

THIS is the LAW



Buying A Home in North Carolina

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. 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 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 an attorney. Attorneys are professionals trained specifically to assist you.

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; local 677-8574) or online (www.ncfind-alawyer.org).

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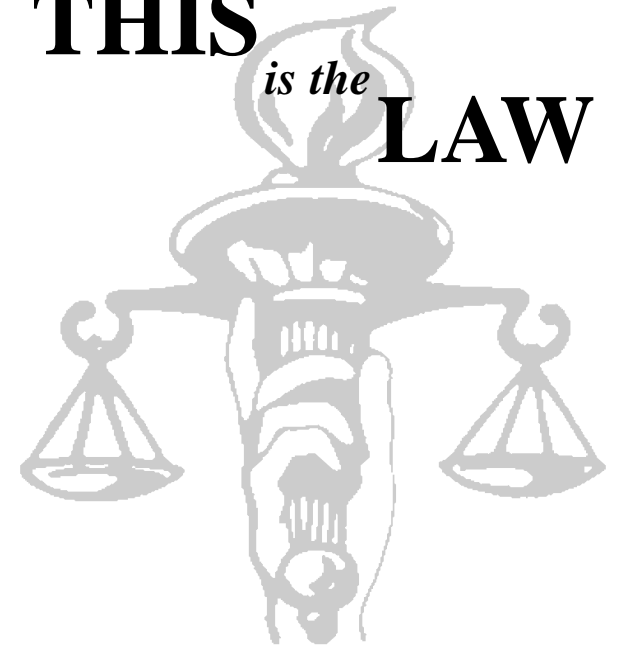
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The Contract

The contract is a very important legal instrument. If not in writing, no contract for the purchase and sale of a home is enforceable. Though the instrument may be captioned “Offer to Purchase” or something other than “Contract,” if it includes a written offer, is signed by you, 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 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 by a general warranty deed?
- Is your obligation to purchase conditioned upon the property's 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?
- Is your obligation under the contract conditioned upon your ability to complete the sale of your present home?
- Does the contract allow you to inspect the structural, electrical, mechanical, plumbing and other systems to determine that they will be in good working order at the time of closing?
- Is the home to be free and clear of termites and other wood destroying insects as well as to be free from insect damage, water rot, dry rot, etc.?
- Does the contract give you the right to check for environmental hazards, such as radon or friable (meaning it can be crumbled or reduced to powder by hand pressure) asbestos or lead or lead-based paint or other environmental contamination?
- Does the contract specify who is to pay the fees related to closing as well as taxes, assessments and other charges against the property?
- Do you understand that the typical contract does not limit your liability for default to the amount of your deposit and that you may have substantial liability in addition to your deposit?
- Does the contract provide specifically that your 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?
- Do you understand that in the event of a dispute between you and the seller over the return or forfeiture of earnest money held in escrow, the broker is required by state law to retain the earnest money until a written release from both the seller and buyer has been obtained or until disbursement is ordered by a court?

If you have signed the contract prior to consulting your attorney, you have limited significantly his ability to assist you in these and other important considerations. At that point, your attorney can only inform you of your rights and obligations.

Disclosure

Except in the case of new homes, the law generally requires that prior to you making an offer to purchase the home, the owner must provide to you a Residential Property Disclosure Statement, a two-page statement signed by you and the owner (i) stating that the property is being sold with no representations or (ii) identifying to the actual knowledge of the owner abnormalities or damage.

You should 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 disclosure statement to you by the time you make the written offer to purchase, then you may withdraw your offer or cancel the contract (if the offer has already been accepted by the owner) within the earliest: (1) three days following your receipt of the disclosure statement, (2) three days following the date the contract was made, (3) or the closing on the purchase. This notice must be in writing and delivered either in person or by U.S. mail to the owner or the owner's real estate broker or agent, at which time you are entitled to receive a return of your deposit or earnest money.

Environmental Concerns

Environmental concerns are an important part of the 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 before legally obligating yourself to purchase.

You may ask the seller to reduce the price of the house or lot, clean up the environmental problem, or agree in the contract to be responsible for the problem.

If you suspect that the house or lot you are buying has environmental concerns such as lead, unclean water, stump holes, underground 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.

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” 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.

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 supervision of an 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 Opinion on Title or will obtain an owner's policy of title insurance for you. Following examination, the attorney will advise you of the findings and may give you an opinion of the marketability of title.

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 will advise you prior to closing of the exclusions from coverage and will explain the potential consequences of these exclusions.

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 all terms of the contract have been met by your seller, that all documents relating to any financing are prepared in accordance with your agreement with the lender, and that you are aware of and understand your rights and obligations as they relate both to the property and to the loan documentation.

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. If there are repairs to be made after closing, your attorney should make sure that adequate funds are placed in escrow to pay for those repairs.