

SOUTH CAROLINA BAR  
**Buying a Home and the Law**



**B**uying a home involves complex considerations. Once you have decided on the area in which you wish to live, you can save time and frustration by working with an experienced real estate broker.

## **THE CONTRACT**

After you have found a home you want to buy, the real estate agent or owner will ask you to make an offer. This is done by signing a “contract.” When both you and the seller sign this document, you create long-term binding relationships. Any verbal agreements concerning the sale of real estate are not legally enforceable.

You should consult your lawyer before you sign the contract, and give him or her a chance to review the proposed document.

The contract will cover many matters, but it must at least include the price, the amount of earnest money, a description of the property and other conditions

and terms of the sale. It also should specify the costs for which you will be responsible at closing. A review of the contract by your lawyer can help you avoid overlooking any important considerations.

Depending on the terms of the contract, the earnest money you pay at the time the contract is signed may or may not be refundable if the transaction is not completed. Your failure to comply with the contract also may expose you to a claim for damages or other legal action. Your lawyer can make sure the contract accurately represents the intent of the parties and protects your interests.

Special terms or conditions

should be set forth separately. For example, the contract should also specify every item of personal property that is being sold with the house. Only those items specified in the contract bind the parties. If you are interested in having an independent inspection of the property, this should be stated as well as how you and the seller will be affected by any negative findings in the inspection.

### **AGENCY**

Many buyers do not realize that the real estate agent listing the home is the legal agent for the seller and is responsible to the seller and not to the buyer. For this reason, the buyer may be unrepresented unless he or she has retained another real estate broker or his or her own lawyer. However, the buyer and seller may consent in writing for the listing agent to represent them both.

### **CASUALTY AND FLOOD INSURANCE**

You will need to carry insur-

ance to protect you from risks of loss and potential liability. Approximately 30 days before closing, you should consult an insurance agent. The insurance must be purchased before the date of closing and must be acceptable to your mortgage lender.

### **FINANCING**

In addition to the down payment, which includes the earnest money you pay when you sign the contract and the amount you pay at closing, another important consideration is your monthly mortgage payment. That payment will include principal and interest on the amount you borrowed. Mortgage payments frequently include one-twelfth of the anticipated property taxes and insurance premiums for the coming year.

Mortgage insurance, which protects the lender from your failure to pay, may also be included in the monthly payment. Discuss all these factors with the lender when you apply for the loan. The lender

should give you an estimate of the costs that will be charged to you.

## **SURVEY**

A complete and precise description of the property you are purchasing is important. Disputes often arise at the closing and even after the sale because of inaccurate or inadequate property descriptions in the contract. It is important that a survey be made and a plat prepared by a licensed surveyor to locate the boundary lines of the property, the location of improvements that are constructed on the property and any easements or restrictions.

## **TERMITE LETTER**

Generally, the seller is required to provide proof that the property has been inspected for termites. It is recommended that you request this letter before closing so that any problems can be addressed.

## **TITLE INSURANCE**

Lenders require mortgagee

title insurance coverage. This one-time premium is paid at the closing and insures the validity of the lender's lien on your property. For an additional cost, you may obtain an owner's title insurance policy.

The lawyer's examination of the title obviously can only cover matters that appear on the public records. Title insurance, however, protects you against many matters that may not appear of record or that may not be apparent from a record examination. The possibilities may include rights someone has acquired by usage and even forged documents in the chain of ownership. Before the closing, you should discuss title insurance with your attorney.

## **CLOSING**

Your bank is required to inform you of your right to select your own attorney and not only one from its list. Once you have made your

selection, your lawyer and staff will tie together the many processes and requirements that go into the closing, including:

- making the required examination of the public records to determine the quality of the seller's title (usually a period of 60 years is required);
- gathering all the information necessary to prepare the documents that itemize the terms of the sales transaction, including taxes, insurance, closing costs, mortgage amounts and additional agreements between the parties;
- preparing all the legal documents
- explaining and supervising the signing of all papers;

- recording the necessary documents with the proper authorities; and
- certifying the completed transaction to the lender and the title insurance company.

At the closing, your lawyer will explain the purpose, importance and effect of each document that you are required to sign.

### **TAX CONSIDERATIONS**

Every sales transaction involves tax considerations for both buyers and sellers. Proper structuring of the transaction may result in substantial savings and should help you avoid future problems. Before the purchase, you should discuss tax considerations with your lawyer or accountant.

## **General information:**

**[www.scbar.org/public](http://www.scbar.org/public)**

The South Carolina Bar is dedicated to advancing justice, professionalism and understanding of the law. Please visit [www.scbar.org/public](http://www.scbar.org/public) for information on free services offered to the public, including legal clinics, publications and other Bar programs and services.

### **South Carolina Bar Lawyer Referral Service**

If you need a lawyer, contact the South Carolina Bar Lawyer Referral Service from 9 a.m. to 5 p.m. Monday through Friday. Call 1-800-868-2284; if you are in Richland or Lexington counties, call 799-7100. Access the Lawyer Referral Service online at [www.scbar.org/lrs](http://www.scbar.org/lrs)

### **Additional Legal Tips**

To access the answers to frequently asked questions on other legal issues, please visit [www.scbar.org/public](http://www.scbar.org/public) and click the link to “LawLine.”

Provided as a public service of the



P.O. Box 608 | Columbia, SC 29202  
(803) 799-6653 | Fax: (803) 799-4118  
[www.scbar.org](http://www.scbar.org)

Copyright ©2007 South Carolina Bar  
Revised 2007