

HOUSING: BUYING AND SELLING A HOME



prepared by
**PETERSON AFB
LEGAL OFFICE**

(719) 556-4871



BUYING A HOME

Financing Through the VA

- Most military members can get real estate purchase financing with the help of the Department of Veteran's Affairs
- For more information, visit www.benefits.va.gov/homeloans

Seller's Disclosure Obligations

- Colorado law requires sellers to disclose, for example:
 - If buyer will be obligated to become a member of and pay owner's association fees
 - Source of potable water for the property
 - Existence of any proposed or existing transportation projects that are expected to affect the property
 - If property may be in special taxing district and where buyer can go to determine if it is
- Federal law requires disclosure of lead-based paint on property if built before 1978
- Colorado Real Estate Commission has form sellers can use in making disclosures; buyers can ask follow-up questions

Home Inspections – *See Separate Handout on this Topic*

- Home inspections, likely required by lenders, are an important way to learn about the condition of the property before you purchase
- Colorado law does not require home inspectors to have licenses or background checks, so be sure to do your research to ensure you hire reputable company

Title

- Understand what kind of title you want and can get
- Two major types:
 - Warranty deed: Transfers property and guarantees seller owns property free from any liens or conditions other than those listed on the deed
 - Quit-claim deed: Transfers only whatever rights of ownership the seller has, so if another party has a greater right to ownership than the seller does, you could lose the property

The Sales Contract

The single most important document in any home sale, whether handled by you or a realtor, is the sales contract. Some people mistakenly believe that until you actually "close" on the house (i.e. the money is paid and the keys change hands) you have the option of backing out of the deal without any problems. This is not true. Once a buyer and seller sign a sales contract, the deal is done unless some condition contained in the sales contract is not met. The most common condition in a sales contract is, "contingent upon the buyer obtaining adequate financing." If a contract contains this type of language, the deal is off if the buyer cannot get a loan. Of course, the law requires the buyer to make good faith efforts to obtain a loan; he or she cannot just do nothing and breach the contract. It is possible to negotiate any condition to which both the buyer and seller will agree: "contingent upon selling my present home in Minot, North Dakota," "contingent upon a title company certifying clear title," or "contingent upon my astrologer concurring to the sale." Almost anything both parties agree to is okay.

Get Everything in Writing

The contract itself does not need to be in any special form, but it does have to be in WRITING. The written contract really only must contain: an adequate description of the property (e.g. "the north ¼ of the south 80 of Bent Fork Township," "all my property located in El Paso County, Colorado," or "my house and property located at 1600 Pennsylvania Avenue"), the names of the buyer and seller, the purchase price, the buyer's and seller's signatures. However, you and your buyer probably will want to include a lot of other things like the closing date, method of payment, what fixtures and appliances stay with the house, who pays filing fees, what warranties you are making about the property, or if you must make repairs before closing. You can get "standard" sales contracts for real estate at business form stores or copy stores or in do-it-yourself law books. Remember that you can add or delete special provisions from standard forms as long as both parties agree. If you leave out important information, and the parties later disagree about what the contract covered, the court may decide what the contract did or did not cover!

SELLING A HOME

Making and Keeping the Deal

Once you and your buyer have worked out all the contract terms (put EVERYTHING in the contract and NEVER rely on oral promises or "handshake" deals!) and have signed on the line, you have a binding, enforceable agreement to sell your house. If the buyer gets cold feet and tries to back out of the deal, you have two options.

First, you can sell the house to someone else and sue the original buyer for the difference between the price you would have gotten and the price you actually got. For example, if your original buyer was going to pay you \$100,000, breaches the sale contract, and you end up selling the house to \$90,000 to another buyer, the first buyer owes you \$10,000. You get the "benefit of the bargain." Of course, you must make a good-faith effort to sell the house for a reasonable price (you can not sell a \$100,000 house to your brother for \$1 and then sue for \$99,999). There are other things you may be required to do to mitigate (lower) your loss. Additionally, there may be extra steps the seller must take to ensure the buyer really is not going to buy the house. To be safe, you should always get everything in writing. This is especially true if the buyer says or implies that they will no longer be able to purchase the house.

Second, only for the sale of real estate, you can ask a court to order "specific performance" of the sale. This means that the buyer is ORDERED to go through with the deal and it is then up to him to resell the house and take the loss. However, specific performance is rarely an option for the seller because he or she must stand alert and ready to perform the contract. For the seller this means retaining title. Most military sellers are preparing to PCS and may even have another house in escrow. Unless you are prepared to hang in there, sometimes for years (depending on court dockets), you will likely be forced to resell the house and later seek damages. Additionally, if you are able to see the home at the same price you would have gotten (or higher) you may not be able to get any damages. Courts vary on whether or not you can claim the costs required to 'carry' a property until you are able to sell the home. Often however, these everyday costs of holding onto the home are not included in damages.

Moving In/Out Early:

If you as the seller are going to allow the buyer to "preoccupy" the house before closing, you need to either enter into a lease, thereby putting you and the buyer in the position of landlord and tenant until closing, or you need to complete a thorough inspection of the house at the time the buyer occupies it and note in writing any damage or wear-and-tear. The last thing you want to have happen at the closing is an argument over who put the scratches in the kitchen cabinets. Regardless of whether or not the buyer preoccupies the house, the buyer bears the risk of loss. This means that, except for damages due to your negligence (e.g. your son blowing up the house with his chemistry set or your daughter driving her car through the garage door), the buyer bears the risk of damage to the property. For example, if lightning strikes the house and burns it to the ground, the buyer now has a lot with a scorched hole that isn't worth anywhere near what he paid for it. Therefore, it

is to everyone's advantage if both the buyer's and the seller's interest in the house is insured after the sales contract is signed. Call you insurance company to check on this.

Closing on the House:

The only way to assure that a closing takes place on or before a certain date is to include the words "Time is of the essence" in your sales contract. If those words are missing, then any "reasonable" date is acceptable. Because "reasonable" is about as easy to define as "about," don't expect any help from the courts for a late closing. If "time is of the essence" appears in the sales contract, you *might* have the option to cancel the deal if the closing does not happen on the specified date. Most people do not want to cancel the deal, but having the ability to do so could be important.

It is theoretically possible for you and the buyer to sit down at your kitchen table and close a house deal. But be warned that there are many, many details to work out. Hiring a lawyer or title insurance company to handle the closing is a smart way to proceed. Although this costs some money, it is nowhere near the amount you would spend for a real estate agent who probably would use title agents for closing anyway! Also, title insurance is always a good idea.

When you transfer ownership of a house, you will transfer the property by "warranty deed." When you warrant the property to a buyer, you are agreeing that you have good title to the property, you have the legal right to sell that property, and you guarantee that nobody else will contest the buyer's right to that property.

Thus we return to the subject of title insurance. A title company, for a fee, guarantees these warranties. They search the property title for liens or encumbrances and assure that no one else has a claim to the property. If someone does assert a claim, the title company will bear the burden of defending the title.

Generally, the cost of title insurance is based upon the value of the property. For example, a title insurance company would charge approximately \$500 for title insurance on a \$100,000 home. If the title insurance company agrees to handle the closing for you, the charge will be higher. But compare this \$700 or \$800 cost with the \$5,000 to \$7,000 you would pay for a realtor's commission.

Lawyers also handle house closings but their fees vary widely. To locate a civilian attorney who specializes in real estate transactions, contact the El Paso County Bar Association or consult the yellow pages.

This information is for the sole use of Active Duty service members, retirees, and their families. It provides only a brief overview of legal matters. Rights and responsibilities vary widely according to the facts and circumstances in each case. Laws can vary across states, services, and civilian jurisdictions. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.