

Steps to Successfully Going Under Contract

MAKING AN OFFER

Once you have found the home you wish to purchase, you will need to determine what offer you are willing to make for the home. It is important to remember that the more competition there is for the home, the higher the offer should be – sometimes even exceeding the asking price. Remember, be realistic! Make offers you want the other party to sign!

To communicate your interest in purchasing a home, we will present the listing agent with a written offer. When the seller accepts an offer it becomes a legal contract. When you write an offer you should be prepared to pay an earnest money deposit. This is to guarantee that your intention is to purchase the property.

After we present your offer to the listing agent it will either be accepted, rejected, or the seller will make a counteroffer. This is when we will negotiate terms of the contract if necessary.

The step-by-step contract procedure for most single-family home purchases is standard. The Purchase and Sale Agreement used is a standard document approved by the Georgia Association of Realtors.

The Purchase and Sale Agreement (or contract) constitutes your offer to buy and, once accepted by the seller, becomes a valid, legal contract binding upon the parties. For this reason, it is important to understand what is written on the contract offer.

In order for your Agent to draw up an offer, you need to figure out the following terms:

- Offer Price
- Closing Costs Paid by Seller (This must be a dollar amount as we cannot request that seller pay all closing costs)
- Earnest Money Amount (at least 1% of the sales price is suggested)
- Closing Attorney Preference
- Due Diligence Time Frame
- Closing Date
- Any other requests for the Seller (example: one year home warranty)

Remember that the Seller is always looking at the “net amount”. For example, if you offer \$250,000 on a property but ask for the seller to contribute \$5000 in closing costs and pay for a \$500 home warranty, you are really offering the seller \$244,500.

UNDER CONTRACT

You came to mutual terms with the Seller and are under contract! What happens between now and the time you legally own the home? In Georgia, Real Estate Closing Attorneys perform the majority of the closing processes below. Lenders and Title Companies round out the other functions.

Loan Application/Inspection – Once agreement between you and the seller is reached and communicated, a Binding Agreement Date is established. All obligations of the buyer including applying

for the loan, and inspecting the property, are measured from the Binding Agreement Date. Once you submit the loan application, it is usually subject to a credit check, an appraisal, and sometimes, a survey of the property.

Tax Check - What taxes are owed on the property? The Closing Attorney contacts the various assessor-collectors.

Title Search - Copies of documents are gathered from various public records: deeds, deeds of trust, various assessments and matters of probate, heirship, divorce, liens, judgements, and bankruptcy are addressed.

Title Clearance - Any title defects that are found in the public record are addressed, if possible, so that title is marketable and insurable.

Examination - Verification of the legal owner and debts owed.

Document Preparation - Appropriate forms are prepared for conveyance and settlement.

Settlement - A Real Estate Closing Attorney conducts the closing of the transaction: seller signs the deed, you sign a new mortgage, the old loan is paid off and the new loan is established. Seller, agents, attorneys, surveyors, Title Company, and other service providers for the parties are paid. Title insurance policies will then be issued to you and your lender.

Title Insurance - There are two types of title insurance:

- Coverage that protects the lender for the amount of the mortgage (the lender's policy)
- Coverage that protects the equity in the property (your owner's policy)

Both you and your lender will want the security offered by title insurance. Why?

Title agents search public records to determine who has owned any piece of property, but these records may not reflect irregularities that are almost impossible to find. Here are some examples: an unauthorized seller forges the deed to the property; an unknown, but rightful heir to the property shows up after the sale to claim ownership; conflicts arise over a will from a deceased owner or a land survey showing the boundaries of your property is incorrect.

For a one-time charge at closing, title insurance will safeguard you and your lender against problems including those events an exhaustive search will not reveal.

DOING YOUR DUE DILIGENCE

The rule in Georgia is Caveat Emptor (let the buyer beware). This is a common law doctrine which serves as the general rule regarding the purchase of realty. *Cendant Mobility Financial Corp. v. Asuamah*, 285 Ga. 818 (2009). If a home has mold, termites, a rotten roof, or any other defect---it is the buyer's responsibility to fully investigate this prior to buying the home. In general, the buyer is put on warning

and notice that they are responsible to discover such defects and if they discover them after the real estate transaction, unfortunately it is a case of too little, too late.

During the Due Diligence period a buyer can terminate a contract and get their earnest money back. Having a good inspection is one of the most crucial steps to take during your due diligence time.

Home Inspection

If you are purchasing a resale property, we highly recommend that you have a professional home inspector conduct a thorough inspection. The inspection will include the following:

- Appliances
- Plumbing
- Electrical
- Air conditioning and heating
- Ventilation
- Roof and Attic
- Foundation
- General Structure

The inspection is not designed to criticize every minor problem or defect in the home. It is intended to report on major damage or serious problems that require repair. Should serious problems be indicated, the inspector will recommend that a structural engineer or other professional inspect it as well.

Your home cannot “pass or fail” an inspection, and your inspector will not tell you whether he/she thinks the home is worth the money you are offering. The inspector’s job is to make you aware of repairs that are recommended or necessary.

You are welcome to inspect even further with other types of inspections:

- Radon Inspection
- Air Quality Testing
- Septic Tank Inspection
- Pool Inspection
- Etc.

The seller may be willing to negotiate completion of repairs or a credit for completion of repairs, or you may decide that the home will take too much work and money. A professional inspection will help you

make a clear-headed decision. In addition to the overall inspection, you may wish to have separate tests conducted for termites or the presence of radon gas.

In choosing a home inspector, consider one that has been certified as a qualified and experienced member by a trade association. ASHI or CABO certified are the two most commonly used certified inspectors used.

I recommend being present at the inspection. This is to your advantage. You will be able to clearly understand the inspection report, and know exactly which areas need attention. Plus, you can get answers to many questions, tips for maintenance, and a lot of general information that will help you once you move into your new home. Most important, you will see the home through the eyes of an objective third party.

Beyond the Home Inspection

In addition to having an inspection conducted on the property, it is also important to inspect the neighborhood, because while many features or conditions of the home can be changed, the neighborhood cannot. Some things to consider investigating during the due diligence period include proximity to any places or facilities that you might find troublesome such as a prison, cemetery, airport, or landfill. Additionally, you might also want to find out more information about your potential neighbors, including performing a violent sex offender search at the Georgia Bureau of Investigation website. It's also a good idea to research local schools, crime rates, and government and make sure that you are comfortable with all of these.

On the actual property, in addition to the dwelling, you'll also want to conduct research about the land such as property boundaries, floodplains, power lines, and zoning. If you are buying a condominium or a home in a neighborhood with an HOA, make sure that you have a firm understanding of the bylaws of the homeowner's or community associations and that you know what the annual or monthly required fees are and what services are included in those fees.

Surveys

A few years ago, lenders usually required a survey of the property as a requirement of obtaining the loan. Today, most lenders no longer require the purchaser to get a survey. However, even if your lender does not require it, you may want to purchase a survey because of the many benefits it offers.

A survey is a map of your property, showing precisely where your house lies within the property boundaries, as well as easements, setback lines, building lines and other encumbrances. A survey will reveal whether the property is in violation of any county requirements, or PUD restrictions and whether there are any encroachments on the property. Surveys are prepared by professional, licensed surveyors pursuant to industry standards. The matters revealed by a properly prepared survey often affect the

marketability of title (and hence also the value) of the property, so it is valuable for buyer to obtain a survey during the due diligence period.

It is also important to note that a survey conducted for the seller at the time the seller purchased the property is not a protection for subsequent purchaser. A purchaser must have his or her own survey conducted.

[NOTE: FYI, if the seller has a recent survey (i.e. dated within the past year or so), the insurer may accept the survey on behalf of the buyer if the seller signs a no-change affidavit]

Generally, in a standard title insurance policy, the insurance company does not insure against matters that would be disclosed on a survey. If you purchase a survey, however, your title insurance company will usually insure that the survey is correct. An enhanced owner's title policy is also available (for a nominally higher cost), which can provide for title coverage for certain matters that a survey would have disclosed as long as the buyer has no knowledge of such matters prior to purchase of the title insurance. As part of the Owner's Affidavit, signed at closing, the owner states that he/she is not aware of any matters that a survey would have revealed (e.g., easements, encroachments, acreage discrepancies) which supports the enhanced title insurance coverage without a survey.

Home Warranty Protection

New Home Warranty

When you purchase a newly built home, the builder usually offers some sort of full or limited warranty on things such as the quality of design, materials, and workmanship. These warranties are usually for a period of one-year from the purchase of the home.

At closing, the builder will assign to you the manufacturer's warranties that were provided to the builder for materials, appliances, fixtures, etc. For example, if your dishwasher were to become faulty within one year from the purchase of your newly built home, you would call the manufacturer of the dishwasher – not the builder.

If the home builder does not offer a warranty, BE SURE TO ASK WHY!

Resale Home Warranty

When you purchase a resale home, you can purchase warranties that will protect you against most ordinary flaws and breakdowns for at least the first year of occupancy. The warranty may be offered by either the Seller, as part of the overall package, or by the agent. Even with a warranty, you should have the home carefully inspected before you purchase it.

A home warranty program will give you peace of mind, knowing that the major covered components in your home will be repaired if necessary. Ask me for more details about home warranty packages.