

BUYING OR SELLING REAL ESTATE

Offer to Buy Real Estate and Acceptance or Purchase Agreement. 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, you should retain an attorney to review the Offer to Buy or Purchase Agreement before you sign it. A Real Estate Contract needs to address the names of the sellers, the names of the buyers, price, down payment, balance due date, proration of real estate taxes, continuation of the abstract of title, description of the real estate, any fixtures or personal property included in the sale, date of possession and closing date (which normally coincide) and other matters. The amount of earnest money or down payment varies for each transaction. The earnest money or down payment may be held in an attorney's trust account or a real estate broker's trust account until closing.

Disclosure Requirements for Residential Property.

Residential Property Seller Disclosure Statement. A Seller is required to provide a Residential Property Seller Disclosure Statement to a Buyer. This Disclosure must 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.

EPA Lead Paint Disclosure. With respect to homes built prior to 1978, Federal law requires that an EPA Lead Paint Disclosure be completed by the Seller and signed by the Buyer. The Seller should also provide the Buyer with the EPA Lead Hazard Booklet.

Closing Process.

Abstract Continuation. After the Offer to Buy Real Estate and Acceptance or Purchase Agreement is accepted, the Seller will need to have the abstract of title for the real estate continued by an abstract company. The abstract includes a list of all 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. Continuation of the abstract can take anywhere from a few days to several weeks. Continuation of the abstract to show marketable title in the Seller is usually at the Seller's expense.

Certain matters can affect ownership and enjoyment of real estate 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; 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 become apparent upon inspection or investigation of the real estate. The attorney's title opinion which usually state that such matters are not addressed in the abstract of title or the title opinion.

A Buyer should also investigate whether any solid waste, 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 clean up or other remedial actions under Fed-

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eral, 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.

Title Opinion. After the abstract has been continued, it should be delivered to the Buyer's attorney for a title opinion. If the Buyer is obtaining financing, the Buyer's lender will retain an attorney to examine the abstract and render the title opinion. Most Buyer rely on the lender's attorney's title opinion and do not retain an independent attorney to examine the abstract. You are cautioned 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 is to request that the lender allow the Buyer to choose an attorney to examine the abstract for both Buyer and lender, or the Buyer may ask the lender's attorney to address the title opinion to both the lender and the Buyer. The title opinion for the Buyer will 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 notable would be mortgages, outstanding property taxes and the like. Most objections can be readily cured before closing, but sometimes there can be serious objections that cannot be readily cured.

Title Guaranty. As a purchaser of real estate, you should consider whether to purchase protection offered 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 not feasible to do so, including survey errors, forged or altered documents affecting title, and the legal competency or authority of each person executing any instrument affecting the real estate.

Transfer Documents. The Seller is responsible for preparing the Deed, Groundwater Hazard Statement, Declaration of Value and closing statement. The Deed conveys the property to the Buyer. Normally, a Buyer will require a Warranty Deed in which the Seller warrants title against defects, even if they were prior to when the Seller purchase the property. Other types of Deeds including a Special Warranty Deed which only warrants title against defects that arose while the property was owned by the Seller, a Court Officer Deed which may require Court approval and is typically given by an Executor or Administrator of an Estate or Conservator, and a Quit Claim Deed which provides no warranties of any kind. A Buyer should consult with his or 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, the Seller's attorney will need to have a copy of the title opinion, the names of the Buyers, social security numbers and addresses for both the Seller and the Buyer, and if there is more than one Buyer, whether the Buyers want to hold 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 (such as accrued taxes, transfer taxes, earnest

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money, etc.) and the amounts due Seller at closing. Real estate taxes are paid in September and March each year for the prior fiscal year, ending June 30, and therefore, property taxes are always one year behind. Accrued and prorated taxes are normally taken as a credit by the Buyer against the purchase price.

Under Iowa law, the Seller is also assessed a real estate transfer tax (also called revenue stamps) when the Deed is recorded. The real estate transfer taxes are basically \$0.80 per \$500.00 (\$1.60 per \$1000.00) of the purchase price (after the first \$500.00 or fraction thereof). The transfer taxes are normally taken as a credit by the Buyer on closing statement. The Buyer then pays the transfer taxes when the Deed is recorded. The Deed is usually recorded at Buyer's cost.

Preclosing. The condition of the 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, the Buyer should obtain from the abstract company an oral update summarizing whether there have been any changes to the condition of the title.

Postclosing. After closing, the Buyer or the Buyer's lender will need to record the Deed, Declaration of Value and Groundwater Hazard Statement. The abstract should be kept by the Buyer or the lender.

Real Estate Professionals. You can also purchase and/or sell a real estate by using a real estate licensee (e.g. sales person or broker). If a real estate licensee is 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. The lender, real estate licensee, and attorney will all play different roles to assist the Seller and the Buyer. The skills and training of each professional should be used and their advice should be carefully considered.

The foregoing information does not cover everything you need to know concerning the sale or purchase of real estate, and every transaction is different. Please contact our office for specific advice regarding your transaction.

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