

# BUYING A HOME IN MASSACHUSETTS

By Daniel M. Polvere Esq.

*The purchase of a home may well be the single most important financial transaction you will be involved with during your lifetime. Therefore, the importance of properly handling such a transaction cannot be overstated. During more than 25 years of advising Buyers and Sellers, we have found that a basic familiarity with the process, before you buy or sell, may eliminate much of the mystery. This article is intended to explain the basic elements of a real estate transfer as well as*



*some of the related issues which you may encounter.*

## THE REAL ESTATE BROKER

So, you are planning to buy the home of your dreams! It is the Real Estate Broker who will usually bring together the Seller and a ready, willing and able Buyer. In Massachusetts, the broker is an experienced professional and must meet certain requirements to perform brokerage services. In most cases, the broker acts as agent for the Seller.

The broker will obtain from the Seller information about the Seller's property to pass on to prospective buyers. When a Buyer has decided to make a purchase, the broker will have the Buyer and Seller complete an Offer to Purchase.

## OFFER TO PURCHASE

This document constitutes a formal offer to the Seller to purchase the property on certain terms and conditions. These terms include, of course, the price. But they also include a proposed time to consummate the transaction as well as any contingencies. Contingencies are nothing more than events which would allow the Buyer to terminate the agreement and include such items as getting a mortgage, inspecting the property and, in some cases, selling an existing home. You should remember that these contingencies must be contained in the offer or you will not be able to raise them later as a reason for the transaction to be cancelled. Your real estate agent should be able to suggest which contingencies you need and provide you with a pre-drafted form. Finally, you should realize that the offer is a binding contract and should be read as such. While it is usually a single page agreement, you should review it carefully before signing. If you have an attorney, he or she can recommend additional language.

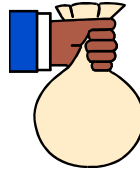
## INSPECTION

Once the offer is accepted, the Buyer usually has between 7-10 days to have the property inspected. Once again, the right to perform an inspection and terminate the agreement if it is not acceptable depends on whether you have an inspection contingency in the Offer to Purchase. The inspection contingency usually requires the inspection to be performed by a professional inspector, and requires the Buyer to provide notice to the Seller by a specific date if the condition of the property is unacceptable. Miss this deadline and you miss your opportunity to terminate the sale without penalty. In many cases, Sellers are willing to repair or adjust for serious conditions which the inspector identifies. Thus, the parties usually discuss any issues arising from the inspection and means of resolving the issue(s). It should also be noted that there is no obligation on a Seller to disclose defects in the home. However, if the Seller is asked about a problem, he or she is obligated to answer truthfully. In other words, you should ask about any concerns which you have and not simply rely on an inspection.

An additional inspection clause will be necessary if the property is not served by a public sewer system. This provision would require the Seller to comply with the provisions of "Title V" by having the septic system inspected. In the event that the septic system fails to comply with the provisions of this regulation, the Seller will need to undertake repairs to bring the system into compliance.

## PURCHASE AND SALE AGREEMENT

Once the offer is signed by both parties and the inspection is completed, the next step is to negotiate the Purchase and Sale Agreement. The Purchase and Sale Agreement, or "P&S", is a more detailed recitation of the terms and conditions of the contract, as initially contained in the Offer to Purchase. It is the most important step in the purchase of a home because this document defines all the rights and obligations of the Buyer and Seller. A few of the matters covered in the Agreement are: what financing Buyer will obtain, the condition of the property at closing, what fixtures and appliances are included, on what conditions can Buyer void the transaction, and damages on default by either party. While there are



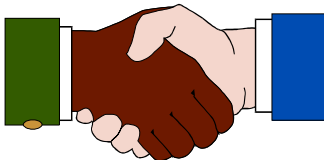
several forms of Agreements which are widely used, these are generally skeletons which need to be fleshed out with provisions to cover particular situations. It is not uncommon to drastically alter a "standard" Agreement. Your attorney will know what additions or changes are desirable and also what are customary and likely to be acceptable to the other party.

In Massachusetts it is highly advisable to be represented by an attorney throughout the purchase transaction. Ideally, a prospective Buyer should consult an attorney of his or her choice *before* any negotiations since the attorney can advise of potential legal or financial problems in advance and provide suggestions on dealing with them. In any event, legal counsel should be retained prior to the drafting of the Purchase and Sale Agreement.

Once again, the Purchase and Sale Agreement is a valid and enforceable contract. In the event that you are unable to perform and breach the agreement, the Seller will be permitted to retain your deposit (often up to 10% of the purchase price) and may be entitled to additional damages. Thus, it is vital to review and understand the provisions of the Agreement, as well as your obligations thereunder. It is also crucial to make sure that any contingencies which were contained in the offer are included in the P&S. For example, if you have not obtained a mortgage commitment by the time you sign the P&S, this contingency must be included in the P&S.

## FINANCING

Once the Purchase and Sale Agreement is completed, the Buyer sets out to obtain financing for the transaction. Hopefully, you have already considered this issue before you begin your search for housing. After all, how do you know how much house you can afford until you find out how large a mortgage you qualify for, or more importantly, can afford. This process is called "pre-qualifying" and is strongly recommended. The loan originator from the lender which you select will review your income, debts, credit history and other factors and will identify whether you qualify for a mortgage and in what amount. The



loan originator will also tell you what your monthly payment will be at each amount. If you successfully pre-qualify, the loan originator will provide you with a letter which informs potential sellers that you are qualified and should be able to obtain a mortgage.

An alternative which you can consider is "pre-approval." There is a fee and additional preliminary work, but as a result you become a buyer with stronger bargaining power because a great deal of the financing uncertainty is removed from the transaction. Pre-approval means the loan will be made assuming that the property is appraised at a high enough level to support the mortgage amount.

If you have not been pre-approved, you will proceed to the loan application and documentation. The lender will also ask for a copy of the P&S. When the loan is approved, you will receive a commitment letter which constitutes the bank's agreement to provide a loan under certain terms and conditions.

You also have to decide the type of mortgage loan. Rates on loans vary from bank to bank and can also be fixed for the life of the loan or adjustable after a certain number of years. You should ask your originator to explain the various programs and discuss rates. You may also want to consider paying points. A "point" equals 1% of the loan amount. It is a charge which the bank makes to give you a lower interest rate on the mortgage. The higher the points, the lower the rate. Finally, your rate is not guaranteed until you "lock-in" by signing the lock-in form and, in most cases, paying a deposit.

## **TITLE EXAMINATION**

In this state, the bank selects an attorney to search the title and prepare the loan documents. It is his/her responsibility to certify that the Seller has good marketable title to the real estate. He/she does this by searching public land records to determine: whether the Seller is indeed the owner; the presence of mortgages, judgments or liens which must be resolved before "clear" title can be conveyed; restrictions, easements or rights of way which may limit the Buyer's use of the property; and unpaid taxes or water bills. It is necessary to bear in mind that the bank's attorney is primarily representing the bank's interest and that he/she is not a substitute for your own attorney. In cases other than a conventional bank loan, your own attorney will search and certify title. In either situation your attorney will discuss with you the advisability of owner's title insurance, which is an important consideration.

## **CLOSING**

At the closing or final settlement, the balance of the price is paid and the Seller gives his/her deed and transfers title. The obligations of the parties are carried out and completed. In a conventional loan closing, this includes the signing of a great number of documents which your attorney will review and explain. In the well organized transaction, the closing is a very smooth proceeding. Provision is made to satisfy outstanding debts and the documents are recorded in the Registry of Deeds, at which time you become the record owner.

## **TAXES AND TITLE**

Real estate, whether a home or investment property, is favorably treated by our tax laws. However, maximum benefits require careful planning and your attorney can give you guidance. For Buyers, the manner in which title is taken can significantly affect protection against creditors and estate disposition. A married couple, for instance, can choose to take title as tenants in common, joint tenants or tenants by the entirety (a form of joint ownership available only to a married couple). Massachusetts recognizes a form of Homestead; however, caution should be exercised in employing it since it may affect later credit transactions.

Once a home is owned, thought should be given to a Will and other estate planning.

## **LEGAL FEES**

*In selecting an attorney one should not hesitate to inquire about his/her fees and also his/her experience in handling real estate matters. Fees vary but are generally based on the extent of services provided and time required.*

*We have often found that long-term attorney-client relationships are formed in the course of home purchase representation.*

## **CONDOMINIUMS/MULTIPLE DWELLINGS**

A person who is considering buying a condominium unit will have special needs. He will need to have lengthy and complex documents reviewed. There can be substantial restrictions and obligations on a unit owner, which should be carefully weighed before purchase. The financial soundness of a condominium association, as well as the probability of impending special assessments, should be checked. Typically, these matters are reviewed during the offer period and become additional contingencies.

In this area, a homebuyer will find that many available properties are two, three or four family houses. These can present very attractive investment and tax possibilities. However, the Buyer and his/her attorney must investigate zoning, leases, and local restrictions, among other things. The Purchase Agreement must deal with these and other landlord-tenant issues.