawyer.

**Closing Statement.** The closing statement is a summary of the amounts paid and received by the buyer, seller and third parties at closing. It contains the purchase price, adjustments for real property taxes and utilities, broker commissions,

{6597592:}

transfer taxes, title insurance premiums, mortgage and lien payoffs and other closing adjustments. Buyers and sellers should review the closing statement carefully to make sure that all dollar amounts are correct, and all charges are included.

**Transfer Taxes.** With a few exceptions, Michigan imposes two transfer taxes upon the seller of real estate, payable when the deed is recorded. The county transfer tax is \$.55 per \$500 of the purchase price. The state transfer tax is \$3.75 per \$500 of the purchase price.

**Real Property Taxes and Assessments.** The purchase price is usually adjusted to give the seller credit for prepaid real estate taxes, and give the buyer credit for unpaid taxes. Special assessments are commonly paid in full by the seller or assumed by the buyer. These adjustments should be stated in the purchase agreement and related in the closing statement.

**Rent for Delayed Possession.** The buyer usually receives possession of the home at closing. However, the seller may ask to remain in the home for a period of time after closing. When this happens, the seller generally pays the buyer rent. Monthly rent usually equals the principal and interest amount of the buyer's monthly mortgage payment, real property taxes and insurance premiums.

**Recording of Deed.** The buyer should make sure that the deed is recorded with the local county Register of Deeds office promptly after closing.

**Bill of Sale.** Just like a deed transfers title to the home, a bill of sale transfers title to appliances and other personal property. Unlike a deed, a bill of sale is not recorded.

**Property Transfer Affidavit.** The buyer must file a property transfer affidavit with the local assessor's office within 45 days after closing. This affidavit discloses the identity of the seller and buyer, as well as the date of transfer and the purchase price.

**Principal Residence Exemption Affidavit.** If the buyer will own and occupy the property as the buyer's principal residence, you must promptly file this affidavit with your local assessor. By doing so you may pay lower property taxes than non-homestead properties. This is sometimes called the "homestead exemption."

**Insurance.** Not only will most mortgage companies require it, it just makes good sense to obtain liability and property insurance on your home. The insurance policy should cover liability matters (e.g., if someone gets hurt on the property) and property damage in the event of a fire or other casualty.

**Escrow.** Occasionally the buyer and/or seller cannot perform all of their obligations at the closing. Documents or money (including rent or water charges) may be placed "in escrow" (which means held by a title company, broker or lawyer and not given to the other party) until all conditions are satisfied.

**THIS PAMPHLET SHOULD NOT BE USED IN PLACE OF LEGAL ASSISTANCE.  
BEFORE SIGNING A PURCHASE AGREEMENT, SEEK LEGAL ADVICE.**

© 2011, 2017 REAL PROPERTY LAW SECTION STATE BAR OF MICHIGAN

Rev. 02/20/2017