

Para 201-You & the Law

Chapter 4-Buying & Selling a Home

Monday-9/14/09

**Elements of Real Estate: ownership includes:

- (1) Land & everything under it
- (2) Anything of value on land (crops, timber)
- (3) Airspace over land, and
- (4) Improvements on land (buildings etc)

I. Sale or Purchase of Home:

- A. Home: includes not only houses but condos, townhouses, cooperatives
- B. Purchase is favorable over renting usually: tax benefits, investment (build-up of equity)
- C. Buyer's market: when home sales are slow (right now—reduction in prices, decline in building permits, increase in unemployment, increase in foreclosures)
- D. Seller's market: when homes are selling fast, few homes on market, & local economy is good

II. Parties to Real Estate transaction: buyer, seller, lender, attorney, real estate agent, inspector

- A. Real estate agent: listing agent & agent showing property are agents for seller; buyer's agent works for buyer
--check professional memberships, look at their record for last 6 months, check Multiple Listing Book and compare, check web-sites, your comfort level
- B. Attorneys: needed primarily for contracts/ get help early in process

III. Listing Agreement: binding contract between seller and agent-includes:

- length of listing period
- commission rate
- responsibilities
- atty should review this before seller signs
- review different types of agreements-p. 6 (bottom) & p, 7 (top)

- A. Fee: usually 5% to 7% of sales price but some internet agents advertise rates as low as 2%--commissions are negotiable in seller's market

B. Limit listing agreement to 90 days so you can try another agent if first doesn't work out

IV. Buyer's Real Estate Agent:

- not listing or seller's agent
- look for experience in handling closings
- have a price range and stick to it
- may require a nonrefundable fee (don't tie fee to sale of home)

V. Buyer's advance work: attend open houses, pre-qualify with lender (helps zero in on price range)

VI. Buying & Selling Without Agent:

A. Disadvantages:

- (1) Home is not in Multiple Listings Service
- (2) Seller is responsible for advertising, showing home
- (3) Seller must negotiate sales and contract terms

B. Advantage of FSBO (For Sale By Owner): usually lower price for buyers

C. Foreclosed properties: (REO-Real Estate Owned by Lender):

- (1) Some institutions advertise foreclosed properties & local agents may have list
- (2) Fannie Mae- has toll-free number to get list of foreclosed properties in your area
- (3) FHA sells foreclosed properties through auctions announced in papers/ads

VII. Disclosures: seller's obligations to buyer:

- A. Set by state law
- B. Some states require disclosure of material defects(leaks in roof, basement problems, radon)
- C. Some states require disclosure of equipment defects: furnace, air-conditioning, hot-water heater
- D. Most states do not require disclosure (CAVEAT EMPTOR:let the buyer beware)

E. Agents may have ethical duty to disclose known, pertinent defects

VIII. Attorneys:

- find through Internet, ads, real estate agents, friends, family
- will give estimates of fee: hourly, flat-rate, percentage

IX. Setting the Price

A. Seller's view: check comparables in real estate listings, web-sites, appraiser
--consider amenities/location
--lenders have their in-house appraisers

B. Buyer's view: consider income level, credit history, current interest rates,

C. Prevailing rule says home should cost no more than 2.5 times your annual income; i.e. if your annual income was \$50,000, your limit would be \$150,000

D. Lender's view: like to see monthly mortgage payments no more than 28% of your gross income
**see worksheet on p. 15 to calculate how much mortgage lender might offer you

E. Payments may include: mortgage, insurance, real estate taxes,

F. Down Payments: usually 20% of purchase price to avoid PMI (Private Mortgage Insurance) which you must carry until you have built up at least 20% equity
--lender must cancel PMI when mortgage balance is below 78% of home's original purchase price

G. Closing Costs: between 4% to 6% of loan amount usually:
--includes atty's fees, lender's appraisal, lender's title insurance, escrow deposits for real estate taxes, insurance
--seller responsible for agent's commission, title insurance policy, points

H. Poor credit history: check your credit history: see web-sites on p. 17-you can get free summary of your report but may have to pay fee for full credit report
--credit agencies maintain negative info in your report for 7 years and bankruptcy info for 10 years

X. Making the Offer-Purchase Contract:

- A. Purchase agreement: includes your offer, inspection rider, mortgage-contingency clause, attorney-approval rider
 - should include time limit
 - usually earnest money paid
 - this may be only the start of negotiations

- B. Earnest money: buyer's commitment to purchase; often goes toward down payment if sale closes

- C. Purchase agreement: binding legal document if both parties sign
 - includes: date, price, items included in sale, items excluded from sale, closing date, mortgage-contingency clause, inspection rider, attorney-approval rider, legal description of property, title assurances, provision for return of earnest money if sale doesn't close, provision for walk-through inspection possession date, terms of escrow, insurance coverage, parties' signatures, etc

- D. Inspection rider:
 - (1) Right to have professional home inspector & if defects found, right to cancel
 - (2) Inspection rider which gives seller right to repair any problems uncovered by inspection or reduce purchase price

- E. Attorney-Approval rider:
 - "Subject to Approval by Parties' Attorneys Within ____ Days"
 - could be limited to legal items such as the state of the title

- F. Mortgage-Contingency rider: 30 to 60 days usually
 - to allow buyer to obtain financing
 - might specify type of mortgage (fixed, variable), interest rate, amount

- G. Possession: agreement should specify date of possession and rent owed for any period after that date

- H. Home Inspections:
 - includes: plumbing, heating, electrical, air-conditioning, foundation, roof, basement, radon, asbestos, lead paint, etc.
 - buyer should accompany inspector
 - inspector not concerned with cosmetics but with structural, mechanical Aspects

--fee usually in neighborhood of \$250 to 500

--if defects uncovered: look to contract: seller repair? cancel contract?
reduction in price?

XI. Financing:

--most buyers must finance with bank or S&L

--seller financing: Contract for Deed

A. Interest rate: lenders determine based on market

--rates available on Internet

--ARM-Adjustable Rate Mortgage: use caution

--pays to shop around: most web-sites have mortgage & home finance calculators

B. Land Contract: seller financing -K/D-

--legal title not transferred to buyer until paid in full

--seller records "Satisfaction of Mortgage" in Recorder's office

C. Bridge loans: allow buyer to buy another home while waiting to sell present home --usually high interest rate

D. Fixed-Rate loan: 15-20-30 years

--interest rate remains fixed for term of loan

--mortgage payments: at first, most of payment is applied to interest; later, more goes to principal

E. Adjustable rate loan: interest rate adjusted/changed over course of loan

--tied to Index not under control of lender

--should include maximum allowable increase

--ARM's- usually adjusted once a year

F. Balloon Loan: short-term loan—usually 3 to 7 years

--must pay loan in full on balloon date

G. FHA & VA loans: insured low-interest by fed gov't & approved lenders

--for borrowers who may not qualify for conventional financing

H. Negative amortization: installment payments don't cover all interest due each month; unpaid interest added to principal & debt increases rather than decreases:AVOID

