



The Residential Real Estate Transaction

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A legal matter that most of us will experience at least once in our lives is the residential real estate transaction. The transaction has four main parts: the contract, financing, title work, and closing.

The contract defines the terms of the deal. While the main terms, such as the price, the downpayment, and the closing date must be specified, there are other important parts. For example, the contract must specify who will be responsible for various costs involved in the transaction. These costs include title work, closing fees, financing fees, and legal document fees. The contract must also address the allocation of real estate taxes between the parties.

There are non-cost items to be considered also. Will the buyer be permitted to have the property inspected? If so, and defects are found, will the seller be responsible to repair those defects? Will the contract be contingent on the buyer securing financing? If the seller is offered a higher price before closing, can the seller accept that price and terminate the contract with the first buyer?

All of these items, and possibly more, depending on the facts of the sale, must be written in clear terms in the contract. And there must be a contract in order for the transaction to be enforceable. An oral promise to buy or sell real estate is not enforceable. Also, as a practical matter, title companies will generally not start work until receiving the contract.

It is usually the buyer's responsibility to obtain financing and advise the seller of the lender's commitment to finance the sale. Sometimes sellers will assist buyers with the financing by paying part of the financing costs or by buying down the interest rate by purchasing points.

A title company will research the title of the property in order to find any liens, mortgages, etc. that affect the property. If the title company is satisfied as to title matters, it will issue a policy of title insurance. This policy protects the parties from claims against the title (for example, a claim by a distant relative of a previous owner).

When the financing and title work are in order, the sale can be closed. Closings usually occur at title companies or financial institutions. The closing involves both parties signing multiple documents to complete the sale, including but not limited to lending documents, financial disclosures, and a deed to transfer the property to the buyer.

The paperwork involved in a residential real estate transaction can be overwhelming. Since our home is often a large part of our assets, it's important to understand the transaction. Be sure to read all documents before signing, and to get help and ask questions with respect to things you don't understand.

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