

# **BUYING AND SELLING A HOME**



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## **BUYING A HOME**

### **Financing Through the VA**

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

### **Seller's Disclosure Obligations**

Colorado law requires sellers to disclose various pieces of information. For example: if the buyer will be obligated to become a member of and pay owner's association fees, source of potable water for the property, and/or if property may be in special taxing district and where buyer can go to determine if the property is in such a district. Similarly, federal law requires disclosure of lead-based paint on property if built before 1978. The Colorado Division of Real Estate provides forms sellers can use in making such disclosures. Please note, buyers can ask follow-up questions.

### **Home Inspections – *See Separate Handout on this Topic***

A home inspection is an important way to learn about the condition of the property before you purchase. Home inspections are typically required by lenders. It is worth noting, Colorado law does not require a home inspector to have any licenses or mandate background checks, so be diligent and do your research to ensure you hire a reputable company.

### **Title**

Be sure to understand what kind of title you want and what kind of title you can get. There are two major types of title:

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

## **SELLING A HOME**

### **The Sales Contract**

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

seller will agree. For example, “contingent upon selling my present home in Minot, North Dakota,” or “contingent upon a title company certifying clear title.”

### **Get Everything in Writing**

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

### **Making and Keeping the Deal**

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

First, you can sell the house to someone else and sue the original buyer for the difference between the price you would have gotten and the price you actually got. For example, if your original buyer who was going to pay you \$100,000 breaches the sale contract and you end up selling the house for \$90,000 to another buyer, the first buyer owes you \$10,000. You get the "benefit of the bargain." Of course, you must make a good-faith effort to sell the house for a reasonable price (you cannot sell a \$100,000 house to your brother for \$1 and then sue for \$99,999).

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

### **Moving In/Out Early:**

If you as the seller are going to allow the buyer to occupy the house before closing, you need to either enter into a lease, thereby putting you and the buyer in the position of landlord and tenant until closing, or you need to complete a thorough inspection of the house at the time the buyer occupies it and note in writing any damage or wear-and-tear. Regardless of whether the buyer moves in early, the buyer bears the risk of loss. This means that except for damages caused by your negligence, the buyer bears the risk of damage to the property. For example, if lightning strikes the house and burns it to the ground, the buyer now has a lot that isn't worth anywhere near what he paid for it. Therefore, it is to everyone's advantage if both the buyer's and the seller's interest in the house is insured after the sales contract is signed. Call your insurance company to verify coverage.

### **Closing on the House:**

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

Hiring a lawyer or title insurance company to handle the closing is a smart way to proceed. Although there is usually a fee, it is nowhere near the amount you would spend for a real estate agent who probably would use title agents for closing anyway.

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

To locate a civilian attorney who specializes in real estate transactions, contact the El Paso County Bar Association or research online.