

# THIS IS THE LAW

## BUYING A HOME

So, you're thinking about buying a home? This investment will be perhaps the greatest you will ever make. It should be made wisely and with the assistance of a professional with experience in the legal process of transferring property and documenting a loan transaction. Each aspect of the transaction will be filled with legal consequences. This pamphlet has been prepared to inform you of some of the considerations to be made in purchasing a home in North Carolina. It is not intended to advise you on any specific problem and does not cover many of the more complex problems of purchasing a home, such as the tax or estate consequences resulting from owning a home in your name alone or jointly with your spouse or with some other person. Before signing anything and before making any deposit, you should consult a licensed North Carolina real estate attorney. Attorneys are professionals trained specifically to assist you and protect your interests in the transaction.



**The North Carolina Lawyer Referral Service (LRS)** can refer you to a lawyer near you. **LRS** lawyers charge no more than \$50 for up to a 30-minute initial consultation. **This is not a pro bono referral service.** We do not make referrals to lawyers who work for free.

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This pamphlet was prepared as a public service by the Communications Committee and is not intended to be a comprehensive statement of the law. North Carolina laws change frequently and could affect the information in this pamphlet. If you have specific questions with regard to any matters contained in this pamphlet, you are encouraged to consult an attorney. If you need an attorney, please contact the North Carolina Lawyer Referral Service, a nonprofit public service project of the North Carolina Bar Association, via phone (1.800.662.7660) or online ([www.ncfindalawyer.org](http://www.ncfindalawyer.org)).

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**THE CONTRACT** • The contract is a very important legal instrument. A verbal contract for the purchase and sale of a home is not enforceable in North Carolina. The contract must be in writing in order to be legally enforceable. Though the instrument may be captioned "Offer to Purchase" or something other than "Contract," if it includes a written dated offer, is signed by you, cites consideration, and is accepted in writing by the Seller, you have made a binding contract.

In preparing and evaluating your contract, some of the matters to be considered other than price and terms of payment are:

- Have all of the owners, buyers and their spouses signed the contract?
- Is the description of the real property adequate to ensure that you will obtain the property you expect to purchase?
- Are all items of personal property which you intend to purchase (stove, refrigerator, draperies, etc.) included in the contract?
- Is the Seller obligated to convey good and marketable title (not just insurable title) by a general warranty deed?
- Is your obligation to purchase conditioned upon the property being free and clear of all restrictions and zoning regulations which would prohibit or restrict your intended use?
- Does the contract provide adequate time for you to obtain necessary financing, and is it conditioned upon your ability to obtain such financing, and does it have sufficient due diligence time?
- Is your obligation under the contract conditioned upon your ability to complete the sale of your present home?
- Does the contract have a sufficient due diligence period to allow you to inspect the structural, electrical, mechanical, plumbing, and other systems and determine that they are in good working order?
- Does the contract provide specifically that your earnest money deposit will be returned to you if any condition of the contract is not met or if the Seller is unable or refuses to perform?
- Does the contract specify who is to pay the fees related to closing as well as taxes, assessments and other charges against the property?
- Are the taxes prorated on a calendar year?
- Is the home in a planned community that is subject to governance by a homeowners association? Have you received a copy of the restrictive covenants? Are you aware of any monthly/annual dues and/or capital assessments for which you may become responsible as a new homeowner?

- Do you understand that in the event of a dispute between you and the Seller over the return or forfeiture of earnest money deposit held in escrow, the broker is required by state law to retain the earnest money (or deposit same with the local Clerk of Superior Court), until a written release from both the Seller and Buyer has been obtained or until disbursement is ordered by the court?

During the due diligence period, you may also want to inspect the home to be sure that it is free and clear of termites and other wood-destroying insects, as well as free from insect damage, water rot, dry rot, etc.

During the due diligence period, you may also want to check for environmental hazards, such as radon or friable (meaning it can be crumbled or reduced to powder by hand pressure) asbestos, lead or lead-based paint, underground storage tanks, and/or other environmental hazards.

During the due diligence period, it is strongly recommended that you order a new survey to gain certainty with respect to your property boundaries, and to reveal any encroachments or setback violations. Also, a new survey will allow you to obtain owner's title insurance coverage that does not exclude coverage for matters that a new survey of the property would reveal.

Have you ever heard the expression "caveat emptor," meaning "buyer beware"? In North Carolina, it is the buyer's responsibility to do due diligence and assure himself or herself about the property before the closing. You may find that you have little or no recourse if you discover things after the closing that you could have discovered beforehand.

**DISCLOSURE** • Except in the case of new homes, the law generally requires that prior to your making an offer to purchase the home, the owner must provide to you a Residential Property Disclosure Statement, signed by you and the owner, (1) stating that the property is being sold with no representations, or (2) identifying (to the actual knowledge of the owner) abnormalities or damage or the lack thereof. You should carefully review this disclosure statement. You should not deliver your offer to purchase the home to the owner until you are satisfied.

If the owner does not deliver the Residential Property Disclosure Statement to you by the time you make your offer to purchase the property, you may under certain circumstances cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the Seller or the

Seller's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event may you cancel a contract after closing the transaction or (in the event of a sale or exchange) after you have occupied the property, whichever occurs first.

### **ENVIRONMENTAL CONCERNS**

Environmental concerns are an important part of the home-buying transaction because they affect your health and the value of the house or lot you are purchasing and may have other legal and financial consequences.

A Seller may require you to buy the home or lot "as is" and you will therefore want to be alert to environmental problems and have appropriate inspections done in a timely manner.

If you suspect that the house or lot you are buying has environmental concerns such as lead, unclear water, stump holes, under-ground storage tanks or other outdoor toxic materials, asbestos, radon gas or other indoor air pollution, it is important to consult the appropriate legal or environmental professionals to assist you further.

It is important to identify any such environmental concerns prior to the expiration of your due diligence period, before you become legally obligated to close upon the purchase of the home.

**TITLE** • Title to real property is not a document such as a certificate of title to an automobile, but is an ownership right. "Marketable title" to real property in North Carolina is a title free from such claims of others that a court will enforce the terms of a contract for its sale. To determine the status or quality of your Seller's title, a title examination must be made by a licensed North Carolina attorney (or under such attorney's direct supervision)

Title examination involves an extensive review of the public records and requires a thorough knowledge of many areas of the law. For this reason, the examination should be made by (or under the direct supervision of) a licensed North Carolina attorney. Those matters affecting title which are revealed by the public records include, among others, outstanding deeds of trust, judgments, unpaid taxes and assessments, easements, and building and use restrictions. If you have retained your attorney to examine the title, the attorney will provide you with a written title opinion and (upon yours or your lender's request) will obtain an owner's policy of title insurance for you.

However, the attorney's opinion cannot advise you of or protect you from title difficulties not disclosed by the public records. Some examples of these "hidden risks" are forged deeds in the chain

of title, fraud and undue influence in connection with the execution of deeds, deeds signed by minors or by incompetent persons, and missing heirs not disclosed by the public records. Protection against such difficulties can be afforded only through the purchase of an owner's policy of title insurance.

It is important to note that a title insurance policy in favor of your lender or in favor of a prior owner does not protect your interest. Title insurance is a contract between the insurer and the insured. Only if you are a named insured in the policy are you protected, and then only as set forth in the policy. You should be aware that your title insurance policy may exclude from coverage certain risks which you may not be willing to assume.

Ask an attorney about title insurance. Not only can the attorney procure an owner's policy for you, the attorney can advise you prior to closing of the exclusions from coverage and explain the potential consequences.

**CLOSING** • The closing of a real estate purchase is technical and complex. It is not the mere formality of exchanging money for a deed. Closing is the time for you to be assured that (i) all terms of the contract have been met by your Seller; (ii) all documents relating to any financing are prepared in accordance with your agreement with the lender; and (iii) you are aware of and understand your rights and obligations as they relate both to the property and to the loan documentation.

A licensed North Carolina attorney must supervise all material aspects of a residential closing. Only a licensed North Carolina attorney may provide an opinion on title; and only a licensed North Carolina attorney may answer your questions at the closing table. All such functions comprise the practice of law in North Carolina.

Prior to the payment of the purchase price to the Seller, your attorney will assure that your deed is in proper form, that it is executed and acknowledged properly, and that it is recorded in the Office of the Register of Deeds in the county in which the property is located. It is advisable to have any and all agreed-upon repairs completed prior to the closing.

Remember: after closing, a purchaser has very limited rights to recover from the seller for newly discovered repair issues.

If you are the Seller of a house, you should keep your homeowner's insurance coverage on the property until you have received your proceeds from the sale of the home. The closing attorney will disburse the closing funds from his or her trust account once the requirements of the Buyer's lender and the Good Funds Settlement Act are met, and the deed and pertinent bank documents have been recorded.