



Thinking of Buying a Home?

The movie *The Money Pit* depicts, "What's the worst that could happen?" after a home is purchased. Now, imagine the characters had completed renovations, moved in and found out they don't legally own the home, or a bank or lending company was foreclosing its loan against the home. The second scenario is much less humorous and much more frightening.

As a potential home buyer, you are likely making one of the largest investments of your lifetime and may be investing a substantial portion of your life savings into the purchase. You can take steps to minimize the possibility of having either type of money pit. The first step begins with the contract.

Q: What are some of the things I need to know about the contract?

A: The contract has a variety of titles and formats and can be from one sentence to more than 20 pages long. A basic contract is written, identifies the buyer and seller, states the purchase price, provides a legal description of the property and is signed by the buyer and seller. Anything less than this will not likely be viewed as a contract if a dispute arises.

Contracts often have additional terms and conditions. Since you are bound by the contract after you sign, make sure you understand the terms and conditions *before* you sign. If you don't understand any of the terms or conditions, you need to have those terms explained to you. *Do not* sign a contract unless you have had the opportunity to read it and ask questions.

Matters commonly included in the contract:

- What property (including personal property or minerals) is included in the purchase?
- Is the seller to furnish a "marketable" title, "insurable" title or something less?
- What are the terms of payment?
- Is an abstract of title to be furnished? If so, who is to pay for the abstract update?
- What kind of a deed must the seller give?
- When is the purchaser to have possession?
- If a survey is needed, who is to pay for it?
- What happens if the survey reveals an improvement on neighboring property is built partially on the subject property (encroachment), one of the improvements on the subject property is partially on the neighboring property, or the land area of the subject property is more or less than the expected area?
- Will the property be inspected? If so, who pays for the inspection? What if the inspection reveals problems?
- Who pays for unpaid real estate taxes or special assessments?
- Who pays the sales commission and other transaction costs?
- If the purchase is financed, does the buyer have the right to

back out if financing cannot be obtained?

- Does the buyer have the right to back out if a property appraisal is too low?
- Is the seller making any warranties?
- Will the seller be completing and providing a residential property disclosure form?
- Is the seller making or going to make any other types of disclosures?

Q: What kind of title should a person demand?

A: When purchasing a home, you should demand a "marketable" title. A "marketable" title is one free of adverse claims, liens, apparent defects, grave doubts and the risk of litigation.

Q: What is an abstract and why do I need one?

A: An abstract is a compilation of the documents filed in certain county offices regarding the property and the owners of the property. The abstract includes deeds, mortgages, liens, easements, releases and other matters. An abstract is not legally required but is a useful item. Without an abstract, a title examiner will need to travel to the county courthouse and review the records from Oklahoma territorial days to present day. This is time consuming, *which adds to the overall cost.*

Q: Why is a title examination necessary?

A: A title examination is a study and review of the abstract or county records to determine the identity of the legal owner, whether mortgages or liens exist, if other title defects exist and what easements and restrictions may exist. The examination requires interpreting numerous deeds, mortgages, wills, court decrees and other instruments and applying laws and court decisions to the various situations disclosed in the abstract. All of this is performed to assure that title to the property is "marketable."

Q: Does the title examiner need to be an attorney?

A: An attorney with the required legal knowledge and training should perform the title examination. These matters require analysis of statutes, cases and standards to identify potential problems, determine if the potential problem can be disregarded or must be corrected and determine what corrections are required.

The attorney will examine title only for their client, who can be the lender, the title insurance company or the buyer. An attorney's opinion for the lender or the title insurance company will not cover you as the buyer. Consider hiring your own attorney to examine title, inquiring if the examining attorney will also issue an opinion for you as the buyer, or obtaining owner's title insurance.

Q: What is title insurance?

A: Title insurance covers your ownership or the lender's mortgage.

If a title problem is found that must be corrected, the insurance carrier normally pays the required legal costs to correct the problem. If the problem cannot be corrected, the insurance carrier will pay for the decrease in value caused by the problem or if the property is lost, will pay the cost of the property.

The title insurance company reviews the attorney's opinion and issues a title commitment explaining everything that needs to be done before the policy is issued. The policy is issued after you become the property owner and will continue in full force without the need to pay additional premiums.

Two types of title insurance policies are available: an "owner's policy" and a "lender's policy." A lender usually will require a borrower to pay for a lender's policy of title insurance to protect the lender against financial loss. This policy is in force as long as the mortgage exists but does not protect you as the buyer. You can purchase a separate owner's title insurance policy from the same title insurance company that is in force for as long as you own the property.

Q: Does the title examination cover everything I need to know?

A: The title examination does not cover everything you need to know. A survey will disclose the following matters, as long as the surveyor is told the following must be shown on the survey:

- Where are the property boundaries, and are all of the improvements within the boundaries?
- Are there any encroachments on the property from an adjacent property?

Inspections and inquiries will help you determine the following matters:

- Is the property owner in a bankruptcy proceeding?
- Has there been any labor done or material furnished on the land or buildings within the last four months that have not been paid for and that might be a basis for mechanic's or materialman's liens?
- Is the property located in a floodway, a 100-year flood plain and/or a flood-prone area? What are the flood, water history and water risk of the property?
- Have any hazardous substances been released, disposed of, stored or used on the property?
- Have any special use permits, variances or other land-use authorizations been issued concerning waste disposal on the property?
- Is the property listed as a hazardous waste site, or is it adjacent to a hazardous waste site?
- Are any of the improvements on the property constructed of materials known to be potential health hazards?

Q: What are Covenants, Conditions and Restrictions?

A: When a real estate developer records a plat dividing land into blocks and lots, they file a document called Covenants, Conditions

and Restrictions (CCRS) that set out the rules and regulations regarding the use and development of the lots in the subdivision. In 2018, the state Legislature amended Oklahoma Statute Title 60, Section 857, to require real estate closing companies to provide all buyers with a copy of this document for a max fee of \$25. Potential buyers should review these documents, in consultation with an attorney if necessary, to ensure the restrictions do not affect their intended use of the property.

Q: Everything is ready, and I'm told to show up for "closing." What is the closing?

A: The closing is the meeting where the parties finalize the sale. Here, the balance of the purchase price is paid, and the deed is delivered. The closing is often conducted by an attorney, a title insurance company or a closing company. You have the right to read any paperwork handed to you and to request an explanation of what the paperwork means. Federal law gives you the right to copies of certain closing documents the day prior to closing. You may want to review all paperwork prior to the closing and be ready with any questions.

Closing documents you need as the buyer typically include the following:

- Settlement Statement showing the purchase price and all your costs;
- Deed to be signed by the seller and notarized;
- Promissory note to be signed by you;
- Mortgage to be signed by you; and
- Seller's affidavit covering some of the matters listed above for inspections and inquiries.

Other documents will often be presented for signing or for information. Many explain your rights, and some explain your duties. Upon completion of the closing, you are the owner of the property. Get the keys, go look at the property, take a deep breath and prepare to turn the property into the property of your dreams.

This pamphlet is based upon Oklahoma law and is issued to inform the public of some of the problems involved in buying a home. It is not intended to advise anyone on a specific legal problem. No person should ever attempt to apply or interpret any law without the aid of an attorney. For your protection, before purchasing any real estate, you should seek the advice of an attorney.

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