



**HAPPY NEW YEAR!
2020**

IPI Weekly Article

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Buying a Home

What is it?

Finding the right home to buy can be a challenging prospect but knowing what to expect can make the process easier. You can (1) buy through agents representing the seller and/or use a buyer's broker, (2) buy directly from an owner, or (3) shop the auctions and foreclosure sales. Once you find the house you want, you must make an offer, check for clear title to the property, and arrange for a home inspection. And after the closing, you can finally move into your new home.

Using an agent or buyer's broker

What a real estate agent can do

Real estate agents, real estate brokers, and Realtors? can guide you through the home-buying process and may be able to help with some or all of the following:

- Determining your housing needs
- Showing you properties and neighborhoods
- Suggesting sources and techniques for financing
- Acting as intermediary in negotiations
- Recommending professionals whose services you may need (e.g., an attorney, inspectors, appraisers)
- Providing insight regarding market activity in the area you're considering
- Disclosing positive and negative aspects of various properties that might otherwise have escaped your attention

Who the agent works for

The real estate agent generally works for (and is paid by) the seller. The agent must generally give his or her client (the seller) any information that could affect the seller's position. However, there are many types of buyer-seller-agent arrangements, such as:

- The traditional seller's agency arrangement, whereby a seller employs an agent to list a property and solicit buyers. The seller pays the agent's commission when the house is sold.
- Single-agency brokers, who list properties and solicit buyers for a seller; they also find homes and negotiate prices and terms on a buyer's behalf. To avoid a conflict of interest, the same firm does not represent both parties in a single transaction.
- Dual-agency brokerage arrangements, whereby a single agent may represent both the buyer and the seller in the same transaction. The agent agrees not to disclose confidential information that could benefit one party at the expense of the other.

Finding a good real estate agent

If you want to work with a real estate agent, be sure to select an agent with a good reputation and expertise in the neighborhood(s) you are considering. Here are some steps you can take to find a good real estate agent:

- Find out the names of the brokers and agents who work in the area where you want to buy (check the yellow pages).
- Contact the local real estate board and the state real estate commission to determine if any complaints have been registered against agents or brokers with whom you may want to work.
- Call some of the most promising brokers. Tell each one what kind of buyer you are (e.g., a first-time homebuyer, a veteran house hunter) and what you are looking for in a home. Ask the broker to put you in touch with an experienced agent who can meet your needs.
- Interview each prospective agent. Find out what he or she knows about the community and evaluate how well you might work together.

You may decide to work with more than one agent. Unlike a seller, a buyer generally does not enter into an agreement with one agent. So, if you're dissatisfied with the one you're working with, you're free to choose another.

Using a buyer's broker

Unlike a seller's broker, a buyer's broker works on your behalf. Buyer's brokers don't list properties; instead, they help you find the kind of home you want within your price range. Buyer's brokers may offer several compensation arrangements, including commission splitting with a seller's broker or an hourly fee. In an hourly fee arrangement, the buyer's broker's fee is not necessarily tied to the selling price, so the broker has no reason to focus his or her search on more expensive homes. Buyer's brokers can also help you purchase homes that aren't listed with real estate agents, such as "for sale by owner" homes (see below).

However, using a buyer's broker can have disadvantages. They can be expensive, especially if you choose to compensate them on an hourly basis. And some seller's brokers are reluctant to split their commission with buyer's brokers, which may result in your buyer's broker limiting the properties you are shown if you choose a commission-splitting compensation arrangement.

Buying from the owner

In a "for sale by owner" (FSBO, pronounced "fizzbo") situation, the owner offers the home for sale without the involvement of an agent, and thus avoids paying brokerage fees and commissions. You deal with the seller directly, rather than through the seller's agent. You should be even more thorough when inspecting the property in the case of a FSBO. That is because a seller generally has no requirement to volunteer information about the condition of the property, whereas a broker must generally disclose all material information that he or she possesses.

Without the involvement of real estate brokers, the parties typically require assistance to complete the necessary paperwork to finalize the transaction. Before you make an offer to purchase FSBO property, seek the advice of your attorney. A written offer to purchase real estate becomes binding when it is accepted by the seller, so you should make sure you have adequately protected yourself against problems that may subsequently arise.

At a minimum, your offer to purchase should be contingent upon satisfactory inspections (e.g., structure, termites) and the ability to obtain financing. If a purchase and sale agreement (also known as a P&S) is to be executed, your attorney should review that as well.

Buying at an auction or foreclosure sale

Property secured by a loan on which the debtor has defaulted is known as distressed property and is often subject to foreclosure proceedings. You may be able to purchase a home at below-market prices during any of the following three phases of these proceedings:

- If the owner of the home is in default but foreclosure proceedings haven't yet been initiated, you can still buy the property directly from the owner. However, you may have difficulty getting clear title to the property (see below). In addition to buying the property from the owner, you may have to pay off various other lienholders.
- Properties that have been foreclosed upon are offered at auction or foreclosure sale. If you are the highest bidder, you may purchase a home at a price covering the remaining defaulted mortgage balance and attendant costs. Some junior liens are eliminated before the foreclosure sale, thus clearing the title, but you will still be responsible for paying any outstanding property taxes.
- Properties that were offered at auction but did not sell revert to the lender, and you may then purchase such property directly from the lender. You may get a bargain on a home this way, and you should get clear title, but you will still be responsible for paying any back-property taxes.

Buying property at an auction may require a substantial cash outlay. Find out before the auction how much of a cash deposit you will need, whether the deposit is refundable, and whether financing will be available, or even accepted. In contrast, when you buy directly from a lender, you generally get good financing terms as well as a reasonable purchase price.

Because of the possibility of physical damage to distressed property or creditor liens against its title, there is a great amount of risk involved with purchasing it, so you'll want to do some thorough research before you do so. Start out by:

- Enlisting the aid of a professional home inspector to inspect the property thoroughly. Add the cost of any necessary repairs to the price of the house to get a better idea of what it will actually cost to buy the house. If you can't inspect the property in advance of the sale, make your offer to purchase contingent on a satisfactory home inspection.
- Investigating the property's title for any junior liens or other title defects. Factor into the total cost of purchasing the house the money you'll spend to find and correct title problems. Your attorney should include a guarantee-of-clear-title clause in your offer to purchase.
- Having the property appraised. It's important to know how much a home is actually worth before you can determine if the selling price is reasonable.

What to do once you find the right house

Once you find the house you want, it's time to make an offer. Have your attorney review your offer to purchase before you submit it to the seller. If accepted, it becomes a binding agreement between you and the seller. It's important to make sure that everything you want included in the deal is contained in the initial contract, because once it is signed by all parties, it may be too late to add or change anything.

Tip: *In some states, the contract simply contains an accepted offer to purchase a particular property at a specified price. Once the purchase price has been accepted, other contract terms are negotiated in the purchase and sale agreement.*

Your offer may not be accepted. If the seller wants to negotiate, a counteroffer is made. If the counteroffer is not acceptable, you can allow it to expire or make another offer. Negotiation can go on for weeks, although an agreement is typically reached by the second or third try.

Be sure you're getting clear title to the house

Before closing, an attorney or a title specialist should conduct a title examination. The purpose of the title examination is to discover any problems (such as outstanding liens or judgments against the property, unpaid taxes, ownership disputes, etc.) that might prevent you from getting clear title to the home. Generally, title problems can be cleared up before the closing or immediately after by applying some of the sale proceeds to clear encumbrances. But in some cases, severe title problems can delay the closing or may even cause you to consider voiding your contract with the seller. In order to preserve your option to void the contract, make sure a guarantee-of-clear-title clause is included in the purchase and sale agreement.

You should also consider purchasing an owner's title insurance policy. Before a title insurance policy is issued, a title report is prepared based on a search of public records. This report gives a description of the property, along with any title defects, liens, or encumbrances discovered in the course of the title search. After reviewing the report, the title insurance company issues an owner's title insurance policy, which protects you against additional title defects that were not discovered in the title search (e.g., forged signatures). The cost of this insurance can vary significantly from state to state and among insurance companies, and you will generally pay a one-time premium.

Tip: *Owner's title insurance coverage should not be confused with lender's title insurance, which is required by most mortgage lenders. Lender's title insurance simply protects the lender's lien against the property, making the mortgage more attractive on the secondary market. Lender's title insurance does not protect your investment in the property. Thus, you should purchase owner's title insurance in addition to the required lender's title insurance.*

Be sure the house is in good condition

Since a house is such a major investment, you should learn as much as possible about the condition of a house before you buy it. A professional home inspection will uncover both positive and negative aspects of the home.

After conducting the inspection, the inspector will create a report explaining his or her findings. If the inspector's report indicates that the house needs minor or moderate repairs, such as a new roof or water heater, the seller may lower the price of the home to cover the cost of making the repairs. The seller may also agree to make the repairs before you buy the house. If major flaws are uncovered in the course of the inspection, you may choose not to buy the home. As long as your purchase offer is contingent upon a satisfactory inspection and you act within the time period specified, you should have no trouble walking away from the house and receiving a full refund of your deposit if the inspection uncovers any major problems.

When does the house actually become yours?

The house becomes yours after the closing (also called settlement, title closing, or closing of escrow). The purpose of the closing is to transfer ownership of the property from the previous owner to you. At the closing, you will fill out the required paperwork, which is necessary to make the transfer of ownership official. Closing can be an arduous process, but once it's over, you'll be the proud new owner of a home!

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