



Real Estate Purchase Agreements: A Standard Form Isn't Necessarily Standard

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I routinely receive calls from clients seeking to purchase a house, and asking whether it is necessary for an attorney to review the purchase agreement. The simple answer is yes. While residential purchase agreements are often some version of a “standard form”, it makes a big difference whether the blanks have been properly filled in, and whether there have been revisions from the original form. In this regard, document production and word processing capabilities now make it possible to revise virtually any “standard form” document in a manner which is difficult to detect without a thorough review of all terms and conditions. As such, “boiler plate” provisions may not be as standard as they first appear.

While residential purchase agreements contain numerous terms and conditions, each of which has a precise meaning and application, there are several primary areas which can constitute pitfalls for a buyer. First and foremost, a buyer should be certain that the physical condition of the house meets all expectations. Under Iowa law, a seller must provide a residential property disclosure form to a prospective buyer before a purchase agreement is signed. This form covers numerous physical attributes of a house, and serves as a representation from the seller regarding the existence of certain known conditions or deficiencies. Keep in mind, however, that these disclosures are made “to the knowledge of the seller”, and do not constitute an absolute statement or warranty that the conditions do or do not exist. While the disclosure form provides some basis for the condition of the house, it is always recommended that the purchase agreement contain a provision which gives the buyer a reasonable period of time to have a thorough home inspection performed. If the home inspection reveals adverse conditions which are objectionable to the buyer and the seller is not willing to repair, the buyer should be able to terminate the purchase agreement and receive a refund of the earnest money deposit. Additionally, a termite inspection should be performed in the early stages of the process, with the same remedy in the event that infestation is found. An area often overlooked until shortly before closing, are septic systems. Under Iowa law, septic systems are generally required to be inspected by a seller prior to a sale, and must be in compliance with regulatory requirements.

Perhaps the biggest concern in real estate transactions is receiving clear title. In most residential real estate transactions, the seller is required to deliver a current abstract of title, which shows ownership, mortgages and other items which affect the use of the property. While this review is

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generally initiated by the buyer's mortgage lender, it is imperative that a buyer be aware of all items affecting title. There could be items which are not of concern to a mortgage lender, but may be objectionable to a buyer. Common items are covenants which restrict or limit certain uses of a property, or the existence of a homeowner's association which requires the payment of periodic dues and assessments. Other areas are easements or use agreements, which may grant others the right to use or access the property. It is important to note that many "standard" residential purchase agreements provide that the buyer will receive "marketable title", which generally does not include objectionable covenants or the existence of a homeowner's association. The buyer should pay special attention to these areas on the residential property disclosure statement and should obtain copies of such covenants and restrictions prior to signing the purchase agreement. If those items are not readily known or ascertainable, the purchase agreement should allow the buyer a short period of time to review those items and to terminate the purchase agreement if unacceptable.

Again, all provisions of a residential purchase agreement have a precise meaning and application, and will determine the respective rights of the buyer and seller. In order to avoid disputes or misunderstanding, it is advisable for a buyer to thoroughly understand all such terms and conditions prior to signing.

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