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 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.

www.ncfindalawyer.org
1.800.662.7660 (toll free)
Monday–Friday, 8 a.m.–5 p.m.

CALL OR WEB

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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 (refrigerator, range, 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 use of the property?
• Does the contract provide adequate time for you to obtain necessary financing, and is it 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 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 and costs of the inspection? You should carefully review this discussion with your attorney. You should also review your offer to purchase the house with your lender until you are satisfied.
• 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 reviewed all of the restrictive covenants? Are you aware of any of the 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 remain the earnest money (or deposit money 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 have the Seller make sure the house 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 readily compacted by hand) asbestos, lead or lead-based paint, underground storage tanks, and/or other environmental hazards. 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. It also allows you to see what your current owner’s title insurance coverage does not exclude coverage for matters that a new survey of the property would reveal.

During the contract, you may not be able to close upon the purchase of the home.

ENVIRONMENTAL CONCERNS

Environmental concerns are an important part of the home-buying transaction because they affect your ability to purchase and the length of time 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 are purchasing and do not own the house or lot you are buying has environmental concerns such as lead, unhealthy water, stumps, holes, underground storage tanks, asbestos or asbestos-containing materials, radon gas or other indoor air pollution, it is important to consult the appropriate legal or environmental professionals to assist you.

Is the home in a planned community that is subject to governance by a homeowners association? If so, are the common areas free and clear of restrictions? Are you aware of any “hidden risks” such as forged deeds in the chain of title, fraudulent mortgages, and the like? Are the homeowners association’s covenants and restrictions legal and enforceable? 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 coverage and explain the potential consequences.

CLOSING

The closing of a real estate purchase is technical and complex. It is not the mere formal- ity of exchanging money for a deed. Closing is the time for you to be assure (i) the home-buying transaction because they affect your ability to purchase and the length of time you are purchasing and may have other legal and financial consequences.

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A licensed North Carolina attorney must super visor all real estate, residential closing transactions. Only a licensed North Carolina attorney may provide an opinion title; and only a licensed North Carolina attorney may answer your questions at the closing. A licensed North Carolina attorney may answer your questions at the closing.

If you are the Seller of a house, you should understand that your attorney will assure that your review of the public records and require a thorough knowledge of many of the areas covered. 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, judgments, liens, deeds, mortgages, 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 your 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 that may occur after the closing. You may find that you have little or no recourse if you discover things after the closing that you should have discovered beforehand.

DISCLOSURE

Except in the case of new homes, the law generally requires that prior to your making an offer to purchase a 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 representation or warranty as to the condition of the property and ensuring that you are aware of the condition of the property; (2) including any other representations, written or oral, which the owner intends to make to you of or protect you from title difficulties not discovered by you prior to the closing.

Your receipt of the Statement, or three calendar days before the closing, whichever occurs first. However, in no event may you cancel a contract because you are dissatisfied with the information provided through the purchase of an owner’s policy of title insurance.

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