

BUYING A HOME IN VIRGINIA

JB LANGLEY-EUSTIS LAW CENTER

This handout is designed to help you understand some of the major issues involved in the purchase of a new home. Although this pamphlet is not all-inclusive, this information should help make the process a little more bearable.

Should I buy or continue to rent?

- Do I have a steady source of reliable income?
- Do I have a good record of paying my bills?
- Do I have few outstanding long-term debts, such as car payments?
- Do I have money saved for a down payment?
- Do I have the ability to pay a mortgage every month, plus additional costs?

Buying a home can save you on taxes because your mortgage interest and real estate taxes are tax deductible.

Home Considerations

- Check to see if the house is in a low-lying area that might be flooded, is in a high-risk area for natural disasters (like earthquakes, hurricanes, tornadoes, etc.), or in a hazardous materials area.
- Be sure the house meets building codes and consider hiring a home inspector to test the home for defects.
- Consider local zoning laws, which could affect remodeling, landscaping, or making an addition in the future.
- Be mindful of property tax trends in the community from year to year.

Real Estate Agents – Real estate agents are valuable resources. They can easily search listings, help you find homes that most closely match your desires, provide you with forms associated with purchasing a home, and assist you in obtaining advantageous financing. However, *never forget* that **the real estate agent works for the seller**. This means the agent is paid to promote the seller's interest. Despite this fact, most agents can and will assist you in making the purchase of your home as smooth as possible. Be cautious of the agent who represents himself as a "buyer's agent," especially if he will be receiving a percentage of the commission earned by the seller's

agent. **Find out how the agent is getting paid!**
Bottom line: If you are not paying for the service, the agent is not working for you exclusively.

Making an Offer – Once you have decided on which home you want, you will be expected to make a written offer. This offer is an extremely important document. It lists the price, terms, and conditions under which you agree to purchase the property. It gives the seller the power to bind you to a legally enforceable contract if the seller accepts your offer. **NEVER** make an offer unless you are willing to be bound by its terms!! Never make an offer on more than one property at any one time unless you fully intend to buy more than one property!! **ALWAYS** write a time limit on your offer so that it expires automatically after the seller has a reasonable time to consider it. (Two to three days is usually enough.)

After you make your written offer, the seller may:

- 1) Accept your offer on your terms;
- 2) Expressly reject your offer;
- 3) Let the offer expire automatically at the end of the stated time limit; or
- 4) Make a counter-offer which you may either accept or reject.

Remember, if the seller accepts your offer, the result is a legally binding, enforceable contract. This contract is known as a "sales contract," "purchase agreement," "contract for deed," etc., and is no more than an exchange of promises. You promise to pay the agreed upon price, and the seller promises to convey the deed to the property. Therefore, if you renege or back out of the contract, the seller has the right to sue you for any loss they suffer such as advertising, maintenance, taxes and the like. This contract **DOES NOT** transfer title to the property.

Terms and Conditions – If you don't request it in writing, you won't get it. Make sure you list all your terms and conditions for purchase in the contract. **When in doubt, list it.** The most common conditions include:

- 1) Names of the parties to the contract,
- 2) Description of the property,
- 3) Purchase price (including terms of financing, interest rate, VHA, FHA, or VA),

- 4) Fixtures such as lights, blinds, water heaters, etc.,
- 5) All other items you wish to list in the contract such as refrigerators, washers and dryers, and
- 6) Home inspection(s) (typically paid for by seller),
- 7) Closing costs (can be paid by either party).

The condition of the premises should clearly be stated in the contract. For instance, the seller should agree to maintain the heating, air conditioning, plumbing and appliances in working order until the property is conveyed. In addition, the seller should provide you with a wood infestation report.

Liability for damage or destruction to the premises *prior to* closing or possession is another area that you should address in your initial offer. To protect yourself, you should include a provision in the offer stating that the risk remains with the seller until closing or possession. Although such a provision is common, many sellers insist that the risk shift to you, the buyer.

ALWAYS specify that the agreement is contingent upon your obtaining financing within a specified time. This way, if you cannot obtain the financing in the specified time, you can get out of the contract and recover your money without threat of a lawsuit. If a home inspection has not been performed, this too should be a contingency within the agreement.

The closing date and date of possession should also be specified in the contract. The closing date is the agreed upon date to transfer the deed in exchange for money. Possession usually occurs at closing; however, it is not uncommon for the seller to permit the buyer to occupy the premises on a rental basis until the paperwork has been completed.

Closing Costs

Several fees may be due, including:

Legal fees- charged for holding the settlement meeting; includes the fee paid to the title company to review the deed and other documents filed in the county land records to make sure that title can be transferred free and clear.

Appraisal fee - paid to the mortgage company when the loan application is made or paid at closing.

Lender fees- Lenders charge fees associated with the closing, including documentation preparation, points

charged in connection with the determination of the interest charged, and application fees (which are not charged by all lenders but are still seen when using the services of small banks or mortgage brokers).

Recording fees- fees or taxes paid to the county or state in which the property is located.

Real Estate taxes- often pre-paid at settlement with escrow accounts set up by the lender to continue to pay the tax payments until the property sells.

Your lender will prepare a detailed GOOD FAITH ESTIMATE when the loan application is taken. Most real estate agents will prepare a BUYER'S ESTIMATED CLOSING COSTS when preparing your Contract of Sale so you'll be prepared for settlement costs. Closing costs in Virginia are approximately 3% of the purchase price.

Other Issues

Buying a home can be a trying experience. If you have any questions about the offer you are planning to sign, seek legal assistance from a civilian attorney or the Langley Law Center.

Note: The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.