SALE/PURCHASE OF A HOME

SECTION A - INTRODUCTION

If you are selling or buying a home, you may want to consider using a real estate broker. Although you are not required to use a broker, many consumers do. Real estate brokers may be able to provide information about real estate values, financing, and standard sales agreements. The following information may help you decide whether you want to work with one, and, if you do, what services and terms you want to arrange.

Before selecting a real estate broker to help you sell or buy a home, you may first want to interview brokers from several firms. Ask them to provide you with the names and phone numbers of previous clients, in the neighborhood, if possible, to call as references.

SECTION B - SELLING YOUR HOME THROUGH A BROKER

If you decide to sell your home with the help of a broker, you will want to ask each broker a wide range of questions dealing with issues of marketing, negotiating fees, and drawing up a "listing contract." Below and on the following pages are some questions and ideas you may want to discuss with a broker:

How would you plan to market my home?

Most consumers want their broker to place their home on the Multiple Listing Service (MLS). The MLS is a broker information network, often computerized, which publicizes homes for sale.

How much would you charge me?

You, as the seller, will probably pay a commission to the broker at settlement for finding a buyer for your home. Your own broker, however, may not receive the full commission. Typically, your broker will place your home on the MLS with an offer to split the commission with any broker who finds the buyer. Many home sales involve two brokers who split the commission paid by the seller.

Although commission rates may appear to be relatively standard within your community, it is important to remember commission rates are not set by law and you may be able to negotiate a lower rate.

You may also be able to negotiate an arrangement where the broker accepts a lower commission if the house is sold within a certain period of time. For example, you might agree to pay your broker a 6 percent commission if the broker finds a buyer within 60 days, and a reduced commission if the broker takes longer to sell your home. In addition, in order to finalize a sale, a broker will sometimes reduce his or her commission to narrow the gap between your minimum selling price and a buyer's offer.

What type of "listing contract" will you want me to sign?

You will be asked to discuss and sign a "listing contract" with your broker. This contract includes the terms of sales for your home (such as the asking price), your brokerage arrangements (such as, what the broker will do for you and how much you pay the broker), and the expiration date of the contract. Make sure the services and terms that are important to you are written into your listing contract.

In an exclusive right-to-sell contract, you agree to pay your broker a commission no matter who finds a buyer--even if you find the buyer independently of a broker. This contract is preferred by most brokers. If you know specific people who may be interested in buying your home, you may want to include a special "reserve clause" in this type of contract. This reserve clause would allow you to sell your property to any specifically-named person and would require you to owe either no commission or a reduced commission.

In an exclusive agency contract, you agree to pay your broker a commission if that broker or any broker finds the buyer. If you locate the buyer yourself without a broker's help, you owe no commission, or, perhaps a reduced commission. Although there are some restrictions on who may use the MLS and what types of listings will be accepted, you may be able to have your home placed on the MLS under an exclusive agency contract.

All listing contracts must specify a beginning and ending date. While brokers prefer as much time as possible to locate a buyer, you may wish to limit the contract period to 90 days. You may also want to reserve the right to cancel the contract upon reasonable notice. The options allow you to hire a broker if, for example, you are dissatisfied with the services you are receiving.

SECTION C - BUYING A HOME THROUGH A BROKER

If you are buying a home, you may also want to talk with several real estate brokers about your housing needs. This will allow you to determine which broker is best suited to assist you. You especially may want to ask a broker about some of the issues discussed below.

Whom do you legally represent - the homebuyer, the home seller, or both of us?

If you are buying a home, you may believe - as many consumers do - that the broker you have chosen legally represents your interest. While this may be the case, it is not necessarily so. Real estate brokers may represent the seller, the buyer, or both. However, according to most Multiple Listing Services, any broker assisting the buyer usually works under the seller's broker and owes primary allegiance to the seller rather than the buyer. If you want to be sure that the broker represents your interests as a homebuyer, it is advisable that you obtain a written agreement from your broker spelling out the relationship.

Whom the broker represents can be important to you. For example, if a broker showing you a home legally represents the seller, he or she is obligated to seek the highest possible price for the seller, and thus may not be able to advise you what approximate lower price the seller may be willing to accept. Or, as the homebuyer, you tell a broker the true "top price" you are willing to pay for a home without having an agreement of confidentiality, such information might be passed on the seller without your knowledge or approval. That could result in a seller asking for the higher price and your paying more than what you might have otherwise paid. As a homebuyer, therefore, you should carefully consider whether you want to disclose confidential information to a broker who has not agreed to represent you.

Will you agree to represent me as a "buyer's broker?"

Any broker may agree to represent you, as the homebuyer, and some brokers are beginning to specialize in legally representing buyers. Having a "buyer’s broker" may offer some advantages. For example, a buyer's broker may be more motivated to spot problems with a home and may be able to obtain more favorable purchasing terms. Buyer's brokers may or may not charge you a fee. This is because a buyer's broker can legally share in the commission paid by the seller as long as you (the homebuyer), the homeseller, and the seller's broker agree to this. You can try to locate buyer's brokers by asking friends and looking for advertisements in your newspaper and the Yellow Pages.

Will you offer me any special benefits or discounts?

These may include: discounts for home furnishings, home repairs, moving services, rental cars, motels, or air travel; actual cash bonuses; or a promise to buy your home if it is not sold within a certain period. Of course, in choosing a broker, you will want to consider the broker's abilities, track record, and basic terms as well as any special benefits.

SECTION D - SELLING YOUR HOME WITHOUT A BROKER

No one should be more efficient at selling the house than you. No one knows and cares for it more than you. Therefore, you are its best spokesperson.

Answer honestly any questions posed by a potential purchaser. Generally you need not disclose information unless you are asked. False representations that are an inducement to buy, however, can result in liability even after the closing on the purchase even if these representations are oral.

Prior to any attempt to sell the house, make sure it is clean and neat. Consider the situation as if you were the buyer. Touchup painting, cleaning the carpet, and removing damaged furniture, can, at small expense, greatly increase the sale ability of the house and its market value. Make sure the yard is well kept, fertilized, and watered. These improvements should be made before the house is appraised. The appraisal helps determine the price you should ask and is used by the potential buyer's mortgage company.

Before undertaking to sell your house, gather the following information.

1. The estimated annual real estate taxes or the taxes for the prior year.

2. The heating and cooling costs for the coldest and warmest months. Past bills for these are great selling points.

3. The schools the children will attend.

4. The square footage of the house.

5. Any special features of the house such as extra insulation or air conditioning.

NOTE: It is not a bad idea to type this information on a page that can be handed to the prospective purchasers. In this way, he or she can take something that will recall your house when it is compared with others. If you are not completely certain of the facts, indicate that they are estimates or approximations.

If you do not know the market value of the house, you can contact an independent appraiser. Inquire as to the fee and when the appraisal can be made. Often, a written appraisal from a qualified appraiser reduces the time the buyer needs to qualify for the loan because the value of the house has already been estimated by a qualified person acceptable to the financial institution. You may want to ask your savings and loan association whom they accept or recommend.

For your information and in the event a prospective purchaser would like to assume your loan, determine the amount of the loan payoff, whether there will be a prepayment penalty, and the terms should the purchaser assume the loan. These facts need not be listed on the information sheet that is made available to the purchaser.

Timing is extremely important in the sale of a house. April through July is the best months to sell your home, as this is when most permanent change of station (PCS) moves are made.

Expect to spend money on the sale of your house. If you had contacted a real estate broker, the broker would be spending money for promotional signs and newspaper advertising and possibly the MLS fee. In avoiding the broker's commission, you have to incur some costs.

Place an advertisement in the local newspaper stating your home is for sale by owner and giving a brief description of the house and location. Since some potential purchasers desire to live in a certain area of town, they will not call if they know your location. Also, give an approximate price, not the exact price that you wish to receive. Thus, if you indicate the house is priced in the middle 60s, you eliminate callers who are looking for a house on the $40,000 or $80,000 range.

Finally, the last three words of your advertisement should read, "No Brokers, Please." The occupation of real estate brokers is the sale of real estate. Therefore, when they learn that an owner wishes to sell his or her home, they try to obtain a listing. Do not be offended by their telephone calls since they are only trying to list and sell your house in order to obtain a commission.

Place a sign in the front yard indicating that the house is for sale. Give your telephone number and state: "Inquire within" rather than the more common statement, "By appointment only," because often potential buyers are short of time, are out-of-town, or have already looked at other houses in which they are interested. The fact they must note your telephone number and go home to call for an appointment may cause them not to call at all. Also, while people are driving around looking for a potential house, they are in the mood to purchase. The need for an appointment tends to stifle this impulse to buy.

The provision that the potential purchaser can stop at any time to look at your house is not as great a burden as it may seem. Most people are reasonable. If they stop at an inconvenient time, such as during a meal, they will understand that the house will not be as neat as it would have been had they given more notice.

Depending on the price of the house, the asking price should be $1,00 to $2,500 more than you are willing to accept. The purchase of a used home is much like the purchase of a used car. The purchaser does not want to pay the asking price; he wants to feel he has obtained a bargain. This is accomplished by offering you less than your original price. Typically, buyers will be willing to pay more than the first price they suggest; therefore, do not automatically accept the first price offered.

If the purchase is other than for cash, determine whether the purchaser will be obtaining a conventional loan or an FHA- or VA-guaranteed loan. In FHA and VA loans, there are discount points as a result of the difference in interest rates between the conventional rate and the government-guaranteed rate the seller must pay. Therefore, the price of the house must reflect the additional cost to you in the form of "points." To avoid a problem later on, the sales contract should specify the type of financing.

Typically, certain items of personal property remain within the house. They include wall-to-wall carpeting, built-in appliances, television antennas, fireplace screens, light fixtures, and drapes.

If, for any reason you intend to take these items with you, be sure to inform the purchaser and include the fact in the contract.

Certain costs will be incurred whether you use a real estate broker or sell the property yourself. The main expense will be for title insurance. Title insurance premiums are based upon the price of the house and are usually paid by the seller.

It is never a wise idea for you to write your own real estate sales contract. Form contracts can be obtained, but these may not meet the special needs of your sale. It is always wise to consult a local real estate attorney on preparing an adequate contract.

SECTION E - SHOPPING FOR A NEW HOME FROM A BUILDER (50 QUESTIONS TO ASK)

1. Can you obtain an earnings statement or financial report from the builder? Or, can you get a credit report from the builder? If not, you might be dealing with a builder who gets in and out of the construction business quickly.

2. Is the builder bonded? If the salesman says no, you may not get your deposit on a home returned to you if the builder declares bankruptcy.

3. Does the builder have adequate insurance for his workmen? If the answer is no or the salesman says he doesn't know, you could be face with a lawsuit if a workman is injured during construction of your home or during a callback following completion of the house.

4. Is the house factory-built? If the answer is yes, get the name of the manufacturer. Also, ask for the financial statement or earnings report of the manufacturer. Some home manufacturers are floundering these days; if you have a problem later, you may not have any recourse through the builder.

5. Does the builder use components such as roof trusses, wall panel, or soffit systems? If the answer is no, you may be paying extra for construction labor that is not necessary. Well-made, factory-built components can be better and cheaper than their handmade counterparts.

6. Does the builder handle the financing of his homes? If the answer is no, you may have to spend a lot of time locating construction funds through a savings and loan, credit union, or mortgage banker. Sometimes, you even have to arrange for the builder to be qualified before the lender will reserve money for construction payments.

7. Will the builder give you a firm down payment price? If you get a "no" answer, it means you will have to go to the expense of selling your old home to have enough cash for the new one. Are you sure there will be enough money for this transaction? Better check with a realtor so you'll know your alternatives before signing any papers.

8. Will the builder take your old home as trade-in? A "no" answer means you will have to go to the expense of selling your old home to have enough cash for the new one. Are you sure there

will be enough money for this transaction? Better check with a realtor so you'll know your alternatives before signing any papers.

9. Has the builder been in business at least 3 to 5 years? If the answer is no, run a check on his background and try to get a financial report.

10. Is the builder a member of the National Association of Home Builders, a reputable local home builders' association, or the local chamber of commerce? If the answer is no, better find out why. Most good builders are proud to belong to such organizations and must be reputable in order to be accepted by them.

11. Is the house built on fill land? A "no" answer means the house is on solid footing. Fill land, if it hasn't been properly engineered, can sink, causing extensive damage to the house.

12. Does the builder have a landscaping budget in the price of the house, and is this cost included in the mortgage payments? If the answer is no, you may have to pay out plenty in one chunk to have your lot properly landscaped. Many good builders have a landscaping budget and can get you a "price" on additional trees and shrubs of your choice.

13. Is the driveway surfacing provided by the builder? A "no" answer means you will have to pay extra to have the driveway surfaced. To have it done after you move into the house can cost as much as $2,000.

14. Can you get the name of the person or firm who designed the house? If the answer is no, the house may not be adequately engineered or constructed. Most good builders employ an architect or use an architectural firm for house plans. This, in the long run, can save you money through smart planning.

15. Can you get a blueprint and specifications list of the house you're really planning on buying? A "no" answer can mean the builder wants to hide a construction shortcut or poor selection of material.

16. May you make minor changes in a house plan without charge? If the answer is no, this service may be quite costly. Many builders will go along with slight changes in a plan, such as the relocation of the nonload-bearing partition wall, without charge. Major plan changes, of course, must be at your expense since they can change the house structurally.

17. Does the builder guarantee the house? If not, you might get stuck with the cost of initial service calls, which can amount to a considerable outlay of cash. Good builders have a callback service and will iron out any bugs over a fairly long period of time--at least a year.

18. Does the builder have a post-sales service crew to fix those inevitable bugs? If the answer is no, you may have to make a deposit to cover labor and material if anything goes wrong. Most top builders have a post-sales crew; you are usually introduced to the foreman at the time you buy the home.

19. Does the builder have a materials selection center? If not, you may be stuck with the builder's choices for floor, wall, and ceiling coverings, carpeting, types of windows, counter-top coverings, appliances, hardware, and other components. You should have a wide selection and many quality builders have a showroom where you may pick the type of finish materials you would like to have.

20. Is the roof of the house UL and/or FHA approved? If not, the roof may be inferior or cost you more in protection insurance. An asphalt roof should have at least 235 pounds shingles; heavier is better. Wooden shingles tend to raise insurance rates, so check this out.

21. Can you get the names of the subcontractors on the job? If not, you may not have any recourse if something goes wrong with the roof, gypsum board walls, plumbing, or electrical wiring. Most builders use subcontractors for this work; they should be held responsible for callbacks.

22. Does the foundation have a water-proofing membrane on the outside? If the answer is no, you may be plagued with a damp or wet basement.

23. Is the siding of the house guaranteed by the builder? If not, the siding may not be permanent and/or low-maintenance. Wood siding should be kiln-dried and back-primed before installation. It should have been put on with rustproof nails. If the siding is aluminum or vinyl, ask for the brand name and for details of the guarantee. If the siding is brick, make sure the mortar joints are tight and smooth.

24. How much insulation is in the house? With today's energy crisis, an answer of "none" probably makes the house unacceptable, in any climate. The builder should tell you the "R Factor" that indicates the heat flow resistance of the insulation. The higher the number, the greater the efficiency of the insulation. You should expect R Factors about like this: ceilings, R-19-21; walls, R-11; and floors over unheated space, R-9-11. For maximum fuel savings, you ask for ceilings, R-21 (or more); walls, R-11; and floors, R-14.

25. Is the house sound conditioned? If the answer is no, you'd be wise to check on the noise factors in bedrooms, bathrooms, the laundry and furnace area.

26. Does the builder furnish screens and storm windows or thermal glass? A "no" answer means you will have to buy these outright and their cost, plus special installation, can be sizeable.

27. Are the windows "brand name"? If the salesman says no, you will have to take his word for their quality. Good windows usually are guaranteed by the manufacturer for a long period of time--up to 10 years or so.

28. Do the doors of the house have dead bolts? If the answer is no, you will have to have them installed for security purposes. Knob locks are inferior.

29. Does the house have vents at the gable ends, under eaves, or as openings in the soffits? If you get a "no" answer, the house may be hot in the summer months since the warm air has no place to escape. There also may be no way to prevent moisture condensation during the winter.

30. Are paneled rooms backed with gypsum wallboard? If not, the paneling has not been installed properly. You can tell by tapping on the wall. If the noise is a hollow sound, the paneling probably is installed directly over the studs. You'll have a noise problem.

31. If the room is carpeted, is there a finished floor under the carpeting? A "no" from the salesman means that you have to finish the floor if you decide against wall-to-wall carpeting later.

32. Is there adequate power or wiring to the spot where major appliances will be located? If the answer is no, running power in for connections can cost you an approximately $25 per foot from the main power entry to the house.

33. Are the kitchen cabinets approved by the Kitchen Cabinet Institute? A "no" answer can mean the cabinets are of inferior workmanship and finish. Most quality cabinet manufacturers belong to the association. If the builder constructed the cabinets himself, you'll need to check them carefully. Make sure edges are smooth, the finish is hard and durable, and the hardware is quality material. Shelves in upper and lower cabinets should be adjustable; drawers should operate easily and stop before they can be detached from the cabinet.

34. Does the builder offer a porcelain or stainless steel sink? If the answer is no, the product may be inferior. Porcelain enamel provides both color and economy. Stainless steel that is 20-guage offers lifetime durability.

35. Does the kitchen have single-lever faucets? If the answer is no, the faucets may not be as handy and maintenance-free as single-lever types.

36. Does the range hood have a 300-cubic-foot-per-minute exhaust capacity? A "no" answer probably means that the hood is not adequate for the range. The hood also should be approved by Underwriters' Laboratories and Home Ventilating Institute. Turn the hood on and see if it operates quietly.

37. Are there warranties on each appliance? If the salesman says no, you may be spending a lot of money repairing shoddy merchandise. Good appliances come with warranties; the salesman should tell you the proper service procedures to follow if the appliance goes bad.

38. Is the bathtub manufactured from cast iron and with a double porcelain enamel finish or is it a new fiberglass unit? A "no" to this question by the salesman can mean trouble later. Inexpensive tubs are light steel. To tell the difference, press on the bottom of the tub. A cheapie will tend to give in with pressure.

39. If the lavatory and tub are white, is the finish acid-resistant? You can't tell by looking.

40. Will the salesman let you test the flushing action of the toilet? If the answer is no, the toilet may be an inferior product. A syphonjet flushing action is best. Here, the bowl usually is oval and elongated, and the flushing action is almost noiseless.

41. Does the bathroom have a window? If the answer is no, there should be a fan. If the room has a window, it should be equal in size to about 15 percent of the total floor area.

42. Is the mechanical equipment-furnace, water heater, water softener, and air conditioner - "brand name"? Many good manufactures guarantee mechanical equipment. If the manufacturer doesn't, ask if the builder does.

43. Is the heating and air conditioning system adequate? You can tell from the output tag, which is attached to the furnace. Rule of thumb for a heating system is about 50 British Thermal Units (BTU) per hour per each square foot of living space. Cooling is one ton of capacity for every 750 square feet.

44. Does the house have a central air conditioner? If not, find out how easily one might be installed. Many times, a builder can add this feature at little extra cost while the house is being built.

45. Does the house have at least a 100 amp electrical entrance? If the answer is no, the wiring is substandard. The best system is a three-wire, 220-240 volt, and a feed of at least 100 amps.

46. Are heating and appliances on separate circuits? If the answer is no, you may have a house power shortage. Large mechanical equipment, such as the furnace, air conditioner, or power tools, should all have separate circuits.

47. Are the main plumbing pipes at least ½-inch inside diameter? If the answer is no, the plumbing may not be adequate. A good plumbing job utilizes 3/4-inch for the main runs. The best pipe is cooper with cast-iron drains. Plastic pipe is good, if the codes permit. Basements and garages should have a floor drain, and there should be more than two faucets and a drain in the laundry area.

48. Can pipes and wiring be placed where you want them in the laundry area? If the answer is no, the laundry may not be flexible enough for your needs. There should be space for a sink for pretreating clothes to wash, a vent for a dryer, and adequate wiring for side-by-side washer and dryer units. Outlets should be properly grounded and there should be adequate lighting.

49. Is the plumbing waste system hooked up to the city sewer system? If the answer is no, the waste system is probably hooked to a septic tank. The tank should be large enough to handle the capacity. Does the city expect to run a central sewer system into the area soon? If the answer is no, you may have additional expense in keeping the septic system clean and operating properly.

50. Is the builder proud to be selling you this house? If you feel you're just another in a parade of families, perhaps the builder isn't as interested as he should be. When you feel that he is genuinely proud of his product chances are you're doing business with a top housing producer.

SECTION F - THE PURCHASE CONTRACT: BLUEPRINT FOR THE TRANSACTION

When a buyer has decided on a house and is ready to make an offer to buy, the seller or the seller's broker usually will ask the buyer to pay a sum of money and sign a paper. The payments sometimes are called a "good faith" or "earnest money" deposit. The paper to be signed is the purchase agreement; it may also be called a "contract," bid," "binder," "offer to buy," "deposit receipt," "memo," or some other name.

Whatever it is called, when it is signed by the buyer and accepted by the seller, it is a contract. The buyer is obligated legally not only to buy the property, but to do so in exactly the way the contract specifies. The contract governs and controls the completion of the purchase transaction.

It has been stated the contract for transfer of real estate is the blueprint for the closing. The importance of the contract cannot be overstated. The real estate contract is a legally binding document which represents the rights and duties of the buyer and seller up to and including the time they exchange keys and deeds and money.

The initial purchase agreement, whatever it is called, should state all of the terms of the sale. Some of these are:

1. Purchase price and how it is to be paid, including the amount of cash required, any financing plan, its cost, and interest changes.

2. Buyer's right to cancel if unable to secure financing (if that is part of the understanding).

3. Legal description of the property (a street address is not adequate; in many cases a survey of the property is be required).

4. Good title furnished by the seller, supported by an abstract of title, certificate of title, or a policy of title insurance.

5. Party responsible for the risk of fire or other hazards pending closing.

6. Warranties of title, including title restrictions and other rights and limitations to which title is subject.

7. Proration of utility bills and reserves in gas tanks, etc.

8. Date of possession.

9. Itemization of furnishings, appliances, shrubbery, fixtures, air conditioners, and other personal property included in the purchase.

10. How the buyer (and spouse or other co-purchaser) is to take title.

11. Basic terms of the escrow agreement, if there is to be one.

12. Provision for return of initial payment (earnest money or binder deposit) in the event the sale is not completed.

13. Signatures of the parties.

It is important that sellers remember they must be in a position to convey the title required by the contract at the time of closing. There may be encumbrances, encroachments, restrictive covenants, or other matters that affect this. If the seller cannot do so, the buyer may be able legally to rescind or back out of the contract, and all the time the house was off the market will have been wasted.

Both preprinted and individually drafted contract forms are used, but preprinted forms may not adequately express the particular agreement intended by the parties. Any insertion in preprinted form contracts should be carefully checked by an attorney. If standardized forms must be used, they should include the phrase "SUBJECT TO THE APPROVAL OF THE ATTORNEYS FOR THE PARTIES WITHIN DAYS," so the attorneys will be able to determine what additional clauses are necessary. Without such a condition, you will be bound by the terms, some of which may be ambiguous or contrary to your interests.

Some preprinted contract forms contain provisions for riders. If riders are not needed, it is important that any mention of riders or contingencies be crossed out.

Many printed contracts carry the following legend recommended by the National Conference of Lawyers and Realtors:

This is legally binding contract. If not understood, seek competent obligation to advise you of its meaning and effect and that oral assurances of matters, which are not included in your agreement, may be unenforceable. For your own protection you should consult your own lawyer as to your obligations under any proposed contract.

The buyer and the seller should consider tax prorations for the current year as well as payment of the prior year's taxes. Some form contracts use last year's tax rate, others use an escalator clause to anticipate tax increases, and others use different methods. Your attorney can advise what method is most desirable for your transaction.

A firm and definite provision governing the date of possession the seller is to vacate and the buyer is to take possession should be detailed. The seller may want to make the possession date contingent or possession of another house purchase being completed.

An inventory of the furnishings should be prepared for the prospective buyer to see whether any of these are being sold with the house. A copy of the inventory should be attached to the contract. This avoids misunderstanding about whether all furnishings seen by the buyer were to be included in the sale.

The seller may want to limit warranties of the furnace, roof, or major appliances that will be included in the sale by adding an "as is" or similar clause, to avoid being liable for expensive repairs. In many areas, a termite inspection provision should be included to protect the seller by determining whether or not termites exist and that the buyer accepts the inspection as conclusive. In this way, if termites are subsequently discovered, the seller is not required to expend substantial sums of money, which would alter the basic bargain.

In order to protect the buyer, a clause should be inserted requiring the seller to pay for any special assessments levied prior to the date of the contract, which might not have been specifically known by the buyer. Special assessments may be for various items, for example, sidewalks, sewers, streets, gutters, or other improvements or services.

In some states, pending improvement liens are a claim from the date they are approved even though the improvements are not made until later. The buyer should assume this obligation if the improvements are to be installed after the closing.

The seller should make sure the contract includes a statement that "time is of the essence," which legally makes the contract date more binding. Also, both parties will want the contract binding on the heirs or representatives of the other party. In this way, in the event of death or incapacity of one party, the contract may still be enforced.

Finally, the financing clause is extremely important from the seller's standpoint. The seller will not wish to allow too long a period for the contract to be binding, pending the buyer's financing approval, as this keeps the house off the market and may eliminate other potential buyers. There are methods of accepting offers from a second or third party buyer while the first buyer is looking for financing, but this is complicated legally. The method definitely should be set up by an attorney. The financing terms, which the buyer must accept, are also important. This includes the interest rate, points, or other fees for which the buyer will be shopping at various lenders. Sometimes, the term "at market rates" is used to overcome problems of guessing what financing is available.

SECTION G - FINANCING

Banks, insurance companies, savings and loan associations, and other institutions are in the business of providing the money needed to finance the purchase of home. Some loans which are insured by the federal government (Federal Housing Administration or Veterans Administration) afford reduced interest charges or extended terms of repayment, or both. However, additional fees the borrower is required to pay in connection with loans of this type may reduce or eliminate the advantageous interest rate. Furthermore, sellers usually must pay additional fees, which are required by a lender to make a loan with interest rates below the market. Most lending institutions will give information about the requirements for such loans and whether you are eligible.

After reviewing the loan application, the lending institution will, if the loan is approved, issue its "commitment." This is the agreement to provide financing on specified terms within a specified period.

Specific terms and requirements of the various lending institutions, including those under FHA and VA, vary widely. They depend on the customs and practices in a given community, the state of "the money market," the quality of the borrower's credit, and numerous other factors. Such variables may include:

1. A prohibition against prepayment of the mortgage (or a penalty for prepayment);

2. An "open end" agreement, which allows or obligates a lender to advance additional sums in the future, secured by the same mortgage;

3. Prohibition or limitation of the right to sell the property without the consent of the lender;

4. Requirements with respect to the amount and nature of insurance to be maintained;

5. Requirements for prepayments on anticipated property taxes and insurance premiums;

6. Limitations on use of the property; and

7. The brokerage and discount charged.

At the time of making a loan application, the buyer should ascertain all costs of the loan. These may include a service charge, appraisal fee, survey costs, title insurance, escrow fees, and lender's attorney fee.

Generally, the lender will set the terms and requirements of the mortgage with strict inflexibility, and what the buyer is asked to sign will be described as a "standard form." However, some provisions in nearly every mortgage are subject to variation for particular circumstances. Your lawyer, who understands the requirements of the specific mortgage involving your loan, may be able to have it tailored to your requirements. In any event, your lawyer will explain to you the details of your obligation under this legal document.

In some purchases, the unpaid balance of the purchase price is "financed" by the seller who takes back a mortgage for a portion of the price through a "purchase money mortgage, "a" contract for deed," or by other agreement. There is the same variety of terms in such documents as in a mortgage involving an institutional lender.

Borrowers would understand that ordinarily, in most states, when a mortgage note is signed, one is responsible for the full payment of the total indebtedness, even though the home is sold later to purchasers who agree to assume the mortgage. This is true unless, at the time of the subsequent sale, the lender agrees to release the original borrower from personal responsibility.

Frequently, a homebuyer agrees to assume and pay the seller's mortgage loan. If a buyer decides to do this, he or she should be advised as to the basic term of payment, including interest rates. It also is important to ascertain whether the lender has the right to accelerate or change the terms of the loan assumed. The buyer may be required to submit a financial statement or other evidence of acceptable credit to the lender for approval before assuming the seller's loan.

Where the buyer is taking title subject to or assuming the mortgage, he or she should have a written statement from the mortgage of the exact balance due to the mortgage. The seller will be especially interested in knowing what funds the mortgage has of the seller which are being held in escrow for the payment of insurance, taxes, FHA fees, or other deposits.

Traditionally, a mortgage conveys title from the mortgagor (landowner) to the mortgagee (lender). However, in some states the mortgage merely conveys a lien on the owner's title.

In negotiating a mortgage loan the lender is entitled to rely on the term of the loan and the rate of the interest bargaining for, and unless the borrower has reserved the privilege of prepayment, the loan may not be able to be prepaid. Some states forbid penalizing prepayment. Others allow it, but only after a period of time; the borrower may also have to pay a penalty and/or a higher rate of interest.

VA LOANS

Release of Liability: The VA homebuyer who sells a home should make every effort to secure a release from further liability to both the VA and the lender. The easiest way to do this is by having the loan repaid in full at the time of sale. This is done if the buyer obtains a new loan in which case part of the proceeds of the loan is used to pay off the seller's loan. Of course, the loan is not repaid in an equity sale, since the buyer merely takes on the existing loan. In such a case, the seller can be released from liability to the VA on its guaranty if the loan is current, the buyer assumes the seller's liability, and the buyer satisfies the VA that the buyer is a good credit risk. "Assumes" means that the buyer agrees to take on the seller's loan and repay it according to its original terms and conditions. If the buyer purchases the property "subject to" the seller's VA loan, it does not constitute an assumption. Note that one of the conditions for release of liability is not that the buyer posses VA eligibility of his own. Note also that the **VA must approve the buyer before it will issue a release**. Sometimes it will not be possible for the VA's approval to be obtained before the sale must be closed. In such a case, the deed transferring the property should contain a clause, which constitutes an assumption agreement. Obtaining a release from the VA does not automatically constitute a release of liability from the lender, since the buyer will no doubt meet its requirements. Note that release of liability by the VA does not, of itself, restore the seller's VA loan entitlement. **you should contact your local VA or VA service officer**.

SECTION H - TAX ASPECTS

A seller should remember that, generally, profit on the sale of a home is taxable as a long-term capital gain. All selling expenses, such as broker's commission expenses, may be deducted from the gross selling price. Many improvements made by the seller are deductible as well. If after the deductions have been made, a profit has been realized, payment of taxes can be postponed within limits prescribed by current tax laws and regulations.

The subject of federal and state income tax, estate tax, inheritance tax, and other consequences on the sale or purchase of real estate is complicated and periodically changes when new laws are passed. Each person's situation is unique and will be considered as such by one's attorney. Furthermore, the sale or purchase of a house may involve significant change in a landowner's estate. This is a good time to consult an attorney to review and update a will and estate plan.