

# THE BASICS OF MAKING AN OFFER

## **A written proposal is the foundation of a real estate transaction.**

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Oral promises are not legally enforceable when it comes to the sale of real estate. Therefore, you need to enter into a written contract, which starts with your written proposal. This proposal not only specifies price, but all the terms and conditions of the purchase. For example, if the sellers said they'd help with \$2,000 toward your closing costs, be sure that's included in your written offer and in the final completed contract, or you won't have grounds for collecting it later.

REALTORS® usually have a variety of standard forms (including Residential Purchase Agreements) that are kept up to date with the changing laws. When you use a REALTOR® these forms will be available to you. In addition, REALTORS® cover the questions that need to be answered during the process. In many states certain disclosure laws must be complied with by the seller, and the REALTOR® will ensure that this takes place.

If you are not working with a REALTOR®, keep in mind that you must draw up a purchase offer or contract that conforms to state and local laws and that incorporates all of the key items. State laws vary, and certain provisions may be required in your area.

After the offer is drawn up and signed, it will usually be presented to the seller by your REALTOR®, by the seller's REALTOR® if that's a different agent, or often by the two together. In a few areas, sales contracts are typically drawn up by the parties' lawyers.

### **What the offer contains**

The purchase offer you submit, if accepted as it stands, will become a binding sales contract (known in some areas as a purchase agreement, earnest money agreement or deposit receipt). It's important, therefore, that it contains all the items that will serve as a "blueprint for the final sale." These purchase offer items include such things as:

- Address and sometimes a legal description of the property
- Sale price
- Terms -- for example, all cash or subject to your obtaining a mortgage for a given amount
- Seller's promise to provide clear title (ownership)
- Target date for closing (the actual sale)
- Amount of earnest money deposit accompanying the offer, and whether it's a check, cash or promissory note, and how it's to be returned to you if the offer is rejected -- or kept as damages if you later back out for no good reason
- Method by which real estate taxes, rents, fuel, water bills and utilities are to be adjusted (prorated) between buyer and seller
- Provisions about who will pay for title insurance, survey, termite inspections and the like
- Type of deed to be given
- Other requirements specific to your state, which might include a chance for attorney review of the contract, disclosure of specific environmental hazards or other state-specific clauses

- A provision that the buyer may make a last-minute walk-through inspection of the property just before the closing
- A time limit (preferably short) after which the offer will expire
- Contingencies, which are an extremely important matter and discussed in detail below

### **Contingencies**

If your offer says "this offer is contingent upon (or subject to) a certain event," you're saying that you will only go through with the purchase if that event occurs. The following are two common contingencies contained in a purchase order:

- The buyer obtaining specific financing from a lending institution. If the loan can't be found, the buyer won't be bound by the contract.
- A satisfactory report by a home inspector "within 10 days (for example) after acceptance of the offer." The seller must wait 10 days to see if the inspector submits a report that satisfies you. If not, the contract would become void. Again, make sure that all the details are nailed down in the written contract.

### **Negotiating tips**

You're in a strong bargaining position -- meaning, you look particularly welcome to a seller -- if:

- You're an all-cash buyer; or
- You're already pre-approved for a mortgage; and
- You don't have a present house that has to be sold before you can afford to buy.

In those circumstances, you may be able to negotiate some discount from the listed price. On the other hand, in a "hot" seller's market, if the perfect house comes on the market, you may want to offer the list price (or more) to beat out other early offers.

It's very helpful to find out why the house is being sold and whether the seller is under pressure. Keep these considerations in mind:

- Every month a vacant house remains unsold represents considerable extra expense for the seller;
- If the sellers are divorcing, they may just want out quickly; and
- Estate sales often yield a bargain in return for a prompt deal.

### **Earnest money**

This is a deposit that you give when making an offer on a house. A seller is understandably suspicious of a written offer that is not accompanied by a cash deposit to show "good faith." A REALTOR® or an attorney usually holds the deposit, the amount of which varies from community to community. This will become part of your down payment.

### **Buyers:** the seller's response to your offer

You will have a binding contract if the seller, upon receiving your written offer, signs an acceptance just as it stands, unconditionally. The offer becomes a firm contract as soon as you are notified of acceptance. If the offer is rejected, that's that, and the sellers could not later change their minds and hold you to it.

If the seller likes everything except the sale price, or the proposed closing date, or the basement pool table you want left with the property, you may receive a written counteroffer, with the changes the seller prefers. You are then free to accept or reject it or to even make your own counteroffer. For example, "We accept the counteroffer with the higher price, except that we still insist on having the pool table."

Each time either party makes any change in the terms, the other side is free to accept or reject it, or counter again. The document becomes a binding contract only when one party finally signs an unconditional acceptance of the other side's proposal.

### **Withdrawing an offer**

Can you take back an offer? In most cases the answer is yes, right up until the moment it is accepted, or even in some cases, if you haven't yet been notified of acceptance. If you do want to revoke your offer, be sure to do so only after consulting a lawyer who is experienced in real estate matters. You don't want to lose your earnest money deposit, or find yourself being sued for damages the seller may have suffered by relying on your actions.

### **For sellers:** calculating your net proceeds

When an offer comes in, you can accept it exactly as it stands, refuse it (seldom a useful response), or make a counteroffer to the buyers with the changes you want. In evaluating a purchase offer, you should estimate the amount of cash you'll walk away with when the transaction is complete. For example, when you're presented with two offers at once, you may discover you're better off accepting the one with the lower sale price if the other asks you to pay points to the buyer's lending institution.

Once you have a specific proposal before you, calculating net proceeds becomes simple. From the proposed purchase price you can subtract:

- Payoff amount on present mortgage;
- Any other liens (equity loan, judgments);
- Broker's commission;
- Legal costs of selling (attorney, escrow agent);
- Transfer taxes;
- Unpaid property taxes and water bills;

**If required by the contract:** cost of survey, termite inspection, buyer's closing costs, repairs, etc.

Your present mortgage lender may maintain an escrow account into which you deposit money to be used for property tax bills and homeowner's insurance premiums. In that case, remember that you will receive a refund of money left in that account, which will add to your proceeds.

### **For sellers:** counteroffers

When you receive a purchase offer from a would-be buyer, remember that unless you accept it exactly as it stands, unconditionally, the buyer will be free to walk away. Any change you make in a counteroffer puts you at risk of losing that chance to sell. Who pays for what items is often determined

by local custom. You can, however, arrive at any agreement you and the buyers want about who pays for:

- Termite inspection;
- Survey;
- Buyer's closing costs;
- Points to the buyer's lender;
- Buyer's broker;
- Repairs required by the lender; and
- Home Protection Policy.

You may feel some of these costs are none of your business, but many buyers -- particularly first-timers -- are short of cash. Helping them may be the best way to get your home sold.



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