

# Buying A Home



THE FLORIDA BAR

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## **INTRODUCTION**

Buying a home may be the biggest single investment of your lifetime. A life's savings may be invested in this one venture.

Thus, it is extremely important that you, the prospective buyer, use the greatest caution in buying a home which will not only provide you with comfort, but will cause you as little trouble as possible while living in it and when you decide to sell it.

For your protection, consult your family lawyer before you sign or buy. His or her training and experience will help you avoid trouble.

## **THE PURCHASE AND SALE AGREEMENT**

The paper first given to a prospective buyer by a real estate broker is the purchase and sale contract. Few people realize that this paper is the most important step in purchasing a home—the details of this agreement determine what you buy and how you buy it. Before signing, read the agreement carefully and discuss with your family lawyer such items as the following:

1. Exactly what land, buildings and furnishings are included in your offer? Are stove, refrigerator and the like included?
2. What details regarding payments should be stated?
3. When can you take possession?
4. Is the seller to furnish you with a good, marketable title?
5. Which kind of deed should the seller give?
6. Who pays for the examination of the title to the property in the event the offer is accepted? Who pays for the abstract of title or title insurance?
7. Have utilities been installed and paid for?
8. Should a surveyor be employed to determine whether the improvements are actually located on the property? Who should pay for the cost of the survey?
9. If a mortgage is to be given, who will pay the intangible tax on the mortgage?
10. If a loan is to be obtained from an outside lender, who will pay the loan closing costs?
11. If termite damage is found, shall the seller pay the cost of repairs?
12. What are the zoning regulations, or restrictions, on the use of the property?

13. What is the time within which the purchase should be accepted or refused? Is the date of such acceptance to be vital to the offer?

14. If your offer is accepted, what steps should be taken with respect to insuring the improvements to protect you, the prospective purchaser, pending the final closing?

15. What persons (husbands and wives) should be required to sign and accept the offer?

16. Are boundary lines properly specified?

17. Are timber, mineral and water rights, if any, properly covered?

18. Who is responsible for paying of taxes?

19. How should the agreement be executed to make it binding?

20. What are the remedies if the buyer or seller defaults?

21. Should the purchase be contingent on any outside matters such as the availability of financing on acceptable terms or the sale of the house which you presently own?

22. Whose responsibility is it to pay for the broker?

23. Whose responsibility is it to pay for governmental special assessments that arise prior to closing?

Your lawyer may not be able to answer some of these questions until examining many public records, including court and governmental files.

It is desirable that your purchase agreement be prepared by your own lawyer or reviewed by him or her before you sign. Only then will you know the agreement covers your requirements.

## **THE TITLE TO REAL ESTATE**

A real estate title is a right to partial or whole ownership to land and improvements upon the land. If you can prove your title against all the world, and if it is for whole ownership, it is a good title. If, in addition, the evidence or proof of ownership is contained in proper public records, it is a good record title. Ordinarily only a good record title is marketable.

When purchasing a home, you should request a "marketable" whole title. Your lawyer, after proper investigation, can tell you whether the seller is able to convey such a title to you. No one can advise you without a proper investigation.

## **WARRANTY DEED**

A warranty deed is a conveyance of title plus some warranties or guarantees. The usual guarantees or warranties by the seller are: good title, freedom from encumbrance other than as excepted, and possession to the buyer as against all others.

These guarantees are not adequate protection since they are no better than the present and future financial responsibility of the seller. A warranty from a financially responsible seller is comforting and desirable. It is not a substitute for a title examination. Title defects have a way of lying dormant for years and perplexing a buyer long after he has paid for the land and after the seller is dead.

## **NECESSITY FOR TITLE EXAMINATION**

A title examination is a study of the abstract of title and sometimes of other title evidence. (An abstract of title is a collection of public records relating to the ownership of a parcel of real estate.) Your lawyer examines the applicable title information to determine who owns the lands, defects in or claims against the ownership and any action needed to secure good record title.

This may seem to be a simple operation. It is not. It requires interpreting numerous deeds, mortgages, wills, court decrees and other instruments; considering the sequence of time of transactions and events affecting the title; and applying laws and court decisions to the various situations disclosed in the applicable title information.

The examination of a title requires a thorough knowledge of many phases of law. An examination of applicable title information may involve evaluating a variety of problems such as the validity of divorces, the effectiveness of foreclosures, the scope of restrictions, the presence of federal and state tax liens and the effect of old claims against the land.

Whether examining an old United States patent or passing on a deed of recent date, the process of examination is, at every step, the consideration of legal problems. Experience can speed up the work, but attorneys almost daily encounter new situations requiring new legal research.

## **TITLE INSURANCE**

Your lawyer can bolster the title examination by issuing or obtaining for you an owner's policy of title insurance. In such a policy, the title insurance company contracts with the insured person named in the policy to

protect the title as insured against financial loss and the cost of defending the title in court.

But like any insurance policy, the coverage is no greater than is stated in the policy. Any policy can list matters substantially affecting title which are exceptions to the coverage and are not insured. Another type of policy, mortgagee's or lender's title insurance, protects only the holder of the mortgage and not the owner.

Your lawyer representing your interest can advise the extent of protection given by your owner's policy. Some attorneys include the policy's cost in an overall charge for all legal services. Other attorneys separate the charge with the cost for the policy being based on the real estate purchase price. This price is the maximum amount for which you are insured. There is only a one-time charge for an owner's policy and its protection continues for as long as you or your heirs own title to the insured property.

## **JOINT OWNERSHIP**

Buyers often have the title to a home placed in a joint ownership arrangement with special words inserted so that title passes automatically to the survivor when one of the joint owners dies. This arrangement is known as "joint tenancy." In Florida, when land is owned jointly by husband and wife, it is known as an "estate by entirety." Owning property in this manner may be a good idea for some, but, again, it may not be good for you. You should determine the income, gift and death tax consequences before having your home placed in joint ownership.

Joint ownership occasionally leads to lawsuits over a right of occupancy, the right to the rents if not occupied by all the joint owners and the duties of the various owners as to payment of mortgages, taxes and cost of repairs and upkeep. If the joint owners are parent and child, or brothers and sisters, the subsequent marriage of one of them may lead to conflicts and complications.

## **IS THE BUILDING UNDER CONSTRUCTION?**

If the home you are buying is still under construction or has been completed recently, special care is required to make sure that all building costs have been paid by the sellers and that you are fully protected as to the provisions of the Florida Mechanics' and Material-men's Lien Law. You should consult your lawyer for full information as to your rights and responsibilities under this law.

This may be true also when repairs on a house have been made recently or building material recently delivered.

Failure to protect against mechanics' liens can result in the property's being subject to liens even though the full contract price was paid.

## **FINANCING YOUR HOME**

Many financing arrangements are available to today's home buyers: variable rate mortgages, conventional mortgages, government insured VA and FHA loans, as well as specialized mortgages designed for specific financial institutions.

Your attorney can help you determine the most advantageous plan, based on your needs and capabilities to repay, including certain tax advantages appropriate to your personal financial situation.

Regardless of the type mortgage loan, you should be aware of specific terms the lender may require such as:

- prepayment penalties
- limitation of your right to sell without lender's consent
- maintenance of insurance levels
- tax and insurance escrow payments
- collateral rights to borrow from another source
- limitations on your use of the property
- lender's right to change interest rates if you assume an existing mortgage
- lender's right to change interest rates during term of the loan

You should also determine if, in the future, you'll be allowed to borrow additional money secured by the same mortgage. You'll want to ask your attorney to explain all costs of the loan, including service charges, appraisal fees, survey costs, escrow fees and lender's attorneys fees.

Remember, when you sign a mortgage note, you are ordinarily responsible for the full payment of the total indebtedness. Even if you later sell to someone who agrees to assume payment of the mortgage, your responsibility continues unless the lender releases you.

If you and your attorney feel that the terms of your mortgage loan are satisfactory, then you'll need to consider a very important step in protecting the investment you are about to make.

## **CLOSING YOUR PURCHASE**

Closing a real estate sale is a technical and complex operation. The careful drafting of papers to carry out the actual intent of the parties is part of the job. Meeting the technical title requirements is another step. The proper signing and acknowledgement of papers is another. Delivery and recording of the papers are usually the last steps.

As a careful buyer, you should insist that your lawyer be present at the closing, checking each detail. He or she knows which points are significant in making your purchase the trouble-free ownership to which you are entitled.

If you need a lawyer and don't know how to find one, many areas in Florida have lawyer referral services listed under "attorneys" or "attorney referral services" in the yellow pages of the telephone book. This service will give you an appointment with a lawyer for a nominal fee.

If there is no lawyer referral service in your city, the statewide Florida Bar service can locate a lawyer for you. You can call this service, which operates only in cities where there is no local program. They will refer you to an attorney for an initial one-half hour consultation for \$25.

The material in this pamphlet represents general legal advice. Since the law is continually changing, some provisions in this pamphlet may be out of date. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

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