

10 Important Legal Considerations When Buying a Home

by **Brette Sember** on March 10, 2016 [Home Buying/Selling](#) 0 Comments



Buying a home is likely one of the biggest legal transactions you'll ever be involved in. From before you even find your desired house to the day you're handed the keys, it's important to know the legal requirements involved with real estate. Making sure you check all the boxes and complete each step will allow you to move forward as a homeowner with less stress and more excitement.

Mortgage Preapproval

The first thing you should do, before you even start looking for a home, is get preapproved for a mortgage. This will make it much easier for a seller to accept your offer, since they'll know you have been approved for the financing you need.

The preapproval process is not very complex: The lender will take your personal information, proof of income, and run a credit report. You'll need to know how much money you're willing to put down as a cash down payment. The lender will provide you with a letter stating you're preapproved for a specific time period, for a specific amount.

To be clear, preapproval does *not* mean you're guaranteed a loan; it just means that you initially qualify for one. The lender will need more documentation to formally approve your loan.

Purchase Offer

The next step is to actually find the house of your dreams and put in a [purchase offer](#). Your real estate agent can help you complete this document, which is an offer to buy the home. Carefully consider how much you want to offer. You may want to offer less than what the seller is asking; though, in some hot markets, you might have to offer more. The purchase offer is really a contract waiting for the seller's signature, so it is a complex document.

You may want to have [an attorney who specializes in real estate law](#) review the purchase offer. In most instances, your agent will have used a standard form approved in your county, but you want your attorney to make sure it includes everything necessary to protect you and that it is completed and executed properly.

Negotiation

After you've submitted an offer, the seller may counter it, reject it or accept it. If the seller counters and changes any of the conditions of the contract, such as striking out contingencies (more on those later), your attorney should review the revisions.

In most cases, the purchase offer requires you to put earnest money in escrow. As the name implies, this money is designed to ensure that you're serious about wanting to buy the house. Should you back out of the deal, the seller can retain your earnest money, unless you can cite a legitimate legal reason for canceling the offer. Don't be lulled into thinking you have a three-day period to [change your mind](#) and cancel the contract – that's a federal regulation that does not apply to real estate purchases.

Mortgage Approval

Once your offer is accepted, you'll need to contact your lender with the details so that the mortgage approval process can begin. The lender will likely ask you for more documentation and information than you provided for preapproval.

Home Inspection

Nearly every contract for the sale of a home includes a provision for a [home inspection](#) before the contract is considered binding. Make sure your agent or attorney inserts a clause about this in your contract. This allows you, the buyer, to hire a home inspector to view and [inspect the home](#) (inside and out) to look for potential problems. If your inspector finds problems, your attorney can then ask the sellers to make the needed repairs for the sale to go forward. There may need to be further negotiation at this point. If the seller does not want to make repairs, you could counter with a lower purchase price.

In extremely hot housing markets, some buyers have been known to waive the inspection to try and outflank competitors. While this might better position you with the seller, it's an exceedingly risky strategy, particular when purchasing an older home. Tread carefully.

Meeting Contingencies

Once the home inspection is over and the contract is final, you'll need to meet other contingencies listed in the contract. The biggest one often is the sale of your current home. If you're already a homeowner, you'll probably want to sell your current home to be able to afford the second one, so the contract will state that the purchase is contingent on that sale.

Again, when dealing with a competitive home buying market, a contingent offer, as it's called, can be a strike against you, as the seller may have other buyers who don't have to sell an existing home before buying a new one. Of course, the alternative isn't terribly appealing: You can sell your home in advance, but you'd have to find somewhere to live in the meantime. Balance priorities accordingly.

Title Insurance

Next you'll need to purchase title insurance for the property, as required by the mortgage company. This insures that the title (ownership rights) you receive are valid.

Mortgage Closing

Once all the contingencies have been met and you've provided your lender with the appropriate documentation, your closing (also known as a settlement) will take place. During this meeting, you'll close on the home and the mortgage. Your lawyer – or at least your real estate agent – should accompany you to the closing, if possible, to make sure that the documents you sign meet all the legal requirements and protect your interests. You'll sign your name more times than you thought possible and review all the financials in detail.

Deed

As part of the closing, you'll receive the deed to the home, which is your legal ownership. You'll want to consult with your attorney about how you want to take ownership if you're married or buying the home with someone else (some options include joint tenants, joint tenants by the entirety, joint tenants with right of survivorship).

Filing

Once all the paperwork is done, your purchase is still not complete until the documents have been filed with the county. Your attorney will handle this and your home purchase will be complete. Congratulations!

Brette Sember is a former attorney and author of more than 40 books, including "The Divorce Organizer & Planner," "The Complete Divorce" and "How to Parent with Your Ex." She writes often about law, parenting, food, travel, health and more. Brette also writes for Avvo, the leading online legal marketplace connecting consumers and lawyers.

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