

## What papers are signed at closing?

The closing can be a little overwhelming, especially if it's your first time. You may feel as though you're signing away your life. Knowledge equals peace of mind, so here's a rundown of the documents typically included in a closing:

- **Promissory note.** This is the formal IOU showing the loan amount, interest rate and term of loan (number of years to pay back).
- **Security deed.** A mortgage document that is recorded in the courthouse records showing the amount and term of loan. It gives the lender the right to foreclose and take title to the property if the loan isn't paid back or you default under the loan documents.
- **Warranty deed.** The seller signs this document to convey the title to the buyer. The warranty deed contains the exact legal description of the property and is recorded in the courthouse of the county where the property is located.
- **HUD-1 settlement statement.** This also is called the closing statement or HUD and shows all financial terms of the transaction, including how much money both the seller and Realtor® receive as well as the exact amount the buyer must pay at closing. All money that changes hands should be reflected on the HUD-1 Settlement Statement.
- **Truth in lending statement.** This identifies the annual percentage rate, which is the loan interest rate plus the finance charges paid by the buyer. It also shows the total amount paid back over the term of the loan.
- **Aggregate escrow disclosure.** This shows the calculation of how much money you need to establish in your escrow account to pay next year's property taxes and insurance renewals.
- **Various affidavits.** These include a series of documents in which you, the buyer, promise that you still are employed, plan to occupy the house, agree to sign or initial corrections or additional papers later, promise that there are no side agreements between the buyer and seller and that the down payment has not been borrowed. The seller will also sign an affidavit that he or she is not aware of any unpaid liens or title disputes.

But that's not all. Sometimes you will be asked to sign other documents to complete the loan file, such as a typed loan application and an acknowledgment that the closing

attorney does not represent you. Your attorney can review these documents prior to closing to make sure the terms are what you negotiated and that you fully understand the documents that you are signing.

## Do you really need an attorney?

Yes. Buying a house is one of the most significant financial transactions of your life. While there are standard procedures for buying a home, every situation is as different as the people and properties involved. It is wise to rely on the professional services of a licensed attorney to head off potential problems and to protect and advise you throughout the entire process.



*This pamphlet was prepared by the Real Property Law Section of the State Bar of Georgia as a public service. It is not intended to be a comprehensive statement of law. Its purpose is to inform, not to advise on any specific legal problem. If you have specific questions regarding any matter contained in this pamphlet, you are encouraged to consult an attorney.*

## Buying a Home



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## So you want to buy a home. It's a big decision! How do you know you're doing the right thing?

There are things you can do to make it a positive experience. First, consider consulting an attorney. Buying a house is complicated. But it doesn't have to be overwhelming, especially if you have a legal professional on your side, looking out for your interests. The peace of mind that comes with an attorney's services is every bit as valuable to a homeowner as locking in the best possible interest rate. The following are the basics of buying a home.

### What can you afford?

We all have an image of our dream home, but remember, what is perfect in your mind might not be perfect for your bank account. Before you even start looking, find out what you can realistically afford.

Here's what you should do to establish your price range:

- Do your homework. You'll need to gather basic information about your income, existing debts and credit history.
- Meet with a lender (bank, mortgage company or credit union) to find out how much you can borrow.
- After determining how much you can borrow, add the amount of savings you will use for the down payment to determine your price range.

(Down payment + loan = sales price and closing costs.)

In addition to the down payment there will be costs for closing the transaction. These costs will be shown on a Good Faith Estimate provided by your mortgage professional; they include origination fees, discount points, inspections, a survey, hazard insurance, property taxes, interest and escrow accounts set up to pay future taxes and insurance. Also, your mortgage professional may send you additional documents to assist you in making an educated decision about your loan options.

All this sounds confusing, but it does not have to be. An attorney can review and explain all of the documents *before* you sign anything. It's always better to ask now than to regret a decision later.

### What kind of property is right for you?

There are a lot of choices out there: houses, townhomes, condominiums, traditional neighborhoods, cluster homes

and high rises. When looking at your options, don't forget that your mortgage payment isn't the only consideration. There often are other "built-in" expenses. Find out about any voluntary neighborhood dues for swimming pools, tennis courts, playgrounds and landscaping. In addition, with planned communities, condominiums and townhomes, find out about mandatory association fees—how much they are and exactly what they cover.

### Making an Offer

Once you've found the right home, it's natural to want to rush to submit an offer. Take a deep breath and think through the process, because a contract is a legally binding document. To begin, you, your Realtor® or your attorney will need to prepare an offer for purchase and sale. It is important to seek the counsel of a licensed attorney, because even things that appear to be small matters could become large problems if they are not properly addressed in the offer for purchase and sale. Some important components to a real property purchase and sale agreement are:

- sales price that you are willing to pay
- legal description of the property you want to buy
- amount of earnest money and who will hold it
- method and amount of financing (all cash, bank or mortgage company loan, seller financing)
- who will pay closing costs and how much
- when the seller will move out and the buyer will move in
- amount of real estate commission (usually paid by seller)
- the date of closing and who will close the transaction
- whether buyer can back out or require repairs if an inspection reveals problems with the house, or if title is not acceptable
- which items will remain with the house and which items will be removed by the seller
- who will pay for repairs, if any
- warranties and, if applicable, who will pay for them
- how the property will be conveyed (warranty deed, limited warranty deed or quit claim deed)

Even simple forms can be deceiving, so it is always best to have an attorney take a look at your contract *before* you sign anything.

### Are you really ready to sign?

Presenting a formal offer to the seller is a big step. If you have any special considerations—if, for example, your down payment depends on a bonus from work, or you have to sell another house, etc.—an attorney can make sure the contract is worded appropriately. When the seller signs your offer, with no changes, you have an accepted and binding contract. There's no going back without financial and legal consequences. If you have any questions at all, consult an attorney before you become obligated to an agreement that doesn't meet your needs or that you don't completely understand.

### Some Considerations Prior to Closing

**Obtaining a survey.** Many lenders do not require a current survey. However, it is prudent to obtain one prior to closing because it will show the location of the house and other improvements such as fences, garages, driveways, decks and walkways on the property, including any improvements encroaching on or from adjoining property. You will need to notify the closing attorney prior to closing if you wish to have a survey done on your property.

**Purchasing owner's title insurance.** Owner's title insurance is not required by law in Georgia, unlike some other states; however, it is an extremely important protection for you as the owner of real property and it is recommended that you purchase such a policy. An owner's title insurance policy ensures that you have an insurable title to the property. It's a relatively small one-time cost, and it can protect the buyer from mistakes in title examinations and other title problems caused by prior owners of the property. This policy may be purchased at the time of closing through the closing attorney. It is important to note that a lender's title insurance policy does not protect you as the owner of the property, but if your lender is obtaining a policy, you may be eligible for a substantial discount on an owner's policy. This is called a "simultaneous issue" rate and you should contact your closing attorney for details.

**How to take title to the property.** If you are purchasing property with another person, it is important to consider how you will take title to the property. Georgia recognizes two options: 1) Joint Tenants with Right of Survivorship and 2) Tenants in Common. Joint Tenants with Right of Survivorship means that upon the death of one owner, the deceased owner's interest will automatically pass to the other owner, regardless of the deceased owner's will. Tenants in Common means that upon the

death of one owner, the deceased owner's interest will pass to the deceased owner's estate. If it is not clearly specified, Georgia law assumes you have taken title as Tenants in Common.

These matters should be discussed with a licensed attorney prior to closing.

### What exactly is a "closing"?

The closing is when the seller actually transfers the title to the property to the buyer. The buyer signs all loan papers and wires money for the closing costs and down payment (or purchase price if there is not a loan). The closing usually takes place in the closing attorney's office and the party paying closing costs pays for the closing attorney. It is important to know that typically, if you are obtaining financing for the acquisition, the closing attorney represents the lender—not the seller, not the Realtor® and not you. If you want an attorney to solely represent your interest, you must hire one.

### Getting Ready for Closing

You've got your loan lined up. The seller has accepted your offer. Now, it's on to closing. The more you know, the more painless your closing will be. To make your closing smooth and free of surprises, once you have a binding contract and your loan is approved, you, your Realtor® and your attorney need to coordinate a closing date and time with the lender, seller and closing attorney.

### What do you take to closing?

You will be instructed by the closing attorney as to the necessary documents needed for your specific closing, but generally these may include:

- wired funds for the down payment and other buyer costs (based on the Good Faith Estimate or preliminary settlement statement)
- insurance policy (must be ordered prior to closing from any licensed insurance company) and a bill or paid receipt
- any paperwork still required by lender (for example, your most recent pay stub and pest/termite inspection report)
- photo identification (valid driver's license, state issued ID or passport)
- all parties who must sign loan papers, such as spouse and/or parents