

Questions and Answers on: REAL ESTATE CLOSINGS

In the typical residential real estate sales transaction, a buyer offers to purchase property from a seller. After negotiating the price and terms, the buyer and seller sign an offer to purchase and contract, and the buyer gives the seller (or the seller's broker) an earnest money deposit to show good faith in the transaction. Under the standard form Offer to Purchase and Contract, the buyer may also give the seller a "due diligence fee" for the buyer's right to conduct due diligence, including any inspections, loan applications, and appraisals, for a negotiated period of time (the "due diligence period"). Prior to the expiration of the due diligence period, the buyer may terminate the contract for any reason. After the expiration of the due diligence period, the buyer's right to terminate is severely limited. For more information about due diligence, refer to the Commission's brochure, "Questions and Answers on Due Diligence for Residential Buyers," available on the Commission's website.

A real estate "closing" is the final step in the transaction. Under the standard form Offer to Purchase and Contract, "settlement" is the point at which the buyer signs final documents, pays the purchase price to the seller (usually with the proceeds from a loan), and the seller gives the buyer a deed transferring title to the property to the buyer. Also, funds are paid to an appraiser, home inspector, and/or other service providers, and to pay off banks or others who may have claims against the property. Closing is completed when the closing attorney records the deed and disburses the funds to the appropriate parties. After closing, the buyer is entitled to possession of the property including receipt of the keys. This pamphlet focuses on questions frequently asked about residential real estate closings. The questions raised are of special concern to real estate buyers. Consequently, they are posed from the standpoint of the buyer.

Q: Does a "loan commitment letter" guarantee that I have a loan to buy the property?

A: No. A loan commitment letter does not guarantee that the lender will make the loan. It simply means that, based upon an initial review, your credit appears sufficient to qualify you for the necessary loan amount. After issuing the letter, the lender may refuse to approve your loan if there are any changes in your employment, creditworthiness, or other changes which might affect your ability to repay the loan, or based upon further review by its underwriters. The lender reserves this right until the deed is recorded transferring the title and the loan proceeds are actually disbursed at closing. Note that the standard form Offer to Purchase and Contract does not make the ability to obtain a loan a condition of purchase. Therefore, you should determine whether necessary financing is available prior to the end of the due diligence period.

Q: What is title insurance?

A: The lender will probably require you (the borrower) to purchase title insurance to protect its interests from potential title problems. Before issuing a title insurance policy, the title company will require the closing attorney to perform a title search to discover any problems with the title to the property. Problems found during the title search (such as unpaid judgments, taxes, mortgages, etc. on the property) must be corrected before closing.

For a few dollars more you can also purchase your own title insurance policy to cover you from title problems with the property which may not have been discovered prior to closing. If a problem covered by your policy is discovered after closing, the title insurance company will help

clear up the problem or compensate you for any losses you have sustained. Like any insurance policy, there may be exceptions in your coverage, so it is critical that you carefully read your policy and refer any questions to the closing attorney.

Q: What if the seller wants to give me a non-warranty, or quitclaim deed?

A: The deed transfers the seller's interest in the property to you. There are many different types of deeds. The best one — the general warranty deed — contains the seller's warranty that good title is being conveyed to you. A quitclaim (or non-warranty) deed contains no warranties at all; therefore, you accept title from the seller "as is." A special warranty deed contains limited warranties from the seller. If you are given anything other than a full or general warranty deed, immediately consult with your attorney.

Q: What happens if the property is damaged or destroyed after I sign the purchase contract but before closing?

A: Typically, the purchase contract requires that the property be in substantially the same or better condition at closing as on the date you contracted to buy it (normal wear and tear excepted). If the property is damaged or destroyed by fire or other casualty prior to closing, the risk of loss is on the seller. The buyer has the option to terminate the contract and recover any earnest money deposit and any due diligence fee.

Q: Who closes the transaction?

A: The closing will probably be handled by an attorney chosen by you. In many transactions, the attorney may also represent the lender and the seller. The seller may hire his or her own attorney or pay your attorney to prepare the deed to give to you. Make sure you know "up front" who the attorney is representing. Others involved in the transaction may recommend or offer you financial incentives to hire a particular closing attorney, but you have the final word. Prior to closing, the seller should give the closing attorney a copy of the deed to the property. Also, if there is an outstanding mortgage on the property, the seller should give the attorney any personal information needed to obtain a loan payoff figure so any existing loan(s) can be paid off in full at closing. As the buyer, you will need to give the closing attorney a copy of your contract and contact information about your lender, any inspectors, or other persons who provided services in connection with the transaction.

Since closing involves several complex phases (examination of the title, completion and explanation of legal documents, and resolution of any possible title problems), you should carefully consider having an attorney assist you throughout the process and during the closing. Also, read each closing document so you fully understand each step of your real estate transaction.

If a non-attorney is handling your closing, that person may render only administrative services related to the transaction — not give you legal advice.

Q: What is a Certificate of Occupancy?A:

A Certificate of Occupancy is a document issued by the city or county building inspection office which certifies that a newly-constructed home or a home with an addition or significant renovations has passed a final inspection, has satisfied the terms of the building permit(s) and is

safe for occupancy. The buyer of a newly-constructed, renovated or modified home should obtain a copy of the Certificate Occupancy from the seller before closing.

Q: What is “prorating”?

A: Certain items (real estate taxes, some utility bills, occasionally special assessments, etc.) are prorated at closing. “Prorating” occurs when you and the seller are each responsible for a portion of an expense. For example, property taxes are assessed as of January 1 but not normally payable until the end of the year. The seller is responsible for his share of the property taxes from January 1 through the closing date. You will be responsible for the remainder of the year. Review the contract carefully to be sure you know what items, if any, will be prorated at closing.

Q: What are special assessments?

A: Local governmental units can assess property owners for certain improvements to their property such as sidewalks, sewer lines, street repairs, and drainage systems. Since these assessments run with the property, you should verify with the closing attorney before closing that there are no existing special assessments (either pending or confirmed).

Q: In my contract, the seller agreed to pay \$2,000 in closing costs. What costs are included?

A: The term closing costs includes a variety of expenses above the purchase price of your property, such as fees for an attorney, title search, insurance, loan origination fees, etc. The standard form Offer to Purchase and Contract states that the Seller agrees to pay an agreed amount “towards any of Buyer’s Expenses associated with the purchase of the property at the discretion of Buyer and/or lender.... If the actual closing costs are less than the amount offered by the seller, then the lender may limit the seller’s contribution to the actual amount of the closing costs, in which case you would not be able to receive the full \$2,000. Some lenders will allow the buyer to receive the full \$2000 as agreed regardless of the actual closing costs.

Q: How can a buyer obtain protection against future liens?

A: The buyer of a newly-constructed, -renovated, or –improved property should consult the closing attorney to ensure that the proper steps have been taken to prevent any subcontractors from claiming a lien against the property for work performed. While there are some laws in place to protect homeowners against a post-closing lien, it is recommended that you discuss with the closing attorney the steps that he/she undertook to protect you against future liens.

Q: What kinds of documents will I receive at settlement/closing?

A: The buyer and seller will each receive a document that shows a settlement of the funds that will be transferred at closing (called a Closing Disclosure or a settlement statement). If you are a buyer obtaining a loan, there will be loan-related documents (promissory note, deed of trust, tax forms, and other disclosures). A seller will be asked to sign a deed conveying the property to the buyer. If a buyer has not already received and reviewed copies of the termite report, survey and repair invoice(s), he/she should do that at the closing.

Q: What is a closing disclosure statement?

A: A closing or settlement statement is a document that summarizes all funds received by you and the seller at closing, and all funds paid by you and the seller for various expenses of the transaction (real estate broker commissions, loan payoffs, fees for inspections, property taxes, etc.). For all closings involving federally insured loans, the Real Estate Settlement Procedures Act (RESPA) requires that this information be disclosed on a Seller Disclosure or a Buyer Disclosure form for each party.

A Closing Disclosure is a form created by the Consumer Finance Protection Bureau (CFPB) that is required for all federally insured loans. There are two Closing Disclosure forms: a Buyer/Borrower Disclosure form and a Seller Disclosure form. The Buyer/Borrower form summarizes all funds received and expenses paid on your behalf. It also contains information regarding your loan, such as the interest rate and the lending institution. The Seller Disclosure form summarizes all funds received and expenses paid by the seller.

Typically, you must pay a portion of the property taxes, the cost of all inspections, and all costs associated with the loan, title search and closing. These costs include the appraisal fee, survey, pest inspection, lender fees, fees to establish an escrow balance for homeowner's insurance, taxes and any required private mortgage insurance, attorney fees, title insurance, and recording fees. The seller normally pays the balance due on any existing loans, his portion of the taxes, commissions to real estate brokers, fees for deed preparation, cancellation of existing liens, and revenue stamps payable to the state. In most transactions, payment of these fees is negotiable between the parties. However, if you are getting a VA or FHA loan, the lender may require the seller to pay particular closing costs, such as the pest inspection.

Q: When will I receive the Closing Disclosure Statement?

A: If you are using a lender to assist with the purchase of the home, by law, you must receive your Closing Disclosure three (3) business days prior to closing. The Closing Disclosure will come from your lender. Contact your lender (or loan officer) at least a week before closing to find out how you will receive your Closing Disclosure. Ask whether your Closing Disclosure will be sent to you via email, postal mail, or if you will have to download it from a website.

Q: May a real estate agent sign closing documents for me?

A: No, not unless you have given the agent your written authorization, preferably in the form of a limited power of attorney, to sign documents for you. However, the best policy is for you to review and sign all documents yourself. If you have a question about any document you are asked to sign, ask the closing attorney for an explanation of the document before you sign it.

Q: The closing attorney is asking me to remit funds via wire transfer. How can I protect myself from wire transfer fraud?

A: Before transferring any funds via wire transfer, contact the closing attorney's office by telephone using a publicly verified phone number and speak directly to the closing attorney or a member of his/her staff to obtain the correct wire transfer information. Do not rely upon emails, text messages, or telephone calls from persons claiming to be the closing attorney or a member of his/her staff. Such persons may be attempting to give you fraudulent wiring instructions in an effort to steal your money.

Q: I am being asked to put something on the statement that is different than what I agreed to. Is that ok?

A: Probably not. A closing/settlement statement or closing disclosure statement should reflect the agreement between the parties and match the terms set out in the purchase contract. You may be committing loan fraud if you make a false representation to a lender on the loan application or elsewhere in order to obtain a larger loan amount or a loan on more favorable terms than you are otherwise qualified for under the lender's guidelines. Loan fraud is a federal crime punishable by up to 30 years in prison and \$1 million in fines. If you are asked to do any of the following, refuse and immediately contact the North Carolina Real Estate Commission:

- create a false gift letter for down payment funds.
- make it appear you made a deposit when, in fact, you did not.
- give the seller a secret or even false or "forgivable" second mortgage.
- make payments outside of closing which are not disclosed on the closing disclosure or closing/ settlement statement, such as additional fees paid to service providers, to the seller, or third parties.
- make a false statement that you will occupy the property.
- give false personal information about yourself to the lender.

Q: If I'm a seller, when should I get my proceeds from the sale of my property?

A: The closing attorney may disburse funds immediately after closing has been completed, the title has been updated, and the documents have been recorded. Often, time may not permit the closing attorney to record the documents, update title, and disburse funds, or the lender may not be able to wire the loan proceeds, all in the same day. When this happens, a "dry closing" is sometimes held with the funds being disbursed the next business day. If you are a seller, you should discuss the timing of disbursements with the closing attorney in advance so you can be aware of any possible delays. If you are a buyer, be aware that the seller may not be willing to give you possession of the property until he receives his proceeds from the sale.

Q: What if I can't close by the time stated on the contract?

A: The standard form Offer to Purchase and Contract includes a 14-day extension provision to allow the parties a short time to complete settlement. After 14 days, if there is no settlement or written agreement to extend the settlement, the delaying party will be in breach and the other party may terminate the contract. If you are not using the standard form Offer to Purchase and Contract in your transaction, you should consult an attorney regarding the impact of a possible delay in closing.

Related reading available from the Real Estate Commission:

- Questions & Answers on: Earnest Money Deposits
- Questions & Answers on: Condos and Townhouses

- Questions & Answers on: Home Inspections
- Questions & Answers on: Residential Subdivisions & Planned Communities
- Questions and Answers on: Due Diligence for Residential Buyers
- Working with Real Estate Agents

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