CHAPTER ELEVEN

Where the Heart Is

Buying and Selling a Home

A HOME IS THE LARGEST PURCHASE most Americans will ever make. It's surprising, then, that people sometimes plunge into buying or selling a home with less care than they give to buying or selling a car.

If you are one of the millions of Americans about to buy or sell a home, it's important to understand the ramifications of the decisions you will make. For example, state and federal law, the economy, your personal preferences, your financial situation, the prevailing real estate market, current mortgage rates, and tax considerations, are among the many factors that affect you as either a buyer or seller. You will also need to work with a variety of people -- real estate agents, attorneys, lenders, home inspectors, appraisers, and insurance agents, to name a few. In short, buying and selling a home is not the simple matter it might appear.

Whether you are buying your first home or selling your tenth, you will want to make sure that you understand how the law affects your decisions. This chapter begins with questions related to buying and selling a home. It's a good idea to become familiar with the legal aspects of both the buying and selling process. This is particularly true if it has been a while since you bought or sold a home. Practices and laws change, so you'll want to be aware of how these changes affect your responsibilities as a buyer or seller.

Remember, someone must be willing to buy a home before you can sell it, and vice versa. The sale will involve negotiation and have legal consequences. Like any other contract negotiation, it's a good idea to understand the goals of both parties in the transaction.

ELEMENTS OF REAL ESTATE

When you own an interest in real estate, you own the land and everything under it, including minerals and water; anything of value on the land such as crops or timber; the airspace over the land; and improvements on the land such as buildings, for example a garage, barn, or fence. Each of these elements may be separate or shared and may also be subject to legal claims or **liens** -- claims against property representing an unpaid debt of the owner or an unpaid judgment entered against the owner by a court.

An example of how several different persons can have a legally recognized interest in the same real estate is where a farmer leases land owned by a school district. While the district owns the land, the farmer owns the crops he or she plants on the land. The district also might have sold mineral rights in the land to yet another person.

SELLING REAL ESTATE

Transactions involving real estate are different from buying anything else, and that difference is reflected in complexity. Possession of personal (movable) property is a strong indicator of ownership. With real estate, on the other hand, the property cannot be moved and possession does not necessarily mean ownership. To illustrate, unless property is fenced in, it may be difficult to distinguish a neighbor's property from your own. And, while you may own real estate, you may not have possession of it, if, for example, you are renting the property to someone else.

Most people buy a home because they want to own it and reduce their living expenses as they get older. Other benefits include favorable tax considerations and more control over one's personal living environment than might be possible in the context of renting.

--SIDEBAR: Home or investment?

A common view of prospective home buyers is to think of a home solely or, at least, primarily as an investment. This view, however, may be mistaken. There is no reason to assume that home prices will always rise. As many owners have discovered in the last five years or so, home prices can fall, sometimes dramatically. And, depending on the home prices in your area of the country, renting may be far more economical than buying, particularly if the renter invests the difference between a mortgage payment and rental payment. Nonetheless, while the decision to buy a home is not just an investment decision, it may be wise to give it the same care.

Meeting the Players

Though it's possible for a home to be bought and sold strictly between **principals** -- the buyer and seller -- this rarely happens today. Often, a home buyer will want to use the services of a real estate agent, an attorney, and a home inspector to check out the property. To obtain financing, home buyers will consult the staff of one or more lending institutions. They also may consult with a financial planner or accountant about financing and an insurance agent to obtain homeowner's insurance.

Sellers often use a real estate agent and an attorney. The seller also may turn to a financial planner or accountant for assistance in sorting out the tax consequences of selling.

Typically, two real estate agents are involved in the sale of the home: the **listing agent**, with whom the seller lists the property, and the agent who shows the property to prospective buyers. For the buyer, it is important to keep in mind *that both the listing agent and the agent showing properties are agents for the seller*. This means that both of these individuals work for and on behalf of the seller, not the buyer. For a prospective buyer, this is an absolutely crucial point. It means, for example, that neither the listing agent nor the showing agent is permitted to disclose to a buyer confidential information supplied by the seller that is adverse to the seller's interest in selling the property. (The seller and agents are, however, obligated to disclose material defects in the property if specifically requested to do so by a potential buyer, and, under some states' laws, even if not specifically asked. See page 21.)

As a buyer, you can avoid this information gap by hiring a buyer's agent. You will, of course, have to pay something for this person's services, but the fee will probably be negotiable, or it may even be taken out of the commission that would have been paid in any event. Because this individual represents you as the buyer, he or she will be required to disclose to you all relevant information -- the bad as well as the good -- about the property you are considering. In addition, a buyer's agent is there to negotiate the best possible purchase terms for you.

A buyer's agent can now be compensated from the total commission generated by a sale. This relatively recent change in the agency system is expected to increase the number of buyer's agents and, thus, to expand the level of information available to buyers. It could also lead to a slight increase in house prices, but any such increase would be hard to identify because real estate has been very much on the upswing in major markets for years now. Because this is an area of law that is rapidly changing, it is important for the buyer to have a knowledgeable attorney review a buyer's agent agreement before anything is signed.

The seller's listing agent helps determine the price of the home, suggests how to market the home, schedules advertising and open houses, shows the home to prospective buyers, and otherwise facilitates the sale. The showing agent works with buyers to show homes, contacts the listing agents, monitors the transaction, and, perhaps, helps to obtain financing. In most cases, the seller pays the sales commission, which is shared by the two agents.

Before starting the search, the buyer's lawyer should prepare a contract form on which to make an offer. The one supplied by the buyer's "agent" is likely to be seller-oriented. If the buyer does not have such a contract, the buyer will want an attorney to review an offer to purchase before it is signed, or at least be sure the offer has an attorney approval provision so that an attorney can review it before it is final. If you are a seller, you probably will want to consult an attorney early in the process and before signing a listing agreement with a real estate agent.

Buying and selling real estate almost always entails a contract. So keep in mind that a typed or handwritten “letter or agreement” or “letter of understanding” signed by the parties will be binding if it meets the legal requirements of a contract. Don’t sign something assuming it’s not a contract and, therefore, not important. If something goes wrong, you don’t want to discover too late that you’ve signed away important rights, failed to include important protections, or failed to receive what you expected. And beware of making oral promises. For example, if a seller verbally promises to update the electrical system, the buyer might be able to insist that the system be updated even if the matter doesn’t arise in later negotiations. Legal advice will be much more helpful -- and less expensive -- before rather than after signing a purchase contract.

Selecting a Real Estate Agent to Sell Your Home

Experienced, reputable agents can be an invaluable asset to a seller. Real estate agents can offer advice on the suggested listing price, can give you an educated guess as to how long it may take to sell, and can offer valuable suggestions about how to best show your home. The major advantage, however, is that by listing with an agent, information about your home is immediately available to hundreds of other agents and buyers in your area through a Multiple Listing Service (MLS), which may also be available over the Internet.

The agent with whom you sign a listing agreement is known as the listing agent -- most are members of the local MLS. Usually, within twenty-four hours of signing an agreement with an MLS agent, all MLS offices in your area will get a notice that your home is for sale. Because most home buyers work with agents, this makes information about your home available immediately to a wide range of potential buyers. (You should think twice before hiring a real estate agent who is not a member of the MLS.)

Choosing an agent requires that you do your homework both on the qualifications of the real estate firm and the individual agent who will handle your sale. You may want to interview several agents from various local firms with the following in mind:

- Is the firm a member of the National Association of Realtors, a national voluntary professional organization whose members exchange information and hold seminars in order to enhance their skills and improve the services provided to buyers and sellers of real estate?
- Ask about sales for the last six months or one year. How do these figures compare to the sales figures of other real estate agencies?
- How long do homes stay on the market?
- How much and where does the agency advertise?
- How close is the actual sale price to the listing price for homes sold over the past six months or year?

- What does the agent think you should do to make your home more saleable?

You also may want to know how familiar various firms and agents are with your area. How well do they know its schools, facilities, and public transportation? The answers to these and similar questions can help you select someone who is knowledgeable and interested in working for you.

It's a good idea to avoid agents who want to list your home at a much higher price than other agents suggest. This may be just a device to get the listing. Within a few weeks, you may find yourself being pressured to reduce the price drastically. Thus, make sure you are comfortable with the agent you choose. You should have confidence in your agent's ability. Your agent should be responsive to you by telling you who has expressed interest in the home and following up on the visits of potential buyers. For example, if many buyers have seen your home but no offers have been made, your agent should be trying to discover why. Is the price is too high? Is the decor too distracting? Should some minor repairs be made?

The Listing Agreement

Once signed, the listing agreement is a binding contract between the seller and the listing real estate firm. Its provisions include length of the listing period, commission rate and payment date, responsibilities of the firm and its agents, and who is responsible for the cost of advertising and the other costs associated with the home sale.

Read the listing agreement carefully. Don't hesitate to discuss any provisions you would like to change. To further protect your interests, resist signing an agreement until your attorney has reviewed and approved it, especially if you have requested changes that have been resisted.

One final suggestion could save you lot of money. Before signing a listing agreement, let your friends and neighbors know you're selling. If any of them express an interest in buying, exclude them from the listing agreement. Then, if one of them ultimately buys the property, you won't be required to pay any commission.

Most real estate firms prefer **exclusive right to sell** listings, also known just as "exclusives." An exclusive guarantees that a commission will be paid no matter who sells the property as long as it's sold during the time period covered by the listing. Exclusive listings require that the listing agency work the property and actively promote its sale. Other types of listings include **open** listings and **exclusive agency** listings. Most real estate agencies avoid open listings for residential sales because these listings allow sellers to list with other agencies or to sell the homes themselves. Under an open listing, the commission is paid only to the agency who finds the buyer. In some states, an exclusive agency listing may be offered under which the seller can avoid paying commission if he or she sells the house personally and not through an agent.

Real estate firms that are members of a Multiple Listing Service combine their exclusive right to sell listings. This makes the home available to a wide variety of prospective buyers. The multiple listing agreement defines how the firms share the sales commission when the property is sold.

Typically, real estate firms charge 5 to 7 percent of the sale price. On some higher-priced homes, a firm may charge the full commission on the first $100,000 or $200,000 and a lower percentage of any amount above that price. If the agency that lists the home is also the agency that sells it, the commission is shared by the agency and the individual agent who actually handled the sale. If the listing firm and the selling firm are different, the commission is shared by the two firms.

Other less common forms of fee payments include the flat-fee method, in which a set fee is charged regardless of the home's price, and the net method. The net method, which is not favored and is illegal in some states, allows the broker to retain any amount of the selling price higher than an agreed sale price.

Remember: All commission agreements are negotiable, particularly in a seller's market. So are the other terms in the listing agreement. At the very least, the real estate agency should be willing to negotiate provisions on:

- **The length of the contract.** Many of the standard forms provide that the contract renews automatically. Many firms want a six-month listing. If you're in a hurry to sell your home, try to get a 60-day or 90-day listing.
- **When the commission is earned.** You should insist that the listing agreement provides that this occurs only when the seller and buyer actually complete the sale, not when they sign the purchase agreement.
- **Who will be responsible for the advertising expenses** -- the seller or the agency.

You should always remember that the listing agreement between a seller and a real estate firm carries a **fiduciary responsibility**. This means that the firm and all of its agents act for the seller. They owe the seller the duties of care, obedience, accounting, loyalty, and notice. Your agent should promptly return your telephone calls, keep you informed about the progress of your home sale, schedule open houses, and, generally, appear interested in the sale. On the other hand, do not be unduly upset if you are presented with offers that seem unreasonably low. Your firm and its agents have an obligation to present you with all offers, even those that may seem "insulting." Of course, you are not required to accept any offer presented, although you may be required to pay a commission to an agent if you refuse to accept an offer at the precise price and terms set forth in the listing agreement. But, if you feel that undue pressure is being applied, it may be time for a change -- another reason to limit the length of a listing agreement.

BUYING A HOME

If you're a prospective buyer, postpone offers and negotiations until you get a feel for various neighborhoods and the style of home you are seeking. Visiting open houses is an excellent way to do this. You also may want to be pre-qualified by a lender for a mortgage before you have a specific home in mind. This will require filling out financial statements, making the necessary financial disclosures, and having your credit record checked. This will give you a rough idea of how much money the lender will lend you and, thus, make it easier for you to pinpoint your price range.

Making an Offer: The Purchase Contract

Negotiations are handled in various ways in different parts of the country. Typically, most transactions begin with negotiation over price, although other items such as date of possession may also be negotiated. The real estate agent will provide a form, usually called a **preliminary agreement** (there is nothing legally "preliminary" about it, however), a **contract to purchase** or, simply, a **real estate contract**. In any case, this is a formal, written offer that conveys your terms to the seller. If you intend to have the home inspected, it should include an **inspection rider**; if you intend to apply for a mortgage, it should include a **mortgage-contingency clause**; if your attorney has not reviewed the contract, it should include an **attorney-approval rider**. (Each of these is discussed in more detail below.) In other words, it should cover the basics. Remember, once this document is signed by both parties, it is legally binding.

The offer should specify a date after which it is no longer valid. This period may be as little as 24 hours from the time the seller or the seller's agent receives it. The offer to purchase also is usually valid only if both the buyer and seller sign it within a certain time period. As a general rule, an **earnest money** deposit (discussed more below) of perhaps $500 or $1,000 accompanies the offer to purchase.

When the buyer signs the offer to purchase, the buyer usually deposits a sum of money with the seller, the seller's real estate agent, or the seller's attorney. This is **earnest money**. Your offer should specify that the earnest money deposit will be placed in an interest bearing account with the interest credited to the buyer. Earnest money is not the same thing as the buyer's down payment, although if the sale goes through it will be applied to the down payment. Earnest money symbolizes the buyer's commitment to take the necessary steps to complete the purchase, for example obtaining a loan. Thus, if a prospective buyer does little or nothing to complete the sale, he or she risks losing the earnest money deposit.

The Purchase Contract

The purchase contract may be called a sales contract, real estate contract, purchase agreement, sales agreement, purchase and sale agreement or preliminary agreement. Whatever it is called, it is a legal document that, when signed by both parties, is a legal contract that will govern the entire transaction. Some states automatically allow you to void such a contract within 72 hours or a similar period -- a statutory "attorney review period" (see below). Ideally, though, ***before*** signing such a contract, you and your attorney should review it carefully. Remember, once signed, you are obligated to fulfill your part of the contract. A purchase contract, in most cases, is a standard form contract with any necessary riders attached. As ever, you can change any terms on a pre-printed form. The contract can include many provisions but should include the following:

- the date of the contract;
- the purchase price of the home;
- the amount of the down payment;
- all items to be included in the sale such as wall-to-wall carpeting, window treatments, appliances, or lighting fixtures;

- any items to be excluded from the sale such as an heirloom chandelier;
- the date when the deed will be transferred (or the closing date);
- an inspection rider. This allows the buyer to have the home inspected, usually within 10 days of the date of the contract. It may specify various types of inspections, such as structural, termite, roof, etc. If the inspection is unsatisfactory, the buyer ordinarily is released from the contract. However, the buyer may not be released if the contract allows the seller to make repairs and the repairs, when made, meet applicable standards of workmanship.
- an attorney-approval rider for both the buyer and the seller if either or both parties are signing the contract before it is reviewed by their respective attorneys;
- a legal description of the property**;**
- a provision that the seller will provide good title to the home or what is sometimes called marketable title. Generally, the seller fulfills this obligation by providing an abstract of title, certificate of title, or a title insurance policy. This indicates that the seller has the authority to sell the home. In some states, for example Connecticut, the seller is required to deliver good title that the buyer is expected to verify, at his or her own expense, by securing an abstract of title, certificate of title, or a title insurance policy. If the buyer encounters problems in establishing title, he or she can reject the title at closing;
- any restriction or limitations that could affect title;
- a provision for paying utility bills, property taxes, and similar expenses through the closing date;
- a provision for return of the buyer's earnest money deposit if the sale is not completed as, for

example, when the buyer has been unable to obtain financing after reasonable or good faith efforts to do so;

- a provision for taking possession. Along with a firm date for transferring possession from the seller to the buyer, the buyer should include a provision that requires the seller to pay a specific amount of rent per day if the seller does not leave the home by the agreed date. If the buyer and seller already know that possession will be delayed, the buyer may ask for a certain amount of money to be held in escrow at the closing to cover the rent for the expected time period;
- a provision for a walk-through inspection within a specified period before the date of closing to allow the buyer to make sure conditions are as they should be according to the contract;
- terms of any escrow agreement;
- a provision for who is responsible for maintaining insurance until the closing. The Uniform Vendor-Purchaser Risk of Loss Act applies in some states, which means that the seller assumes the risk of loss until either the transfer of title or possession. In some states, the common law requires the seller to assume this risk;
- signatures of the parties.

Many buyers like to inspect the property within 24 hours of the closing to be sure it is in the same condition as it was when they signed the offer to purchase and to make sure that all property to be included in the sale remains in place. This is called a **walk-through**. If something has been removed that was included in the sale under the terms of the purchase contract (such as a chandelier or appliance), the buyer should quickly notify his or her attorney or the seller’s agent to see if the item will be returned before closing. Or, if agreeable to both parties, the buyer and seller may decide to reach a financial compromise instead.

Specific Contract Riders

One common rider, the **attorney approval** rider, makes the purchase contract subject to approval by the buyer's and seller's respective attorneys within a short period of time, usually five to ten days after acceptance of the offer. In such cases, the standard contract form should include the phrase, "**Subject to the Approval of the Attorneys for the Parties Within Days**," with the number of days written in. Without such a condition in the contract, both the seller and the buyer are bound by the terms of the contract, which may be unclear or may differ from the parties' intent.

Like the inspection rider and the mortgage-contingency rider, this language does allow a buyer to get out of a purchase contract. In fact, this is the reason some sellers will not accept such clauses, though it is mandated in some states. An attorney-approval rider could specify that a lawyer must state such disapproval in writing, with the seller having the option to correct the problem causing disapproval. This type of rider ensures that the contract need not bind the parties if their lawyers find an unsatisfactory provision in the small print. Meanwhile, the buyer and seller can sign the contract knowing that the other party may not easily back out of the contract because of a minor defect or objection.

The **mortgage-contingency rider**, a common provision, allows the buyer a certain period of time to obtain a commitment for financing at a specified interest rate for a certain amount of money. It usually lasts for 30 to 60 days, depending on the average time needed to obtain a loan commitment. The clause might read, for example, that the contract is contingent on the buyer's obtaining approval for a 30-year mortgage for $100,000 at no more than eight percent interest within 45 days. For additional protection, the buyer might specify the type of loan he or she prefers, for example fixed or variable or FHA or VA.

A mortgage-contingency rider provides critical protection to the buyer. For example, it allows the buyer to void the purchase contract without penalty in those cases in which the buyer is unable to obtain financing on the terms specified in the contract after making a reasonable or good faith effort to do so within the time provided. Because this type of clause favors the buyer, some real estate agents suggest that the buyer obtain “pre-qualification” from a lender, which gives the seller a degree of confidence that the buyer will not use the clause to void the contract unless some extraordinary circumstance arises.

The seller may refuse to agree to a mortgage-contingency rider. This can and does happen in a very hot seller’s market -- in which case, there is not much the buyer can do. But the absence of a mortgage-contingency rider might mean that the buyer will be forced to finance his or her home purchase at an unfavorable interest rate. Because of this risk, buyers should be cautious about signing a purchase contract that does not contain this clause. Sellers should ensure that the proposed interest rate is reasonable, based on current rates, and also allow a limited but reasonable time for the mortgage commitment. Similarly, most sellers accept an inspection rider but should make sure that this rider expires relatively quickly -- say, ten days from signing. Unlike a mortgage commitment, there’s usually no reason that an inspection can’t be done within a week or so.

Uncompleted Sales

What happens to the earnest money deposit if the sale is not complete? Generally, the purchase contract allows the buyer to get back his or her earnest money and any interest earned on it, unless the buyer has in some way violated the contract. If the seller refuses to return the deposit, the buyer may have to sue the seller for return of the deposit.

If the seller violates the terms of the contract or refuses to close the sale, the buyer can sue to force the seller to complete the transaction, although this is rare – especially in a seller's market, where there is usually another buyer in line. It also is possible for the buyer to sue for damages. For example, a buyer who had incurred costs for obtaining a mortgage or costs for renting temporary housing caused because the seller broke the contract would have a case for damages.

The Home Inspection

A professional home inspection can vary among localities, but, generally, the aim is to discover any problems with the home that might not be readily apparent. Most inspectors check to make sure there are no material defects or problems with such items as the electrical, plumbing, heating, and air-conditioning systems. The inspector also may check for termites, the age of the roof and when it might need replacement, condition of the basic structure including the foundation, evidence of basement seepage, and other problems. Some inspectors check for radon concentrations, lead paint, or other environmental hazards.

A professional inspector should not be an alarmist. The idea is to point out problems without exaggerating defects. It's a good idea for the buyer to accompany the inspector during the inspection. In this way, the buyer is able to ask questions and to get an idea of the cost of any repairs that are necessary or advisable. Further, the inspector also may suggest ways to better insulate the home or offer maintenance suggestions that can prolong the life of operating systems such as heating and air conditioning.

Most buyers do not want to pay for an inspection until they have settled on other terms with the seller. To do this, the buyer often uses an inspection rider to provide that the offer to buy is contingent on a favorable inspection of the home. It is unethical for home inspectors who are contractors or architects (as many are) to angle for contracts to do the corrective work on defects they find.

---SIDEBAR: An agent or not?

There are advantages to selling your home without an agent. If you sell your home on your own, you will not have to pay a sales commission. While this may seem like a large savings, you must prepare yourself to assume all the responsibilities and costs associated with selling your home. These include advertising your home, spending time with potential buyers, and negotiating the sale. Sellers familiar with local sales procedures and the real estate market may choose to sell their homes themselves, and there are various books that can help guide you through the process. Experts generally recommend that the seller hire both a lawyer and appraiser at the beginning of the process. An appraiser can help you establish a price for your home, and the attorney can help you with the legal issues, legal filings, and other necessary documentation.

There are three distinct disadvantages to doing it yourself, however. First, you will lack the many resources that real estate agents have to attract buyers. For example, your home will not be listed in your local Multiple Listing Service, so it is unlikely that many buyers will be shown your home. Second, you will have to find time to show your home and talk to potential buyers and you will need to pay for all advertising. Third, you will be directly involved in negotiating the sales price and other contract provisions.

At first glance, this last task may seem easy enough. However, many sales fall through without the mediating influence of a third person who has the experience to bring the buyer and seller together on a variety of issues. A professional real estate agent is on the alert for “deal-breakers,” the kind of petty disagreements over small items that break up negotiations. If you’ve decided to sell on your own and also don’t hire an attorney to negotiate for you, remember that settling on the terms and conditions of sale, including the price, is a give-and-take process. The fact that you love your renovated kitchen won’t influence a potential buyer who intends to remodel anyway. If, after some reflection, you conclude that you lack the necessary experience, it may be wise to turn to a real estate agent or your attorney.

The major advantage of buying a For-Sale-By-Owner, or **FSBO**, home should be a lower purchase price because the seller will not be paying a commission on the sale. The truth is, however, that many FSBOs are priced as high as they would be if they were listed with a real estate firm. If you are interested in a FSBO, make sure you check the prices of comparable homes on the market as well as recent sales in the area.

Disclosures

Disclosures about real estate are covered -- or not covered -- by state law. In other words, disclosure is treated differently among the states. Some states require sellers to fill out a long form that explicitly asks about the seller's knowledge of various material defects that might be present in the home. Most states, however, do not require disclosure, though in may of these states the listing agent will require it anyway. It is certainly wise for the buyer to beware. In some jurisdictions, unless the buyer asks specific questions about defects, the seller is not required to disclose them even if he or she has specific knowledge that one or more substantial defect exists. As a result, any problems discovered by the new owner after the sale is closed are his or her problems. There is a trend for courts to require disclosure if the buyer does not ask. But so not rely on this possibility. As a buyer, when in doubt, ask.

As a seller, you may want to disclose known material defects that seriously affect the home's value even if your state does not mandate such disclosure. This will help you avoid any future legal problems involved with the sale of your home. Many of the lawsuits filed about real-estate transactions involve the seller's misrepresentation or failure to disclose. Responding honestly to the buyer's questions and either repairing material defects or disclosing them is an effective way to avoid future litigation.

Setting a Price

Whether as a buyer or a seller, how do you establish the value of a home? First of all, there is no "right" price. The value of a home is almost entirely dependent on what someone is willing to pay for it and how long the seller is willing to wait to find that person. Most sellers are not in the position to wait for the "ideal" buyer who will pay their "ideal" price. They want to find the optimum price at which their home will sell in a limited amount of time. To do this, they typically rely on comparisons with recently sold homes in the neighborhood. A real estate agent can help you by giving you a list of homes sold through the local Multiple Listing Service during the past year or so. This information is also readily available on the Internet, for free, although such free information may not be comprehensive.

For example, if the home in question is a three-bedroom, two-bath ranch on a typical lot, your agent can point out sales prices of similar homes to determine a listing price. Try to limit your study to homes that are very similar to the one you are seeking to sell or considering bidding for. If Victorian homes are prized in your area, even a Victorian needing work will be priced higher than other styles of homes of similar size.

Amenities are a big factor in the price. An attached garage, wood-burning fireplace, updated kitchen and baths, large lot, and spacious rooms are among the factors that generally increase a home's price. Location is also a factor. Most buyers want good schools, good transportation, quiet neighborhoods, and little if any commercial activity. The presence or absence of these factors all affect the selling price of your home.

--SIDEBAR: THE FAIR HOUSING ACT

A homeowner may legally refuse to sell a home to a potential buyer for many reasons (i.e., shaky credit), but not for **prohibited** reasons (race, gender, etc.). The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, covers housing discrimination. This law prohibits housing discrimination by real estate firms and homeowners. This means that homeowners may not refuse to lease or sell property based on race, religion, gender, color, or national origin. In some localities, special housing discrimination ordinances or laws also cover sexual orientation. This does not mean, however, that sellers must sell *you* their home. It means that you could take legal action if the seller refuses to sell and you believe it was due to discrimination.

A homeowner can face serious financial penalties if found in violation of this law. The potential buyer could sue for actual monetary losses as well as attorney's fees, court costs, and even punitive damages.

A homeowner *may* lawfully "discriminate" on economic grounds. Without too much fear of legal action, a seller could refuse the bid of a buyer with a poor credit rating or inability to obtain a loan. The homeowner's argument could be that he or she cannot be forced to remove the home from the market while waiting for a loan commitment that had little chance of materializing. Perhaps the safest thing for the seller to do if the economic viability of an offer is in question is to tell the buyer that offer might be accepted once the loan commitment is obtained -- if no other offers were received in the interim.

Real estate firms and agents also are covered by the Fair Housing Act, which prohibits them from **steering**, a practice of showing potential buyers homes located only in certain neighborhoods. For example, a firm or agent might be accused of steering if the homes shown to prospective black buyers were located only in neighborhoods with a high concentration of black residents.

If you suspect that someone has discriminated against you, request a complaint form by calling the federal Department of Housing and Urban Development (HUD) at 1-(800) 424-8590 or http://www.hud.gov/complaints.html. HUD's job is to investigate such complaints. You also may be able to contact a local civil rights organization to find out if your area has specific organizations to contact. Usually, you will have to consult a lawyer about possible legal action against the homeowner.

Perhaps equally important are personal reasons for selling and how long you can wait to buy or sell. Typically, the most interest is generated in the first few weeks a home is listed. If the seller wants to sell a home fast, it should be priced so that it stands out among comparable homes on the market. If the seller is willing to wait (and willing to keep the house in good shape during the time it remains on the market), the seller will likely price it above the competition. Sellers who try to hold out for the highest price, however, may find themselves reducing the price down the line. A house that has been on the market beyond the average marketing time generates little interest from buyers, even when the price is reduced dramatically. Most buyers will assume that the home has problems which they, understandably, want to avoid.

As a buyer, you have to consider the following factors to determine whether or not you can afford to purchase a home:

- How much money have you saved for a down payment?
- What is the status of your current income and expenses, such as car payments?
- Do you have a good credit history?
- What are the current interest rates on mortgages?
- What are your priorities and lifestyle?
- How much home can you afford?

Affording a Home

This is one of the first things to consider when buying a home. First of all, knowing what you can afford will narrow your range so you will not waste time by looking at homes that cost too much. First-time buyers often become disappointed when they find the home of their dreams only to discover they cannot afford it. Unless you are paying cash for a home, how much home you can afford depends on your income, your assets, your expenses and debts (including automobile or education loans and outstanding credit card balances), prevailing interest rates on mortgages, the cash needed for a down payment (10 to 20 percent of the purchase price), and closing costs (four to six percent of the purchase price).

There is a formula for determining what you can afford. The prevailing rule says that a home should cost no more than 2.5 times your annual income. Thus, if your income is $50,000, your price limit would be $50,000 multiplied by 2.5, or $125,000. Typically, a lender expects you to pay no more than 28 percent of your gross income for housing, which includes the loan payment, property tax, home owner's insurance, and estimated utility costs. A lender will look at your debts. As a general rule, your total indebtedness, including monthly housing expenses, should not exceed 36 percent of your gross income.

Along with these guidelines, consider your lifestyle and priorities. If costly vacations, dining out, and entertainment are important to you, you may want to buy a less expensive home than the lender says you can afford. Many people, however, find that they are willing to give up some luxuries or even stretch their budget for the home they want. In an era of corporate downsizing and job insecurity, however, this may be unwise. Luxuries can be cut back in an emergency; a mortgage payment cannot.

The total loan amount a lender will agree to provide is directly tied to your income and expenses. As a homeowner, you will be paying a monthly loan payment, along with the cost of insurance, property taxes, utilities, and maintenance. A lender looks for a solid history of income, employment, and credit. The lender also will review your expenses, including automobile payments, credit-card debt, education loans, child support, alimony, etc. If you are borrowing money for your down payment, the lender will treat the interest payments on that loan as expenses, or perhaps even decline the loan unless most of the down payment is your money.

Down Payments and Other Closing Costs

Some people may qualify for special government-insured loans offered through the Federal Housing Administration (FHA) or Veterans' Administration (VA). The down payment needed for these loans is minimal. But, unless you can qualify, you will need a down payment equal to 20 percent of the purchase price to avoid paying the extra cost of Private Mortgage Insurance (PMI). With less than a 20-percent down payment, banking regulations require the buyer to carry PMI. This insures the lender against nonpayment of the difference between the customary down payment and the down payment actually paid. The charge for PMI may be as much as $50 or $60 per month, although the amount declines as the loan ages and you begin to pay off more of the principal. It is not tax deductible.

If you cannot put down 20 percent, the only way to end the PMI payments is to demonstrate in the future that your equity in the home has increased to 20 percent. This can sometimes be done if you refinance and your home has increased in value to the point where the balance of your loan is less than 80 percent of the home’s value. Or, if you have owned your home long enough to build up equity through principal payments, you may be able to eliminate PMI. Be aware, however, that the insurer will need written support from a certified appraiser as to the value of your home. The value assessed by a municipality for real estate tax purposes is seldom considered in evaluating home equity.

Along with the down payment, you will need between four and six percent of your loan amount to pay for closing costs, unless you are obtaining an FHA or VA loan. These costs include fees for your attorney, the lender’s appraisal, lender’s title insurance, title search, escrow deposits for property taxes and/or homeowner’s insurance, as well as other expenses such as recording fees. If you are obtaining a loan from a federally insured financial institution, the law requires the lender to provide an estimate of these costs at the time you apply.

The seller has to cover some closing costs. He is responsible for paying the commission on the sale and must pay any taxes owed on the property, any money due his or her lender, and any liens that may be outstanding on the property. Usually, the seller is required to pay the cost of a title insurance policy for the buyer that insures the buyer against any defects in the title to the property.

Mortgages

The interest you pay on your loan is part of the cost of owning a home. For example, a one percent increase in the interest rate on a $100,000 loan adds approximately $75 to your monthly loan payment over the life of a 30-year loan. Obviously, the lower the interest rate, the more you can afford to borrow. Be aware that home interest rates can change quickly. They usually are the last rates to decline when other interest rates are falling and are among the first to rise when other rates are climbing.

If you are unsure about your price range and, especially, if you are a first-time buyer, **pre-qualifying** for a loan can help smooth the purchase process. You will know exactly what you can afford and avoid the disappointment of being unable to buy the home you thought you could afford. To pre-qualify for a loan, you will need to go through most of the steps entailed in applying for the actual loan. If you decide to pre-qualify, be sure to do so through a loan originator, that is, an actual lender. A mortgage broker, who brings together borrowers and lenders, cannot pre-qualify you for a loan.

FINANCING A HOME PURCHASE

Few people have enough cash to buy a home outright. Most need to finance their purchase by borrowing money. Usually, this is done by contracting with a financial institution or mortgage company. The buyer agrees to pay interest on the money borrowed and the lender retains a lien on the property, called a **mortgage** or **deed of trust**. Today, a wide variety of financing mechanisms exist to finance a purchase. Some buyers may qualify for federally insured loans that permit smaller-than-normal down payments and lower interest rates than prevailing market rates.

It pays to pay attention to trends in interest rates and to shop around for the best deal you can find. Lenders are very competitive. Interest rates and fees charged to originate a loan vary among financial institutions. Typically, lenders charge the prospective buyer a fee, called **points** (as in percentage points) to obtain a loan -- this may be a flat fee or a percentage of the loan (one point is 1 percent of the loan amount). One lender might offer an 8 percent, thirty-year fixed-rate loan with a flat fee of two-hundred dollars. A second lender might offer a 7 percent, thirty-year fixed-rate loan with two points. A third lender might offer the loan without points or other fees but at a higher interest rate. This could be advantageous for a buyer who wants to put as much as possible into his or her down payment. Another buyer might prefer to pay higher points in exchange for a lower interest rate because the IRS allows points to be deducted against taxable income in the year the home is purchased. TILA helps you make a choice by requiring information that will help you understand the options and make comparisons.

There is an alternative form of financing in some states called a **land contract**. A land contract is a common form of seller financing. The buyer pays the seller a down payment and agrees to make payments of interest and principal on the outstanding balance. In other words, the seller acts as a lending institution. This is often referred to as “the seller taking back a mortgage” or “taking back paper.” Typically, the buyer takes possession of the property, but the seller retains the right to sue to recover the property if the buyer fails to fulfill his or her contractual obligations. This is sometimes used when the buyer does not have a large amount of cash to buy a new home, and is generally considered not desirable from the buyer’s point of view, since the buyer can be quickly ousted for default (moreso than under a bank mortgage) and may lose the built-up equity. Other drawbacks include inability to finance home improvements, inability to borrow on built-up equity, and possible problems in getting clear title from the seller when the time comes to transfer ownership.

Sometimes a **bridge loan** is needed to allow a buyer to buy another home while waiting to sell his or her present home. You can obtain a bridge loan if you have a contract to sell your present home and you need the loan only for a specific, relatively short, period of time. It is much more difficult to obtain a bridge loan if you do not have a buyer for your home and, thus, need to pay loans on two properties. Bridge loans usually carry a higher interest than a traditional home loan, because they are for a short duration. But since they're out for a short time, the interest bite is not as painful as it would be under a long-term mortgage.

Fixed-Rate Loans

Some prospective buyers prefer a **fixed-rate loan** because the interest rate cannot be increased during the term of the loan, typically 15, 20, or 30 years. Under a fixed-rate loan, buyers can feel more comfortable knowing the exact amount of their monthly loan payments throughout the life of the loan. (Much of the same comfort, however, with some of the benefit of a variable rate, may be obtainable with a variable rate capped over the loan life and even capped each year.) Although the interest rate does not change with a fixed-rate loan, the way in which the payment is divided changes over the loan period. At the beginning, most of the payment is applied to the interest owed to the lender. As the loan progresses, more money is applied to the principal -- the face amount of the loan. This process, called

amortization, also means that the amount of interest deductible for a federal income tax purposes will decline over the life of the loan.

The major difference between a fifteen- or twenty-year fixed-rate loan, on the one hand, and a thirty-year fixed-rate loan, on the other, is that the borrower will pay higher monthly payments (which include more of the principal) on the shorter term loans than would be the case with a thirty-year loan for the same amount of money. Over the life of the loan, however, the buyer pays far less interest, because he or she is using the money for a shorter period of time and is paying off more principal each month.

Adjustable-Rate Loans

Adjustable-rate loans vary, but they all share one common factor -- some aspect of the terms of the loan can be changed by the lender during the life of the loan. The specific type of adjustable mortgage is tied to whether the change is in the rate of interest, amount of payment, or length of time for repayment. If you are considering applying for any type of adjustable-rate loan, make sure you understand exactly how the mortgage works, including the spread between the interest rate and the index to which the rate is tied; how often the loan can be adjusted; the maximum allowable increase (or decrease) each year as well as over the life of the loan.

Adjustable-rate loans include:

Adjustable-rate mortgages (ARMs). These loans typically offer a lower interest rate than fixed-rate loans to begin, and often come with a "teaser" rate--a lower-than-market interest rate in the first year. The future interest rate, after the initial period, will usually be adjusted annually and is tied to an index that may move up or down but is not under the control of the lender. The index might be the one-year Treasury bill (the “T-bill” rate) or some other rate that reflects the changes in interest rates. Note that the rate is tied to the index -- it is not the same as the index. The mortgage might specify, for example, that the future rate would be two points above the average T-bill rate. Typically, ARM’s are adjusted once a year on the anniversary date of the loan. Additionally, ARM’s usually have a provision for a cap, that is, the highest rate that could be charged. Some may include a minimum rate as well. When considering ARMs, consumers should never take one without a cap, and should insist on an example of what the highest possible payment would be under a particular ARM.

Convertible ARM’s. These loans usually offer a conversion factor that allows the borrower to convert to a fixed-rate loan at a specified period of time. For example, a convertible ARM could allow the borrower the option to convert to a fixed-rate loan once a year over the first five years of the loan. The interest rate to be paid would also be tied to an index.

Renegotiable-rate mortgage (rollover). These loans typically set the interest rate and monthly payments for several years, sometimes as if the loan were being amortized over a much longer period, and then allow both the rate and principal payments to be changed depending on general market conditions. If the new terms are unacceptable to you, you can pay the loan in full or refinance at prevailing interest rates.

Graduated payment mortgage (GPM). With this type of loan, typically sought by young buyers who expect their incomes to rise, the payments are low in the first couple of years and gradually set to rise for five the years thereafter.

Shared-appreciation mortgage. These loans offer lower-than-market rates of interest and low payments in exchange for a lender's share in appreciation of the property. Usually, the lender will require that its share of equity will be turned over when the home is sold or at a specified date set out in the loan agreement.

Balloon Loans

With a **balloon loan**, the buyer is expected to pay off the loan completely within a short period of time, usually in three, five, or seven years, but the loan is amortized over a longer period so the payoff amount is large. In other words, this is a short-term loan with a large (balloon) final payment. The interest rate can be fixed or variable, but in all cases the unpaid balance on the principal is due at the time specified. The borrower must either refinance or sell the home to pay off the loan.

To attract buyers, builders often offer balloon loans during periods of high-interest rates when home sales are sluggish. In most cases, the interest rate will be lower than prevailing home loan rates. But if interest rates are high when full payment is due, refinancing may not be possible. The balloon will "burst," resulting in foreclosure and loss of the home. Balloon loans are less popular today than they were in times of large interest rate swings, when frequent (and speculative) refinancing was a regular occurrence.

FHA and VA Loans

The Federal Housing Administration (FHA) offers insured low-interest loans made by the federal government and approved lending institutions. The cost for this loan insurance varies and is charged at the closing. While FHA loans are not available through all lenders, in some areas they are very popular and can make the difference in obtaining a loan for some potential buyers who do not qualify for conventional financing. The Veterans Administration (VA) offers government-insured loans to qualified veterans.

Income qualifications, required down payments, and the maximum allowable loans under these plans are changed periodically. Currently, the maximum FHA loan is about $220,000 in certain high-priced areas of the country.

For first-time home buyers, the federal government as well as state governments offer loan assistance to prospective buyers who meet eligibility requirements. For current information about these loan programs, consult local FHA and VA offices as well as your real estate agent.

Jumbo Loans

Jumbo loans exceed the amount of loans allowed by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Association (Freddie Mac), the federal agencies that oversee the secondary market in mortgage loans. The maximum mortgage amount for Fannie Mae and Freddie Mac can go up or down. Recently it stood at $ 252,700.

Fannie Mae and Freddie Mac are not loan guarantors; they are purchasers from primary lenders. These agencies purchase loans from lenders and then resell the loans to other organizations such as insurance companies and banks. On the other hand, FHA and VA are loan guarantors. Many FHA and VA loans are purchased by Fannie Mae and Freddie Mac.

Interest rates on jumbo loans typically are slightly higher than other loans, but this isn't always the case. Lenders who intend to keep the mortgage in their portfolio tend to offer competitive interest rates.

Negative Amortization

In a typical home loan, the borrower pays off the interest and principal in installments. This is known as amortization because the debt is gradually reduced. **Negative amortization** can occur when the installment payments do not cover all the interest due each month. This unpaid interest is added on to the principal that is owed, resulting in a debt that increases, rather than decreases.

The worst problem with negative amortization occurs in a market (which has not been seen in most areas of the country for many years now) in which home values decrease. Then the size of your debt could increase to the point where it would exceed the equity in your home. Sadly, you could sell your home and not be able to repay what you owe. Most professionals advise buyers to avoid a negatively amortized loan. The risks outweigh the benefits of the lower payments. It may be better to postpone buying a home until you can make higher payments or investigate a lower-cost loan from the FHA or VA.

APPLYING FOR A HOME LOAN

Obtaining a loan requires a lot of paperwork and sometimes a lot of fortitude. The savings and loan scandals and the large number of foreclosures in recent years have forced lenders to take a much more critical look at their lending practices. While you won't be asked for your blood type, it's a good bet that you will be asked about everything in your financial history. Loan applications vary, but most require the following information:

- Employment history, salary history, and proof of employment;
- Outstanding debts;
- Assets;
- Source of your down payment.

This last point requires some explanation. The lender will want to make sure that you are not borrowing money to make your down payment. (If you are borrowing money and will be making interest payments, this will be taken into consideration.) If you are receiving a gift from relatives for a down payment, the lender will expect proof that the gift will be forthcoming.

When you apply for the loan, ask the lender how long the approval process is expected to take. It can take anywhere from twenty-four hours to three months, depending on a variety of factors. If you have included a mortgage-contingency clause in your purchase contract, be sure to inform your lender when you apply for the loan of the date the clause expires. Usually, your lender will work with you to meet the deadline or alert you that approval will take more time. At that point, you may be able to get an extension from the seller on the contingency.

Although illegal in many states, where permitted many home loans include a **prepayment penalty**. This is a charge imposed if the borrower pays off the loan ahead of schedule. This penalty is usually one or two percent of the loan. It is not unusual for home loans to include a prepayment penalty for the first few years; however, you should avoid mortgages that require a prepayment penalty beyond the third year.

Once your loan is approved, the lender will provide you with a **loan commitment**, in which the lender agrees to lend a specific amount of money on specific terms. A copy of this commitment can be provided to the seller to assure him or her that your financing is in place.

There is a substantial amount of documentation provided by the lender, or **mortgagee**, before closing. Much of it is mandated by federal law and is meant to disclose the true cost of the loan to the borrower, or **mortgagor**.

Ultimately the borrower will sign many documents; however, two documents are essential to completing the loan transaction. One is a **promissory note** -- a contract under which the borrower agrees to repay the lender the money borrowed plus interest. The borrower may be responsible for repaying the note even if he or she later sells the home to a buyer who assumes the mortgage. The second document is a **mortgage**, or **deed of trust**, which is the document that gives the lender a security interest in the real estate. Having a security interest in your home means the lender may enforce repayment of the loan by selling the property. If you do not pay, you could lose your home.

Insuring Your Home Loan

Several types of insurance contracts pay your home loan if you die or become disabled. This type of insurance establishes an annual premium cost for the life of your loan. Because your loan declines as you pay down the principal (main amount of the loan), the amount of insurance coverage decreases each year, although the cost stays the same. In almost all cases, a term life insurance policy that can be used to pay off the loan in the event of your death is preferable to a mortgage insurance policy. Term life insurance is less expensive and offers better protection and more flexibility. (For example, if your spouse has a regular source of income, but little savings, he or she may not want to pay off the house but might prefer to keep the life insurance proceeds in the bank.) All insurance products are relatively complicated. You may want to consult a financial professional or an attorney to check these policies before you buy one.

Because temporary or permanent disability can threaten your ability to pay your home loan, you may also want to consider buying a disability policy or participating in any disability insurance offered by your employer. Disability insurance can add to your peace of mind and that of your lender. Again, however, *credit* disability insurance may not be your best choice.

---SIDEBAR: BUYING A HOME FROM A BUILDER

A buyer purchasing a new home from a builder may or may not work through an agent. If you are not working with an agent, you should consult your lawyer to ensure that the purchase contract with the builder contains no surprises. In addition, you may want to consider having the finished structure inspected notwithstanding its newness. Remember, it's the quality of the construction, not its newness, that is important. An independent inspection can give you this assurance.

If you are contracting with a builder on a home that is not built or finished, you will want to make sure you will get what you think you are buying. For example, model homes typically include options, rather than standard features. Along with superior windows and siding, these could include better-quality kitchen cabinets, higher-grade carpeting, and more expensive lighting fixtures. In a large planned-unit development, it is not uncommon for developers to switch to cheaper finishing materials as different phases of the construction continue. Make sure that the builder provides you with a complete list of standard and optional features. If you are choosing options, make sure the purchase contract includes the specific cost of all options.

You will want to know other facts as well, such as the type and extent of any landscaping to be provided by the builder, known plans for the development of surrounding property, and the exact provisions of any warranty from the builder. If possible, you will want a warranty that is insured by an insurance company, rather than a warranty guaranteed only by the builder. Finally, the builder should provide you with evidence that his or her subcontractor's and material suppliers have waived any liens they might have against the property in the event the builder does not pay them for their work.

Specified dates for completion and occupancy should be included if the home is not yet built. You can provide for a penalty or for the right to cancel the contract if the builder exceeds these dates. You can also insist on an escrow or hold back for incomplete items that are discovered just prior to closing.

The Closing

The real estate closing is the final stage in the process of buying a home. The closing is a meeting at which the buyer and seller, usually accompanied by their respective lawyers and real estate agents, complete the sale. At this meeting, the buyer usually makes all the required payments. The seller produces all documents necessary for the transfer of good -- that is, marketable -- title and delivers a deed that transfers the title to the buyer.

Before the closing, the parties and their lawyers will review all documents to see that everyone is fulfilling all conditions and promises of the contract. A closing statement or settlement sheet is prepared, fully listing the financial aspects of the closing. The Real Estate Settlement Procedures Act (RESPA) will apply in any transaction in which a buyer is obtaining a mortgage from a federally insured financial institution. This requires use of a settlement sheet developed by the Department of Housing and Urban Development. In other closings in which the buyer is not obtaining a mortgage, another form of settlement sheet is usually prepared.

Both buyers and sellers should expect to sign a lot of papers at the closing. Buyers should expect to sign the following:

- A promissory note promising to pay in full the loan and interest;
- The mortgage document;
- A truth in lending form that requires the lender to tell you in advance the annual percentage rate of the loan over the loan's term and other information about payments;
- A payment letter telling the buyer the amount of the first payment and when it is due;
- An affidavit that the buyer's various names all refer to the same person (mainly relevant to buyers who have changed their names after marriage);
- A survey form stating that the buyer has seen and understands the survey of the property and that it fairly depicts the property;
- A private mortgage insurance application, usually required on loans with a down payment of less than 20 percent;
- A termite inspection or other inspection form, indicating that the buyer has seen a report of any inspections that were made.

Sidebar: Saving Money on PMI

Private Mortgage Insurance (PMI) is usually a must on low down payment loans, to cover the lender's risk in the event of a foreclosure.

You probably would be required to pay PMI if, like 30% or more of homeowners, you got a mortgage without putting down at least a 20% down payment. Lenders make PMI a condition of the loan, to protect themselves in case borrowers default on loans and they have to sell the property for less than the outstanding balance. On a $90,000 loan at 7.5% interest, PMI would be over $350 a year.

However, once you've build up at last 20% equity in the home—meaning that the money owed is less than 80% of the home's value—the lender is no longer at risk, and you can ask that the insurance be cancelled.

A federal law that went into effect in 1999 helps consumers understand when they no longer need to pay private mortgage insurance (PMI)—and thus save thousands of dollars over the length of a home loan.

Under the new federal law, the lender *must* cancel the insurance when the mortgage balance falls below 78% of the home's original purchase price. However, because homes usually appreciate in value, you may be able to cancel it earlier—and federal law now requires the lender to tell you annually that you have the right to cancel if you meet certain criteria, such as rising home values increasing your equity.

The seller can expect to sign the following documents:

- The deed transferring title in the real estate from the seller to the buyer;
- A bill of sale transferring ownership of any personal property that may be included in the sale of the real estate;
- An affidavit of title in which the seller states that he or she has the legal right to sell the real estate and that there are no liens or encumbrances (judgments, mortgages, or taxes owed) on the property;
- An affidavit as to mechanic's liens and possession indicating that the seller has not had any work done on the property that would give rise to a mechanic's lien and that there are no parties other than the seller entitled to possess the property;
- An occupancy certificate indicating that a new home complies with the local housing code.

Both buyer and seller will also sign the following:

- An affidavit specifying the purchase price and indicating the source of the purchase price. (This affidavit assures the lender that the buyer has not received any undisclosed loans from the seller or others that could negatively affect the buyer's ability to repay the lender's loan.)

- A RESPA form developed by the federal Department of Housing and Urban Development and sometimes a separate closing statement, specifying all costs associated with the transaction.

At the time of closing, the seller and buyer will total up various credits in order to determine how much money the buyer must pay. The seller will receive credits for such items as fuel on hand (such as oil in the home heating tank), unused insurance premiums, prepaid interest, and already-paid taxes and public utility charges such as water and sewer fees. These credits also will include any other items prepaid by the seller that will benefit the buyer.

The buyer normally will receive credits for such items as the earnest money deposited and taxes or special assessments that the seller has not paid. The settlement sheet also will specify who is responsible for the payment of various expenses. These will include the sales commissions and the costs of the survey, title search, inspections, recording fees, transaction taxes, and the like. The allocation of such expenses will depend on the terms of your contract as well as the law and customs in your area. Your real estate agent or attorney should advise you ahead of time of how much money you will need at the closing. Typically, you will be required to have a certified or cashier's check in the amount required to meet these expenses.

Other common fees include: loan origination fee to cover the lender's administrative costs in processing the loan; credit report fee; lender's appraisal fee; mortgage insurance application fee; mortgage insurance premium; and hazard insurance premium. Buyers also may have to put money into escrow to assure future payment of such recurring items as real estate taxes. This amount is regulated by federal law. Also, there often are separate document fees that cover the preparation of final legal papers such as the promissory note and mortgage or deed of trust. Sometimes, if the buyer has used a mortgage or loan broker to secure a loan, that person's fee will be paid at closing.

CONDOMINIUMS AND COOPERATIVES

There are other ways to be a home owner without buying a piece of property outright. **Condominiums** and **cooperatives**, or **co-ops**, offer certain advantages over traditional home ownership.

A condominium is a common-interest community in which individual units are separately owned but the owners share an interest in common areas, for example, hallways, roofs, and exteriors. With a cooperative, or co-op, buyers purchase shares of stock in a corporation that owns a building. A condominium owner has title to his or her unit; a co-op owner receives a proportionate amount of shares in the corporation that owns the building, based on the unit’s proportion of the building. He or she signs a lease with the corporation.

For the purposes of income tax laws and other laws regarding real estate, a condominium is treated as a single-family home. But an association has the right to impose maintenance fees, demand escrow payments for large repair bills, and manage the overall operation of the entire building. Owners of co-ops also must abide by the corporation rules; additionally, if they fail to pay their fees, they may be evicted.

There are important differences between common-interest home ownership and single-family home ownership. In single-family home ownership, the control, decisions, and expenses are the responsibility of the owner, subject to zoning restrictions established by local law and any restrictions contained in the declaration of the builder who originally developed the property. As a general rule, multi-unit ownership is subject to more extensive regulation than single-family ownership. For example, there are statutes, rules, and regulations governing what you may and may not do with your condominium, co-op, or other multi-unit dwelling.

If you are considering a common-interest purchase, be sure to obtain all the information on the terms of sale and such regulations. Ask to see the bylaws, operating budget, management agreement, and regulating agreement, and then give them to your lawyer to review. Many states require disclosures to the purchasers of units in a common-interest community. Some states have a central agency that licenses and regulates the development and sale of common-interest community units.

The cost of the unit is not the limit of your financial obligation with multi-unit real estate. There will be monthly assessments to cover maintenance and related expenses for operating the common areas. These assessments will be in proportion to the percentage you own of the total complex. If all the apartments in a ten-unit building are the same size, each owner would have a 10 percent ownership stake. This means that each owner will pay 10 percent of its assessments.

These costs will almost certainly increase over time; incidents where they have decreased are considered newsworthy. You should determine the amount of the monthly assessment and the potential increase before signing an offer to purchase. In addition, unit owners are subject to special assessments above and beyond the basic assessment, to pay for unforeseen improvements or repairs. Always ask about pending projects and their approximate cost. You also should be sure that there is enough liability insurance coverage for the entire development.

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