

LawFacts

What you should know about.....



Buying a Home

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What should I watch for 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 in regard to 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 require a large sum of money 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.

For your protection, you should seek the advice of an attorney whose training and experience will help you make the purchase and avoid future troubles.

Here are some things to keep in mind when contracting to buy a home:

- Has the seller given you, either before or after your execution of the Purchase Agreement, the Residential Property Disclosure Form prescribed by Ohio's Department of Commerce?
- If the home was built before 1978, has the seller given you the Lead Paint Disclosures required by federal law?
- Are there any serious physical defects in the property and how can you be protected against such hidden defects?
- Exactly what property, real and personal, is included 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 inspections should be made to the property before closing and does the seller have any responsibility for curing any discovered defects?
- What are the terms of payment?
- When can I have possession?
- Has my attorney approved my purchase agreement before I sign it?
- 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.

The important thing to remember is that you should consult your attorney before you sign the purchase agreement. All too often, a prospective buyer will sign a purchase agreement to buy a home and then call an attorney for advice. When this happens, the attorney can only tell the purchaser what rights are covered by the agreement; the purchaser may have signed away many rights. Had the purchaser consulted an attorney before signing, the attorney could have specified what rights should be included in the agreement. When contracting to purchase a home to be constructed or that is in the process of being constructed but is not yet completed, many other important considerations are involved that should be discussed with an attorney.

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, but the rescission right must 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.

What kind of title should I demand?

When purchasing a home, you should demand a "marketable" title, one that is free of all claims by third parties that would be objectionable to a prospective buyer. Your attorney can advise you whether you can obtain such a title.

Should the title be examined or reviewed by an attorney?

Yes. Prior to closing, it is essential that adequate title evidence be provided to the buyer and reviewed by an attorney. The type of title evidence 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. Those 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 you employ the attorney who examines your 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 on which they intend to lend money. Buyers sometimes assume that this examination frees them from 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. 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. The buyer should have an independent examination to warn of any possible further cost involved in clearing the title so that it

will not cause problems while the buyer owns the land, require expense at the time of sale, or cause expense and problems for heirs.

Is a warranty deed a substitute for a title examination?

No. In a warranty deed, the seller warrants the title against the claims of all other persons. If the warranty is broken, it may have to be enforced by a lawsuit. There is always the possibility that the seller may die or go bankrupt before a defect in the title is discovered. Should this happen, the buyer may not receive any benefit from the warranty or from a lawsuit. Although a warranty deed is desirable, and the buyer should insist on this type of protection, the deed alone is not enough. To be safe, the buyer should insist on proper title evidence and have the title reviewed and approved by an attorney.

What is title insurance?

If a title insurance policy is provided, it 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. Most policies cover you against all defects of title whether in or outside of the record; however, exceptions to coverage may be contained in the policy, and you and your attorney should check carefully the meaning of these exceptions. 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.

What is a Torrens Certificate?

A Torrens Certificate is a document that shows title to registered land. Such certificates are used in only a few Ohio counties. Because the Torrens System and the statutes creating registered land and the transferring of registered land are technical, an attorney should be involved in the process.

What does closing involve?

Extreme care should be taken in closing a real estate sale. At the closing session, a final check should be made of all papers to see that the intent of the parties has been carried out. For protection, you should consult with your attorney to determine if you need legal representation at the closing.

What about the new tax credit for first-time homebuyers?

The Housing and Economic Recovery Act of 2008 established a tax credit for first-time homebuyers worth up to \$7,500. The American Recovery and Reinvestment Act of 2009 expanded the first-time homebuyer credit by increasing the credit amount to \$8,000. The Worker, Homeownership and Business Assistance Act of 2009, signed into law on November 6, 2009, extended and expanded the first-time homebuyer tax credit allowed by previous acts, requiring an eligible taxpayer to buy, or enter into a binding contract to buy, a principal residence on or before April 30, 2010, and to close on the home by June 30, 2010. For qualifying purchases made in 2010, the law allowed buyers the option to claim the credit on either their 2009 or 2010 return. This law also authorized

the credit for long-time homeowners purchasing a new principal residence and raised the income limitations for homeowners claiming the credit. At the time this pamphlet was written, it was not known if the tax credit would be further extended or expanded. For more detailed information, please consult with a tax professional or an attorney.

What should I know about the tax credit?

The tax credit:

- applies only to homes used as a taxpayer's principal residence;
- reduces a taxpayer's bill or increases his or her refund, dollar for dollar;
- is fully refundable, meaning the credit will be paid out to eligible taxpayers, even if they owe no tax or the credit is more than the tax owed.

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