

(Buyer Article)

Writing the Earnest Money Contract

Once you find the home you want to buy, the next step is to write an offer – which is not as easy as it sounds. Your offer is the first step toward negotiating a sales contract with the seller. Since this is just the beginning of negotiations, you should put yourself in the seller's shoes and imagine his or her reaction to everything you include. Your goal is to get what you want, and imagining the seller's reactions will help you attain that goal.

The offer is much more complicated than simply coming up with a price and saying, "This is what I'll pay." Because of the large dollar amounts involved, especially in today's litigious society, both you and the seller want to build in protections and contingencies to protect your investment and limit your risk.

In an offer to purchase real estate, you include not only the price you are willing to pay, but other details of the purchase as well. This includes how you intend to finance the home, your down payment, who pays what closing costs, what inspections are performed, timetables, whether personal property is included in the purchase, terms of cancellation, any repairs you want performed, which professional services will be used, when you get physical possession of the property, and how to settle disputes should they occur.

It is certainly more involved than buying a car. And more important.

Buying a home is a **major** event for both the buyer and seller. It will affect your finances more than any other previous purchase or investment. The seller makes plans based on your offer that affect his finances, too. However, it is more important than just money. In the half-hour it takes to write an offer you are making decisions that affect how you live for the next several years, if not the rest of your life. The seller is going to review your offer carefully, because it also affects how he or she lives the rest of their life.

That sounds dramatic. It sounds like a cliché. Every real estate book or article you read says the same thing.

They all say it because it is true.

Contingencies in a Purchase Offer

In most purchase transactions there may be a slight challenge or two, but most things will go quite smoothly. However, you want to anticipate potential problems so that if something does go wrong, you can cancel the contract without penalty. These are called "contingencies" and you must be sure to include them when you offer to buy a home.

For example, some "move-up" buyers often agree to purchase a home before selling their previous home. Even if the home is already sold, it is probably a "pending sale" and has not closed. Therefore, you should make closing your own sale a condition of your offer. If you do not include this as a contingency, you may find yourself making two mortgage payments instead of one.

There are other common contingencies you should include in your offer. Since you probably need a mortgage to buy the home, a condition of your offer should be that you successfully obtain suitable financing. Another condition should be that the property appraises for at least what you agreed to pay for it. During the escrow period you are likely to require certain inspections, and another contingency should be that it pass those inspections.

Basically, contingencies protect you in case you cannot perform or choose not to perform on a promise to buy a home. If you cancel a contract without having built-in conditions and contingencies, you could find yourself forfeiting your earnest money deposit.

Or worse.

Earnest Money Deposit

After you have come up with an offer price, the next step is to determine how large a deposit you want to make with your offer. You want the "earnest money deposit" to be large enough to show the seller you are serious, but not so large you are placing significant funds at risk.

One recommendation is to make sure your deposit is less than two to three percent (depending on your location) of your offered price. The reason for this is that if your deposit is larger than that, the lender will pay particular attention to how you came up with the funds. You might have to provide a copy of a canceled check along with a bank statement showing you had the money to begin with. Normally, this is not a problem, but if you have a short escrow period or are barely coming up with your down payment, it could pose an inconvenience.

Another reason to limit your deposit is "just in case." Although significant problems are the exception and not the rule, they do occur. "Just in case" there is a nasty or prolonged dispute between you and the seller, the less money you have tied up in a deposit, the fewer funds you have placed at risk.

As with practically everything in real estate, there are exceptions to this rule, too. During a hot market there may be multiple offers on the property that interests you. A large deposit may impress a seller enough so they will accept your offer instead of someone else's, even when your unknown competitor is offering the same price or slightly higher.

Since large deposits do impress sellers, you may also find that by making a large deposit you can convince the seller to accept a lower offer. More money up front may save you money later.

There are also times when closing can be delayed by weeks, through no fault of your own. Have back-up plans prepared for such a contingency.

The Closing Date

It is absolutely essential that you include a closing date as part of your offer. This way both you and the seller can make plans for moving, and the seller can make plans for buying his or her next home. Though most transactions actually do close on the right date, do not be so inflexible that a delay creates insurmountable problems.

For example, if you are renting and need to give the landlord notice that you are moving out, you may want to allow a little flexibility. Otherwise, if your purchase closes a few days late you could find yourself staying in a motel with your belongings packed in a moving van somewhere while you pay storage costs.

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Transfer of Possession

A transaction is considered "closed" once the deeds have been recorded. Then you own the home. However, it is not always possible for you to occupy it immediately. This can happen for several reasons,

but the most common is that the seller may be purchasing a home, too. Usually, it is scheduled to close simultaneously with your purchase of their home.

It is sort of like being at a red light when it turns green. Although all the cars see the light change at the same time, the guy at the back of the line doesn't begin moving until all the cars ahead of him have started.

As a result, it has become customary to allow the seller up to a maximum of three days to turn over actual possession and keys to the home. When transfer of possession actually occurs should be clearly laid out in your offer to prevent confusion later.

Safeguards Regarding the Property

Disclosures From the Seller

Although you have toured the property, looked at the walls and ceiling, turned on the faucets and played with the light switches, you have not lived in it. The seller has years of knowledge about his or her home and there may be some things you want to find out about as quickly as possible. For this reason, you will require certain disclosures as part of your offer.

Basically, you want the seller to disclose any adverse conditions that may have a substantial impact on your decision to purchase the home. This would include any problems with the house, whether the property is in a flood zone, a noise zone, or any other kind of hazardous area.

If you have an agent representing you, this is almost automatic, but many states do not require individuals selling their own home to provide you with this information. Often they do not require banks selling foreclosed property to provide these disclosures, either. Obtaining these types of disclosures should always be a part of your offer, and time is of the essence.

Inspections You Should Require

Besides appraisal and the termite inspection, you should also have a professional go through the house and seek out potential problems. Of course, you will have inspected the home, but you are not used to looking at some things that a professional will find. Even if they are not things the seller is expected to repair, at least you will have foreknowledge of any potential problems.

The seller will want this inspection performed quickly, so that you can approve the results and move forward with the purchase. Once you receive the inspection, you will want to allow yourself sufficient time to review and approve the report. If you do not approve the report, you may negotiate with the sellers on which repairs should be performed and who should pay for those repairs. Otherwise, you can cancel the purchase without penalty, provided you have included timetables in your offer.

Allow a maximum of ten to fifteen days to receive the report and five days to review it.

Final Walk-Through Inspection

Before closing, you will want to revisit the property to ensure it is in the condition you have required in your offer, and to inspect that any required repairs have been performed. You should do this no sooner than five days before you intend to close. Make sure this right to do a final inspection is included in your offer to purchase the home.
