

BUYING A HOME

Introduction

For most of us, buying a home represents the biggest purchase of a lifetime. Carrying out such a big decision, and getting it right, involves educating yourself and getting appropriate professional help. Many people, including lawyers, are available to provide that help. In this booklet, The Missouri Bar will give you some ideas on how to help yourself, and some suggestions on how to use the professionals in the real estate industry to achieve your objective.

Educating Yourself

Most real estate professionals agree that buying a home on a whim or impulse is a dangerous practice. Therefore, the first step in purchasing a home is defining your needs and capabilities. What size and other amenities do you need in your new house, such as number of bedrooms, bathrooms, storage, and family space? What do you want outside the house in terms of yard, garage, or garden space, as well as intangibles, such as neighborhood, area and schools? At the same time, you should determine how much house you can afford. This involves a careful calculation of how much cash you have available, and how much you can borrow. Most banks will welcome the opportunity to “pre-qualify” you for a loan by taking your loan application, reviewing your finances, and telling you the maximum amount they will lend you. A bank’s prequalification will provide one indicator of the maximum price house that a buyer can acquire. However, prequalification is no substitute for evaluating one’s own goals and budget to determine a monthly payment that a purchaser can realistically afford, and the time within which a purchaser would like to have paid off the mortgage.

Where do you want to live? You should consider factors such as proximity to work (travel time), style of the neighborhood (city, suburban, old, new, subdivision) and choice of school (public, parochial, private). The more time you spend educating yourself and “looking around,” the better decision you will make. Check out the real estate ads, drive around your favorite neighborhoods and survey available homes, and check out community resources. School districts are another factor that may affect the long-term value of your home. Realtors can be an invaluable resource

in assessing neighborhood characteristics, and their effect on a home's value, although a qualified appraiser is the only person qualified to give an accurate opinion of value. Local realtors frequently have a familiarity with the region, and can locate areas within your price range with the amenities each buyer is seeking.

Getting Help

Throughout Missouri, real estate agents earn their commission from the seller's funds when the sale closes. You will generally find three types of agents, each of which must disclose to you the nature of the agency:

(a) a **listing agent** represents the seller only, and earns a commission from the seller's funds at the closing.

(b) a **buyer's agent** offers a confidential relationship with you, and helps you negotiate the deal. The buyer's agent also earns a share of the listing agent's commission. If you have your own buyer's agent, you will not see a selling agent. A **buyer's agent** will show you a wide variety of houses, and provide a wealth of information on your preferred neighborhood.

(c) a **dual agent** represents both sides of the transaction, a real conflict of interest. You should be careful about disclosing any confidential information, such as your "maximum price," to anyone except your own "buyer's agent" or your lawyer.

Be aware that realtors may steer a buyer away from homes that are for sale by owner because the realtor wants to make sure they earn a commission, and properties that are for sale by owner are not listed on the realtor's multi-list system.

A **lawyer** will provide you with your best source of confidential legal advice, and will help resolve any legal conflicts that arise during the contract process. Lawyers generally charge by the hour, and thus your lawyer has no financial stake in the outcome of your negotiations. The lawyer's fee typically represents a very small amount when compared to the purchase price, but the lawyer's advice can save you money and disappointment in the long run. Your lawyer will act as your advisor, choose the form of purchase contract, draft the purchase contract, and adapt it to your individual objectives. Your lawyer should also review the title insurance commitment, the closing statement and the title transfer documents prepared by the title company. Contrary to popular belief, residential sale contracts are complex and binding agreements. Every purchaser, regardless of whether they have a realtor or a lawyer, should read their contract, and ensure that they understand it. Any amendments to the standard form contract, other than filling in the blanks with numbers

or checking the boxes, is the practice of law, and should be done only in consultation with a lawyer. A lawyer may also explain the survey, the significance of a boundary survey as opposed to a spot survey, and can explain the title commitment. In most cases, lawyers will not profess an opinion on value or whether or not the decision to buy a house is a prudent decision.

Most real estate loans can be obtained through a bank. However, different rates are available at different banks or through a **loan broker**. A loan broker will charge a fee based upon the size of the loan, and may help in steering you into a specialized loan program. In the same manner that a buyer should look at different houses before deciding, shopping for different loan options is a good idea before settling upon a certain lender. In comparing loan proposals, it is important to make sure that all fees and costs are calculated into the finance cost to determine the best loan option.

The **appraiser**, chosen by your lender, will examine the property you want to buy in light of market conditions in the immediate area and the general condition of the house, and will give an opinion of value based upon an established methodology. The appraiser primarily protects the bank from making a loan on overpriced property, but this may protect you, also. Generally, if the appraisal does not equal or exceed the contract price, the bank will likely not fund the transaction, and the standard contract will let you cancel the deal, provided that the contract was written as being contingent upon financing.

The **title company** searches the public records to determine whether or not it is willing to ensure that the seller actually owns the property. If the title company considers the title “marketable,” it will issue a title insurance policy to the bank, and to you, if you request one, and will prepare all of the documents necessary to complete the transfer of ownership, called “the closing.” The title company charges a fee for its services, and a premium for the title insurance policy based upon the purchase price. A title policy may exclude significant risks from coverage, such as encroachments. An attorney can explain these exclusions and may be able to negotiate the removal of some exclusions.

A **surveyor**, of course, prepares a survey of the property. In many transactions the surveyor performs only a spot survey. A spot survey is created from the plats on record without a surveyor actually examining the property, whereas a stake survey or boundary survey is created where the surveyors mark the corners of the lot with stakes. Where only a spot survey is performed, the title insurance company will exclude coverage for any encroachments that would have been determined by a stake survey.

Spot surveys are, of course, cheaper. However the piece of mind of a stake survey is often worth the price.

Building inspectors, provided for in the standard purchase contract, come in various specialties. A general building inspector will look for defects in the house itself, especially structural problems. Many building inspectors have limited training, and therefore a buyer should ask for the inspector's qualifications. In the event a buyer has any structural concerns after speaking with a building inspector, they should seek additional consultation with an engineer. Each purchase generally also requires a termite and pest inspection, and an inspection for gas appliances. Some home buyers ask for a radon inspection. Radon is a potentially carcinogenic gas found in underground unventilated areas in some areas of the state. The residential sale contract usually sets forth a very rigid time frame for performing inspections. Failure to notify the seller of defects revealed by the inspections within the designated time will cause a waiver of these defects. The buyer generally pays for all of these inspections, but their modest fees represent a good investment in making the right decision about buying a house. In the St. Louis region, the seller generally pays for the municipal and gas inspection.

Getting a Deal

Once you have educated yourself and have a good idea of the house you want, then you need to gain more information about the house before you make an offer. If the seller provides a seller's disclosure statement, then the seller has the duty to disclose all "material" defects, ones which would cause you to change your mind about buying the house. In most parts of Missouri, the listing agent has available a printed questionnaire that makes it easier for the seller to provide truthful written disclosure. You should expect to see this disclosure form completely filled out. The disclosure statement is not a substitute for qualified inspectors, and does not include all aspects of the property, such as the health of trees or the seller's opinion of his neighbors. If the seller does not provide a disclosure statement, the buyer should be very cautious.

One should also inquire how long the house has remained on the market. The real estate agent can easily get this information. The price should fall within the range you have already determined, or within your borrowing capacity, as determined by the bank, if you pre-qualified. A buyer and seller rarely agree upon the purchase price at first, and careful negotiation can save you a substantial amount of money. Your lawyer or buyer's agent can give you realistic advice on how much of a negotiating range to expect,

and can help you formulate your first offer. A seller's agent or dual agent should not be consulted on price negotiations. Negotiations will involve, most importantly, the purchase price, but may also include any number of contract terms, like the size of the "earnest money" deposit, the time limits, closing date, and clauses to deal with special situations.

Under Missouri law, only a written contract will bind the parties to the deal. In most areas of Missouri, real estate agents will generally use the same printed form for a purchase contract. The standard contracts try to anticipate most of the problems that arise during a transaction and provide a way of dealing with those problems. Your lawyer or buyer's agent can prepare the contract for you, and make sure that it meets your objectives. For example, most home buyers need to borrow money to finance the purchase. A "loan contingency" in your contract will let you out of the deal if you cannot get the loan you need. Other contingency clauses deal with the necessity of selling your present home, early possession, necessary repairs shown by the inspectors, and other problems. Your lawyer can select the most appropriate printed form for you. Only a lawyer can draft contract language that goes beyond the printed forms. If you and the seller make any changes after you have reached agreement, those changes must be reduced to writing in order to be valid amendments to the agreement.

Getting a Loan

Once you and the seller have come to terms and agreed upon a written contract, then you will turn your attention to financing the purchase. Most sale contracts with a financing contingency require that the buyer apply for financing within a short time of final acceptance of the contract. If you have already pre-qualified for your loan, the loan process will go very smoothly. If you have not already pre-qualified, your banker or loan broker can help you learn about special or subsidized programs available in your area for first-time home buyers or a federally-insured loan under the FHA, VA, or FNMA programs. Any loan applicant should provide complete disclosure of their finances on the loan application, even if the banker does not insist upon it. Under some circumstances it is possible to assume or take over the seller's existing loan, called a "loan assumption." One advantage to a home mortgage is that the mortgage interest is deductible on your federal tax return.

Market rate loans (with no subsidies) come in a variety of forms. The bank loan officer can tell you what kind of a loan is available from that bank, but any buyer should inquire of several banks to obtain the best interest rate and loan provisions. Under federal regulations, the lender

must provide the borrower with a “good faith estimate” of the finance costs, including its fees and charges.

Inspecting the Property

Unless you already know about the condition of the property you want to buy, or would buy it regardless of the condition, your contract should provide that you can have the property inspected and can cancel the contract if the inspection reveals material problems. The inspection clause will provide for at least the following kinds of inspections:

A **building inspection**, performed by a certified home inspection service, building contractor, engineer or architect, can report only on the conditions of the house that the inspector can see. The inspector looks for structural problems, deterioration of the structure, and building code compliance. The inspector may also give an opinion as to necessary preventive or remedial measures, and sometimes will make an estimate of the costs. No one should expect a perfect house, and inspectors almost always find some defects. If the defects do not pose structural problems, the parties will attempt to negotiate for repairs or adjustment of the purchase price before closing, as provided in the contract.

A **termite and pest inspection** will look for both active infestation and inactive evidence of old damage from termites or other wood-destroying pests. The inspector will propose remedial action, if needed, and may even propose a service contract. If the seller already has a service contract in effect, he should pass that on to you before closing.

In any area where natural gas heats most of the homes, the gas company will provide for safety inspections of all **gas appliances**, furnace, stove, and water heater. The inspector has the authority to “red tag” the appliance until the owner makes repairs.

Radon, a radioactive natural gas that percolates up through the foundation, has become a major concern as a possible cancer-causing element. **Radon testing** has become more common in residential sales. It takes about two weeks to gather the test sample, and another two weeks for the test results. Therefore, the contract must provide adequate time for testing, and you must plan to initiate the test immediately. The Environmental Protection Agency has set “safe” levels above which it recommends remedial action.

Many municipalities have a **building code compliance inspection** as a requirement before closing, or before occupancy by a new tenant. The code compliance or occupancy permit inspection looks for a whole different range of defects than the standard building inspection. If the municipality requires such an inspection, then it should be a contingency in the contract.

Reviewing the Title Report

In most parts of Missouri (except St. Louis), the seller orders and pays for the title report, and at closing pays for the buyer's title insurance. The preliminary title report ("commitment"), issued before closing, shows who owns the property now. It may, but not necessarily, show whether the property has any restrictions on ownership or use, such as deed restrictions, easements, and subdivision restrictions. It will show any liens that the seller must clear up before closing. The commitment will also show what the title company requires the buyer and the seller to do in order to complete the closing under the terms of the contract. Reading and evaluating a commitment for title insurance requires legal knowledge, and you should make sure your lawyer has an opportunity to go over the commitment with you as soon as the title company issues it.

Dealing with Surprises Before Closing

Surprises emerging before closing generally involve defects in the physical condition of the property. Even though the seller may have given you a good faith disclosure of his knowledge of the property condition, the inspectors may find conditions or defects of which the seller was not aware. The contract should provide that you do not have to complete the deal if the seller does not repair or compensate you for the defects.

In addition, the preliminary title report may show defects or "clouds" on the title of the property that require action by the seller, possibly even litigation, to make the title marketable. Unless the seller can deliver marketable title, you can cancel the contract.

Most contracts authorize a walk-through by the buyer before closing. This right should be exercised to ensure that the property is in the same condition as when the buyer last saw it, and to see that the seller has made any repairs discussed in the contracts. If any failure to perform repairs or damages to the property is identified in the walk-through, a portion of the sale proceeds should be placed in escrow to pay for the repairs.

Surprises before closing generally require further agreement between the buyer and seller in order to avoid terminating the contract. **You and your lawyer must pay careful attention to the time limits stated in the contract; if you miss a time limit, you may have lost the opportunity to protect your rights under the contract.** If the best efforts of buyer and seller fail to reach an agreement to deal with a surprise and allow the deal to close, then the contract should provide that you will receive a refund of your earnest money.

Closing the Deal

Closing a real estate transaction generally involves two stages closing on the loan, and closing on the title transaction. Closing on the loan means going to the bank and signing the loan and the deed of trust, a document in which you pledge the house as collateral for the purchase loan. The loan officer will explain to you the significance of all of the loan papers that the bank wants you to sign, all of the bank's charges, and the bank's requirements for performance of your obligations. When you have finished the loan closing, the bank will give you an envelope to take to the title company with all of its documents for recording, and a check for the title company. Sometimes the bank sends all of the papers to the title company, where you will sign all of the closing documents in one place.

The title company has a duty to everyone in the transaction as the "escrow agent." This includes the buyer, the seller, the real estate agent, the bank, all lien holders, and anyone else who expects to be paid from the funds available at closing. The title company prepares all of the closing documents and handles all of the money. When you finish the closing, you own the house. The title company, as the agent of the title insurance company, will guarantee that you have marketable title by issuing an owner's policy of title insurance.

Dealing With Surprises After Closing

Even if everything goes smoothly in your residential purchase, after you move into your newly-purchased residence you may learn things that you did not know before closing, that the inspectors did not see, and that the seller did not tell you. When that happens, you should immediately ask your lawyer to review the contract and see what remedies you have. You may also have remedies outside the contract under Missouri law. But no remedy after the closing works as well as full disclosure and investigation before the closing, when you can terminate the deal if you find the seller cannot deliver what he promised in the contract.

Getting What You Pay For

For most people, buying a home represents both a dream come true and a business transaction requiring great care. A buyer can avoid the dream becoming a nightmare by learning as much as they can about what they want to buy, and by seeking professional help. Even if you have gone through the home-buying process before, each transaction presents new problems. Learning through the experiences of others, especially your lawyer and your buyer's agent, will give you the best chance of achieving a happy result.