

Consumer Legal Guide



Your Guide to Buying a Home



ILLINOIS STATE

BAR ASSOCIATION

ASK A LAWYER

BUYING A HOME

Purchasing a new home will probably be the single largest investment of your life. To protect that investment, it is important that you work with knowledgeable professionals at each stage of the buying process. As you shop for your home, you should also be assembling your “team” of real estate professionals. Each member of your real estate team – your real estate attorney, real estate agent, home inspector, and lender - has a vital role to play in the process. Selecting them with care and consideration at the outset of the process will keep you from making rushed decisions as you start to look for your new home.

YOUR REAL ESTATE ATTORNEY

In recent years, the process of buying a home has become increasingly complex. Retaining a qualified, competent real estate attorney at the outset can save you costly mistakes throughout the process. Ideally, you should bring your real estate attorney on board before you make a purchase, and should consult with him or her before you sign any document. At the very least, if you feel you must submit an offer to purchase before your attorney has the opportunity to draft or review the offer, be sure the offer provides an attorney approval/modification contingency provision granting your attorney a reasonable period of time (several business days) to review and possibly revise the terms of the offer. Because any changes proposed during the attorney approval period may be deemed counteroffers having possible adverse legal consequences, it is best to consult your attorney before you submit an offer. The attorney approval contingency may also be limited by the offer to matters other than dates, purchase price, or other specified issues, thus limiting your attorney’s ability to assist you.

BEWARE: IF YOU SIGN A CONTRACT THAT DOES NOT CONTAIN AN ATTORNEY REVIEW CONTINGENCY, YOU MAY BE OBLIGATED TO PROCEED WITH THE PURCHASE REGARDLESS OF: (a) YOUR ABILITY TO OB-

TAIN FINANCING; (b) THE CONDITION OF THE PROPERTY; OR (c) ANY OTHER VALID REASON TO TERMINATE THE CONTRACT.

If you do not know a competent, experienced real estate attorney, ask your friends and colleagues to recommend an attorney with whom they have had a satisfactory experience in a real estate matter. You can also contact your local bar association and ask for the names of several real estate attorneys in your area. When you contact the attorney, be sure to inquire about the fee arrangement and ask questions about that attorney's experience in handling real estate matters.

Your real estate attorney will be the glue that holds the complex process together. Among other things, your attorney will:

- provide an overview of the process and the attorney's role in that process;
- draft, review, explain and/or negotiate your contract to purchase;
- discuss timing and possession issues, including matters relating to your current lease if you are renting;
- communicate and negotiate repair issues related to your home inspection;
- examine the title commitment and survey to determine that you are purchasing the property contracted for, without encumbrances or title defects you have not agreed to accept;
- explain contract contingencies, if any, and monitor deadlines to make sure those contingencies are met;
- explain mortgage financing options;
- verify and explain tax prorations and other closing figures;
- attend the closing to ensure compliance with the contract and to review the loan documents to verify compliance with your loan agreement; and
- after the closing, review the recorded deed and the final title insurance policy for accuracy.

Much of your attorney's work will be behind the scenes, arranging the closing and monitoring the progress of the other members of your

real estate team to ensure that the purchase progresses as well as possible.

YOUR REAL ESTATE AGENT

Once you have determined the area where you wish to live, you can often save both time and frustration by working with a knowledgeable and enthusiastic real estate agent familiar with that area. Your agent will work with you to identify the characteristics you are looking for in a home and can save you time and legwork by identifying homes that meet your specifications and arranging for you to see them.

Under Illinois law, when you work with an agent to find a home, it is presumed that he or she is your agent unless you sign an agreement to the contrary or the agent performs only ministerial tasks such as responding to questions about a property or setting an appointment to view property that you (and not the agent) have researched and selected. All agents in Illinois must be sponsored by a licensed real estate broker, which is usually a real estate brokerage company, and thus the agent with whom you work may request you enter into an exclusive agreement with his or her broker. Be sure that you understand the terms of the agreement and that your attorney reviews it before you sign it. You should have a clear understanding of how, when, and by whom the broker and agent will be paid for their services.

YOUR HOME INSPECTOR

Illinois law requires most home sellers to provide prospective buyers with a completed disclosure form relating to the condition of the house prior to the formation of a contract. The disclosures on this form include whether the seller is aware, for example, of flooding or recurring leakage problems in the crawl space or basement, of boundary or lot line disputes, or of leaks or material defects in the roof, ceilings, or chimney. Although the disclosure form may contain information of use to you in deciding whether to purchase a particular home, or how much to offer, it is not intended to take the place of an independent, professional home inspection. If you do

not have a home inspection before you submit an offer to purchase (due, for instance, to time and cost factors), you should insist on a reasonable inspection contingency period after the acceptance of your offer (again, several business days) to allow for one or more professional inspections of the property. Here are some additional things to keep in mind:

- Choose your own independent home inspector, in advance, as a member of your team; this will enable you to act quickly during an often brief contingency period.
- Obtain referrals for a qualified home inspector from friends or colleagues, or contact the American Society of Home Inspectors (ASHI) or the Illinois Chapter of the National Association of Home Inspectors, Inc.
- You may wish to have a general inspection, supplemented by specialized inspections – for pests, fireplace, heating system or environmental concerns, for example – as the situation warrants.
- Do not forego hiring your own independent inspector simply because you are obtaining a Federal Housing Administration (FHA) or Department of Veterans Affairs (VA) insured loan, both of which require an inspection as part of the appraisal, or if a city ordinance requires an inspection as a condition of any sale.
- You cannot require the seller to undertake repairs for matters discovered during the independent inspection, but you may be able to terminate a contract for a home with unsatisfactory conditions, or you may be able to renegotiate a price that more appropriately reflects the unanticipated problems.

YOUR LENDER

You should discuss your financial situation in detail with a mortgage lender before you shop for a home. By enlisting this critical member of your real estate team in advance, you will bene-

fit by having a realistic assessment of your price range before you shop. You should consider submitting a formal application for written loan pre-approval. This will give you the ability to shop with confidence and may give you an edge with home sellers.

When speaking with prospective lenders, ask about all loan costs and fees, not just interest rates and service charges (points). Find out whether a prospective lender can realistically meet your closing time frame and that of any financing contingency you may have. Once you have selected a lender:

- Prior to making your loan application, ask your lender what documentation you will need to supply and take it to the application meeting.
- Make sure you do not lock in a rate that will expire before your contract closing date.
- If your lender suggests a co-signer, or a particular method of holding title, consult with your attorney before agreeing.
- Find out whether your lender will require escrows (reserves) for property taxes, insurance, or private mortgage insurance.
- To avoid delays, resist the urge to continue shopping with other lenders for a better rate once you have applied.
- If you are told your loan is approved, expect to see a written commitment and scrutinize it for conditions to be fulfilled (e.g., appraisal, explanation letters, copies of checks) before the commitment is binding on your lender.
- At the closing, review the “good faith estimate” of closing costs supplied by the lender to verify that the various fees charged by the lender are consistent with those you were quoted at application.

Because your attorney should be familiar with the mortgage loan process, he or she can help you understand the information you get from your lender and can monitor your lender to keep the closing on schedule.

THE CONTRACT TO PURCHASE

Once you have selected the home you wish to buy, you must make a written offer to purchase. If your offer is accepted, you will then have a legally binding contract. The contract will govern the transaction by setting forth the rights and obligations of both the buyer and the seller. Other than possibly the deed, the contract is the single most important document involved in the purchase of a home. The contract will include all the terms of your purchase, such as purchase price, amount of earnest money deposit, financing terms, closing date, possession date, personal property to be included in the sale, tax proration, right of inspection, and possible contingencies, such as attorney's approval, inspection, financing, or the sale of your present home. Other concerns that may need to be addressed include existing leases, well and septic issues, and whether the property is being conveyed "as is."

It is essential that you understand the terms of your offer before you unwittingly enter into a binding contract. Your real estate attorney should assist you in preparing and presenting your offer. If your offer is presented to the seller prior to you consulting your attorney, make sure the contract will allow your attorney to review it and modify its provisions, if necessary, as discussed above.

AS STATED PREVIOUSLY, ONCE THE CONTRACT IS SIGNED BY BOTH PARTIES, UNLESS THE CONTRACT CONTAINS AN ATTORNEY APPROVAL CONTINGENCY, YOUR INTERESTS MAY NOT BE ADEQUATELY PROTECTED, AND YOU MAY BE LEGALLY OBLIGATED TO COMPLETE THE TRANSACTION.

YOUR TITLE INSURANCE COMPANY

In most Illinois communities, it is common for the seller to provide you with an owner's title insurance policy in connection with your home

purchase. Your contract should make this a requirement.

A commitment to issue an owner's title insurance policy should be given to your attorney prior to closing. It will show who owns the property, what liens or other matters affect the seller's ownership (such as mortgages, unpaid taxes or judgments), as well as any easements, building restrictions, set-back lines or other matters of record which affect the property. Your attorney will review this title commitment and require that the seller clear up any items that are not permitted by your contract and could adversely affect your ownership rights. After closing, you will be issued an owner's title insurance policy which insures your ownership rights subject to the terms of the policy. Many form offers to purchase real estate include a provision which obligates the purchaser to take the property subject to all existing easements, covenants, reservations, and restrictions of record. If such an offer is signed by the prospective purchaser and accepted by the seller, the purchaser has already agreed to accept any objectionable encroachments which may exist, all without knowledge of their existence. This common occurrence once again demonstrates the necessity of having qualified legal counsel to assist you throughout the entire process.

If you are obtaining financing to purchase the property, your lender will require that the title company issue (at your expense) a title policy insuring the validity of your lender's mortgage. This is commonly called a loan policy or mortgage policy. It insures only the lender's interest and does not take the place of the owner's policy issued to you. The commitment for mortgagee's title insurance should be sent to the lender sufficiently in advance of the closing.

THE OTHER PLAYERS

There are other professionals who may be needed as part of your real estate team. They usually will perform a specific role and will not be involved in the transaction on an ongoing basis. They may include:

- A surveyor, who determines the location of the improvements in relation to the lot lines and establishes the location of easements, building or setback lines, and improvements on adjacent properties. The contract will govern who is responsible for providing and paying for the survey.
- An appraiser, employed at your expense by your lender to determine that the value of the home corresponds with the purchase price. If you are buying without the services of a real estate agent, you may wish to employ an appraiser to give you an idea of the value of the home before you make an offer to the seller.
- Your tax advisor or estate planner can work with your real estate attorney to assist you in determining how best to hold title or to maximize tax deductions for personal financial or estate planning purposes.
- The escrow agent or closer, usually an employee of the title company, who acts as your lender's agent to ensure that the lender's requirements are met before the loan proceeds are disbursed.

PRE-CLOSING CONSIDERATIONS

If there is more than one buyer, your attorney will explain to you the various title holding alternatives available to co-owners, which include tenancy in common, joint tenancy, or tenancy by the entirety. If you are unmarried and living with a partner, your attorney may suggest that you enter into a written agreement with your co-owner to spell out such things as sharing of expenses, unequal contributions, and terminating the co-ownership. Inheritance rights will be determined by the form of ownership as well as your individual estate plan and state law.

Your real estate agent should help you arrange a pre-closing inspection so you can determine that the seller has completed any repairs required by the contract and that the property is

otherwise in the same general condition as when you entered into the contract.

The contract will control the time of transfer of possession from the seller to the buyer. However, circumstances sometimes prevent absolute compliance with the contract. Rather than terminating the contract or changing the closing date, the parties may wish to negotiate either pre-closing occupancy by the buyer or post-closing occupancy by the seller. Your attorney will point out the risks inherent in such situations and should draft an agreement to address such concerns as occupancy charges, utility payments, insurance considerations, maintenance and repair, penalty provisions, and other consequences of non-owner occupancy.

THE CLOSING

Once the mortgage loan is approved, the title insurance commitment is issued and approved, the property is surveyed, and the final inspection of the property is completed, you are ready to close. The closing will take place at the office of the title insurance company or at the office of one of the attorneys. The closing should be attended by you, your attorney, the seller, the seller's attorney, the real estate agents, the escrow agent or closer, and may include the lender.

There will be many mortgage loan documents and other closing documents to review and sign at the closing. Your attorney will explain these to you and make sure that they are accurate and appropriate. You should receive copies of all documents you sign at the closing, as well as the keys to the purchased property, garage door transmitters, and any warranties and instruction manuals the seller may have available.

SPECIAL CIRCUMSTANCES

This brochure has discussed the basic type of a home purchase – an existing single family home purchase with conventional mortgage financing. A variety of special circumstances, such as new construction, condominium purchases, cooper-

atives, homeowner and other associations, installment sale (often called land sale contracts or articles of agreement), seller financing, lease-option, by-owner sale, senior/retirement housing, tax-deferred exchange, multifamily buildings, land trusts, estate planning trusts, planned unit development, condominium conversions, and even cash transactions, require additional consideration that are beyond the scope of this brochure. The “standard” forms used in your community may not be appropriate for all of these situations and may not sufficiently protect you. Your real estate attorney can explain the distinctions, considerations, and risks of these types of transactions, and tailor your contract to suit your needs and afford you the protection you need.

This pamphlet is prepared and published by the Illinois State Bar Association as a public service. Every effort has been made to provide accurate information at the time of publication.

For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call Illinois Lawyer Finder at (800) 922-8757 or online **www.IllinoisLawyerFinder.com**

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