

Buying or selling real estate may be the largest single investment of your lifetime. Along with a substantial financial commitment, such transactions involve risks, technicalities, and legal considerations.

This pamphlet is intended to provide you with general information about the basics of buying and selling real estate. It explains essential steps in the process and suggests guidelines for avoiding pitfalls, but it does not attempt to provide specific legal advice. Therefore, if you are not knowledgeable or experienced in negotiating terms, arranging financing, analyzing tax consequences or handling related details, you may want to consult an attorney.

### **HOW DOES THE PROCESS START?**

Before signing any document or paying any money, you should carefully examine your requirements, resources and needs for professional help.

A real estate broker may be indispensable. Although the seller ordinarily hires the real estate broker and agrees to pay the fee, it is possible for a buyer to make such arrangements.

The Washington Administrative Code requires agents to disclose whether they represent the buyer or seller (or both). Verbal and or written disclosure is required before showing homes for sale. In addition, the disclosure must be confirmed in a separate paragraph in a written purchase and sale agreement.

When you buy or sell real estate, you may also come into contact with bankers, title officers, inspectors or other authorities whose function you should understand. Of all your advisers, your attorney is probably in the best position to assist you with each phase of the transaction.

### **WHAT DOCUMENTS ARE USED?**

Various documents are used to specify rights and obligations in real estate transaction.

Preprinted forms, individually drafted forms, or a combination may be used; however, your attorney can assist you in determining which are best for your situation.

### **WHAT IS A LISTING AGREEMENT?**

The usual form of contract between a seller and broker is a listing agreement. It is usually a preprinted form, but the amount of commission, the duration of the agreement and duties of the broker are all items that may be negotiated. There are several forms of listing agreements, with great variation in terms, liability, duties and services rendered.

Most brokers request an exclusive listing, a written agreement entitling the listing agent to a commission regardless of who sells the property. The agreement may also provide for a commission even after the listing agreement has expired, if the property is sold to a prospect produced by the broker during the term of the contract.

An open listing contract may be given to any number of agents, and often allows the property owner to sell the property directly. In the event of a sale, only the broker who has found a buyer receives a commission.

A multiple listing association enables participating brokers to pool listings in order to give maximum exposure to the property.

A broker who produces a purchaser who is ready, willing and able to buy the property on the terms specified in the listing agreement (or otherwise acceptable to the seller) is normally entitled to a commission. The fee (typically a negotiated percentage of the selling price) should be stipulated in the agreement.

Although contracts may sometimes provide for payment of a commission only if a sale is completed (or "closes"), the seller usually must pay a broker who performs according to an agreement, regardless of whether the sale was ever consummated. In other words, if a sale fails to close because a seller reneges, the seller generally must pay the commission.

A broker's role may be negotiated by the parties to the agreement, but the broker is usually the seller's

agent. In representing the seller's interests, a broker must report all offers and proposals. The broker or agent sometimes acts as an intermediary, delivering offers and counteroffers between the buyer and seller. Rates, terms and services vary with the type of listing, geographical area and other factors.

### **WHAT IS A PURCHASE AND SALE AGREEMENT?**

Often called the "earnest money agreement," a purchase and sale agreement is prepared to specify all the terms and conditions of the transaction. This document states the price and terms under which the buyer is obligated to buy and the seller is obligated to sell. It is a legally binding contract which establishes the respective rights and responsibilities of the purchaser and seller. An agreement for the sale of real estate is void and unenforceable unless it is in writing and signed by the buyer and seller.

The buyer often makes a deposit, known as an earnest money deposit. The amount can vary and the deposit is usually applied to the down payment obligation or to the buyer's share of the closing costs.

The importance of the purchase and sale agreement cannot be overstated, and it is advisable to have an attorney review the document before signing. If this is not possible, a condition can be included to provide that the transaction is subject to the approval of the buyer's and or seller's attorney within a specified number of days.

A preprinted form is frequently used for purchase and sale agreements, with specific terms added by completing blanks on the form. A specially prepared agreement or addendum may also be used in place of, or to supplement, a preprinted purchase and sale agreement.

In addition to naming the parties, price and terms of the purchase, a purchase and sale agreement should also include the following items:

- legal description of the property;
- stipulation of who bears costs for such items as closing costs, recording fees, title insurance, etc.;

- complete terms and documents to be used if the seller is supplying financing and receiving security for such financing (with copies of any such documents attached);
- items of furnishings, fixtures or appliances to be included or excluded;
- right of inspection, if any, given the buyer;
- date of possession; and
- conditions under which an offer may be canceled, as well as provisions for return or forfeiture of the deposit.

In the purchase and sale of an existing home, the sellers must complete a disclosure statement regarding the home. The disclosure statement covers a variety of topics, including the condition of legal title, the availability of essential services to the home such as sewer and water, and a listing of the history of significant repairs or changes in the condition of the house. Unless the buyer waives review of this statement, the seller must deliver a completed statement to the buyer for review within a certain time after the purchase and sale agreement has been signed by both parties. The buyer then may elect to terminate the transaction by giving timely and appropriate notice to the seller. If the buyer does not object, the disclosure is deemed to be acceptable to the buyer.

### **WHAT FINANCING AGREEMENTS SHOULD BE CONSIDERED?**

Banks, savings and loan associations, mortgage companies and credit unions are among the institutions which are in the business of lending money to finance the purchase of real estate. Some financing, such as FHA-insured or VA-guaranteed loans, is insured by the federal government and may offer lower finance charges or extended terms of repayment.

As an alternative to a conventional lending institution, a buyer may find a seller who is willing to finance the transaction.

Specific very widely and are influenced in part by money market conditions, the quality of the borrower's credit and income sources or assets of the borrower. Loan costs can also vary, and may include service charges, appraisal fees, title insurance, escrow and legal fees.

If financing is required to complete a transaction, a buyer should be sure the purchase and sale agreement specifies that requirement as a condition of the purchase. Furthermore, the buyer usually has the responsibility for finding a financing commitment by a certain date.

The agreements used to secure a debt with real property are usually lengthy and complex. Such agreements affect the payment of money to a seller, a lender, or both, and establish a security interest in your real property. Even with a "standardized" form, legal advice may be necessary to fully understand the details, obligations and legal consequences of the documents. It may also be necessary for your attorney to tailor certain items to meet your requirements.

#### **WHAT SECURITY INSTRUMENTS MAY BE REQUIRED?**

Several methods and various security instruments maybe used for real estate loans, each with different obligations and consequences to the borrower.

A mortgage and a deed of trust are security instruments that pledge to the lender an interest in your real estate to secure payment of a promissory note. The promissory note acknowledges a borrower's formal obligation to repay the loan. Under some types of security instruments, a buyer who fails to pay on time can lose the real property or may be required to pay additional amounts on the loan.

A real estate contract is an agreement between the seller and buyer that states the purchase price and method of payment, as well as other rights and duties. The buyer usually does not receive a deed (or legal title) to the property until all required payments are made.

In the event of default, payments may be forfeited, and the buyer's interest in the real property may be lost.

#### **WHAT EXPENSES ARE INVOLVED?**

In addition to the loan, there may be other costs involved in buying property. These costs will be itemized at the time of closing. Along with understanding what fees and expenses are owed, you should also be aware of when the amounts are payable and who (buyer or seller) is responsible for specific charges. Typical items include: lender's fees, appraisal fees, inspection fees, title insurance, home owner's insurance, real property taxes, excise tax, recording fees and closing fees.

#### **WHAT TAX CONSIDERATIONS ARE INVOLVED?**

Every real estate transaction has certain tax effects upon the parties involved. Steps may be taken when negotiating the initial purchase and sale agreement to reduce or adjust tax obligations or postpone payments. Federal income tax, estate tax and other tax consequences are complicated and the laws frequently change. Whether buying or selling real estate, advice from your attorney or tax professional is essential in understanding and dealing with tax considerations.

#### **WHAT IS REAL ESTATE TITLE?**

Real estate title is evidence of legal ownership of real property. When buying real estate, it is important to assure your right to occupy, use or eventually resell it without interference. Previous ownership and a title's "marketability" can be verified by a title search.

Title insurance offers protection against financial loss and expense of defending your title in court. Issued by a title insurance company following a search through records of previous ownership (title search), such policies have various terms, provisions and types of coverage. Some risks, such as unrecorded easements or zoning and use restrictions, may not be covered by title insurance.

An attorney can explain policy exceptions and conditions and may help a buyer determine whether additional protections are desirable.

#### **WHAT IS INVOLVED IN CLOSING THE SALE?**

The final stage in the purchase of real estate is called closing. This procedure occurs when the parties sign the final documents required to complete the sale according to terms of the purchase and sale agreement, money is deposited with the closing agent (the company providing the escrow services) and documentation pertaining to transfer of ownership is recorded.

Lenders, private escrow companies, title insurance companies and attorneys usually provide escrow services. Under Washington State's limited-practice rule, licensed limited practice officers can prepare and complete certain court-approved forms for use in closing a loan, extending credit and the sale or other transfer of real property.

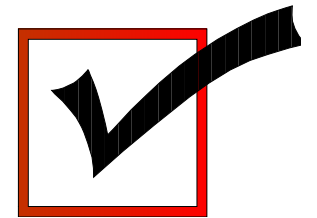
#### **WHERE SHOULD DOCUMENTS BE FILED?**

All documents of ownership of real property and those reflecting a security interest in real property should be recorded in the county where the property is located. This procedure is necessary to protect one's ownership of property. The documents, to be eligible for recording, must meet certain statutory requirements. The company handling your closing will be familiar with these requirements.

All documents pertaining to your transaction should be kept in a secure yet accessible location, such as a safe-deposit box. These important papers may be useful when preparing tax returns or if planning to sell the property.

This pamphlet was prepared by DANO & HARPER, PLLC. It contains general information and is not intended to apply to any specific situation. If you need legal advice or have questions about the application of the law in a particular matter, you should consult an attorney.

# Buying & Selling Real Estate



## What You Should Know

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