



THE REAL ESTATE REPORT

December 2008

Buyer's primer for purchasing a property

In real estate nothing appears to be more complicated and fraught with misunderstandings to buyers than the actual buying process. Here, in a nut shell, are the steps and issues buyers (and sellers) need to know.

Finding

Research available properties through the internet (Multiple Listing Service and real estate broker websites), regional advertising, visits to real estate offices, and word of mouth.

Agent/Brokers

Make a decision whether you wish to be represented by your own broker/agent or prefer to deal directly with seller brokers. Unlike the latter, the former owes you loyalty as much as your own attorney does, whereas a seller's broker/agent owes a buyer honesty -- but not loyalty. In the presentation here it is assumed you have retained your own broker/agent and an attorney.

Visiting

Visit properties for sale which appear to meet your criteria: general location, type (single or multi-family residential, undeveloped land, commercial), parcel size, structure (style, size, layout, condition, amenities, etc.), location (county, town, neighborhood, school district), immediate environment (privacy, noise, neighbors, distance from conveniences, condition, lack of upgrading), and price (compared to similar properties). If one property meets your needs and you wish to own it, then discuss (with your attorney and, if you have one, your broker/agent how the offer should be structured regarding both strategy and specific terms.

The Offer

The written offer ("Purchase Offer Agreement" or binder) is a document completed by the buyer's agent (or seller's agent if there is no buyer's agent involved). It includes a description of the property, the purchase amount being offered, the amount of the "good faith" deposit (usually 1% of the offer (but varying by county) held initially in the buyer's broker/agent's escrow account), the additional amount to be paid upon contract (usually 9%), and proposed contingencies (financing, inspections, tests, included fixtures, required repairs, etc.). Two copies are signed by the buyer(s) and presented to the seller's agent, along with evidence of the deposit check (a photo copy will do). To speed things up, the written offer can be emailed or faxed to the seller's agent, usually followed by an express mailing of the originals (with a photocopy of the deposit check) to this agent who will have the seller sign the copies if the proposed terms are agreeable. Alternatively the seller may either reject or counter the buyer's offer. Note: Both parties should retain copies of all documents for their records.

Valuing

Determining the details of the offer: Before completing the offer/binder, you must estimate the market value of the property. Your buyer's broker/agent should show you evidence of

A monthly column on the real estate market and related issues in the upper Hudson River Valley by Roderic H. Blackburn, principal of R. H. Blackburn & Associates, Inc.—Real Estate of Hudson and Kinderhook, NY. It also appears in *Berkshire HomeStyle* and *Capital District HomeStyle* magazines. If received in error notify blackburn@berk.com. Questions welcome.



recent comparable sales, making adjustments in value for differences between recently sold properties and the one you wish to purchase. Carefully consider what price you will offer, keeping in mind that sellers tend to overprice a house, anticipating somewhat lower offers. Some houses are, of course, very overpriced, in which case you will be encouraged to offer appreciably less.

Next, decide if a mortgage will be required, how much will likely be borrowed, the desired down payment, the prevailing rate (whether adjustable, fixed, or otherwise, the amortization period, and, if different from the amortization period, the payment period (usually 15 to 30 years). A buyer will find it advantageous to have financing already lined up, and to be able to furnish the seller with a letter of approval for a mortgage sufficient to cover the offer. Note: as a buyer, you should nonetheless be prepared to secure a new letter to cover the actual final selling amount if such a letter is requested.

Contingencies

Now you must consider additional contingencies, those the seller has set forth in the listing agreement and your own; you will add these to the binder. Seller and buyer contingencies are stipulated in the binder with the understanding that they may be negotiated before final agreement. Contingencies finally agreed must be met, as applicable, by both parties, and by a certain date. In most cases contingencies will be stated in greater detail, if the contract is being prepared and reviewed by attorneys. Note: in some counties brokers prepare contracts.

Contingencies typically include provisions such as these:

- A. Clear and insurable title, agreeable to the buyer's attorney.
- B. Satisfactory inspection results, as determined by a licensed inspector or engineer. Inspections include assessing the structural integrity of the building and determining the grade and condition of its features (utilities, kitchen and bathroom fixtures and plumbing, electrical system, heating system, hot water system, roof, siding, foundation, water supply, septic, etc.). A buyer may elect to have tests done for: septic system functioning, water purity (if a well), presence of mold, pests, and radon (a naturally occurring low level ground gas).
- C. Also specified in the binder are what appliances are included (stove, refrigerator, dishwasher, washer, dryer, etc.). Fixtures (such as chandeliers, sconces and other objects "fixed" to the structure) are assumed to be included in the sale of the house unless the seller has specifically excluded them in the listing agreement and the binder. Note: Sometimes items owned by the seller are made available for purchase by the buyer. Such items may be especially appropriate to or strongly associated with the property. Although such purchasing can be on terms quite favorable to the buyer and convenient for both buyer and seller, it is generally not part of the actual real estate transaction.
- D. If there are repairs or replacements deemed necessary by the buyer, or missing features which the buyer regards as "essential" (that is, generally expected in order to satisfy building codes or to correct unsafe conditions), these are listed as contingencies. Note: It is not uncommon for buyer and seller to agree upon monetary payment (or credit) from seller to buyer in lieu of completing actual repairs and replacements. This is done as a matter of convenience and to expedite the transaction.

E. In the contract itself a buyer will often require that, by the time of closing, the house be vacated by the seller, that all of the seller's possessions be removed, and that the property be "broom clean."

Negotiation

The seller will either accept or reject the binder, or accept it with modifications. If the binder is not immediately accepted, negotiations conducted by the agents on behalf of the seller and buyer may nonetheless achieve an acceptable compromise, leading to a revised offer acceptable to both parties. When this happens it is said that there has been "a meeting of the minds" between seller and buyer, the point at which real estate professionals may be said to have earned their commissions. A binder is a legal contract. Therefore, the parties, if they have not already done so, should consult their attorneys, availing themselves of this legal right within the period of days provided as a matter of real estate law. An attorney should be consulted regarding possible consequences in the event either the buyer or seller fails to honor the terms of a signed binder or contract, including all agreed contingencies.

Contract

Between the time of an agreed offer and a signed contract there is a period usually two to four weeks, during which some of the contingencies should be met, financing approval obtained and inspections commenced. The contract is prepared by the attorneys for signing by the seller and buyer. The balance (9%) of the deposit is made, which will be held in the escrow account of the seller's attorney.

Depending on local real estate practice, the agreed terms are incorporated into "the contract" drawn by either the seller's broker or the seller's attorney (this varying from county to county, according to custom), along with other provisions to protect the interests of both parties.

Thereafter, contingencies, if not already met, must be satisfied by specified dates, and in any event before the closing. The contract should specify that the buyer takes possession on the day of closing unless other arrangements have been mutually agreed.

Closing

The closing is usually scheduled two to four weeks after the contract is signed, by which time all contingencies are anticipated to have been met. A "walk through" inspection of the property by the buyer and both agents is done before the closing, ideally and often on the same day. At the closing, buyer and seller are usually present, along with their attorneys and real estate agents. Also present are representatives of the financing institution and the title company. When all contingencies are deemed to be satisfied, any "clouds on the title" or liens have been cleared, credit has been given for fuel and electricity paid by the seller, funding approved and title insurance granted, then documents can be signed, payments made (generally by attorney, certified or bank checks), and title transferred to the new owner -- along with keys to the property, security codes, garage door openers, and the like.

Before the closing the seller and buyer real estate brokers will send a "commission statement" to the attorneys which states the financial facts of the sale including the sales commission, and co-broke agreement. This is the basis for the commission checks given at the closing to the seller's agent and the buyer's agent.

Agents

Agents for seller and buyer may find themselves quite involved even after the initial "meeting of the minds" in order to ensure that a contract is agreed and a closing actually takes place. The agents fully realize that although they have legally earned their commissions, in practice they may get nothing if there is no closing. So, seeing that contingencies on the property are satisfied is something agents want to work on diligently. Are the required repairs being made? Has the seller removed a fixture reserved by the buyer in the offer agreement? How can inspection issues be resolved? Is the financial institution going to approve the mortgage or should another be approached? If there is a problem with the title or with title insurance, or if there is a lien or other encumbrance, that is a problem for the attorneys to address.

After the closing everyone should be happy, or at least content. Mindful of the importance of their reputations, it is in the agents' interests to keep both parties positive about the buying and selling experience -- no matter how complicated their journeys may have seemed along the way! Follow up with the buyer may mean advice on repairs, restoration, renovation and who to get to do them.

Postscript

That is the way sales should go. But frequently they don't. See the January 2008 Real Estate Report: "Things which go bang in the night! The unexpected in property buying." This, like all Reports, is available on our website www.rhblackburn.com under Real Estate Reports.

Other columns which address important issues of buying a property are:

8/05 Misconceptions in Buying and Selling Property.

10/05 Steps and Stones of Buying a House

10/06 Pearls of wisdom in buying or building a home.

12/07 In the Maze—a buyer's primer to purchasing a house.

You would think these reports would overlap each other but there are so many ways to view the subject they do not.