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# ***Buying a Home***

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# Chapter 1. Tax Savings for Home Buyers

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## Welcome to Your New Shelter

There are many reasons to buy a home rather than rent one. Owning your own home improves your lifestyle, provides you with pride of ownership and starts you on a path to real wealth building. Because of the stabilizing effect property ownership has on its citizens, the government has a vested interest in making sure that most Americans have the opportunity to become home owners. It is to this end that they have made home ownership one of the best tax shelters available. From the time of its purchase to the time of its sale, your home can provide you with substantial savings on your tax bill.

## The New

### First Time Home Buyers Tax Credit

If you are a first time home buyer (defined by the IRS) and have an income of less than \$75,000 single/\$150,000 jointly, and you purchased a home between April 9, 2008 and July 1, 2009 you are eligible for the Federal Housing Tax Credit for First Time Home Buyers.

This is actually an interest free loan equal to 10% of the purchase price of your home up to \$7,500 for married couples and \$3,750 for singles. Two years after you claim the credit you must start to pay it back. The payback period is 15 years in 15 equal installments or \$500 on your tax return each year. When you sell your home, you must pay the remainder that year from your profits. If there are no profits, you do not have to pay back the remaining balance of the loan.

## The Mortgage Interest Deduction

In the early years of your mortgage loan, most of the monthly payment will be going to the payment of interest. Regardless of where you have gotten your loan, your lender will send you a Form 1098, *Mortgage Interest Statement* at the end of each year. It will usually be sent to you in January. This form will list all of the interest you have paid on your home loan for the previous year.

You are allowed to deduct interest on loans that are secured by either your primary residence or a second home up to a loan amount of \$1,000,000. If a loan is not secured by your home, it is considered a personal loan and its interest would not be deductible. The IRS considers a home to be a house, condominium, mobile home, boat, recreational vehicle or a similar property as long it has sleeping, cooking and bathroom facilities. The deduction is limited to first and second homes.

You can qualify for the interest deduction on your second home even if you rent it out for most of the year. The rule for qualifying is that you must occupy the home for at least 14 days out of the year.

As a new home owner be sure to hold onto the HUD-1 Form that was given to you at your closing since it is possible in the first year your 1098 may not be adequate to give you the entire interest amount. Let's say you have closed on your home in the middle of July. That usually means your first mortgage payment will not be due until September 1. This payment will include an interest payment for August. Many lenders, however, will charge you interest from the middle of July to the beginning of August and you will need a record of this amount when you file your taxes. You can use your HUD-1 statement to provide you with a record of the additional interest payment for your first partial month of home ownership.

Prior to becoming a home owner, you were only able to take the standard deduction when filing your taxes. Currently, the deduction is \$5,350 for single taxpayers and \$10,700 for married couples filing a joint return.

With home ownership, you can decide which will give you the largest tax deduction, the standard deduction or your total amount of interest payments for the year. If you find that the standard deduction will give you more of a write-off you may decide to stay with it. If the situation changes and the interest deduction is more, you may later use the interest deduction. You can alternate between the two options every year or itemize for a few years and then return to the standard. The key is to make sure that you choose the method that will give you the most tax savings for each year.

In order to claim the interest deduction, you will need to itemize and file a Schedule A, Form 1040 which will allow you to take deductions such as medical expenses, real estate taxes and charitable contributions as well as the mortgage interest deduction.

## Real Estate Taxes

Along with your mortgage payment, you will also be paying property taxes which go to your town. The town uses this revenue to fund its schools, pay for police and fire protection, to maintain roads and to fund other services that are needed by its residents.

Real estate taxes are based on two factors: 1) property assessments, and 2) property tax rates.

A property's assessment is based on its market value or how much it would sell for under normal circumstances. The assessor estimates the market value of a property based on the sales prices of similar properties.

Comparable sales are used as well as the appraisal method of adding and deducting monetary values according to the property's square footage, number of bedrooms, bathrooms and other features of the home.

Value is also added for upgrades to your property. The town is made aware of an upgrade when you file for a building permit. In most towns a permit is necessary whenever a significant improvement is made to your home such as an addition or remodeling.

The town's tax rate is determined by the amount of the tax levy. The tax levy is based on a budget that has been set by the town. First, the revenue from all sources other than property tax (sales tax revenue, user fees, state aid, etc.) is determined. This amount is then subtracted from the budget and what is left must be collected through property taxes. In order to ensure that the correct amount is collected, the town decides on an appropriate tax rate. An example of a tax rate would be 12.66 or \$12.66 per thousand.

In your home search, you will find the tax assessment, tax rate and annual property taxes in the public record and on the MLS listing sheets of homes that you are viewing. Your bank or other lending institution will need this

information to calculate your monthly payment. Tax payments are usually divided into monthly amounts and are escrowed and paid with your mortgage and insurance payment.

You may deduct real estate taxes in the year paid. They are also reported on the Form 1098, that you will receive from your bank annually. In addition, you can deduct any prorated taxes that were collected from you at your closing.

Items you may not deduct include:

- Special assessments or betterment charges;
- Trash collection services, even if these are included on your tax bill;
- Home owners' association assessments.

# Home Office

## Do You Work at Home?

If you own your own business, you may be able to take advantage of the home office deduction. Although the potential is an attractive one, before you take this deduction, you should make sure that you meet with all of the requirements.

To qualify as a home office for the purpose of the IRS, you must comply with the following:

### **1. Your use of the Business Part of your Home must be Exclusive, Regular and for your Trade or Business.**

This usually means that it should be a separate room in your home that you use both regularly and exclusively for your business. A common area that you use in this way can comply—as long as you use it exclusively for business.

If you have an additional business with another location, you cannot perform any of that work in your home office. For example, if you are claiming a home office as a real estate agent and you have another job as a teacher, grading papers in your home office would invalidate your use of the office for the real estate business.

Exclusive use also means that your children cannot use your office computer to play computer games or do research for their school papers. An exclusion to this would be if you run a daycare center and let the children use the computer for games and applications.

Regular use means that you should be using the room on a continuing basis whether that is daily or weekly and you should be able to back this use with logs of phone calls or invoices on your computer that show how

you used the office. Be sure to keep any and all records that prove your use of the office on a regular basis.

## **2. Your Home Office must be Your Principal Place of Business.**

You must be able to show that you use your home as your principal place of business. To qualify you will need to prove one of the following:

- You meet patients, clients or customers at your home,
- You use a separate structure on your property exclusively for business purposes.

This must be the place where you perform the most important part of your work and you cannot perform a substantial portion of your administrative activities at any other location. Some of these activities would include:

- Billing customers
- Keeping books and records
- Ordering supplies
- Writing reports
- Setting appointments

You could perform some of these activities elsewhere but your home office must be where you perform your most substantial administrative activities.

Expenses you can deduct for an office in your home may include the business portion of real estate taxes, mortgage interest, utilities, insurance, depreciation, painting and repairs.

Even if you do not qualify for the home office deduction, you can still deduct the expenses you pay for your business such as the business telephone bill, your on-line services and any other business expenses that are generated from home.

## Home Improvements

If you take out an equity loan to make substantial improvements to your home, you can deduct the interest paid on the amount borrowed for the improvement. You can also add this amount to your tax basis for the purpose of the capital gains exclusion when you sell. The IRS defines improvements as those items that "add to the value of your home, prolong its useful life, or adapt it to new uses."

The following are examples of home improvements that may qualify:

**Additions:** bedrooms, bathrooms, a deck, a garage, a porch or patio.

**Lawn & Grounds:** landscaping, walkway, fence, retaining wall, sprinkler, swimming pool.

**Heating and Air Conditioning:** heating system, central air, a furnace, duct work a central humidifier, a filtration system.

**Miscellaneous:** storm windows, doors, a new roof, central vacuum, wiring updates, a security system.

**Plumbing:** a septic system, water heater, water softening system.

**Interior Improvements:** built-in appliances, kitchen modernization, flooring, wall-to-wall carpeting, insulation, attic, walls, floors, pipes, duct work.

Work that does not qualify as home improvements includes repairs such as repainting, plastering, patching your roof, repairing broken windows, replacing cracked tiles and fixing minor leaks.

## **Additional Home Equity Loans**

### **College Tuition, Car Loans and**

### **Debt Consolidation**

You may decide to take out a home equity loan for reasons other than home improvements. You can generally claim an itemized deduction for interest on up to \$100,000 (*married couple filing jointly*) worth of home equity debt.

These loans may be used to finance your son or daughter's college education, pay off a car loan or consolidate credit card debt. You could even use the money to buy furniture. As long as the loan is secured by your residence, its interest is deductible.

Be careful that you don't create an upside down mortgage by ending up owing the bank more than the value of your home. Your own good judgment must come into play whenever you borrow against your home's equity. However; if you have plenty of equity and were going to incur these expenditures anyway, you may want to make the choice to secure an additional tax write-off by financing them through your home.

# Points

## **Remember Those Extra 2 or 3 Points You Paid to Make Your Interest Rate Lower?**

In your mortgage application, you had the option of paying points to help you to get a lower interest rate. A point is 1% of the principal and is usually considered pre-paid interest. For example, one point on a \$100,000 loan would be \$1,000.

To be treated as pre-paid interest the points have to be paid solely for your use of the money and not for services performed by the lender. Even if the lender calls this amount a loan origination fee, as long as it is a charge for the use of the money, the fees are deductible on your income taxes.

To qualify for deduction of points on your income tax, you must meet the following criteria:

1. Your loan is secured by your main home.
2. Paying points is an established business practice in the areas where the loan was made.
3. The points paid were not more than the points generally charged in your area.
4. You use the cash method of accounting. Most people use this.
5. Points were not paid in place of normal settlement costs, such as appraisal fees, etc.
6. The funds you provided at closing were at least as much as the points charged.
7. You use your loan to buy or build your main home.
8. The amount is clearly shown on the settlement statement (Form HUD-1).

Points can be deducted from your taxes by filing them through a Schedule A, Form 1040 along with your other itemized deductions.

# **The Capital Gains Exclusion**

## **This Will Apply When You Sell Your Home**

Prior to May 7, 1997, home sellers needed to use the proceeds from the sale of their home to buy a more expensive home in order to avoid paying taxes on capital gains. The Taxpayer Relief Act of 1997 changed all that. Now, rather than having to roll over into another residence, home owners only need to comply with the following:

When you sell your home, provided you have occupied it for at least two out of five years, you have a \$250,000 exclusion from capital gains taxes on this amount if you are single or a \$500,000 exclusion as a married couple. The property you are selling must be your principal residence, not an investment property. However; if you hold a property for five years, rent it out for the first three, and then live in for the last two, you qualify for the tax exemption. Also, your habitation of the home does not necessarily have to be sequential. You could live in the home for a year, rent it out for three and live in it for the final year. It is also not necessary for you to be residing in the home at the time of sale. So, you could live in the house for a year, rent it out for two, move back into it for another year and rent it out in the final year. The rule is you must live in the home two out of any five years of ownership.

With regard to the married couple exclusion, you must both pass the use test and that is that each of you must have lived in the residence for two years. If you own a home for two years and your significant other marries you six months before the two year time period, you can qualify for the \$500,000 tax exclusion, as long as you file jointly and your significant other has lived in the property with you for the last two years. If he has not lived in the property for the two year time period, or, if he owned and sold his own property and claimed the exclusion within the two year period, then, you do not qualify for the married couple exclusion.

These capital gains rules are a vast improvement over the previous ones since you can now use the proceeds from your home to travel, buy clothes or embark on a completely new venture. Also, there is no limit on the number of times you can use the home-sale exemption. In fact, you can have a tax-free profit of \$250,000 (or \$500,000 if married) every time you sell a home provided that each sale is at least two years apart.

*These are brief descriptions of some of the possible tax savings with home ownership. Before taking any deductions on your taxes, check with your tax accountant, attorney or appropriate IRS publication which may be found at [www.irs.gov](http://www.irs.gov).*

## Chapter 2. How Much Home Can You Afford?

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### Qualifying For a Loan

There are two major factors that qualify you for home financing: your ability to pay a loan and your willingness to pay a loan.

Your *ability* is determined by verifying your current employment and analyzing your total income. Lenders usually like to see that you have been employed by the same company for two years. There can, of course, be exceptions to this. If you change your job but stay in the same line of work, you should not have a problem, particularly if the job change results in an increased amount of income. Bonuses and any additional income such as child support or alimony will also be considered if you are able to bring documentation showing that these amounts are steady and reliable.

Other factors that are taken into consideration include the amount of cash you have in your bank account, including savings, retirement accounts and investments. You should be prepared to show recent bank statements, including checking and savings, your most recent account statements for any investments you have, interest in retirement funds, life insurance policies and the value of personal property, including automobiles.

Your *willingness* to pay the loan is determined by what is on your credit report. If you have been consistent in paying your bills, credit card payments and repaying loans, this will demonstrate that you can be counted on to pay any loans in the future.

Many home buyers are nervous about getting a mortgage loan because they are under the misconception that they have no bargaining power and that is not true. Keep in mind that banks are in the business of loaning money and their business, like any other, is highly competitive. If you

have good credit and can demonstrate your ability to pay for a mortgage, a good mortgage broker is going to fight for your business.

Remember this fact when you talk with a mortgage broker about the particular loan programs that he is willing or able to match you with. That also goes for closing costs and application fees. Be sure to talk to more than one mortgage broker or lending institution to get the best deal on your home loan.

As for meeting lenders' qualifications, there are usually two questions that must be asked. First, is your income large enough to service the expenses associated with the loan? Secondly, do you have cash on hand to meet the up-front cash requirements of the home purchase? To help lenders determine this, they usually employ expense ratios.

## **Mortgage Underwriting Guidelines**

When a bank reviews your mortgage application to determine whether or not to grant a loan, the following items are reviewed:

### **Income**

This is the most important criteria for the bank. They will want to determine where the income is coming from and the likelihood of it sustaining over the period of the loan. These include:

- Salary and Hourly Wages – Calculated on a gross monthly basis, prior to tax deductions.
- Part-time and Second Job Income – Not usually considered unless it is in place for 12 to 24 months.
- Commission, Bonus and Overtime – This can only be used if you have received it for two previous years and your employer must verify that it will likely be continued.
- Retirement and Social Security – Must continue for at least three years into the future for consideration.

- Alimony and Child Support – Must be received for 12 previous months and proven to continue for the next 36 months.
- Notes, Receivables, Interest, Dividend and Trust Income – You must have proof of receiving funds for 12 previous months and also show that income is due for 3 more years.
- Rental Income – The only acceptable source is from investment property. The bank will use 75% of the monthly rent minus expenses.
- Automobile Allowance and Expense Account Reimbursements – This must be verified with 2 years on tax returns and reduced by expenses listed on Schedule C.
- Self Employment Income – Lenders require two years minimum ownership to consider self employed income.

## **Debt**

Your outstanding debts are reviewed. The bank needs to be assured that after all monthly liabilities are paid there is adequate income left to make the mortgage payment.

- Loans, leases and credit cards are factored in while food, insurance, school costs, etc. are not.
- A loan with less than 10 months remaining will usually be disregarded.
- The payment figure used is your minimum monthly payment.
- If you signed as a co-borrower for a friend or relative you are accountable for that payment.
- A loan can be paid off to qualify for a mortgage but not a credit card. If the card is paid off and the credit line still exists, the bank will consider it a possible liability.

## **Credit**

A bank will order a merged credit report from the three main credit bureaus: Trans Union, Equifax and Experian. The credit report also searches public records for liens, judgments, bankruptcies and foreclosures.

Most lenders use a national credit scoring system to evaluate credit risk. An underwriter will evaluate all of this information to determine whether or not to grant a loan.

## **Savings**

A lender will want to see that the borrower has adequate savings since the more money the borrower has, the greater the likelihood there will be of on-time payments. The bank also wants the borrower to have his own funds invested into the property. This lessens the probability of the person walking away from his own life savings when faced with a possible foreclosure.

In terms of funds that the bank considers, they are:

- Checking and Savings Accounts
- Gifts and Grants
- Sale of Assets
- Secured Loans
- Retirement Accounts

## **Ratios**

Many banks will use a 28/36 ratio. Simply defined, the first figure 28 represents the amount of your income you can pay on a mortgage payment. The total amount you should pay toward your mortgage payment, including principal, interest, taxes and insurance is 28%.

The second figure 36 is the amount you pay in debt-related expenses, including your mortgage, car loans, credit card payments and any other debts. This figure should not exceed 36% of your income.

Other lenders may use a 30/40 ratio. This is to say that your house payment should equal 30% of your Gross Monthly Income and your debt should be 40% of your Gross Monthly Income.

Ratios will vary, depending on the lending institution's particular guidelines.

If you are able to make a down payment of 20 per cent or more there are more possibilities that open up. If you are a good borrower with a high credit score you should be able to find a number of lenders who will be able to fit you into a program that will be beneficial to you and the bank.

Besides calculating ratios, there are other ways for you to see how much you may qualify for and what your monthly payments will be. Go to any of the search engines on the internet and type in "pre-qualify mortgage calculator" and it will bring up some sites that will allow you to pre-qualify by filling out a form. If you wish to remain anonymous during this process be sure to choose a site that does not require you to fill in any personal information such as your name, address and social security number. This does not replace a pre-qualification with an actual lender but can give you a rough idea of what you can afford in your pre-planning stages.

## **Determining the Price Range of Your Home**

Once you have determined the loan amount that a bank will be willing to lend you, keep in mind that you may not want to borrow the entire amount. Two items will come into play that will determine the price range you should be looking in:

- The amount of money you have to put down;
- How negotiable prices are at the time of your purchase.

In a soft or buyer's market which we are currently in, you should consider that the asking price of a home is probably not what the home will sell for. Consider that homes may be selling for 5 – 10% less than the asking price in this environment. To this end, it is important to know how long the home has been on the market and, if you possible can, find out anything about the seller's motivation.

With these thoughts in mind you should be looking at homes in a slightly higher price range than you can actually pay. If you are using the services of a good buyer broker, he or she should be able to negotiate a lower price than asking and possibly get more off at the home inspection if any problems are discovered.

Most importantly, you will need to decide what you will eventually be comfortable with for a mortgage payment. If you feel secure in your employment and have expectations of higher earnings in the future your comfort level may be greater than if you are self-employed and need to worry about possible "rainy days." In other words, this is your life and your comfort level - not the bank's, your family's or your friends.

## Checking Your Credit

To avoid any surprises, it's always best to get a copy of your credit report before applying for a home loan. Under the Fair and Accurate Credit Transactions Act of 2003 (FACTA), credit bureaus are required to provide you with one free copy of your credit report each year. Prior to this ruling, you had to pay \$9.50 each time you wanted a copy of your credit report. Congress recognized the benefits of self-monitoring in the battle against identity theft and enacted FACTA so that citizens could keep current on their credit status.

You can get a free report by logging onto [www.AnnualCreditReport.com](http://www.AnnualCreditReport.com) or by calling 1-877-322-8228. Be aware of fraudulent copy cat sites that are soliciting people to purchase their credit protection services. Never order a credit report on-line from a source that you got from searching for “credit reporting services” or anything similar since there is a danger in putting your social security number out on the internet without protection. For a copy of the mail-in form from FACTA, go to <https://www.annualcreditreport.com/cra/requestformfinal.pdf>.

It is wise to check your reports every year, not only to fight identity theft, but also because credit bureaus can make mistakes and you want to make certain your reports contain accurate information. Make sure those credit cards you think you have canceled are showing up as closed.

If you find inaccuracies in your credit report, notify the credit bureau. Do it in writing and keep a copy. Once the agency is notified of an error, it has thirty days to make the correction. You have the right to provide credit bureaus with a one hundred-word statement explaining any circumstances that pertain to specific information in your report. This includes information about late payments, divorce-related problems or a dispute with a company. The credit bureau must then include these statements in your credit report.

## What is a FICO Score?

Most credit bureau scores in the U.S. are produced from software developed by Fair Isaac Corporation (FICO). The scores are used to evaluate how much of a credit risk a potential borrower is. FICO scores are provided to the three main credit bureaus: Equifax, Experian and TransUnion.

These scores are considered to be a fair and impartial judgment of whom should be granted credit and what the limits should be. FICO cannot tell if you are a single woman, a minority race or of any particular religion. It looks only to your borrowing habits measured against the patterns of hundreds of thousands of past credit reports.

FICO scores range from 300 to 850 and, though your scores among the three major credit bureaus will not be far apart, they are never identical to each other. Each agency has its own method of analyzing and reporting the data in your files. It is wise to get a copy of each score since that is exactly what some of the lenders do.

It's important to note that FICO only looks at information in your credit report, while lenders look at a number of variables when making their lending decisions, including your income and how long you have worked at your current job. Your score considers both positive and negative information in your report. Late payments will lower your score and a history of making payments on time will make your score higher.

Your FICO score is based on five categories:

1. Payment History - This makes up 35% of your score. One of the most important factors in a FICO score is whether or not you have paid past accounts on time. However, it is just one piece of the picture.

2. Amounts Owed - Approximately 30% of your score is based on this factor. Having high balances on credit card accounts may show that you are overextended and less likely to make future payments on time. If you pay off your credit cards every month this indicates that you are a good credit risk.
3. Length of Credit History - Approximately 15% of your score is based on this. Having had accounts for a longer period of time is viewed as more favorable than being a new credit customer. FICO looks at how long accounts have been established and how long it has been since you have used certain accounts.
4. New Credit - This accounts for approximately 10% of your score. People who have not had credit for very long should not open too many new accounts in a short amount of time. The scores are also affected by having a large number of requests for credit, although FICO distinguishes between a search for a single loan (such as a mortgage) and searches for many new credit accounts. They do this, in part, by the length of time over which the inquiries occur.
5. Types of Credit in Use - Approximately 10% of your score is based on this factor. If you do not have a lot of other information on which to base your score, opening a vast array of retail accounts, loans, and credit cards will not necessarily be viewed favorably. The score considers whether the loans and accounts are a healthy mix. It is better to start off with a few accounts and establish a good payment record with them than to open many that you do not need.

FICO Scores break down to the following, with the highest score getting you the best interest rates:

760-850, 700-759, 660-699, 620-659, 580-619, 500-579

You can find out more information and purchase your FICO scores at [www.myfico.com](http://www.myfico.com).

## Getting Pre-Approved

After checking your credit and working out some preliminary numbers, it's time to go through the process of pre-approval for your home mortgage loan.

One advantage of getting pre-approved is that it will give you a firm idea of how much you can borrow and, therefore, what the price range will be of your new home. With this in place, you will not be wasting countless hours looking at homes that you may eventually discover you cannot afford to buy.

In addition, it is a help to your realtor, who will be more willing to spend time searching for and showing you properties if they can see in black and white that you are approved for a specific amount of buying power. Sellers will also take any offer you make more seriously if you are pre-approved. In fact, most sellers will not accept an offer and take their home off of the market without first seeing a firm letter of pre-approval.

Some preliminary screening of mortgage companies can be done online or over the phone. You can go online to check their rates or call them direct. Most lenders will give you a great deal of information on their products and current programs. Take advantage of this information to help you to become a more informed about the credit market.

It is important to start this process as soon as possible. That way, you will have ample time to correct any possible mistakes that may show up on your credit report. Having negative information on your credit report will cause you to be put into a higher interest rate program or could possibly cause your application to be denied.

In light of the recent subprime loan crisis, early application for a pre-approval has become crucial since many banks have become more strict on their guidelines for issuing credit.

At the time of application for a pre-approval the lender will provide you with information about various programs you qualify for and also what your monthly payments will be. A mortgage payment is made up of:

- Principal – The total amount of money you are borrowing after your down payment. This is the actual amount you will be financing.
- Interest – The money the lender is charging you for the loan.
- Taxes – Your property taxes are usually escrowed or put into the hands of a third party until it is time for your taxes to be paid. This makes it easier for you to pay your property taxes rather than to come up with a large lump sum at any given time.
- Insurance – Your home insurance protects you against any losses from fire, storms, or theft, or, if you have flood insurance, against flooding.

Collectively, these pieces of your mortgage payment are referred to as PITI.

Your lender will use financial information provided by you to obtain approval for up to a specific loan amount. The lender will ask questions regarding your current residence, employment history, your salary and your outstanding debts. He will also require you to sign a number of disclosure statements. Your application will then be submitted to an automated underwriting process. Using this type of process, your approval may be obtained in a matter of minutes. Once it is approved, you will receive a pre-approval letter which outlines the terms of your pre-approval.

**Exhibit A**  
**Pre-Approval Letter**

ABC Banking

November 1, 2008

RE: Loan Approval-property address-to be determined

Dear Mr. & Mrs. Smith:

Congratulations. ABC bank is pleased to inform you that your application for a mortgage home loan for a purchase price of \$600,000 has been approved. Your approval is based on a review of the information and the documents that you have provided as well as a full credit report. This means your credit history, income, and assets, as reported to us meet the guidelines of the loan program for which you have applied.

A final approval will be issued upon satisfactory compliance of the following conditions:

- Fully executed sales contract.
- Satisfactory appraisal.

Thank you for choosing ABC Bank.

Sincerely,

Joan Bankcard

Loan Officer

## Items Necessary for a Home Loan Application

Some lenders may not require all of these items, but, just to be safe, you should have the following information ready:

- Your social security number;
- Employment history: employment for two years; dates and addresses; salary; current pay stubs or W-2 forms.
- Checking and Savings Accounts and Certificates of Deposits: location of bank accounts, account numbers and balances; address of bank if out of town and be prepared to provide the last 3 months' statements.
- Stocks, bonds, and investment accounts: broker's name and address, description of stocks, bonds, etc. and the last 3 months statements or copies of stock certificates.
- Life Insurance Policy;
- Retirement Plan: approximate vested interest value, copy of latest statement.
- Automobiles: make and model of automobiles, their resale value, if possible;
- Other Assets: market value of personal and household property.
- Liabilities and other non-mortgage debt: creditor's names, addresses, account numbers, monthly payments and balances.

Now that you have been pre-approved for a home loan it's time to start thinking about the type of loan that will best suit your needs.

## **Conventional Loan Programs**

For every home buyer there is a loan program. You can determine which type of loan you fit into by your income, expenses and home ownership goals. If you plan on spending many years in your new home, you are probably best suited for a fixed-rate loan. By getting into a low interest fixed-rate, you will have the security of knowing what your monthly payment will be over the long term and you can make the rate even lower by paying points up front. If, however, there is a good chance that you will be moving in five years or less, an adjustable-rate mortgage may be a better answer for you. Or, if your income will be rising in the future, an ARM may give you more purchasing power now.

### **Fixed-Rate Mortgages**

The most easily understood loan is the fixed-rate loan. It allows the borrower to repay the principal and interest over a fixed period. During this time, the interest and payment amounts stay the same. There are currently fixed-rate programs available for 30 years, 20 years, 15 years and 40 years. The most popular terms are 30 and 15 years.

With a 30 or 40 year loan your payments will be lower since the loan amount is extended over a long period of time. However, if you can afford a higher payment, a 15 year loan will pay off your mortgage in half of the time and the loan will be at a lower interest rate.

The advantages of fixed-rates mortgages include inflation protection, long-term planning and low risk. If you plan on owning your home for more than 5 years, a fixed-rate mortgage will ensure that, even if interest rates go up, your payment will not be affected. This is a hedge against inflationary times. Also, knowing what your monthly expense will be for the entire term of the mortgage can help you in your long-term planning and provide you with a low risk factor as opposed to an adjustable rate mortgage which may go up and make planning more difficult for the long run.

On the flip side, no matter how low interest rates get your payment will not go down unless you choose to refinance. Also, the interest rate on a fixed-rate mortgage will be higher to begin with than an adjustable one which will offer you a low, initial rate to get you into the loan.

The payments on fixed-rate fully amortizing loans are scheduled so at the end of the term your mortgage is paid in full. The advantage to this type of loan is in knowing what your payment will be for the life of the loan. In a period of low interest rates, the fixed-rate loan is a popular way to buy a home.

### **Fixed-Rate Interest Only Loans**

If you qualify, you may opt for an interest only loan. With this product, the loan is divided into two periods. During the first period, your monthly payment will be lower since this is when you will be paying only the interest. In the second period, you will be paying both interest and principle. A typical fixed-rate interest only loan would be for 30 years during which the first 10 years you will have a lower payment paying only the interest. For the remaining 20 years you will be paying both interest and principle.

While this option may seem attractive to some borrowers since you are freeing up cash that you can use for other purposes, you need to remember that during the first 10 years you are not reducing the principal or creating any equity in your property.

It is more difficult to qualify for an interest only loan and this type of loan should probably be reserved for a high end buyer who wants to increase his purchasing ability and invest the money saved in a higher yield investment. It would not be recommended for first-time home buyers since they would need to come up with a larger down payment and miss the opportunity to begin wealth building in what is probably their largest and most important investment.

## **Adjustable-Rate Mortgages (ARMS)**

With an adjustable-rate mortgage, your interest rate will fluctuate with the economy. Depending on your financial situation, this type of loan may allow you to have more purchasing power now than a fixed-rate loan. This is due to the fact that lenders offer introductory interest rates on ARMs that are substantially lower than on fixed-rate loans. ARMs carry risks in periods of rising interest rates, but, if interest rates drop, they can become less expensive.

The rise and fall of ARM interest rates are tied to their relationship to an index. The type of index varies and could include treasury securities or the national average cost of funds to savings and loan associations. If the index rate moves up, your payment does as well. On the other hand, if the index rate goes down, so will your monthly payment.

To get a better understanding of ARMs, you should become familiar with the following terms:

### ***The Adjustment Period***

With an ARM, the interest rate and monthly payment change every year, every three years or every five years, depending on which program you are in. The period between one rate change and the next is called the "adjustment period." For example, in a 1-year ARM the adjustment period, i.e. when the interest rate can change, is 1 year.

### ***The Margin***

To determine the interest rate they will charge on a loan, lenders add a few percentage points to the index rate. This is called the "margin." Margins tend to vary from one lender to another. For example, both lenders may use treasury securities as an index, but one uses a 2% margin and the second uses a 3% margin. The larger margin will make your monthly payment higher.

## ***Discounts***

To make a loan program attractive and, sometimes, to get you approved, a lender may use a lower initial rate than what is standard for them. These rates are referred to as discounted rates. Often these loans are accompanied by large initial loan fees or "points."

The discount provides you with a lower monthly payment and also qualifies you for more than you would otherwise be approved of. Just be aware that, after the discount period expires, which is often at the end of the first year, the savings from this period may be made up during the life of the mortgage by a rise in your mortgage payment.

## ***Interest-Rate Caps***

Caps were put into effect to protect borrowers from extreme increases in their monthly payments. A cap does this by placing a limit on how much your interest rate can increase. A periodic cap limits the rate increase from one adjustment period to another; while, overall caps limit the rate increase over the life of the loan.

For example: you have an ARM with a periodic cap of 2%. At the first adjustment, the index rate goes up 3%. Because of your 2% cap, your interest rate will only go up 2%.

Be aware that a drop in interest rates does not necessarily lead to a drop in your monthly payment. Some ARMS have a carryover feature. If your 2% cap has kept your interest rate to 2% during a 3% increase in the index, the additional 1% can carry over to the next adjustment period. This would raise your interest rate an extra 1% in that period even if the index rate has not had an increase.

As an overall cap example: you have an overall cap of 5%. The index rate increases 1% in each of the next nine years. Your payment will not go up 9 percentage points, but will only go up 5%.

By law, all ARMs must have overall caps.

## ***Payment Caps***

Some ARM programs have payment caps. A payment cap will limit your monthly payment increase at each adjustment, usually to a percentage of the previous payment.

With payment caps you need to be aware of the possibility of negative amortization. This can happen when your monthly payment amounts are not large enough to pay all of the interest due on your mortgage. Since payment caps deal only with payment increases and not with interest-rate increases, there could be a time when your payment does not cover all of the interest due on the loan. This shortage would then be added to your debt and may have additional interest charged on the amount.

Since real estate values are usually appreciating, the extra charges in the loan may be covered by an increase in your property value but this is a possibility that you should carefully consider when looking at any adjustable rate programs.

## **1-Year Adjustable Rate Mortgage**

With this 30-year loan the interest rate changes every 12 months. The amount of the adjustment is determined by an index, as previously discussed. Whether it is the Treasury Bill Rates, Treasury Note Rates, Federal Reserve Discount Rates or the Cost of Funds Index, these indices are all published and readily available to the consumer. Your lender has no control over the rate of increases or decreases.

One reason to consider a 1-year ARM is that the introductory interest rate will be significantly below the rate on a fixed-rate loan which may help you to qualify for the largest possible loan on your current salary. Your part in this arrangement is that you will be taking a risk in that your payment may change from year to year. If interest rates rise dramatically, you could end

up paying much more for a 1-year ARM than for a 30-year fixed rate mortgage.

This loan usually comes with a 2% periodic cap and a 6% overall cap.

### **3/1 Adjustable Rate Mortgage**

The interest rate on this 30-year loan will be at a low introductory rate for the first three years. Then, like the previous loan, the rate is tied to a predetermined index.

If you expect to move or refinance in three years, this could be a good solution for you. It is also an opportunity to qualify for a larger loan than you would under a fixed rate. In any event, you should have some expectation of an increase in your income to be able to cover any possible future adjustments.

### **5/1 Adjustable Rate Mortgage**

This is a 30-year loan in which the interest rate is a low rate for five years and then may change each year thereafter.

You will still be offered a lower rate than the rates on fixed-rate mortgages. In exchange, you are willing to accept a small amount of risk that your rate will go up.

This would be a good option if you expect to stay in the home for at least 5 years. Once again, you should be confident that you income will go up to be able to cover the possible increase in your payment.

## Understanding Closing Costs

One of the most confusing aspects of home financing is determining what is fair or competitive with regard to closing costs. These costs are not fixed and can vary greatly depending on the lender, the lending program and the amount of your loan.

When shopping for a loan, get estimated closing costs from lenders. Ask for them to be in writing. This will help in your comparison shopping.

Once you have applied for your loan, The Real Estate Settlement Procedures Act (RESPA) requires your lender to provide you with a Good Faith Estimate of closing costs within three business days of your application. Also, you must be provided with a disclosure estimating all of the costs associated with your loan, including your total finance charge and Annual Percentage Rate.

Although the categories of lending costs are standard, the amounts charged for the fees are not. Below is an explanation of each of the possible fees as they appear on the HUD (Department of Urban Housing and Development) statement. Not all lenders charge all of these fees.

### *Loan Fees*

**Loan Origination:** A charge for the lender's work in evaluating and preparing your mortgage loan, often expressed as a percentage of the loan. Cost: varies from lender to lender. A one percent loan origination fee is equal to 1% of the loan amount.

**Discount Points:** A point is a one-time charge imposed by the lender to lower the interest rate the lender would otherwise charge. Each point is equal to one percent of the mortgage amount. Usually, for each point you pay for a 30-year loan, your interest rate is reduced by about 1/8th (or .125) of a percentage point. Paying points can be good if you plan on living in the home for a long time. Cost: One point = 1% of the loan.

**Appraisal Fee:** This covers the cost of an independent appraisal of the home you are purchasing. The lender requires this evaluation of the property since it will serve as collateral for the loan. Cost: \$200 - \$500.

**Credit Report Fee:** Covers the cost of a credit report to evaluate your credit history. Cost: \$45 - 50.

**Mortgage Insurance Application Fee:** If you are putting less than 20% down on your home you will be required to take out mortgage insurance (PMI) This covers the lender's risk in the event you should fail to make loan payments. Cost: Varies from lender to lender.

**Mortgage Broker Fee:** Any fees paid to the mortgage broker would be listed here. Cost: Approximately \$500.

*Items to be paid in advance*

**Interest:** Lenders usually require borrowers to pay the interest that accrues from the date of the settlement to the first monthly payment. For example, if you closed on June 20 you would owe ten days of interest payments to the end of the month.

**Mortgage Insurance Premium:** The lender may require you to pay the first year's mortgage insurance premium in advance.

**Flood Insurance:** If the property you are purchasing is in a flood zone, you would have to carry flood insurance.

**Hazard Insurance Premium:** You will be paying at least three months of prepaid home insurance at the closing. Cost: Based on your home's value. It is wise to get quotes from three different insurers.

**Property Taxes:** You are required to pay three months of property taxes which will be held in escrow with the hazard insurance by the lender. Cost: Based on your home's value. The tax amount can be found on your MLS listing sheet or from the public record available from the town hall.

### *Title Charges*

**Settlement or Closing Fee:** This is a fee paid to the settlement agent or closing attorney. Cost: Approximately \$600.

### **Abstract of Title Search, Title Examination, And Title Insurance**

**Binder:** The title search is done to prove to the lender that the seller owns the property you are purchasing. The search involves reviewing public records, recorders of deeds, county courts, tax assessors and surveyors. Also, records of deaths, divorces, court judgments, liens and contests over wills are examined. Cost: Approximately \$250.

**Document Preparation:** This is a separate fee that some lenders charge to cover their costs of preparation of legal papers and the deed.

Cost: \$50-\$200.

**Notary Fee:** This is the cost of having a notary public sign the documents and swear to the fact that the persons named are the ones who signed them. Cost: \$50-\$100.

**Attorney's Fees:** You may be required to pay for legal services provided to the lender such as examination of the title binder. Cost:

Approximately \$600.

**Title Insurance:** The total cost of your title insurance as well as the lender's. Title insurance protects you from an error in the title search. Such an error could mean that you are buying a house from someone who did not own it in the first place. Cost: Based on your home's value.

### *Government Fees*

**Government Recording and Transfer Charges:** These fees are for recording the new deed and mortgage. Cost: Approximately \$50 - \$150.

*Additional Settlement Charges*

**Survey Fee:** A survey, or an Improvement Local Certificate, is done by a licensed surveyor and determines that your lot has not been encroached upon. At a minimum, the lender will require evidence that no additional structures have been added to the lot since the last survey was conducted on the property. Cost: Approximately \$200 - \$350.

**Administrative Fee, Document Preparation Fee, Courier Fee and Certified Copies:** Costs vary.

## Private Mortgage Insurance (PMI)

### Will You Need It?

The determining factor as to whether or not you need to purchase private mortgage insurance is your down payment amount. The bank is concerned with the loan-to-value or LTV. If you are putting down only 10%, your LTV is 90 percent. Since most lenders will only insure 80% of the loan, you will have an exposure of 10% that must be covered. This is done through private mortgage insurance.

### What Does PMI Cost?

According to the Mortgage Bankers Association of America, PMI costs are typically one-half of one percent of the loan.\*

For example: You put down 10% on a loan of \$200,000. \$200,000 minus \$20,000 (10%) is \$180,000. This is the amount to be financed. The lender multiplies \$180,000 by .005. The result is \$900. Divide \$900 by 12 for your monthly PMI payment of \$75.00.

*\*PMI costs may vary from lender to lender.*

### Avoiding PMI

Some lenders have programs in which you can avoid PMI by paying more interest. The usual rate increase amounts to .75 % to 1% depending on the lender and the amount of the loan. One advantage to this method is that mortgage interest is tax deductible.

Another method is called an 80-10-10 or piggyback mortgage. This involves getting two loans and putting 10% down on the property. The program is structured with a first mortgage equal to 80% of the sale price and a second mortgage for the remaining 10%. The second mortgage will

usually have a higher interest rate than the first but since it only applies to a small portion of the total price, the monthly payment for both loans will usually come out to less than paying a PMI premium.

The first loan is equal to 80% of the value of the home. The second is for 10%. The buyer then must come up with the remaining 10% as a down payment. Not all borrowers qualify for piggybacks since they must have enough income to cover the payments of two loans, at least until the second is paid off.

Piggyback loans have become popular because buyers want to avoid paying private mortgage insurance. Another part of their popularity has been the fact that the interest on the piggyback mortgage is tax deductible.

If you do end up with PMI payments in the structure of your loan, keep track of your payments on the principal of the mortgage. When you reach a point where your loan to value is 80% there are provisions which mandate that you be notified. According to the Homeowner Protection Act of 1998, Federal Public Law 105-216, the following rules apply:

**Mandatory Initial Disclosure** - At the time of the closing the lender must provide a written notice of when PMI may be cancelled or that the lender will notify the customer when the cancellation date is reached.

**Borrower-Initiated Cancellation** - When the balance of the mortgage reaches 80 percent of the original value of the property the borrower may request in writing that the PMI be cancelled.

**Automatic Termination** - When the balance of the mortgage reaches 78 percent of the original value of the property the lender must automatically terminate PMI, provided that payment is current.

## Chapter 3. Real Estate Agents

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### **With All the Help there is On the Internet**

#### **Why Do I Need an Agent?**

With regard to searching for properties on the internet, there are some important limitations. One of them is that house listings are not always updated so you may often be chasing one after it has gone under agreement. If you call listing brokers directly, you will not be getting impartiality about other properties you may be interested in since they stand to earn double their commission by selling their own listings to you. This leaves you with the task of calling on every property, setting your own appointments and having no one on your side.

Since buying a home is not something you do on a regular basis, there is no reason for you to learn how to be a real estate agent. Plodding through the maze of listings, property values, zoning regulations and inspection issues is something best left to those who do it for a living. Help is available, and it usually costs you nothing.

The profession of real estate agency has evolved dramatically over the last ten years and it is due, not only to changing technology, but also to the sophistication of today's buyers. With all of the information now available at our fingertips, we are able to bring a higher level of service in a shorter amount of time.

Many realtors are specializing and developing their own niches. One of those niches is buyer broker representation. Because of this innovation, there is no reason to embark on your home purchase alone. Home buying is a complicated process and one that is best coordinated by a professional who, not only helps you to find a property, but also has the knowledge necessary to bring your transaction to a successful closing.

## What Should You Look for In a Broker?

There has long been a belief that people choose professionals who are similar to themselves in a number of ways. This tradition is often seen with how home buyers ally themselves with real estate agents. Because the home buying process can be lengthy and stressful, you may want to work with a broker who shares some of your own personality traits. These might include: being detail oriented, low key or fast paced, shirt-sleeved and basic or high tech and desirous of someone who is tech savvy enough to communicate with you in a way in which you are accustomed.

Other requirements for a good broker to work with are more generic, but extremely important. Some of these are:

- Good buyer/client references;
- Familiarity with the area that you are looking in;
- Ability to provide you with a link into the MLS;
- Exclusive representation. Loyalty without conflicts of interest;
- Confidentiality concerning your money and motivation;
- Unbiased showing of all available homes;
- Showing by for-sale-by-owners;
- A willingness to point out flaws in a property;
- A fair and straightforward buyer agency agreement;
- Good negotiating skills;
- Help in finding a good home inspector, lender, and an attorney.

A traditional real estate broker has no obligation to recommend professionals to you. Because of this, you will most often find that they will recommend three or more (bankers, attorneys, and, especially home inspectors) because they have and want no liability to the recommendation of one.

A buyer broker, on the other hand, does have a liability to recommend the services of the best professionals possible. This is part of why you are hiring a broker, for a professional opinion. When you ask for advice on professionals to help you with your home transaction, do you really want three choices? How will you know which one to use? When you ask for help with home buying issues, you need answers. Only a buyer broker takes on the liability of giving you a direct recommendation.

### **Why Would a Buyer Broker Negotiate a Lower Price?**

This is a very important question and one worth addressing. Since the commission paid to a realtor is a percentage of the total price why would any agent try to get a lower price for a home buyer?

The answer lies in your choice of agents. You should try to work with a realtor who specializes in representing buyers and who has been doing so for awhile. A career is not made from one client and one commission, but from many clients. A professional buyer broker would not have much of a business without first having cultivated and maintained a good reputation as a buyer advocate and the only way to achieve that is by doing the best job possible for every buyer client.

Just as an attorney works hard to win cases for clients, a buyer advocate must also build and keep a good track record in a business that is often referral driven. That's why it is important to work with a specialist in buyer representation and not just a duty broker who answers the telephone at a real estate agency or an agent you meet at an open house.

You can find an agent with the right credentials to help you in your home search by going on-line and searching on "buyer broker" and the state or area you are interested in.

## **Realtor Agency Disclosure**

There has long been confusion about real estate agency. Many people believe that the realtor who is setting up appointments and showing them houses is always working for them as their agent. Often that is not true. To clarify the issue, many states have made it mandatory for real estate agents to have an agency disclosure form signed by all potential buyers. This form must be presented and signed prior to showing properties.

See Exhibit B - the Mandatory Agency Disclosure Form.

## Exhibit B

### MASSACHUSETTS MANDATORY LICENSEE-CONSUMER RELATIONSHIP DISCLOSURE

This disclosure is provided to you, the consumer, by the real estate agent listed on this form. Make sure you read both sides of this form. The reverse side contains a more detailed description of the different types of relationships available to you. This is not a contract.

#### **THE TIME WHEN THE LICENSEE MUST PROVIDE THIS NOTICE TO THE CONSUMER:**

All real estate licensees must present this form to you at the first personal meeting with you to discuss a specific property. The licensee can represent you as the seller (Seller's Agent) or represent you as the buyer (Buyer's Agent) and also can assist you as a facilitator.

#### **CONSUMER INFORMATION AND RESPONSIBILITY:**

Whether you are the buyer or seller you can choose to have the advice, assistance and representation of your own agent who works for you. **Do not assume that a real estate agent works solely for you unless you have an agreement for that relationship.** With your consent, licensees from the same firm may represent a buyer and seller in the same transaction. These agents are referred to as dual agents.

Also a buyer and seller may be represented by agents in the same real estate firm as designated agents. The "designated seller or buyer agent" is your sole representative. However where *both* the seller and buyer provide written consent to have a designated agent represent them then the agent making such designation becomes a "dual agent" for the buyer and seller. All real estate agents must, by law, present properties honestly and accurately. They must also disclose known material defects in the real estate.

The duties of a real estate agent do not relieve the consumers of the responsibility to protect their own interests. If you need advice for legal, tax, insurance or land survey matters it is your responsibility to consult a professional in those areas. Real Estate agents do not have a duty to perform home, lead paint or insect inspections nor do they perform septic system, wetlands or environmental evaluations.

#### **RELATIONSHIP OF REAL ESTATE LICENSEE WITH THE CONSUMER**

(check one)     **Seller's agent**     **Buyer's agent**     **Facilitator**

IF A SELLER'S OR BUYER'S AGENT IS CHECKED ABOVE COMPLETE THE SECTION BELOW:

Relationship with others affiliated  
with \_\_\_\_\_

(Check one)  The real estate agent listed below, the real estate firm or business listed above and all other affiliated agents have the same relationship with the consumer named herein (**seller or buyer agency, not designated agency**).

Only the real estate agent listed below represents the consumer named in this form (**designated seller or buyer agency**). In this situation any firm or business listed above and other agents affiliated with the firm or business do not represent you and may represent another party in your real estate transaction.

By signing below I, the real estate licensee, acknowledge that this disclosure has been provided timely to the consumer named herein.

\_\_\_\_\_  
(Signature of real estate agent) (Printed name of real estate agent)

By signing below I, the consumer, acknowledge that I have received and read the information in this disclosure.

\_\_\_\_\_  
(Signature of consumer) (Printed name of consumer) (Today's Date)

\_\_\_\_\_  
(Signature of consumer) (Printed name of consumer) (Today's Date)

Check here if the consumer declines to sign this notice.

## TYPES OF AGENCY REPRESENTATION

### SELLER'S AGENT

A seller can engage the services of a real estate agent to sell his property (called the listing agent) and the real estate agent is then the agent for the seller who becomes the agent's client. This means that the real estate agent represents the seller. The agent owes the seller undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put the seller's interests first and negotiate for the best price and terms for their client, the seller. (The seller may authorize sub-agents to represent him/her in marketing its property to buyers; however the seller should be aware that wrongful action by the real estate agent or sub-agents may subject the seller to legal liability for those wrongful actions).

### BUYER'S AGENT

A buyer can engage the services of a real estate agent to purchase property and the real estate agent is then the agent for the buyer who becomes the agent's client. This means that the real estate agent represents the buyer. The agent owes the buyer undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put the buyer's interests first and negotiate for the best price and terms for their client, the buyer. (The buyer may also authorize sub-agents to represent him/her in purchasing property; however, the buyer should be aware that wrongful action by the real estate agent or sub-agents may subject the buyer to legal liability for those wrongful actions).

### (NON-AGENT) FACILITATOR

When a real estate agent works as a facilitator that agent assists the seller and buyer in reaching an agreement but does not represent either the seller or buyer in the transaction. The facilitator and the broker with whom the facilitator is affiliated owe the seller and buyer a duty to present each property honestly and accurately by disclosing known material defects about the property and owe a duty to account for funds. Unless otherwise agreed, the facilitator has no duty to keep information received from a seller or buyer confidential. The role of facilitator applies only to the seller and buyer in the particular property transaction involving the seller and buyer. Should the seller and buyer expressly agree a facilitator relationship can be changed to become an exclusive agency relationship with either the seller or the buyer.

## DESIGNATED SELLER'S AND BUYER'S AGENT

A real estate agent can be designated by another real estate agent (the appointing or designating agent) to represent either the buyer or seller, provided the buyer or seller expressly agrees to such designation. The real estate agent once so designated is then the agent for either the buyer or seller who becomes their client. The designated agent owes the buyer or seller undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put their client's interests first and negotiate for the best price and terms for their client. In situations where the appointing agent designates another agent to represent the seller and an agent to represent the buyer then the appointing agent becomes a dual agent. Consequently a dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions which is required of an exclusive seller or buyer agent. The dual agent does not represent either the buyer or the seller solely only your designated agent represents your interests. The written consent for designated agency must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample designated agency consent is available at the Board's website at [www.mass.gov/dpl/re](http://www.mass.gov/dpl/re).

## DUAL AGENT

A real estate agent may act as a dual agent representing both the seller and buyer in a transaction but only with the express and informed consent of both the seller and buyer. Written consent to dual agency must be obtained by the real estate agent prior to the execution of an offer to purchase a specific property. A dual agent shall be neutral with regard to any conflicting interest of the seller and buyer. Consequently a dual agent cannot satisfy fully the duties of loyalty, full disclosure, and obedience to lawful instructions which are required of an exclusive seller or buyer agent. A dual agent does, however, still owe a duty of confidentiality of material information and accounting for funds. The written consent for dual agency must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample dual agency consent is available at the Board's website at [www.mass.gov/dpl/re](http://www.mass.gov/dpl/re).

## Chapter 4. Looking at Properties --

### Architectural Styles

Now that you have been pre-approved and have chosen a real estate broker to work with, the next step is to begin the process of looking at potential homes. Your preliminary screening may take place on the internet where you can sign up to view the Multiple Listing Service on a number of realtor sites. If this is your first journey through the home buying process you may be confused about various home styles – what they look like and what your preference will be.

Your choice of housing style will be dictated by

- You or your families needs by size and comfort;
- Your own particular tastes;
- Housing style affordability;
- The town or city of your choice and its availability of particular housing styles.

Often people are influenced by the type of home they grew up in and feel a sense of familiarity with certain floor plans or ceiling heights. Newer homes have become much larger than homes were thirty or forty years ago. They have gone from an average size of 983 square feet in 1950 to an average size of 2349 square feet in 2005. If you have a family or just like to be spread out you may enjoy a larger home. However; it is important to keep in mind that the more square footage you have, the more your cost will be to heat, clean and pay taxes on your home.

There are many housing styles that can be found throughout the country. This section will brief you on the basic, most common styles you will find in your home search.



## Cape

The Cape Cod is one of America's oldest house styles. It was a popular style through the 1840s by English colonists who came to America. It later experienced a revival when mass production techniques allowed builders to fill developments with capes after World War II. The cape is usually symmetrical in design. The roof is a steep gable type covered with shingles.

Other characteristics of the cape are:

- Small roof overhang
- 1 1/2 stories
- Large central chimney
- Symmetrical appearance
- Center-hall floor plan
- Hardwood floors

Originally, capes were small in scale. Now, there are many large capes with additional wings and dormers to increase their useable space.



## **New England Colonial**

The colonial is the most popular architectural style in the United States. It was developed in the 18th century which is considered the "Colonial" period. The style is symmetrical with four equal sized rooms on the first floor and four rooms above. The basic colonial has two windows on either side of a central doorway and five windows across the second floor. The floor plan for the standard colonial is a central hall with stairs, a living room to the left that is two rooms deep and a dining room on the opposite side with the kitchen behind it. All of the bedrooms are located upstairs.

Other characteristics are:

- One large chimney at the end or in the center
- Shutters the same size as the windows
- Windows that are double hung with small glass panes
- Square, symmetrical shape
- Medium pitched roof
- Minimal roof overhang



## **Gambrel**

The gambrel has a ridged roof with two slopes on each side, the lower slope having the steeper pitch. The shape of the structure allows for a maximum of attic storage while still providing a weather tight roof. Because of the efficiency of storage the gambrel roof is often found on agricultural buildings as well as residential and is often referred to as a “barn style” house.

The gambrel is thought to be attributable to the Dutch since Dutch colonials have a similar roof style.



## **Garrison Colonial**

Some historians think that the Garrison Colonial's style was influenced by colonial block houses which were used for protection against unfriendly Indians. The overhang section was there to provide a good vantage point from which to safeguard the house from intruders. Others dispute this and say that the style was taken from the popular Elizabethan townhouses of the period that were being built in the overcrowded cities of England and that the overhang area created additional living space on the upper floors.

Other characteristics are:

- Exterior chimney at the end
- Double-hung windows
- Steep gable roof
- Second-story windows are smaller than those on the first floor



## **Saltbox Colonial**

In 17th Century New England, adding a single-story lean-to shed to the back of a house was a clever way of increasing space. By the 18th Century, the lean-to was being built into the original construction. The hallmark of a Saltbox is the sharply sloping gable roof that resembles boxes which were used for storing salt in old country stores. The front of the house is a two-story structure while the back slopes down until it becomes one story.

Other characteristics are:

- Exterior is usually clapboard or shingles
- Large central chimney
- Double-hung windows with small panes of glass
- No windows in the rear
- Shutters

The modern Saltbox home incorporates everything from double car garages to sprawling decks or porches. However, the main the design is simplistic and rarely has any ornamentation.



## **Dutch Colonial**

The Dutch Colonial gained popularity in America in the 1900s. The style did not originate in Holland but, rather, was first built by Dutch settlers in Pennsylvania in the 1600s.

Its center entrance, symmetrical style features a broad gambrel roof with flaring eaves. The structure is typically a moderate size with 2 to 2 1/2 stories. Original Dutch colonials had central Dutch doors which were divided horizontally to allow light and air into the home through the top portion while the bottom was kept closed to deter the livestock from entering.

Other characteristics are:

- Dutch entrance door
- Double-hung windows with small panes
- Second-story dormers
- A side, rather than central, chimney



## Tudor

The Tudor style was borrowed from the architecture that was prevalent during the 15<sup>th</sup> century during the reign of King Henry VIII to the reign of Elizabeth I. Most of the Tudor homes in the United States were originally built in the 1900s.

The most distinctive feature of the Tudor house is called half-timbering. In this type of construction the actual framework of the house was left exposed and the space between the timbers was filled with brickwork or white stucco. This presented the appearance of what has been referred to as a "black and white house." Modern Tudor houses are created using decorative woodwork that is, actually, false half-timbering and creates the appearance that was originally generated by the half-timbering method.

Other characteristics include:

- Diamond-pane or small windows
- Steeply pitched roofs
- Tudor arches
- Bay windows
- Massive chimneys



## Contemporary

Contemporary style homes were first designed between 1950 and 1970. The photo above is but one of many variations on this style, which usually consists of an open interior with high, and often, cathedral ceilings. The exterior of the home is typically flat and neutral, utilizing tall windows and skylights. The roof of the contemporary is either a one-pitch gable, flat roof or a series of flat roofs.

Contemporary homes are usually designed to be in synch with their surroundings and incorporate the landscaping into the overall style of the home. Although some associate the notion of cold and concrete with contemporaries, many people choose them because they allow for individuality and can be more personalized than a standard colonial home.

The basic contemporary style is one of fewer walls, less ornamentation and more light.

Other characteristics include:

- Geometric forms
- Exposed beams
- Large amounts of glass
- Lofts and overhangs



## Ranch

The first ranch home was designed by Cliff May and was built in San Diego, California in 1932. This simple and informal style eventually spread to other parts of the country. During the 1940s and post-war boom of the 50s the ranch soared in popularity. The style is associated with tract housing that was built during this period. The ranch house embraces the ability to move freely about, all on one level, without steps and onto private patios and back yards.

The typical ranch is a single-story, often rambling design with a hipped or gabled roof. Its features include sliding glass patio doors, attached garages and picture windows. The interior is generally an open style with the living room, dining room and family rooms blending into one another. The bedrooms are located together in the left wing of the home.

Other characteristics include:

- Long, low roofline
- Asymmetrical design
- Simple floor plans
- Minimal décor



## Split Level

Historians credit this house style to Frank Lloyd Wright. When he split up his original “Prairie” design, he felt that the split would be an affordable home for the average American. The eventual split level was a departure from his original design and it was not until the 1950s and 60s that this style actually came into being.

The basic split level has the main living on the second level. This is where the living room, dining room and kitchen are. The bedrooms are also located in a separate wing on this level. The entryway to the home is between the two floors with one set of stairs leading up and another set leading down to the lower level. The lower level is typically finished with a family room as well as additional recreation, storage areas and the utility room. The garage entrance is usually located off of the lower level.

Other characteristics include:

- A separation of living and private areas
- A relatively small amount of stairs to climb
- An efficient use of space
- Construction that can be built into the contour of the land

## Chapter 5. Exterior Details

As you do your drive-bys, open houses and property showings, you will begin to appreciate the importance of structure and property maintenance. The manner in which homes were built and how the current owners have maintained them will have a direct effect on their appeal to you as a prospective buyer.

This chapter will cover the exterior aspects of a home with specific focus on items that can act as a key to its overall condition. Your observations of the exterior of the home can tell you a great deal and will influence whether or not you will want to go inside for a second look.

### The Roof

Most roofs are made with asphalt shingles. This material can be patched when a leak occurs and is relatively inexpensive. Some owners take full advantage of this fact and layer a new roof over an existing one rather than spending the money to have the old one removed. Be wary of this possibility because a roof with a number of layers is not going to be as durable as one that has been properly replaced since it is now taking on more weight than it should. Look for waviness to the roof which can indicate a build-up of layers. A wavy roof can also be a sign of excessive moisture or rotting.

One of the main causes of leaking roofs is that the flashing has failed. The flashing is the material that is preventing water seepage in the area where the chimney meets the roof. It can sometimes be punctured or torn due to old age and corrosion.

Home inspectors often do their roof inspections using binoculars, but even with the naked eye you should be able to see if the ridge of the roof is

straight. The ridge is the very peak of the roof and should not be swaying or sagging. A sagging ridge can mean a cracked or rotted ridge beam. Also look for lifted or missing shingles. This can indicate old age or poor maintenance.

Always ask the seller or broker the age of the roof. If the roof is the original one on a home that is 20 years or more, it is something to take note of. The life expectancy of an asphalt roof is usually 20-25 years. It could last longer depending on climate and maintenance, but these numbers are guidelines that manufacturers use when issuing their warranties.

Once you are inside of the house you should check the ceiling areas for any signs of water damage. Water marked ceilings can indicate that the roof has been leaking. These markings can also be a result of ice damming.

An important factor that plays into the quality and life expectancy of a roof is ventilation. A roof must be able to breathe. The positive airflow that comes from proper ventilation allows a house to breathe and prevents moisture build-up. That is why it is significant that the contractor did a proper job of installation.

When heat and moisture build up in the attic through warm weather and household activities such as showers, laundry and cooking it can damage rafters and shingles and promote premature aging. Vents allow outside air to move through the attic resulting in a longer lasting roof. Because of this, you will often see a long piece of material running from one end of the ridge to the other. This is a ridge vent. You should also see what appears to be a pipe or pipes sticking up out of the roof. These are plumbing and attic vents.



A typical asphalt roof with attic vents

## Water Drainage

Water should not be allowed to run wherever it wants to on a property. It should always be directed away from the house. This is usually accomplished with the installation of gutters and vertical downspouts. The idea is to catch rainwater from the roof and lead it away from the home preventing water from seeping into the foundation and causing a damp basement.

Guttering can be thought of as a necessary evil since it is not particularly attractive and requires a certain amount of maintenance. It is a natural collection area for leaves, twigs and pine needles and should be cleaned out regularly. This process can be helped by covering the gutters with removable screens or caps which can be popped off when necessary and run through with a garden hose.

Most of the gutters installed on homes are galvanized steel or bare aluminum which should be painted to match the home. There is also aluminum with factory baked enamel paint and vinyl gutters. Vinyl gutters can become brittle in the cold weather but require very little maintenance.

Sometimes a home has natural drainage due to the slope and contours of the land. In this case, gutters and downspouts may not be necessary. If you are looking at a home without gutters, check the grading of the property to ensure that any water problems are being directed away from the structure.

The most common problem with gutters is their installation and maintenance. When viewing homes, take note as to whether downspouts are securely fastened to the house and seem to be performing their desired function. If they are bent, sagging or not aiming the water away from the structure, they are in need of repair.

## Windows

As you walk around the house the most obvious window problems are broken or missing panes of glass. These should be repaired by the seller as part of the negotiations following your home inspection. It is also important to inspect the wooden frames around the windows to check for rot or to see if painting is needed.

From inside the home, you should look at the window sills to check for chipped and cracked paint. This is important, particularly in an older home. If the home was built prior to 1978 there is a possibility that lead paint is present. If you are looking at an older home and the sills are chipped, blistering and flaking, you can almost be certain that lead is present. If the sellers have done extensive renovations, including stripping, refinishing and installing replacement windows, this becomes less of a probability. However, if the owner is stating that there is no lead paint in the house due to renovations; ask for a lead paint "Letter of Compliance." This is a legal letter that states that either there are no lead paint hazards or that the home has been deleaded. It must be signed and dated by a licensed lead paint risk assessor.

Another consideration when looking at windows is whether or not they open and close easily. In older homes windows often have a pulley, rope and weight mechanism. Many times these are not in good condition due to the fact that the owner may have painted over them reducing their functionality.

A single pane of glass would not be energy efficient in summer or winter. Because of this, most homes now have double pane glass windows with a vacuum seal between each pane. Eventually, the insulation barrier is lost. You can tell that a window has lost its seal from the visual affect of moisture between the panes. These panes must be replaced to regain their functionality as well as to be aesthetically pleasing.

## **Siding and Shingles**

### **Vinyl Siding**

Due to its low cost and maintenance, vinyl siding is currently used on more houses than any other siding on the market. When properly installed it can last many years through a multitude of weather conditions. When problems do occur, they are usually the result of poor installation. Since vinyl contracts and expands during temperature changes, it has to be cut long enough to compensate for the difference. If it is not cut generously, the contraction from the cold can cause significant gaps between pieces. When this happens, the home's exterior is exposed to the elements and needs to be corrected. Vinyl does not dent as easily as aluminum, but can fall prey to various items such as baseballs and rocks causing gaping holes. When a home has areas with holes or other damage in the siding, those sections should be replaced.

On the side of the house where sun is a rarity, you should check for mold, mildew or algae. This doesn't hurt the vinyl but can damage the wood underneath if it is allowed to spread. There is really no excuse for this problem since it has an easy solution. The owner can simply wash it off with soap and a bit of pressure from a garden hose.

A tell-tale sign like this one should set off a small red flag and alert you to look more closely at the home's other possible maintenance issues.

### **Aluminum Siding**

Home improvement companies sell aluminum siding with the promise that it will never need painting. Although it comes with paint bonded onto it, many owners eventually feel the need to repaint. This does not negate the fact that it is low maintenance when compared to clapboard or other wood siding. One of its features is the ability to keep a house cool in the summer by bouncing back the sun's heat rays. The siding is usually sold in

a thin (.19 inch) and a thick (.24 inch) version; the thicker be able to hold up better under normal wear and tear.

While vinyl siding has the potential of developing holes in its surface, aluminum's biggest concern is with denting. When dents occur, paint can come off revealing the bare metal underneath. If the dent is deep, there is often rust which needs to be sanded and repainted. Other things to watch for are scratches and rusted nails

If you are viewing a property and are unsure of the siding material, rub your hand lightly over the surface. Aluminum siding with any age on it will dissolve into a fine white powder.

## **Clapboard**

The word "clapboard" got its name from the Dutch word *klappen*, which means "to split". This was due to the fact that it was originally hand-split from logs of white pine, hemlock or cypress. Clapboard is the thin, overlapping wood planks that are installed on the outside walls of the house to protect it from the weather. Along with protection it also adds beauty to the exterior of the home.

Clapboard is always painted, not only for appearance, but to protect the wood from the weather. Because of this, it is important to take note of the condition of the paint. If the paint has worn away sufficiently to expose parts of the wood it will soon result in rotting. Mold and mildew can be a problem as well if the siding has not been maintained by an occasional wash.

Clapboard siding has a natural beauty that many people prefer. It's just important to keep in mind that it will have to be painted every 5 to 10 years depending on the quality of the previous paint job and the sun and weather exposure.

## **Wood Shingles**

Shingles and shakes are highly durable. When they are installed properly they can last the life of the house. They are usually made from western red cedar. Cedar shingles can create a New England cottage-style look.

Usually, five inches of shingle is exposed with seven inches underneath in a weather tight overlap. The labor of applying shingles is part of what makes this a more expensive choice of siding.

When left unpainted or slightly stained, they give a natural appearance like that of a Cape Cod home. If you prefer, they can also be painted for a more formal appearance.

## **Composite Siding**

Composite siding is made from shredded wood, sawdust and pulp mixtures turned into hardboard or various combinations of these glued together with cement.

During the real estate boom of the eighty's a number of contractors experimented with the use of these synthetic building products and they were doomed to fail. They tended to rot prematurely, swell, grow mildew and fungus and buckle or warp. Some of these sidings originally came with 20 year guaranties but experienced deterioration after the first few years.

There have been over 11 nationwide class-action lawsuits involving these products with companies including Georgia-Pacific Hardboard, Abitibi-Price and Jefferson Smurfit. A number of the suits have been settled, including a class action suit against Masonite Corporation which manufactured hardboard siding that the court found was defective.

The Masonite hardboard was a product made from wood fiber, wax and resins. It was designed to look like conventional lumber siding or clapboard. Since most of the installations were done in the early eighty's,

any Masonite siding that is still in existence, at this point, is usually identifying itself through buckling and discoloration.

It is not always easy to recognize composite siding, except for the damage that has occurred. It is a pulp product that is usually held together with glue and sometimes finished with a shiny coat. At first glance, the siding will look quite normal but if it has been exposed to a number of years of weather it will exhibit a lot of breakage.

In the property listing, if the siding is described as clapboard but is actually composite, the listing has an error. This should be corrected with full disclosure regarding the correct siding material. Sometimes a listing broker will make a mistake in listing siding as clapboard when it is actually a composite. Composite siding has been more prevalent in warm weather states since it holds up better in a less challenging environment.

## Evaluating the Neighborhood

A good reason to do a property drive-by is to examine the environment surrounding the home. A home that looks great on a listing sheet may very well be across-the-street from an eyesore.

How close are the houses on either side? Do the neighbors have old cars, boats or RV's stored in their yards? Some of these things can reduce the value of the neighborhood, and, ultimately, your property. Once you have moved into the neighborhood you won't have much power to change the overall image of it so know that your first impression is critical. It will tell you what you think of the area and how comfortable you will be living there.

Traditionally, neighborhoods contain houses that are similar in age, size and value. If you are buying a large four bedroom colonial, you do not want it to be in a neighborhood of small capes and ranches. Being the biggest house on the street can have a negative impact on how well a home will retain and appreciate its value. It is always better to have homes surrounding you that are similar or better than yours since part of a home's value is judged by its location.

One of the reasons developments are so popular is that they provide some control over the issue of property value. Since all of the homes in a development are usually built by the same builder, their sizes, styles and ages will be somewhat uniform. Additionally, people living in them will, generally, be of the same social and economic status. These factors give a noticeable impression of unity and stability and help to preserve the resale value of homes. Cul-de-sacs, slow traffic flow and safe areas for children are also aspects that contribute to keeping property values high.

In contrast to suburbia, urban neighborhoods are often not the result of planning, but of on-going growth. People who place a high value on convenience are often willing to contend with some of its disadvantages.

These include lack of parking, traffic congestion, and a smaller supply of housing. That having been said, for many people, life in a city is far superior to that of the suburbs. There is less isolation, a faster-moving pace and greater access to cultural events.

Unlike the suburbs, there is greater diversity in an urban neighborhood. People from different backgrounds, ethnicity and earning power often live in the same block creating a more heterogeneous environment than their suburban counterparts. In a city, property values are based more on the actual structure and physical attributes of the home as well as the part of town you are located in.

If you choose to invest in an urban dwelling, there will probably be no shortage of buyers when it is time to sell. There will always be those who thrive in the exciting atmosphere that a city can offer and who also desire a shorter commute to work.

## Curb Appeal

Have you ever read the words on a listing sheet "not a drive-by?" This means that the home does not look good from the street. In other words, it has no curb appeal. An example of this was an unusual house that I showed to a client. The side of the house, rather than the front, was facing the street.



Although, once inside, it was long and spacious, from the street it looked like a small bungalow. That fact made it necessary for the owner to compensate for its obvious lack of curb appeal and lower the price.

If you have the ability to look past the obvious, you may be able to pick up a bargain. Most people cannot see past a property's initial shortcomings. If the landscaping has been neglected or the house needs a coat of paint, many home buyers will not even go inside. Having the ability to visualize beauty in a distressed property is a valuable gift. If you are also handy and able to make your own repairs, you may be greatly rewarded for having had an early vision of the finished product.

Typically, the first impression a property makes is crucial to its resale value. There must be plants, bushes, and landscaping details to enhance the appearance of the home. The driveway needs to be in good condition, presenting a pleasant entrance. If the house does not look good from the street, most buyers will just keep driving.

## Chapter 6. Interior Details

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### Bedrooms

Because we spend one third of our lives sleeping, the comfort of the bedrooms is extremely important. Generally speaking, bedrooms should be located away from the main living zones and have an accessible bathroom



Lighting and ventilation are also significant. The main sources of artificial lighting in bedrooms are ceiling lights and lamps on end tables or dressers. For sunlight and ventilation, you should check the size and placement of the windows.

The minimum code requirement for the window area is 10 percent in relation to the rest of the room. Most of us enjoy more sunlight than that so it should have several windows or a skylight. The windows should also be located in a way that allows ample wall space for your furniture. If you have large bedroom furniture bring a measuring tape with you when viewing homes to make sure that the wall space will be adequate.

Three bedrooms are usually considered minimum for a family and are also important for resale. If your budget allows, a fourth bedroom will increase the value considerably.

If you view a home that has three bedrooms upstairs and a bed in a finished basement, it is not a four bedroom house. To qualify as a bedroom it should be either upstairs with the other bedrooms or in a quiet corner on the first floor. It must also have its own closet.

## The Kitchen

The kitchen is the center of living and activity in most homes. Whether you gather together for meals or wander in at different times, this is where the food is as well as the microwave, dishwasher and stove. It should be located close to any possible eating areas, including the formal dining room, outside patio and family room. It should also be convenient to the garage or breezeway with the thought of carrying in the groceries.



The kitchen should have an inviting atmosphere, be well lit and benefit from the sunlight with adequate windows. The window over the sink is a popular design for reasons of ventilation and adequate lighting. For night time cleanups, there should be additional lighting in the sink and cleanup area.

To be properly ventilated, there should be at least two windows and a back door. It's also important to have an exhaust fan system that draws cooking fumes directly to the outside air.

Although most of us feel that it is not possible to have enough counter or cabinet space, new construction has been paying great heed to this need and providing more utilization of all of the available areas. Corner cabinets have lazy susans and additional counters are installed wherever possible. Pantries have also been welcomed back into homes, some equipped with sliding shelves and spice racks.

Many people like to have an eat-in kitchen since this is more convenient for daily or informal meals. To respond to this need, space should be allotted for the inclusion of a table and chairs. Center islands with areas

for barstools provide another informal eating place. They also provide extra counter space and additional cabinet storage underneath.

When viewing potential kitchens, you may want to ask yourself some practical questions: Do you prefer a range or a separate cook top and oven? Does the design of the room allow for easy rinsing and loading of the dishwasher? Are there enough cutting and preparation surfaces? Is there an area to store cooking items, such as olive oil, close to the stove? If you have the need, is there enough room for two cooks to work without bumping into one another?

## Appliances

Popular appliance colors in the 1960s and 70s were Avocado Green, Harvest Gold and Deep Copper. Following this phase, appliance colors returned to white and almond. The trend now is toward industrial-style stainless steel with an emphasis on professional quality ranges with oversized hoods. This polished and high-tech look goes well with every decor from traditional to contemporary and the stainless steel trend is expected to become even larger in the coming years.

For those who do not want stainless steel, there are still all-white appliances and also the integrated look. With this style, it's hard to tell that an appliance is not a cabinet. With an integrated style, you no longer have a kitchen designed to accommodate a refrigerator since the refrigerator is built into the look of the wood. Sub-zeros, which are built-in refrigerators, have been around for awhile but are now gaining in popularity. These are usually side-by-side and come with a framed overlay allowing you to put a on a wood front thus projecting a cabinet-like look.

Dishwashers are also available with wooden fronts to disguise their appearance. Some of the newer models are coming with drawers which can be used separately or simultaneously. The draws are more energy

efficient, using only 4 gallons of water which is heated up to 165 degrees. Also, manufacturers are releasing other products that are completely integrated into kitchen cabinet fronts such as built-in coffee machines and toasters.

With regard to the stove, gas cook tops and ranges have retained their popularity since their look is one of nostalgia and also of a serious cook. Since a gas flame gives you more control than an electric burner, it is usually preferred by gourmet chefs. Still, there are pragmatic cooks who choose electric stoves with ceramic surfaces since some people find them easier to clean.

## **Kitchen Counter Surfaces**

There is, currently, a wide selection of countertop materials available. When buying an existing home you may be restricted to whatever the previous owner has chosen. However, if you decide to remodel the kitchen or if you are buying new construction, your choice can depend on a number of factors including personal taste, desired usage and cost.

### **Formica**

To date, the most widely-used material for kitchen counters has been Formica or plastic laminate.

Formica is a laminated melamine which is made from layers of special papers impregnated with synthetic resins. The saturated papers are fused together under heat and pressure to produce the laminate surface. The surface is easy to clean, resists stains and wears well. It is usually accompanied by a matching backsplash that abuts the wall the countertop is mounted against.



Formica comes in a variety of colors and can even mimic the appearance of Corian. It does not; however, hold up under high heat. Hot pans must be put on a protective surface to avoid damaging a Formica counter.

### **Ceramic Tile**

Ceramic tile is a hard and durable surface and is not affected by heat or fire. It is resistant to stain and sharp knives will not cut it. The color is unaffected by sunlight and stays true to its original. A lovely effect can be created with matching tile on the walls countertop surface. It can be beautiful and many designer magazines feature kitchens with imported tile countertops.

A negative aspect of ceramic tile is in its maintenance. Hard blows can chip the tile and the grout must be cleaned on a regular basis or it will take on a dingy appearance. The grout can also be stained by red wine since it is a porous substance.

### **Corian**

Corian is an extremely durable surface developed by Dupont. It can be drilled, sculpted, bent or worked like fine wood. Although it is available in over 100 colors, the standard countertop colors are usually shades of alabaster. Every Corian countertop is custom designed and has a completely seamless appearance.



Corian's beauty and durability have made it a popular kitchen and bath surface for home owners as well as for builders. It is also a surface that is easy to care for.

Although some builders refer to Corian as indestructible, it can be deeply scratched. It can also be burned by hot pans. The difference with Corian

is that the scratches and burns can be repaired and the surface can usually be restored to a "like new" appearance.

### **Granite**

Granite is formed deep in the earth's mantle at extremely high temperatures. This makes it a very hard and resistant substance. Hot pans will not damage the surface of a granite countertop and the manufacturer seals it immediately following installation. The sealing penetrates the stone, clogging most of its pores, thereby making it invulnerable to any liquid spills.



Even though granite is extremely resilient, it should not be used as a cutting board. The solid surface is harder than any knife blades and will quickly dull them.

Since granite is made from a natural stone, each countertop is unique, owing its beauty and design completely to nature. If you are having granite installed in your home, your contractor will give you samples to choose from. Be aware that your granite will differ slightly in color and pattern from any sample. This distinctive and original quality is part of the beauty of owning a natural substance.

### **Concrete**

Concrete countertops boast a warm and natural look that go well with materials such as wood, stone and brick. These countertops are either pre-cast in a shop or built on site. A positive fact to an in-shop build is that the environment is controlled while it is curing and the surface can then be adequately sealed. An on-site installation will more likely conform to the home owner's particular style or need.

Due to the texture and individuality of concrete, many find it to be a dynamic addition to a kitchen. No two concrete countertops are alike and

some contractors have their own unique styling to ensure this. One style is called a veined look. After the surface has been worked, a grinding disk zigzags across it revealing marble-like veining. It is then sealed to be completely smooth. Another method is called terrazzo whereby marble chips are worked into the background, creating a two-toned effect which adds textural interest under the smooth, sealed surface.

A concrete surface is not stagnant. Its color and texture vary as well as its look over a period of time and with regular use. Cast concrete countertops are becoming popular with those who want a completely individualized look.

### **Stainless Steel**

Stainless steel, which was once the exclusive domain of commercial kitchens, is fast becoming popular in new homes. To provide it with sturdiness and to act as a sound barrier, it is always installed over a plywood substrate.

Like stainless steel appliances, stainless countertops bring a professional restaurant look into residential kitchens. It is waterproof, heat resistant and easy to clean. It has also long been considered an ideal surface for food preparation. Besides being extremely durable, the addition of chromium provides it with rust-resistant properties. The negative side of stainless steel is that it can be scratched and dented. It is a surface that should not be used for cutting.

Significantly, a study by the Hospitality Institute of Technology and Management concluded that stainless steel countertops are a proven germ fighter which may be why it is used in so many restaurant and commercial applications.

## The Laundry Room

Originally, the standard area for the laundry was in the basement. This location had the advantage of space and also of the soiled clothing being out of the main part of the house for aesthetic reasons. Although there was the problem of having to walk up and down the stairs, installing a laundry chute from the upper levels was often a solution.



Newer homes tend to have the laundry area off of the kitchen, often in its own section behind closed doors. Many people find this to be advantageous since they spend most of their time in the main level of the house. People with small children seem to prefer to have the laundry in or around the kitchen to save steps while supervising them.

Others argue that the dirty clothes emanate from the bedroom level and prefer to have a second floor laundry. This makes perfect sense since the clothes, towels and sheets usually have to be returned to the second floor. If this is your preference just pay heed to the possibility of odors from detergents being so close to the bedrooms. Make sure that cabinets close tightly for storage of all cleaning solvents and that proper ventilation is in place.

Wherever the laundry area is there should be venting from the dryer to the outside. This is the case whether you are using electric or gas. Also, the surrounding floors and walls should be made of substances resistant to moisture, humidity and the spilling of solvents. The size is not as important as the convenience of the location. Cabinets and shelves are needed for storing detergents, softeners and bleach. Countertops are helpful for folding and sorting the laundry and, the importance of adequate lighting in the laundry room should not be minimized.

## Bathrooms

The American bathroom has become a major selling feature in homes. Next to the kitchen, it is the most important interior influence. Because of this, the number and quality of bathrooms in a home can affect its resale value.



Today, the minimum amount of bathrooms in a three bedroom house is one full and one half baths. It has become more common in newer homes to have at least two full baths and one half. The usual arrangement is a full bath in or near the master, a full bath down the hall with close proximity to other bedrooms and a half bath or powder room downstairs.

Another minimum standard is a bathroom or half bath on each separate floor. Custom built luxury houses often have a full bathroom for each bedroom.

A bathroom that is shared by two bedrooms is sometimes referred to as a Hollywood bath, or, in the case of children's bedrooms, a Jack and Jill bath. This is not always an optimum situation due to the light under the door and possible noise waking the person in the adjacent room.

Many newer homes are being built with a Jacuzzi or simply an oversized tub in the master. In this case, you will want to take note of the size of the water heater to ensure that it is capable of providing sufficient hot water for a large tub.

During your home inspection make sure that enough heat is getting to all of the bathrooms. Baths require additional heat, especially in the winter months. When a bathroom has been built over a garage area, proper insulation is a must. Additionally, all bathrooms should have fans that ventilate air to the outside.

## Living Room

Throughout the years the idea of having a separate room for entertaining apart from casual spaces has remained with us. The term drawing room was short for withdrawing. It referred to the ladies leaving the men to their brandy and cigars to a place where they could withdraw for some conversation.



Customs in the twenty-first century have changed that way of thinking and, due to the overwhelming popularity of the family room; the living room has taken a position of less importance.

The location of the living room is usually in the front of the home to the right or left of the foyer. It should not be in an area where traffic passes through, but rather in a dead-end area. Many home owners have turned this room into a study or office. With the addition of French doors, this can be easily achieved.

Today, the family room, kitchen and three season porches are when most of the household activities take place, somewhat diminishing the importance of the living room. It no longer maintains its exalted status as the family living center.

The living room has, however, survived the sociological changes that have taken place over the past few centuries and many people still place great importance on the furnishings and elegance of this graceful living area.

## Family Room

The family room had its origin a half a century ago with a connection to the end of World War II. With the return of soldiers, their subsequent marriages and raising of families, the baby boom generation began. These larger families needed a room for activities and, thus, the family room was born.

There is no exact standard placement for the family room. Some older homes have it situated in a finished basement. Split level houses also have this arrangement. In newer homes, the room is often located near the kitchen area for easy flow and proximity to the where food is prepared. The open flow of a family room and kitchen can create a central area which is conducive to monitoring the activities of small children while cooking and cleaning.

The layout of the family room generally takes on the character of the family inhabiting it. If there is a music buff in the household it will be reflected in the shelves of stereo equipment and media storage. This is also where a home theatre will be located, equipped with a television and speaker system. Built-in cabinets and bookshelves are a welcomed asset for holding various items that are stored and used such as books, photo albums, videos and CD's.

A good size for a small to medium house can be 12 feet by 16 feet. There is really no maximum size and a large house could conceivably contain a family room that is 16 by 26 feet or more.

Some feel that with society's new population philosophies, the importance of the family room may diminish in a decade or two. It will probably not disappear, but will be modified with regard to its current uses. However you use it, this usually large room is a welcomed asset and often a visual focal point of a home.

## The All-Important Basement

The basement is where you can tell a great deal about a home, particularly if it is an older one.

As you inspect the basement, check for the following items:

### **Are there cracks in the foundation?**

If there are significant cracks in the walls these can be a point of entry for water to come into the basement. Look for patches over cracks that are deteriorating. Eventually, they can widen if the problem is not corrected. Some cracks are due to settlement and these are not serious. However; wide or V-shaped cracks can be signs of something more significant.

### **Are there any water stains or water marks in the concrete?**

Check under the windows. Often water seeps through causing rust colored stains. Also note any white powder that may be on the walls. This is known as efflorescence and is the residue that is left after water has seeped into the building and evaporated.

### **Is there a sump-pump?**

If there is one, it is an indication that the basement may have had water seepage problems; however, sometimes a sump pump will be installed as a precautionary measure. Consult the owner about the history of water problems and what went into the decision to install a sump pump. You might also ask if there were any other water correction methods put in such as a perimeter drain. A perimeter drain is usually installed around the foundation of the house to prevent water from going into the basement.



**Are the current owners storing items directly on the floor and, if so, are they in good condition?**

Also check the bottoms of metal items like the hot water heater. If it has rust and flaking this is an indication of a water problem.

**Does the basement smell musty?**

Check for the presence of a dehumidifier and take note of whether or not it is running. It is common to have a dehumidifier in a basement to help keep the musty smell out. Just be sure that if there is one that it is doing an adequate job.

Take notice of the furnace. If you are looking at an older home the chances are that you are looking at an old furnace. Check for any leaking or odor of oil or gas. Also, ask the home owner if the furnace is the original and what has been done to update it. Often with an older furnace some parts, such as the burner, have been replaced.

If there is water on the floor directly under the furnace this could be a sign that the boiler has cracked in the heat exchanger. Rust along the bottom can, once again, indicate a wet basement problem. There should be an inspection tag from the last time the oil or Gas Company did an inspection. A cleaning or tuning maintenance should be done on the furnace at least once a year usually in preparation for the winter season.

If the tag is missing, ask the owner when the furnace was last checked or serviced and if the record of it is available. If there is no sign of recent service it is a good idea to ask the seller to have it done and provide you with a paid invoice prior to the closing.

## Electric Service Panel

The electric service panel is usually located in the basement attached to a wall. It should be on a wood panel and not directly on concrete.

An important thing to keep in mind about the electric panel is to not remove the screwed on cover and touch anything inside of it unless you have an electrical background. Home inspectors take precautions about what they are wearing and using to inspect these systems. They include rubber-soled shoes, insulated tools and insulated mats. Of course, while leaving the cover in tact, you may and must touch your circuit breakers every once in awhile. It is suggested that once a year you reset each breaker by tripping it, or moving it back and forth.

Thirty years ago the average home had a 60 amp service. These were fuses and were commonly distributed between the stove and the hot water tank with the remaining 15 amp fuses servicing the rest of the house. If you are looking at a house in this age group, you are probably looking at a fuse box unless the owner has, at some point, updated to circuit breakers.

Twenty years ago, the average home came equipped with 100 amp electrical service. By this time, many had upgraded to circuit breakers but some may still have been fuses. When looking at circuit breakers, take a look at the main breaker which is at the top. The amperage is usually stamped into this breaker. The minimum acceptable amperage is 100 amps and may be adequate for your needs. Newer homes now come with at least a 200 amp service.

Modern central air conditioning systems require more power than an entire home did thirty years ago. A kitchen in a new home will often have receptacles that require a 60 amp service just to run the counter top appliances alone. Also, the old style distribution panels with screw-in fuses are sometimes considered to be fire hazards. Often, insurance companies are hesitant to renew policies on homes that still have fuses.

If you are considering the purchase of an older home that currently has a fuse box, plan on upgrading to circuit breakers as soon as you can. Not only will this make your home more inhabitable for you but will also help with its resale value.

On the inside of the panel door there should be a list of all of the circuits and which rooms in the house they control. It is important to have this information because if power goes out in a certain room or area of the home you will be able to look into the electrical box and ascertain which breaker is causing the problem. Circuit breakers protect fixtures in the home by turning off the power to that fixture. If a circuit gets overloaded the breaker will “trip.” The most common reason for a breaker to trip is that too many appliances are operating on one circuit.

The tripped breaker will usually look like it is between the on and off position. To reset the breaker, turn it all the way off and then turn it on again.

# Chapter 7

## Property Disclosure

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The old rule about purchasing real estate used to be caveat emptor: "Let the buyer beware." Today, with revisions to laws, including laws of disclosure, some of this responsibility has shifted to place more responsibility to the real estate broker and seller.

### **Real Estate Disclosure Laws**

Until the 1960s people purchased properties without the advantage of property disclosure laws. Gradually, more states have adopted their own rules to protect the public. In most states now, the broker has a duty to advise buyers of known property defects and there has been a great deal of encouragement for all listing brokers to have their sellers fill out property disclosure forms.

Presently, mandatory property disclosure is the law in Alaska, California, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington and Wisconsin.

In Nevada, for example, they have an actual "Lemon Law" with regard to real estate purchases. The seller must fill out their mandatory disclosure form. If at any time during the transaction, the buyers discover a defect that was not on the form or is worse than was indicated previously, they may get out of the transaction with all deposits returned.

In California a seller must have the property inspected before putting it on the market and must tell the buyer of any hazardous conditions that the

property is on such as a mudslide area, earthquake zone, flood hazard zone, wild-land fire area or seismic hazard zone.

Many states now make it compulsory that a seller fill out a Seller Disclosure Statement. In Massachusetts; however, it is still voluntary.

That having been said, you may well purchase a property that is listed with a real estate company with its own rules about property disclosures.

Some real estate agencies require their agents to have sellers fill out a disclosure form when they take a new listing. In turn, they require buyers to sign a copy of the disclosure form. This is not done for a validation from the buyer but to acknowledge he has received and read the sellers' property disclosure.

The actual form is called a "Seller's Statement of Property Condition." It asks the seller questions about the zoning of the property, if any work has been done which required a permit, drainage problems, the possibility of an underground fuel tank, heating system questions, hot water, sewage system, plumbing, drinking water source, electrical systems, appliances, security systems, air conditioning, basement issues, the age of the roof, chimney and fireplace cleanings, floor types, wall materials, windows, insulation, asbestos, lead paint, radon, insects, swimming pools, Jacuzzis and sheds.

If you are presented with a seller disclosure on a property you are buying, be sure to keep a copy of it with your home purchase file. Then, should problems occur at a later time, you will have a record of what the sellers claimed to be true about their property.

## **Chapter 93A – The Consumer Protection Act**

In 1968 Massachusetts adopted Chapter 93A which provides greater protection for consumers. The law states that the use of unfair or deceptive practices is illegal and it applies to any area in which a consumer may be affected. This includes debt collection practices, landlord-tenant actions and sales tactics.

With regard to the sale of real estate, some precedent setting cases have guided the way in which 93A applies. The Regulations of the Attorney General state that an unfair or deceptive act is committed if a broker fails to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction.

### **What does this mean to you?**

With the threat of possible lawsuits looming, listing brokers know that they must disclose any fact they are aware of which may have an influence on anyone's decision to purchase a property. Some of these could be roofing problems, wet basements, zoning violations, unpaid betterment charges, underground oil tanks and structural problems.

Because of 93A, when a property goes through a home inspection and the potential buyers opt out of the deal due to something revealed in their inspection, that fact must be disclosed to any potential future buyers.

For example: A home inspection reveals that a house needs a new roof. The buyers decide not to purchase the property. That property must go back on the market with a disclosure in the listing specifically stating that it needs a new roof.

## **Limitations of 93A**

1. Where a broker makes no representation, but has knowledge of a problem, the broker will be found liable for failure to disclose the problem, even if the buyer makes no inquiry, but,

2. Where a broker makes no representation because he has no knowledge of a problem, he will not be found liable if the problem is one which a judge decides that a reasonable broker should not have known.

A legal case which supported the 93A ruling was *Piers, et al v. Wheeler & Taylor, Inc.*

In this case, the buyers had decided to purchase a house and contacted a real estate firm they had dealt with previously. The firm assigned one of their brokers to work with them. The buyers told the broker that they wanted to buy an old house but made it clear that the house was to be lead free. The broker showed them a house that was owned by a fellow agent at her company who also assured them that the property had been delead.

The house had been extensively renovated and the seller assumed that this fact would have negated the possibility of it having lead paint; however, she had never actually had a lead paint inspection. When filling out the property disclosure form, the seller checked "no" next to the question of whether or not the house had any lead paint. The listing broker never questioned the response by the seller and never asked for a Lead Paint Certificate of Compliance.

Due to the fact that they had two small children, the buyers stressed to the seller, outside of the broker's presence, that their need for a delead property was paramount. The seller did not deny to them that the house had been delead. Due to this interaction as well as the statements made by the broker, the buyers had their regular home inspection but did not have the property tested for lead paint.

As the closing was approaching, the agency sent a lead paint disclosure form to the buyers to sign. They insisted that they would not sign the form

since it did not apply to them. They had been assured they were buying a delead home. Even when the broker insisted to them it was "just a formality" they still refused to sign.

Six months after closing on the home, they took their younger son to the doctor for a checkup. After examining the child, the doctor came to the conclusion that the little boy had lead paint poisoning. They filed a lawsuit against the brokerage firm, the broker and the seller. They alleged deceit, breach of contract and violation of Chapter 93A.

As to the 93A violations, the judge ruled that the broker's conduct had been particularly egregious and ordered her to pay treble damages to them. Because she was an experienced broker, she should have known the dangers of lead paint to small children, and, by trivializing the disclosure form and telling the buyers that the house had been delead; she caused them to make a decision to not have the house tested for lead paint.

"The seller warranted in writing that the premises were free of lead paint, and the broker went one step further by orally informing the buyers on more than one occasion that the house had been delead," the judge stated. "Both statements were clearly false, and I rule that they constituted the type of unfair or deceptive acts or practices' proscribed by Chapter 93A, Sect.2."\*

## **Amendment to Chapter 93A**

On August 11, 1998, Chapter 294 of H 2099 was signed into law. This amendment states that “Absent a specific inquiry by a prospective purchaser or his/her agent to the licensed broker or salesperson, there is no duty for the licensee to either investigate or affirmatively disclose murders, suicides, allegations of ghosts or other potential stigmas.”

This rule is referred to as the **Psychologically Stigmatized Property** rule and further states that the fact or suspicion that real property may be or is psychologically impacted shall not be deemed to be a material fact required to be disclosed in a real estate transaction.

Some people are not comfortable moving into a house that has been the site of an illness or misfortune. There can be fear associated with property that has had an assault or murder take place in it; perhaps a fear that the perpetrator may return. Unfortunately, 93A does not force realtors to disclose this information.

On your own or through your buyer broker, these questions can be investigated by going to the town or city hall and inquiring about your concerns. In a small town, you can ask the people at the assessor's office if they know of anything with regard to the subject property. The clerk at the town hall usually knows what has transpired in his town.

In general, if you have any doubts about a property that you want to purchase, ask your buyer broker the question that is on your mind. When confronted with a specific question, a buyer broker must provide an answer to you if there is any way for her to discover it.

Without questioning, a listing broker is really only liable to disclose facts that have actually been made known to her. This may be from the broker's own knowledge or as a result of information supplied by the seller. A seller agent is under no obligation to look for potentially negative facts about a property.

## Chapter 8. Focusing in On a Specific Property

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### Property Valuations

When you become serious about making an offer on a property your broker should be able to put together some numbers which will indicate a reasonable offer price. Contrary to popular belief, there is no one exact price that a property is worth until a buyer has actually offered to pay it.

No matter how many analyses, comparable marketing reports or appraisals are done on a subject, there are still the variables of seller motivation, buyer motivation and other factors that cannot be predicted for any particular piece of property.

If you are working with a broker he or she should perform Comparable Market Analysis to determine an offer price for the property.

The CMA is done by finding three comparable sales and this is similar to what an appraiser would do. The sales should be close to the subject property, usually within a mile and should have closed no longer than six months earlier. They should be approximately the same age as the subject and, if possible, the same style.

The sales are analyzed side-by-side and values are added or subtracted based on square footage of the interior, size of the lot, number of bedrooms, number of bathrooms, finished or unfinished basement, condition of the home, amenities, quality and location. Your broker should also check what is currently on the market and what is under agreement. The result generated is a suggested offer price. Once again, this method is only as good as the recent sales available and is not necessarily cognizant of the real world. A good broker will know how to adjust the results according to current market conditions.

## Making an Offer

After deciding on a price, the offer is written. Most realtors use the preprinted form provided by their board for the main section of the offer. The contingency pages are another matter. Obviously, a buyer broker should have contingencies that are geared toward the protection of the buyers' interests, especially the deposit.

The contingencies should always include the following:

-- **The Financing Contingency** -- This states the amount of financing you will be applying for and accomplishes two things. One, it protects your deposit should your financing be turned down and states that if you are unable to obtain your loan by a certain date, you may withdraw from the transaction and have your deposit money returned. Two, it tells the seller how strong a buyer you are. He can see from the mortgage amount whether you are a 5%, 10%, 20% down or more buyer and this could matter in a multiple offer situation.

-- **The Home Inspection Contingency** -- Written into the offer is a time-frame, usually one week, to give you a chance to have the property inspected. A traditional or seller agent will have a contingency that states that only certain amount of damage; \$500 or sometimes, \$1,000 will allow the buyers to get out of the transaction and have their deposit returned. However, a buyer broker should have stronger language to protect your deposit in the event you should decide not to proceed with the purchase.

-- **Additional Contingencies** -- These will be tailored to meet the particular circumstances of the buyers' needs. For example, perhaps there is an unknown fact about the property that must be checked into, i.e., "Offer is contingent on information regarding the adjacent vacant lot" or "Offer is contingent on viewing a plot plan."

The body of the offer will contain the following:

- The address of the property;
- The brokers involved in the transaction;

- The offer price;
- Initial binder (usually \$1,000);
- The additional deposit to be put down at Purchase and Sale (usually 5% of the purchase price minus the \$1,000 deposit;)
- The date of the Purchase and Sale Agreement (usually within two weeks);
- The closing date;
- Who will be holding the deposit (usually the listing agency);
- What is included in the sale (i.e., refrigerator, washer, dryer);
- Any additional terms of the offer.

All offers are presented as quickly as humanly possible.

Keep in mind that the price is not the only point of negotiation, although it is usually the strongest. Other factors are: how strong you are financially, if your closing date is agreeable with the seller's closing date and how flexible you can be.

Make no mistake about this fact; the Offer to Purchase Real Estate is a legally-binding document. That is why the contingencies are so important. The information in the offer will eventually be transferred into the purchase and sale agreement along with your attorney's additional addendums and riders to protect your interests.

## What is included with the property?

### Real Property vs. Personal Property

For the purpose of selling real estate, property is divided into two categories. Real property is the land and everything that is attached to it, including the ground to the core of the Earth and up to the sky. This would encompass the building, landscaping, trees and all things that are sold as part of the real estate transaction.

Another way to think of it is what realtors call fixtures. Examples of fixtures are: wall-to-wall carpeting, attached lighting, built-in ovens, stoves, microwaves and ceiling fans. This is every item physically attached to the property, including, but not limited to the furnace and the kitchen sink. All of these items will be included in the purchase unless they are mentioned as exclusions in the listing.

Personal property is that which is not attached, such as furnishings, scatter rugs, free-standing lamps, the refrigerator, washer, dryer and grand piano. These are all considered personal to the owner and can sometimes be used as bargaining chips when negotiating a price on a house.

On the listing sheet there often be will inclusions and exclusions. If the refrigerator, washer and dryer are not mentioned, they are not included in the purchase price. If a chandelier is mentioned as an exclusion, the sellers are taking it with them, even though it is attached to the property.

Some sellers may be attached to a particular tree or shrub in their yard and want to bring it to their new home. In that case, the tree would be an exclusion in the listing and the seller would dig it up and take it out of the yard prior to closing. If find yourself dealing with this situation, be sure your attorney words the purchase and sale agreement to specify that the landscaping will be put back in good order after the tree is removed and not left with a gaping hole. Likewise, the missing chandelier should be replaced with a standard chandelier or lighting fixture.

## Chapter 9. The Home Inspection

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Please don't give any thought to skipping this important step. Using the analogy of a boating trip, in the process of buying a home, your inspection is your life jacket. Even when buying a new home you should have it inspected. There are many elements involved in the setting, layout, functionality and quality of construction of a home and you should have a professional analysis of it before signing a purchase and sale agreement.

During the week that has been allotted for your inspection, you or your broker will set up a time for a professional home inspector to come in to inspect the property. It is always better to do this as soon as possible in the event that any issues should arise. This will allow ample time for renegotiation before any further paperwork is signed.

Depending on the size of the house, you should plan on spending two to three hours or more. You should try to attend your home inspection, although I have filled in for absent clients who are too busy or who are relocating from another country.

If you can be there, you will find it to be informative and it will give you a much better look at the property before committing yourself to it. Often a buyer will notice things during the inspection that he did not have a chance to see the first time around. Even if the house comes through with flying colors, it will have been worth the time and expense since it is highly educational in explaining all of the systems that will be part of your new home.

## A Basic Inspection

A structural home inspection should include the following:

**EXTERIOR:** Roof, siding, chimney, trim, gutters and downspouts, perimeter drainage and grading, basement windows, window wells, exterior faucet, electric service entry, exterior outlets, exterior lighting, oil fill pipe and vent, walkways, driveway, decks/porches, patios, retaining walls.

**GARAGE AND BASEMENT:** Garage: foundation, floor, wall, sill, automatic door openers, primary doors, fume barrier, primary door, fire grade sheetrock, roof.

Basement: Foundation, floor, crawl area, basement windows, load bearing girders, support columns, sill, sub floor, joists, wall framing, chimney, bulkhead, water penetration and dampness.

**CENTRAL HEATING AND COOLING:** Thermostats, fire grade sheetrock, emergency shut off, exposed flue and damper from the heat plant, burner/gun, fire box liner, boiler, circulator pump, zone valve, pipes. Furnace: heat exchanger, circulator fan, filter, duct work, space heaters, fuel tank. Cooling system: Compressor, evaporator unit, service line, condenser drain, temperature at service line, temperature at air intake-outlet, electric disconnect, compressor slab.

**ELECTRIC SYSTEM:** Accessible wiring, service panel box, junction box covers, switch and outlet covers, smoke/fire detectors.

**PLUMBING SYSTEM:** Supply (municipal or private), waste (municipal or private), visual condition of accessible feed lines and connectors, visual condition of accessible waste lines within structure, main vent stack, accessible well equipment, laundry tub, washer/dryer connections, hot water heater, interior sewer ejector pump.

**KITCHEN:** Sink water flow, counters, cabinets, walls, ceilings, windows floor, electric outlets, heat source, and baseboard/radiator/diffuser.

**APPLIANCES:** Stove top and oven, ventilator, dishwasher, disposal.

**INTERIOR:** Door: main, rear, side, sliding door, fireplace, stairway (basement), stairway (interior), halls, skylight. Baths: sink, tub/shower, toilet, GFI/electric/fan, tile/fiberglass wall, window, floor, door, heat source.

Interior rooms: ceiling, windows, walls, floor, door, electric outlets, heat source, baseboard/radiator/diffusers.

**ATTIC VENTILATION/INSULATION:** Access to attic, structural supports, roof backings, ceiling joist, flashing, chimney, insulation, ventilation, whole house fan, evidence of water penetration.

### **Pest Inspection**

Your home inspector should check for any insect infestation. If you are getting an FHA loan, a pest inspection certificate will be required. Typical pests that are encountered are termites and carpenter ants.

### **Termites**

These creatures exist to eat wood, so they must be dealt with or serious damage can be done to your home. Termites are almost a half an inch long and resemble large ants. Up to five million of them can live in a colony. Left untreated, they can weaken and destroy a home structure with the damage going on for months or years if you are unaware of them.

Termites obtain their nourishment by eating cellulose materials such as wood, fabric, paper and fiberboard. They thrive in conditions where the soil is moist. A single colony is able to consume large amounts of wood in this environment.

In structures where the wooden portion of the building comes in contact with the soil, chemically treated wood should be used to discourage termites. It is also important to remove all scraps of lumber from the exterior grounds and under the crawl space and to not store firewood close to the house.

## **Carpenter Ants**

Carpenter ants do not eat the wood but they hollow it out to build their nests. They live in rafters, walls and any other wooden items they can get into. They also like soft and damp wood and will tunnel into it to make their nests.

### **The Remedy**

If your home inspector finds infestation of any kind, the seller should be made to deal with this. A simple treatment for termites or carpenter ants may be as little as \$200. But, if the extent of the damage that they have done to the wood is great, the bill could be into the thousands. Before you agree to go through with a purchase of a home with this situation, the seller should agree to have a pest control company treat for the problem and they should also pay to have any of the damage the infestation has caused.

When you take possession of the home, maintain an annual contract with the pest control company to eliminate future problems.

## **Radon**

Radon is a naturally occurring gas produced by the breakdown of uranium in soil, rock, and water. It is also the second leading cause of lung cancer. The acceptable level of radon in your home is 4 Pico curies per liter of air or lower. This is the level that is normally found in the outside air.

The source of the radon can usually be traced to floor openings in the basement such as drains, sump pump openings, floor joints and pores in hollow block walls. It collects in the basement with levels decreasing as you move up into the main areas of the house.

Because radon is often drawn in through foundation cracks and other openings, the most important place to test it is in the basement. The standard for radon testing is to place two canisters in the basement on a table or chair and away from any possible opening doors. These canisters will be left for 48 hours and will typically be picked up by your broker and sent to a lab for results.

### **The Remedy**

When the radon test produces a reading of 4 Pico curies or higher corrective measures should be put into effect. In this case, the seller should pay to have a radon mitigation system installed. If the seller refuses to do this, under Chapter 93A, the home will have to go back on the market with a disclosure that there has been a high radon reading on the property.

The most common radon mitigation system consists of a pipe that is inserted from the basement and up through the house to the air outside. A fan in the pipe blows air out. Radon is drawn through the pipe and evacuated to the outside air so that it can't enter the home. Look for the system to have a gauge on it so that you can always tell that it is working. It is common for radon mitigation companies to provide a life-time warranty on their systems.

Having a high radon reading is not a reason to walk away from a house. Radon mitigation systems do work and they usually bring the radon levels down to 2 Pico curies or less. Since it will be continuously working to keep radon levels low, you'll have safety in your air quality plus the security of knowing that when you sell the property it will have a low radon reading.

## Lead Paint

In 1978, the consumer Product Safety Commission banned the use of lead paint in houses. Prior to this, from 1900 to the 1940's lead was the primary ingredient in many interior paints due to its brightness and durability. From 1940 to through the 1960's the use of latex paint, which does not contain lead, became widespread.

If the home you are purchasing was built prior to 1978, your broker will have provided you with the mandatory "Lead Paint Notification". The overall message in this disclosure is that a property this age may have lead paint and actually, the older the property, the greater the likelihood is that it does have it.

Although most of the focus has been on the effect of lead paint on small children, lead paint can also be harmful to adults. Lead dust which is caused from the normal deterioration of lead from scraping, sanding or from simply opening and closing windows is dangerous when inhaled or ingested. The matter can be made worse from sweeping or vacuuming since this scatters the dust and makes the situation more volatile.

For a number of reasons, children are more susceptible to the dangers of lead paint, partly due to their size and weight. They tend to put lead objects in their mouths since lead has a sweet taste to it. The lead is easily absorbed into their bodies, which are still growing and their nervous systems are extremely sensitive to the toxic effects. Childhood lead poisoning can cause brain damage, damage to kidneys and liver and blood formation. It can lead to behavioral problems, slow growth, hearing impairment and headaches.

Exposure in adults can cause high blood pressure, reproductive problems, nerve disorders and problems with concentration. Pregnant women should stay away from airborne lead since it can harm the unborn baby if ingested by the mother.

A basic home inspection does not usually include an inspection for lead paint. This is a separate test with a separate cost involved. You will need to make the decision according to your situation whether or not you want to have the test done.

### **The Remedy**

You should be aware that the cost of deleading a property can be high; roughly \$25,000 or more for a single family house and \$15,000 or more for a single rental unit.

Although some encapsulating measures can be done by an owner, the actual lead paint removal must be done by a professional. This is the law in many states but, even if it were not, lead paint removal is too dangerous to do yourself. Improper removal of lead paint can spread lead dust around the home, making the situation worse. A list of lead-abatement contractors should be available from your lead paint inspector or from state or local agencies.

There is help available from the government to homeowners who want to delead in the form of financial assistance as well as tax credits. The current tax credit available is \$1,500 per unit and the Joint Committee on Taxation on H.1865 is currently urging the state to increase this credit to \$2500 per unit.

There are also grants and no-interest, deferred loans, or low-interest loans available to eligible property owners. These funds are available through the U.S. Department of Housing and Urban Development, the Massachusetts Executive Office of Communities and Development, the Massachusetts Housing Finance Authority and local banks.

## **UFFI (Urea Formaldehyde Foam Insulation)**

Houses that were built in the 1970's and early 1980's were sometimes insulated using UFFI. It was a wet foam material and was pumped into the walls through small holes where it hardened to form a layer of inexpensive insulation. Unfortunately, UFFI released amounts of formaldehyde gas into the air. This colorless gas was known to cause health problems. Some of these included irritation to the eyes, nose, throat and also respiratory illnesses.

Studies have shown that the levels of formaldehyde in the air have dropped significantly with the age of the insulation and, because of this, the UFFI laws on are becoming less stringent. Sellers no longer have to have a test done for the presence of UFFI and, soon, the requirements on disclosure will also be relaxed or gone, however; you may still have to fill out papers for the bank that will ask about UFFI.

### **The Remedy**

Currently, it is incumbent upon the seller to inform you as to whether or not there is UFFI present in the property.

## **Water Tests**

### **Public Water**

If the property you are buying is on the public water supply, the water has to meet certain standards. In 1974 the Safe Drinking Water Act (SDWA) was enacted by Congress and established minimum standards for public drinking water. In 1986, the law was amended to accelerate

regulations. It also banned future use of lead pipes and other protections of groundwater sources for drinking water.

Under the SDWA, water suppliers must test their water on a regular basis to ensure that it meets all of their guidelines. If it should fall short, they must notify all customers regarding the contaminants that are in excess.

It's a good idea to get in touch with the water department of the town you are moving into and question them regarding the history of their water system and ask if it has ever failed to meet any SDWA requirements.

## **Private Well**

If you are purchasing a property with a private well, you should have the water tested for its quality and safety. In fact, many banks require testing if you are buying a property with a private well.

Usually, the home inspector who does your basic inspection will have a service to send the water to a testing facility. If not, you can find a water testing company in the yellow pages or over the internet.

If you are testing a private well, you should ask for a comprehensive scan. This would test for: total coliform, fecal/e, coli, calcium, copper, iron, magnesium, manganese, potassium, sodium, alkalinity, chloride, chlorine, color, conductivity, hardness, nitrate, odor, ph, sediment, total dissolved solids, sulfate, turbidity, arsenic, lead, ammonia, radon, 61 volatile organics compounds including mtbe, plus the following pesticides: aldrin, a-bhc, g-bhc, chlordane, 4,4'-ddd, 4,4'-dde, 4,4'-ddt, dieldrin, endosulfan i, endosulfan sulfate, endrin, endrin aldehyde, heptachlor, heptachlor epoxide, methoxychlor, toxaphene. There should also be a test for the presence of radon in the water.

The water sample should be taken from the kitchen tap, since this is the area where people will drink from the most. Run the tap for five minutes to flush standing water in the pipes. There is also a test for the water

pressure and the home inspector can usually set this in motion. The test must be done over a twenty-four hour period of time.

### **The Remedy**

If the water test comes back reading positive for any contaminants, the best source to ask is the water testing company. They are the experts and should be able to tell you what action needs to be taken.

The most common problem with private wells is contamination from bacteria. The cure for this involves chlorinating the water with bleach. Of course, if the problem is more severe, a whole-house water treatment system (a water filtering and softening system) should be installed. Since these systems are costly, this would be a renegotiating issue with the seller.

## After the Home Inspection

### What Happens when there are Problems?

During your home inspection the inspector will point out any significant problems as he finds them. You may want to keep a small notepad to jot these down as the inspection proceeds. At the end of your home inspection you will be provided with a detailed, written report.

### Gauging the Seriousness of Inspection Issues

The typical home inspection report will have numerous small issues that are a result of normal wear and tear. These are mostly there to prepare you for any maintenance you will be facing in your new home. A standard report may offer the following:

- *There is a mineral blush on the chimney. Evaluate and remove any residue.*
- *Maintain areas of wood trim for peeling paint.*
- *Remove built up bark mulch.*
- *Work with/maintain yard grading and roof run off to help control water entry.*
- *Turn down hot water temperature at tank.*
- *Trim bushes away from structure.*

These are generally maintenance suggestions to provide you with knowledge of your new home's upkeep.

The following are more significant items that you may want to ask the seller to repair:

- *Water penetration and entry into the basement.*
- *Roof has missing and broken shingles; sagging ridge; wavy surface; flashing is torn.*

- *Furnace is not functioning properly. No record of recent service. Full maintenance is needed.*
- *Electric Service Box: wiring is not to code. Circuits are overloaded.*
- *Gutters and downspouts need repair; not functioning properly.*
- *Large cracks in siding will allow water penetration, need repair.*
- *Deck support posts are rotted. Railings are missing. Deck is not securely fastened to house.*
- *Heating System: cracks and holes in masonry flue; chimney clogged.*
- *Heat not getting to some rooms in the house.*
- *Foundation: major cracks, crumbling and missing mortar. Bowed foundation.*
- *Outlets in kitchen and bathrooms not ground-fault protected.*
- *Front door is warped, does not close properly due to settling.*
- *Windows are broken; some have lost their seal.*

Large, expensive items such as the roof, electrical systems, plumbing, heating and a wet basement are, definitely, points for renegotiation.

If there is structural damage of a serious nature, you may either try to renegotiate the price of the house or have the seller make the repair. If you would prefer to have money deducted from the price of the home, you should have a professional contractor take a look at the problem and give you a written estimate.

### **Put it in Writing**

Following the inspection, the usual protocol is for you to go over a list of issues with your broker. Your broker will then present the issues to the listing agent and negotiate the repairs or possible price adjustments.

When the offer was written, you were given a specified date by which you had to have your home inspection results. To keep an accurate record of the fact that you met this date, it is always a good idea to put the issues and requests in writing and date the memo. Your broker should go over the list with the selling broker and fax or email the memo directly. This will also serve as proof that you met the date requirement for presenting the inspection results to the seller. It is extremely important that this date is adhered to; otherwise, your deposit could be in jeopardy should you decide not to proceed with the purchase.

Depending on the outcome of the negotiations, any agreed upon repairs will be put into the purchase and sale agreement. In the agreement it should clearly state the repairs, the quality of workmanship expected and the time frame for completion.

The seller should make all repairs before the closing with enough time for you to do a walk-through and see that they have been properly made. For situations, such as service or updating to the furnace, roof or electrical repairs, there should be an invoice or paperwork from the service provider to back up any work that has been done.

## Chapter 10. Additional Property Issues

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### Private Septic Systems

#### What is Title V?

Title V regulations, Massachusetts State Environmental Code 310 CMR 15.000, went into effect on March 31, 1995. The rule pertains to any residence that has a private septic system (or on-site wastewater disposal system) and was implemented to protect our drinking water supplies, shellfish beds and to prevent pollution of the environment.

Older septic systems, which were sometimes cesspools, consisted of a pit in the ground which acted as a settling chamber for solids and leaching systems for liquids. The soil system could be overloaded in its capacity to remove bacteria, viruses and phosphorous and to break down ammonia and organic nitrogen compounds. The newer septic systems have a tank in which solids can settle and begin to degrade. They also have a distribution box and soil absorption system that provides a treatment for removing bacteria, viruses, phosphorous and nitrogen.

Title V regulations state that a seller of a home with a private septic system must have it inspected by a certified Title V inspector and it must pass inspection to be certified. The certification is then valid for two years.

There is an exception to this rule. If the seller has had the system pumped every year and has a record proving this fact, the Title V certification will be valid for three years.

#### Title V and Older Homes

When buying an older property, even if it has passed the Title V inspection, you should do a little more checking. According to the

Department of Environmental Protection, you, as a buyer, are entitled to a copy of the Title V inspection report. Carefully review the report, checking to see that the system passed all of the tests. If you have any questions about the results call the Title V inspector and ask for more details on the inspection that was done.

If you have reason to believe that the report has been altered or contains false information, contact the Massachusetts Environmental Strike Force at 617-556-1000 or 1-888-846-5283.

The reason for the scrutiny is that an older system may have barely passed the Title V requirements. If that is the case, you don't want to buy a house that may not pass when it's time for you to resell the property. A new septic system can cost anywhere from \$10,000 - \$30,000 or more.

An older septic system will often fail the Title V inspection. In that case, the seller will usually install a new system before attempting to sell the property. There is no rule through the Department of Environmental Protection that states that a sale cannot be made with a failed septic system; however, most sellers realize that they will be unsuccessful trying to sell their home as is since most banks will not grant a mortgage to purchase a home without either a fully functioning septic system or connection to the town or city sewerage.

If you are buying a home with the promise of a new septic system from the seller, information regarding its size (how many bedrooms it will serve) and timeframe for the installation should be put into your purchase and sale agreement. Additionally, it should state that the seller must comply with the procedure for abandoning the old system according to State Environmental Code 310 CMR 15.354.

### **When Can the Closing Take Place?**

If the sale is taking place in the winter the ground may be too frozen to have a septic system installed or, sometimes the contractors who install them will have a full schedule and be unable to meet your closing date. If

either of these situations applies, the closing may take place prior to the completion of the system with your attorney holding back (from the proceeds of the sale) an amount that is equal to one and one half times the cost of the new septic. The seller will have the additional funds returned once the system has been installed and inspected by the town.

An exception to the above time frame is that some banks will not allow a closing to take place if the septic has failed until the new one is completely in place and working. If your bank has this restriction, the closing will have to be delayed until the new system is fully installed.

## **More Property Issues**

### **Pressure-Treated Wood**

Those of us who have decks attached to our homes know that most decks are made of pressure-treated wood. The reason for this is that wood that has been pressure-treated resists rot, mold, fungi and insects enough to make it last ten times longer than untreated wood. Some manufacturers will offer a twenty-year guaranty or, in some cases, a lifetime.

Pressure-treated wood is made by placing the wood in a pressurized chamber and adding liquid preservative (various pesticides) into its pores. This is how the chemical barrier against insects and damage is formed. Arsenic is usually part of the mixture.

Until recently, this practice was not thought to cause any health risks. However, as of November, 2003, a study conducted by the University of Massachusetts and Wellesley College researchers determined that at least 10 Boston playgrounds contained high levels of arsenic from the pressure-treated wood used on their playground equipment. The researchers took soil samples from parks in city neighborhoods in Boston. They found that even where the playground structures had been removed; there were still pieces of the pressure-treated lumber present around sandboxes and in

borders. These pieces of wood were still contributing to the level of arsenic in the soil.

Many of the outdoor playground structures that people currently have in their yards are made with this wood and could possibly be a danger to children if the arsenic from the structures contaminates the soil. Currently, the scientific community has not stated to the public that this is a problem; however, I feel that in time we will be hearing more about this potentially harmful situation.

Even with the verdict still out on the soil issue, it is important to note that if you do any repair work to a deck or playground equipment made with pressure-treated wood, such as sawing, drilling or anything that may release dust particles into the air, you should take care to not have any small children nearby and also wear a protective mask so that you do not ingest any of the particles.

Never burn any pressure-treated wood, especially in an indoor fireplace or stove. If the property you are purchasing has extra pieces of this wood laying around, ask the seller to remove and dispose of it before the closing.

## **Underground Heating Oil Tanks**

Until the late 1970's, many homes were built with underground oil storage tanks. As space savers, these were sometimes used as an additional tank for back-up. During the oil embargo in the 1970's many underground tanks were used to store oil as a hedge against rising prices. Because of the inflated oil costs, numerous homes were converted to gas or electric leaving some oil tanks buried in the ground.

Since an oil tank's life is usually around fifteen years, tanks that are older can leak oil and pose a threat to nearby drinking water supplies as well as to the environment in general. Aside from the possibility of poisoning the

water supply, oil fumes can cause other health problems if they migrate into homes, usually into basements.

The EPA has no current regulatory control over residential underground oil tanks and has left this matter up to the individual states. A number of states, including Massachusetts, have made it mandatory that no oil tank be kept underground, even one that is not currently being used for oil storage. If a property has an underground oil tank or has had an underground oil tank in the past, this fact must be disclosed to any real estate agent or any potential buyer of the property. If there was an oil tank on the premises, it has to have been not only removed, but certified by a DEP inspector that the area is free from any potential oil spill.

If you purchase a property that has had an underground oil tank, be sure to get documents from the seller stating that the area where the tank was has been inspected and certified.

## **Asbestos**

Prior to the 1970's, asbestos was widely used in a number of construction materials due to the fact that it was strong, a fire retardant and a good insulator. In certain circumstances, it can be an unsafe substance to have in a home. The potential health risks associated with asbestos are dangers arising from the material being in an airborne state. Crumbled fibers in the air can be inhaled and cause lung cancer. They can also cause asbestosis, which is a scarring of the lungs.

Stable asbestos in vinyl flooring is not a threat; as long as it remains intact and undisturbed. It is the presence of asbestos which has been disrupted through renovation or aging which can be quite dangerous.

A typical area where asbestos may have been used is around pipes in a basement for insulation purposes. It can also be found as siding material on older structures, often on older multi-family buildings. If the asbestos

containing material is in good condition and is in an area where it can remain undisturbed, you should probably leave it alone. However, if it is friable or old and likely to become airborne, you should ask the seller to have these areas encapsulated or enclosed.

If precautions are used, asbestos can be removed. The pieces or fragments should be as large as possible. This can be done in the event of blocks of pipe insulation which are molded to fit pipes snugly. They should be removed without breaking them so that no dust or fibers get into the air. This should only be done by someone who knows how to handle asbestos and is properly suited with gloves, mask and other protection.

A standard home inspection does not include an inspection for asbestos. If the house is an older one, ask your home inspector if he suspects any areas in it to have asbestos. If there is a reason for concern, you should bring in an actual asbestos inspector.

## **Carbon Monoxide**

According to the Journal of the American Medical Association, carbon monoxide is the leading cause of accidental poisoning deaths in America. Carbon Monoxide is a colorless, odorless, tasteless gas that is produced during incomplete combustion of fuel. This fuel includes gas, oil, coal, wood and kerosene.

On November 4, 2005 legislation designated as Chapter 123 which is also known as “Nicole’s Law” in memory of Nicole Garafalo who perished after a snowdrift blocked an exhaust vent from her family’s propane-fired boiler, causing the house to be filled with lethal carbon monoxide fumes.

The new law states that prior to the sale of any residence, it must be equipped with carbon monoxide alarms on every inhabitable level. Where a level includes a sleeping area, the alarm must be installed in its

immediate vicinity, not more than ten feet in any direction from any bedroom door.

## **Electromagnetic Fields**

EMF radiation emanates from a number of sources in the home such as hair dryers, microwave ovens, electric blankets and television sets. The levels of EMFs are measured in milligauss and they rapidly decrease as you move away from the source. The EMF generated from a hair dryer ranges from 60 to 2,000 milligauss one inch away and from a microwave oven, 40 to 80 milligauss one foot away.

With regard to real estate issues, the controversy surrounding EMFs is associated with the proximity of high power utility lines to any given property and the possible health risks involved. A great deal of research has been done to determine the health risks, if any, from high frequency transmission power lines. Some early studies had an indication of health risks, but most of the studies have found no increase in the risks associated with them.

In November of 1992, a Swedish study concluded that EMFs from high power lines increased the risk of leukemia in children. Since that time, more testing has been done by the EPA, OSHA and other industrial and academic groups resulting in no convincing evidence that EMF's from power lines cause any demonstrable health hazards.

Because of the uncertainty surrounding this data, the issue of high voltage power lines remains controversial. The main problem is the fact that their appearance can serve to stigmatize your property to future buyers. To be on the safe side, it is best to avoid properties that have high power lines in close proximity. Aside from being unsightly, they can make your home more difficult for resale and that is something you should always keep in mind when looking at a potential home purchase.

## Wetlands

Under the Wetlands Protection Act (WPA) M.G.L., Chapter 131, section 40 it is designated that certain areas which fall under the heading of wetlands must be regulated and protected due to their environmentally sensitive nature. Since the rules surrounding this issue are a bit complex, it is incumbent upon a broker listing a property, which is considered to be on wetlands, to disclose this fact to any potential buyer.

Definition: Wetland is a regulatory term for land that is sometimes submerged by water. This could include inland marshes, creeks, rivers, ponds, meadows, swamps, brooks, intermittent streams and drainage ditches. It can also indicate land which may become wet only seasonally.

Because of the laws protecting these lands, there are a number of rules restricting what can be done on the property. If the wetland is very close to the house you may not be able to expand the home, build a deck or an outbuilding, or install an in-ground pool. You also will not be able to subdivide the property.

The rules also go further by stating that you cannot disturb the vegetation on wetlands in any way. As an example, if the property behind the home you are buying is covered in brush or other growth you may feel to be unsightly, you need to know that, if this is designated wetland, you will not be able to cut or chop the brush in any way.

Most people are not deterred from buying property that contains some wetlands as long as the lot is large enough. It is sometimes looked upon as an advantage if an adjacent lot contains wetlands since this will provide a degree of privacy due to the fact that no construction can ever take place on it. Whether or not this is your view, you should be aware of any

wetlands that are on the property you are buying, their location and how this will affect your use and enjoyment of your home.

## **Easements**

Having an easement on your property means that someone else has a right to use it for a specific purpose. An example of this would be: your neighbors have an easement to walk over your driveway to get to their property or a utility company has an easement to get to a set of nearby meters. There are also easements for profit allowing a neighbor to remove something from your property, such as blueberries.

An easement is written into the deed. The seller knows about it and should have revealed it to the listing broker. The broker should then disclose the information to any potential buyers or their broker.

If the property you are interested in has an easement, get a copy of the wording on the deed and have your attorney go over it. An easement, per se, is not necessarily something that should prevent you from purchasing and enjoying a property. Just be sure you know all of the facts and make the decision as to whether or not it is something you can live with.

## **Encroachments**

When a neighbor's swimming pool, garage or house partially hangs over your property, this is an encroachment.

Most often with these cases, the encroachment has been going on for many years with the current owner of the property not objecting. If it has, then, chances are the neighbor has an implied easement on your property to continue using it in this manner.

Once again, this fact should be disclosed at the time of the listing.

Often these encroachments are a minor nuisance, if any, and may or may not influence your purchase of the property. The important thing is that you are aware of it and can make an informed choice.

## **Smoke Detectors**

According to state law, all homes must be equipped with smoke detectors. With regard to the sale of a property, the burden for compliance falls on the seller. Prior to the closing, the seller of a property must have the fire department come to the property and inspect their detectors to assure that they are all in working order. The fire department will issue a certificate of compliance that must be brought to the closing. Without this certificate, the closing cannot take place.

The law requires that there must be an operable smoke detector on every habitable level, including the basement. A finished attic must also be equipped.

On the first floor, smoke detectors should be placed on the ceiling in a hallway near a stairwell to the second floor. If there is a bedroom on the first floor there should also be a detector outside the bedroom door.

On the second floor, the smoke detector must be placed on the ceiling in the hallway common to all of the bedrooms, normally at the head of the stairs. This is done so that the smoke will get to the detector before it reaches the bedroom.

In the basement, smoke detectors should be placed on the cellar ceiling at the base of the stairs. In an unfinished basement, it should be on the edge of the joist and never placed at the top of the basement stairs by the cellar door.

In properties that were built after 1975 it is mandatory to have a hardwired system with battery backups.

# Chapter 11. Following Up With Your Lender

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## The Bank Appraisal

After you have successfully dealt with any issues that may have come out of the home inspection, you should contact your lender to and give your approval for the bank to send out an appraiser. The appraiser will contact the listing broker and meet with him at the property to begin his evaluation.

The bank appraiser is independent of the bank, the realtors and anyone else involved in the process. Most appraisers have access to the Multiple Listing Service which gives them the ability to look at all of the sales information for the area they are working in.

The appraiser must be licensed or certified in the practice of developing an opinion of value of real property, usually referred to as Market Value. He will use comparable sales, currently active properties and current market conditions to arrive at a value for the property. The appraisal will be done using the Uniform Residential Appraisal Report. This standard report requires a thorough inspection of the interior and exterior of the property, a map which shows the location of the subject, an exterior building sketch to show any improvements and photographs of the subject property as well as the comparables.

There are two types of residential appraisal methods: the sales comparison approach and the cost approach. In the cost approach, the appraiser estimates what it would cost to replace the structure. This is usually used with new construction. If you are purchasing an existing home the appraisal will usually be done by the sales comparison approach.

Since the property will be collateral for your loan, the bank wants to be assured that its value is equal to the investment it is making. The property must appraise for the price that you are paying for it or close enough to justify your loan. The bank will notify you of the results as soon as they

are available. You will also be provided with a copy of the full appraisal for your records.

## **Loan Commitment**

The loan commitment is a formal document from the bank or lending institution which states that your loan has been approved for the purchase of the particular property that you are buying. This is over and above the pre-approval and is a loan that is "ready-to-go". In order to arrive at this point, your loan application has had to go into underwriting and your appraisal has been completed with a satisfactory result.

Depending on the lending institution, the commitment is usually several pages long and contains all of the information about your loan including the rate, finance charges, amount financed, length of the loan and any outstanding contingencies.

Your loan commitment must be ready by the financing date agreed to in your purchase and sale agreement. If, for any reason, your bank needs additional time to have this document ready, you must get in touch with your attorney, broker or the seller and ask for an extension.

# Chapter 12. The Purchase and Sale Agreement

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At this point, you already have a legally-binding agreement in place and that is your original offer to purchase. Everything in the signed offer will be going into your purchase and sale agreement, plus any repairs or items negotiated after the home inspection. Now is the time to get in touch with a good real estate attorney.

A standard purchase and sale agreement is usually drafted by the seller's attorney or the seller's listing brokerage. There is nothing in the document to protect you as the home buyer. That is why it is so important for you to engage the services of a real estate attorney to protect your interests. Since this may be the largest purchase you will make, it is unwise to skimp in this area.

## What Will an Attorney Do For You?

Aside from making changes to the body of the agreement, your attorney will add a rider that is often several pages long. This will usually be a standard rider that she uses for all home buyer clients. In addition to the rider, she will include wording that is specific to your home purchase. Examples of these are:

- All of the repairs that were negotiated after the home inspection, stating the workmanship that is expected and the timeframe in which they should be made;
- If a new septic is being installed by the seller, specific details of the installation and time for completion;
- If there are outstanding tests such as radon or water, there should be an agreement with regard to a possible high radon reading or negative water results (an agreed upon plan for this outcome);

- Who will be responsible for paying money for a possible betterment fee to the town;
- If you are buying new construction, all of the building specifications (a multi-page document that is a detailed list of everything going into the house) should be part of the agreement;
- Anything else that is specific to your home purchase.

In a standard purchase and sale agreement, there is a provision stating that a seller may extend for 30 days beyond the specified time for closing to correct a title issue. Your attorney should make sure that the seller cannot extend beyond your rate lock, thereby causing you to lose a low interest rate or be forced to pay for an extension with your bank.

It should also be stipulated as to whom will be responsible for the property between the signing of the purchase and sale agreement and the closing. The seller should be made to take that responsibility in case the property is damaged or destroyed by natural disaster or fire.

If the seller is using an attorney, he and your attorney will work out the details of the agreement through faxing, email and telephone conversations. When the final document is agreed upon and ready to sign, four copies are usually made. All four copies need original signatures. It is customary for the buyers to sign the documents first and then the sellers will sign all four.

At the time of the signing, you will be putting down an additional deposit which, with the initial binder, will usually be equal to 5% (five per cent) of the total price of the house. Write a personal check for this deposit and in the bottom left corner write, "Deposit on (address of the property.)" Also, make a copy of the check for your records. This money will be put into an escrow account through the listing office and stay there until your closing.

The deposit is usually held in an interest bearing account and the interest is often split between buyer and seller at closing.

## Chapter 13. Title Issues

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### Obtaining Clear Title

Prior to your closing, your attorney will examine an abstract which includes copies of all documents with recorded transactions involving the property. This is done to uncover any tax liens, judgments, mistakes in the record, undisclosed heirs or unknown easements. Problems such as these are referred to as encumbrances. If there are any encumbrances on the title, the seller will have to clear them before being able to transfer the property to anyone.

Following the title examination, an attorney will write a letter of opinion expressing that the seller does indeed have good title. Only then will an insurance company agree to provide title insurance for the property.

### Title Insurance

Part of your closing cost is to buy a title insurance policy that protects the bank against any title claims. This is a **Loan Policy** and the bank will require you to purchase it. The policy is based on the dollar amount of your loan and protects the lender's interest in the event that a title problem should arise. There is also an **Owner's Policy** that you should purchase for your own protection. This policy is written based on your purchase price and will protect you for as long as you have an interest in the property.

Since the property you are buying will usually have a history of previous owners and transactions it's impossible to guaranty that nothing from the house's history will ever pose a problem to you. Even though a title search has been done, this does not negate the possibility of title claims arising from the past. Title problems are rare occurrences, but, just like any type of insurance, you don't want to be without it when those rare instances happen to you.

There are certain situations that could hold your title for ransom. Suppose that a year from now, someone comes forward and claims he has inherited the property from a passing relative and that the seller who sold it to you had no right to do so. Or, perhaps the seller took out a second mortgage two days before the closing after the title search had been done. There are also mechanic's liens. If the seller had work done to the property and neglected to pay the contractor, the law would allow the contractor to place a mechanic's lien against the property for the amount of money that is owed.

Even if the home you are buying is new construction, you need the protection of title insurance. You may well be the first owner of your new home; however, the land that it is built on is another matter. Builders often purchase land with existing structures with the intention of demolishing the structure in order to build a new home. That original home and the land that it was on would certainly have a history and you would have to be concerned about it.

Unlike homeowner's insurance which is there to protect you against a possible future event, title insurance is there to protect you from an event which has already happened. For a one-time fee which is paid at the closing, title insurance is well worth the protection.

## Chapter 14. Homeowner's Insurance

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Several weeks before your closing you should get in touch with your insurance company to let them know that you are purchasing a home. They will prepare an insurance binder which can be sent to you or to the office of the closing attorney. This is done so that when you leave the closing, your new property will be immediately covered. The policy is required by your bank, since your home will be collateral for the loan.

A standard homeowners' insurance policy provides four types of coverage:

1. Coverage for the structure of your home;
2. Coverage for personal belongings;
3. Liability protection;
4. Living expenses in the event you are temporarily unable to live in your home.

### Property Structure Coverage

Most standard policies will pay to repair or rebuild your home if it is damaged or destroyed by fire, hurricane, hail, lightning or other disasters that are listed on the policy. They will not ordinarily pay for flood or earthquake damage. If you want or need this coverage it is sometimes available at an additional cost depending on what part of the country you are buying in.

A typical policy will also cover detached structures such as tool sheds, gazebos, or a detached garage.

In determining how much insurance you need to cover your home, your agent will calculate the cost of rebuilding the structure at current construction costs. The cost of the land is not included in this figure. The

insurance should be at replacement cost which will pay for repair or replacement of the damaged property at today's value with no deduction for depreciation.

## **Personal Belongings**

In case of fire, hurricane or theft, your furniture, clothes, sports equipment and other personal items are covered. The coverage is usually 50% to 70% of the amount of insurance you have on your home. As an example, if you had \$100,000 worth of insurance coverage on the structure of your home, you would have \$50,000 to \$70,000 worth of coverage on your belongings.

In order to calculate the proper amount of coverage you need for personal items you should take an inventory of everything you own and be able to put an approximate price on those items. As part of your inventory take photos or videos of your items and place them in a fireproof safe.

For coverage of personal items, you can insure them at cash value or replacement cost. Cash value will pay the cost of replacing your items minus depreciation. Replacement cost will reimburse you for the cost to actually replace them. If you have jewelry and silverware, there are usually limits to their coverage in your homeowner policy. Typically, you would be covered for \$1,000 to \$2,000 on these items. If you want to insure them for full value, speak to your agent about a floater policy or rider with no deductible.

## **Liability Coverage**

This is coverage to protect you against lawsuits in the event someone is injured on your property. There is usually also a provision that will cover an event in which you, your children or pets accidentally ruin property belonging to a neighbor.

Experts advise that you purchase at least \$300,000 worth of liability protection. If you feel you want more, an umbrella policy is something to consider. This type of policy takes up where your standard coverage ends. These policies can provide coverage on claims against you for libel and slander as well as higher liability amounts. An umbrella policy generally costs \$200 to \$350 for \$1 million of additional protection.

## **Additional Coverage**

If you suffer a covered disaster such as a fire or storm, this part of your insurance will pay the costs of living away from your home. It will pay hotel, restaurant and other expenses you incur while your home is uninhabitable. The coverage is typically 20% of the insurance on your home.

## Chapter 15. Final Property Walk-Through

Prior to the closing, usually the night before or the morning of, a final walk-through will be scheduled. Your broker will set up a time for you to walk through the property to inspect it. The walk-through should take anywhere from 30 minutes to an hour.

### What Condition Should the Property Be In?

The sellers should be completely moved out. All furniture, possessions and debris should be out of the property and off of the grounds. You do not want to be left with an old sofa that the sellers did not feel like moving.

Any repairs that were specified in the purchase and sale agreement should be done. You should go through the list and inspect each repair. For some items, such as electrical work or service to the heating system, the seller should provide you with paper work or invoices proving that the repairs were not only made, but done by professionals in the business of working on these systems.

If the heating system was not working properly during your inspection and this was a repair that was agreed to, run the system to make sure that it is working. Inspect all items that can be physically seen and insist on paperwork for those that cannot be.

If the agreement states that the refrigerator, washer, dryer, window treatments or any other items should be included, make sure that these were, in fact, left behind. Everything that was functioning at the home inspection should still be in good working order.

Sometimes a mishap or accident can happen during the course of the seller's move out. Their moving company could bash a furniture item and put a hole or dent in the wall. There may be stains in the carpeting that

were clearly not there during the home inspection. Accidents can happen, but you should be compensated for them.

During the walk-through you may sometimes see things that were not visible when you looked at the house previously. Furniture or carpeting may have covered scratches in the floor or unfinished painting.

As you go through the home make sure to go in every room. Open every closet and all of the cabinets and draws in the kitchen. Run the dishwasher; turn on the stove and any other appliance that is part of the deal. Run the faucets and flush toilets. Turn on the air conditioning system if there is one.

Sometimes, a seller who was not very happy about having to sell may even trash the place out of spite. This is seen mostly with foreclosure properties but can also happen in a normal transaction. Look in the attic, the basement and all storage places to be sure that the owners have cleaned out and taken everything with them.

The property should be "broom clean". It should be at least swept and free from all debris.

## **What is the Remedy for an Unsuccessful Walk-through?**

If repairs are not made, furniture is left behind or there is damage to the property, you can ask for a "hold-back" from the proceeds of the seller's funds. A typical amount for a situation like this is \$1,000 with the understanding that the sellers will receive the money as soon as the problem has been corrected.

Of course, if the damage is serious, a higher amount may be held back and this can be negotiated at the closing table.

## Chapter 16. Your Closing

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One of the decisions you will have to make is how you would like to hold title to the property you are purchasing. If you are buying a home with a partner, friend or spouse, you should take some time before you reach the closing table to discuss this with your attorney to help you decide which form of title will best serve you and your future needs.

### Forms of Taking Title

#### *Singular Ownership*

#### **Fee Simple or Sole Ownership**

This is the highest and most complete form of ownership and grants the holder the greatest degree of control over his property. In theory, a fee simple title is valid forever, unlike a shared ownership or an estate for years which will revert back to the original owner at some point. Sole owners are typically single, although a married person can have sole ownership in a property as well. In this case, the spouse is usually asked to sign a quit claim deed giving up any ownership interest in the property.

The other side of sole ownership is that it carries with it the highest responsibility and liability. If a legal suit were brought against someone with this type of ownership, there would be no question that the property would be greatly exposed.

Even with that as a possible condition, a fee simple title is still the most common form of title, since it has no restrictions with regard to selling, renting or leaving the property to one's heirs.

## *Joint Ownership*

### **Tenants in Common**

In this form of ownership, each of the title holders owns and controls an undivided portion of the property. The main components of this arrangement are ***inheritability*** and ***undivided interests***.

By example, John and Mary have taken title as tenants in common. Each will own half of the value of the house and may sell his or her interest or leave it to someone in a will, whether or not the other approves.

Both John and Mary share in the costs, responsibilities and upkeep of the property. If one of them is sued, his or her half of the property may be partitioned by a court and awarded as damages.

If a couple wishes to exercise control over their estate with regard to leaving the property to their own heirs and not jointly with their partner, they should take title as tenants in common.

### **Joint Tenants with Right of Survivorship**

If John and Mary decide to hold their property as joint tenants with the right of survivorship, they will still each have an undivided interest. The difference is that when one of them dies, the other will inherit their share of the property. The property will not go into probate since this form of title is explicit with regard to survivorship.

Either of the joint tenants may still sell his or her undivided interest, but the new owner will assume the role of tenant in common with the surviving owner.

This type of ownership effectively eliminates the right of either party to will their share to an heir.

## **Tenancy by the Entirety**

Married couples traditionally take title as tenancy by the entirety. This arrangement is actually limited to married couples and includes an automatic right to survivorship.

Under this form of ownership, the owners are thought to be one entity. Neither one can sell, will or dispose of his or her interest separately from the other. If Mary wanted to leave her share of the house to a child from a previous marriage, she would not be able to do so unless John agreed and they both signed a deed indicating that they both agreed to the transfer.

For purposes of possible legal action against either John or Mary, tenancy by the entirety would offer more protection than other forms of ownership. Since the property is owned by both of them, it will usually not be subjected to a judgment against only one of the owners.

## **Filing a Declaration of Homestead**

You have a right to file for protection of your property equity under The Homestead Act. The act allows you protection of up to five hundred thousand dollars (\$500,000) of the value of your residence against attachment, seizure or execution of judgment from unsecured creditors. The document is called a Declaration of Homestead.

To qualify, the property must be your principal residence. Exemptions to the homestead protection are: debts for taxes, mortgages used to purchase the home, debts incurred prior to signing the homestead, and debts from the court pursuing child support payments.

You may file for protection whether you are a sole owner, joint tenant, and tenant by the entirety or tenant in common, but the act states that only one owner of a home or one family is eligible for protection on your residence. The word "family" would include a parent and a child or children, a husband and wife and their children or a sole owner.

Home owners who are 62 years of age or older and persons who are disabled are protected to the extent of \$500,000 each. Therefore, if two disabled persons or persons above the age of 62 reside in the same home, they should each file a Declaration of Homestead.

The fee for filing a Declaration of Homestead is approximately thirty-five dollars (\$35). The form can be made available to you at your closing. It must be signed, notarized and registered with the Registry of Deeds.

## Closing Costs and Remaining Down Payment

Before your closing, you should receive your Estimated Closing Costs. These usually come from your bank or lender. An overview of these costs can be found in Chapter Two.

The bulk of the money for your new home will be in the form of a check from the bank that is providing your loan and should be included in the closing package submitted to the closing attorney's office. You are responsible for bringing the remaining down payment and closing costs. These funds must be brought in the form of a certified bank check. Since the check is as good as money, it's advisable that you have the bank make it out to you. You can then endorse it and sign it over to the appropriate party at the closing.

### Seller Reimbursements

(Outstanding items to be paid to the seller)

**Taxes** -- If the sellers have paid a full or partial year of real estate taxes, the tax amount will be prorated and you will be reimbursing them appropriately for taxes they have already paid.

**Utilities** -- If the house you are buying has oil heat, the sellers may have filled the tank and you should plan on paying them for the full tank of oil. The same is true if there are any other utility or incidental expenses that the sellers have paid and you will be inheriting. The listing broker will usually have the responsibility of bringing a final reading of the water and gas to the closing ensuring that the seller's usage has ended on that day. Certified evidence of the amount of oil in the tank should also be brought to the closing by the seller or seller's broker.

The sellers will also have called the utility companies to end their electrical and gas service. Remember to call ahead to begin utility service in your name on the day of closing.

The sellers are also responsible for getting a final water reading and paying the water bill prior to the closing.

**Be sure to bring your driver's license with you.**

You will be asked for photo identification and a copy will be made for the file. The bank wants to be sure that the person who signs the mortgage note is, indeed, the person who will be paying it. If you are not a U. S. citizen, bring your passport, visa and any other related documents.

Plan to be at the closing for at least an hour. It's a good idea to plan for more time just in case you need it. Occasionally, something unforeseen may happen which can lengthen the time you will be at the closing office.

The main activity of the closing consists of signing all of the papers associated with your loan. The closing attorney will take each document, explain it to you and tell you where to sign. If you cannot make it to your closing, you can give power of attorney to your attorney, spouse or partner to sign in your place.

Following the signing, the sale must be recorded at the registry of deeds. If your closing is at a lawyer's office, a courier will be sent to record the transaction. The property is not officially yours until it has been recorded. Many times keys will be given to buyers at the closing table; however, it is within the sellers' rights to have the keys held until the recording is done. If you are closing at the registry of deeds, this will happen almost instantaneously. If a courier is going to the registry, it may take several hours.

When all of the documents have been signed, money has changed hands and the seller has signed the deed, you are the owner of your new home.

Congratulations!