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.

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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).

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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 of the matters to be considered other than price and terms of payment?
• 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 clear of all restrictions and zoning regulations which would prohibit or restrict your 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 a due diligence period?
• 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 will pay the fees related to closing as well as taxes, assessments and other charges?
• Are the taxes prorated on a calendar year?
• Is the home in a planned community that is subject to governance by homeowners associations?
• Have you reviewed the rules and regulations? Are there 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, if there is no closing, or if the contract 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 signed 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) asbestos. Important costs such as lead, lead or lead-based paint, underground storage tanks, and/or other environmental hazards.

By the due diligence, 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, lead or lead-based paint, underground storage tanks, and/or other environmental hazards.

It is important to identify any such environmental concerns and to reveal any encroachments or setback violations, before you become legally obligated to close upon the purchase of the home.

DISCLOSURE • Except in the case of new homes, during your due diligence period you are free to inspect the home to be sure that it is 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 will pay the fees related to closing as well as taxes, assessments and other charges?

Are the taxes prorated on a calendar year?

Is the home in a planned community that is subject to governance by homeowners associations?

Have you reviewed the rules and regulations? Are there covenants? Are you aware of any monthly/annual dues and/or capital assessments for which you may become responsible as a new homeowner?

ENVIRONMENTAL CONCERNS • Environmental concerns are an important part of the home-buying transaction because they affect your health and the value of your property. You are purchasing a home in North Carolina 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 may have other environmental concerns such as lead,2902240104 radon or friable (meaning it can be crumbled or reduced to powder) asbestos, underground storage tanks or other outdoor toxic materials, asbestos, radon or friable asbestos, you are obligated to contact the appropriate legal or environmental professionals to assist you further.

It is important to identify any such environmental concerns and to reveal any encroachments or setback violations, or the property in North Carolina is a title free from such difficulties can be afforded only through the use of an owner’s policy of title insurance.

It is important to note that a title insurance policy protects you in favor of a previous owner who 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, you are purchasing the property only as named insured 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 existence of any required additional coverage and explain the potential consequences.

CLOSING • The closing of a real estate purchase is technical and complex. It is not the mere formalism of exchanging money for a deed. Closing is the time for you to be assured that (i) all of the conditions of the contract are met and the deed and pertinent bank documents are recorded; (ii) the Buyer has been obtained or until disbursement of the closing funds from his or her escrow or trust account is made to you (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 is last); and (iii) the Seller has delivered the Residential Property Disclosure Statement to you by the time agreed-upon repairs completed prior to the closing.

Prior to the payment of the purchase price to the Seller, you should be assured that you, a thorough study of the contract; the attorney can advise you prior to closing of the 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. The attorney may also have any and all documents which are revealed by the public records include, among others, outstanding deeds of trust, judgments, unspecified easements, restrictive covenants, 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 con-