



## **Real Estate Purchase Agreements: Not Exactly Ten Pages of Legal Mumbo-Jumbo** by Evan C. Pappas

In considering a purchase or sale of real estate, whether represented by a real estate professional or braving the process on your own, one of the most important first steps in the process is drafting and signing the Agreement of Sale. The Agreement of Sale is the seller's promise to sell and the buyer's promise to buy the subject property. This document is often encountered as a standard "form" agreement with a white top sheet and carbon sheets (pink and yellow) underneath; however, it can appear in any number of forms, some drafted by attorneys and some drafted by a non-attorney seller. When evaluating the Agreement of Sale, it is important to know that although it appears to be a complete form, with little room for amendments, you have the right to make changes to this important document governing the transaction.

Sellers and purchasers will often defer to the expertise of their real estate professional and have him/her fill in all of the required spaces without having read or understood the document. Relying on a trusted real estate professional may be acceptable, but one must realize that the Agreement is a *contract* and that your signature will be firmly affixed to the last page of the document binding you to all of the terms contained therein - *even if you did not read them!* In some circumstances, the contract will leave you responsible for a liability you did not intend, or worse, purchasing a property you do not want to buy.

Of course, the Agreement of Sale contains the usual elements: the names and addresses of the seller and the buyer, the purchase price, and the anticipated date of settlement. Besides the basic information, the Agreement of Sale contains the understanding between the buyer and the seller as to what, besides the purchase price, the terms of the deal are. For example, a standard Agreement of Sale will contain a section entitled "Representations." Ironically, the usual Representations section puts the buyer on notice that any representations that might have been made by the seller or seller's agent during visits to the property are *not* part of the Agreement unless they are expressly incorporated or stated in the Agreement. Furthermore, the Agreement might state that the buyer has inspected the property and accepts it in its present condition.

Therefore, if you are a buyer, and the seller has made representations to you that form part of the basis for your interest in the property, then get it in writing! Specify each and every representation that you intend to rely upon and have this incorporated in the Agreement or as an addendum to the Agreement.

Additional items that a seller or buyer may introduce into an Agreement of Sale are "contingencies." A contingency written into the Agreement is a requirement by one party that a certain condition be met before the Agreement becomes fully enforceable. One example is the mortgage contingency. Often these contingencies require that the buyer provide proof to the seller within 30 days of the signing of the Agreement that the buyer has sufficient financing to pay the purchase price. If such financing approval is not provided to the seller within this time frame, the contract may become null and void.

Another important contingency that a buyer may want to consider including in the Agreement is a well written home inspection contingency. This contingency is important because in the vast majority of circumstances, a home buyer does not have the benefit of a home inspector's report until after the Agreement of Sale has been signed by the parties. Therefore, this contingency protects the buyer if the home inspection reveals hidden conditions that make the house less desirable than originally thought.

Many standard form agreements already contain a home inspection contingency section. However, it is usually best to customize the provision to fully address your particular situation. For example, a home inspection contingency could provide that if the buyer's home inspection reveals problems requiring more than \$2,000 to repair, then the buyer has the option of canceling the contract. Another important modification to the standard form might include a provision requiring the seller to remedy any problems up to a certain dollar amount. However, a buyer should be wary of provisions deeming the property accepted "as-is" if problems are not corrected within a certain time frame. Such a provision may bind the buyer not only to pay the purchase price, but would leave the buyer without recourse for the defective conditions discovered by the inspector.

A number of potential pitfalls exist for a buyer and seller if all the terms of the Agreement of Sale are not thoughtfully addressed prior to signing the Agreement. Once the Agreement is signed, it may be too late to renegotiate. It is advisable to engage a qualified professional in the preparation or evaluation of a proposed Agreement of Sale and to carefully read the document.

For any questions about real property transactions, please contact the author at 717-763-1121 or at [pappas@shumakerwilliams.com](mailto:pappas@shumakerwilliams.com).

[www.shumakerwilliams.com](http://www.shumakerwilliams.com)