

INFORMATION ON BUYING AND SELLING A HOUSE



PUBLISHED BY

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INTRODUCTION

Buying a house is generally the largest financial transaction that a person makes in his life. Buying a house can be a wise financial move or it can be a foolish one. You need to be very careful to make sure that you get a sound house and that the price and the terms are right. If you want to own your own house, if you work for it and plan for it, there is no reason why you should not.

Selling a house is no easy matter. Not only do you have to decide whether or not to sell it yourself, but you have to discover what the market value of it is, determine the best way to put it on the market and advertise it, how to show it to prospective buyers and how to handle the buyer's offers and negotiations. Then you have the problems of financing, providing a marketable title (abstracting), conveying title and settlement costs. True, it does sound like a complicated and possibly confusing process, but help is available.

There are many professionals who are willing to come to your aid. There are plumbers who will inspect the property for mechanical problems, pest inspectors who will look for termites or their damage, surveyors who will identify the exact boundaries of the property looking for encroachments, abstractors who will help to provide a marketable title, attorneys who will help to determine if you do indeed have a marketable title and help clear up any title problems. Also available are insurance agents, both for home owner's hazard insurance and title insurance, appraisers who will help you to determine the value of the property, and real estate licensees who can help you to orchestrate this whole process into an orderly affair.

This pamphlet has been prepared by the Oklahoma Real Estate Commission to help you understand the process involved in buying and selling a home. In it, you will find the basic answers to some common questions and it is hoped that you will become more knowledgeable.



ROLE OF THE LICENSEE

You can buy or sell real estate without the services of a real estate broker or sales associate, if you have the knowledge and the time to devote to this task. However, most of us do other things to earn a living and thus cannot take unlimited amounts of time from work to devote to real estate activities.

Many people do seek help from licensed real estate professionals. You will find that they have a great deal of information and background available to help you. Transfer of ownership of property is a fairly complicated process. Mistakes can be costly. It is usually considered more expedient for us to hire a trained representative to help us solve our particular real estate problems.

A real estate broker or sales associate is a person who is employed to work for the benefit of a party in a transaction or service to assist a party in a transaction, in negotiating the sale, purchase, lease, or exchange of real property belonging to others. His compensation is usually in the form of a commission contingent upon success. Primarily, the licensee's function is to bring together potential buyers and sellers and to act as negotiator between them in order to bring about a sale of the property.

Whom the licensee represents can be important to you. For example, if a licensee showing you homes legally represents the seller, he or she is obligated to seek the highest possible price for the seller and thus may not be able to advise you, the homebuyer, what approximate lower price the seller may be willing to accept.

Or if, as a homebuyer, you tell a licensee the true "top price" you are willing to pay for a home, such information might be passed on to the seller without your knowledge or approval. That could result in the seller asking for that higher price and your paying more than you otherwise might have paid. A homebuyer should carefully consider what is confidential information and inform the licensee it is confidential information. Some real estate licensees may agree to represent you, as the homebuyer, and some licensees are beginning to specialize in legally representing buyers.

A good real estate company performs many services for customers and clients. A licensee is bound by law to deal with you honestly. Their specific services may vary from company to company. Normally, each company has all the basic services that are needed by the average person who has a house to sell or who is in the market to purchase a house.

Should you elect to utilize the services of a licensed real estate licensee, you will sign an employment contract with that person. It has the function of spelling out the terms under which the licensee will work for you with the purpose of obtaining the most advantageous transaction for you. You and the broker may agree to include items that are not a part of the standard form contract. You may also agree to exclude some items. If so, these should be written into the form and be clearly understood. Many items in a standard contract are negotiable, including the broker's commission.



BROKER RELATIONSHIP ACT

Oklahoma law requires that, after November 1, 2000, in every real estate sales transaction involving a real estate licensee, the licensee must clearly disclose IN WRITING to the buyer and seller, the fact that he or she is working for the benefit of the party in a transaction or assisting a party in a transaction.

Once the "relationship disclosure" is made, the real estate licensee's conduct in the transaction shall be in conformity with the Broker Relationship disclosure. The payment of compensation or the obligation to pay compensation to a broker is not necessarily determinative of a particular brokerage relationship.

A real estate licensee's most valuable asset is his or her reputation in the community. Ask friends who have recently bought or sold a house if they were satisfied with their associate.



RESIDENTIAL PROPERTY CONDITION DISCLOSURE ACT

On July 1, 1995, the Residential Property Condition Disclosure Act became effective. The act requires that any seller of one and/or two dwelling units who is: 1) represented by a real estate licensee; or 2) not represented by a real estate licensee but who receives a written request from a prospective purchaser, must complete and make available to the purchaser a Residential Property Condition Disclosure Statement or a Residential Property Condition Disclaimer Statement. The intent of the law is for the seller

to inform a prospective purchaser about the condition of the property.

The law provides that a completed disclaimer or disclosure form is valid for 180 days. After the expiration of 180 days, the seller is required to complete a new form. The seller should deliver either statement to the purchaser as soon as practicable, but in any event it shall be delivered before the seller accepts an offer to purchase.

The disclosure form includes identifications of items and improvements which are included in the sale and whether the items or improvements are in normal working order. The disclaimer form makes three statements: 1) the seller has never occupied the property; 2) makes no disclosures relating to its condition; and 3) the seller has no actual knowledge of any defect concerning the property.

The forms and a law pamphlet are available at the Oklahoma Real Estate Commission.

The Real Estate Commission does not have jurisdiction over this law, but does have jurisdiction over a real estate licensee who fails to comply with this act.



SELLERS REQUIREMENT TO DISCLOSE LEAD-BASED PAINT AND HAZARDS

The requirement for lead-based paint disclosure only applies to residential dwellings which were built before 1978. It could also affect new homes started prior to 1978 and not completed until 1978. The effective dates for disclosure of lead-based paint and lead-based paint hazards are September 6, 1996, for owners of more than 4 dwelling units and December 6, 1996, for owners of 4 or fewer dwelling units. Specifically, the new HUD/EPA rules state that:

1. Sellers must disclose any known lead-based paint and hazards in homes. They also are required to give buyers any reports that are available from tests that may have been performed before sale.
2. Sellers must give buyers a pamphlet about how to protect families from lead in homes.
3. Home buyers must receive an optional 10-day period to conduct a lead-based paint inspection or risk assessment at their own expense. The number of days can be changed by mutual consent of the buyer and seller.

4. Sales contracts must include provisions ensuring disclosure and notification or a seller can utilize the form developed by HUD and EPA.
5. Sellers and real estate licensees all share responsibility for ensuring compliance with the rule.
6. Housing not covered—Housing built after 1977, zero-bedroom units, such as efficiencies, lofts and dormitories, leases for less than 100 days, such as vacation houses or short-term rentals, and housing for the elderly or handicapped (unless children live there.)

For copies of the pamphlet (English or Spanish), disclosure forms and a copy of the regulation, call the National Lead Information Center (NLIC) at 1-800-424-LEAD (5323).



BUYING A HOUSE

Before you contact anyone about buying a house you will have to make a number of important decisions. During the time when you are seriously thinking about buying a house you should become acquainted with the real estate market in your area.

TYPES OF HOUSING

To meet the many kinds of needs that people have, a number of different types of housing have been developed over the years. You need to know about them. You may find, due to your income level and your own special needs, that one kind of housing will appeal to you now and for the near future. However, you may shift to another style of housing later in life as your family needs change.

SINGLE FAMILY RESIDENCE—The single family dwelling has always been a very popular kind of housing. Each type of home has its advantages and disadvantages, and tastes vary in architectural styles. But one thing to keep in mind is that eventually all homes are resold to new owners. The more wild and unusual the type of construction the more difficult it will probably be to find a buyer.

DUPLEX—A duplex is basically two single family dwellings joined together. The middle wall separating the units is common to both. This type of housing offers an owner the opportunity to live in one side of the duplex and rent the other side. The income from the rental portion of the duplex may help the owner in paying for the entire property.

CONDOMINIUM—Condominium ownership is designed

to provide exclusive use and ownership of a portion of a larger property, plus shared use and ownership of common areas. The most popular application is in the apartment-style homes and townhouses currently being offered for sale throughout the country. Under the condominium arrangement, the individual owner buys the exclusive right to occupy the space where his unit is located. The owner also receives an undivided interest in the land and common areas, such as hallways, elevators, structure of the building, and as a rule, the recreation facilities. The common areas are administered by a board of directors elected by unit owners.

The major advantages of condominium ownership are that, despite living in the same building, each individual owner can buy, sell, or mortgage his unit like a single-family dwelling. The use of common walls, floors, and ceilings, and the ability to place more dwelling units on a given parcel of land have helped to reduce dwelling unit costs. The disadvantages of condominium living center on people getting along with each other at close range; and community living requires the sacrifice of some individual rights for the benefit of the group. For those accustomed to the freedom of a single-family residence, a set of house rules may be distasteful.

TOWNHOUSE—The townhouse combines features of a house and a condominium. The legal concept is that the owner enjoys the separate ownership of his dwelling, plus joint ownership of the common areas surrounding the dwelling units.

Since the townhouse owner owns his land and dwelling as separate property, presumably he may use and maintain it as he wishes. However, there may be mutual restrictions upon all separately owned lots and dwellings. The right to establish and enforce these restrictions is usually vested in an owner's association. The association can dictate what color an owner can paint his window shutters, how he can landscape the front of his lot and whether pets can reside in his dwelling. Also, title to the common areas is vested in the association, and it governs how these areas shall be used by the residents.

LOCATION

Next, decide on the type of housing you wish to purchase and the general location in which you want to live. Though needs differ from family to family, there are certain general guidelines which every potential homebuyer should consider. The following represents some of the

items you may wish to consider.

- (1) Availability and quality of schools in the area.
- (2) How close you are to your work.
- (3) Availability of shopping centers, churches and recreational facilities.
- (4) General condition of homes in the neighborhood.
- (5) Property taxes compared to similar houses in other neighborhoods.
- (6) Utility rates (gas, electricity, water, telephone).
- (7) Police, fire protection and garbage collection.
- (8) Availability of public transportation.
- (9) Is the property located in a quiet neighborhood or on an arterial street with heavy traffic?

PRICE

You must also give some thought to the approximate price range of the house you are interested in buying and how you are going to make the monthly payments once you have moved into the house.

You have no doubt heard many estimates of how much you should invest in a home, the most frequent admonition being, "Do not pay more than two and one-half times your annual gross income." In some instances this may be good advice. When should it be two times and when should it be two and one-half times income? Actually, these estimates are only a few of many factors which you should consider when deciding how much to pay for a home.

You may be able to afford to pay more than the standards usually suggested depending on your circumstances. You may be able to pay more than the average family if the principal wage earner has been regularly employed, has received regular job promotions and salary increases, and has a position which promises more of these.

The following are some items that may be considered to help determine how much monthly payment you can afford.

- (1) if you have already purchased and paid for almost all of the furniture and appliances you feel you will need for the home.
- (2) whether or not you have obligated yourself heavily for the purchase of a car, clothing or other personal goods.
- (3) whether or not your total family size is so large that it takes a major portion of your income.

STOP BEFORE BUYING



Once you have found the house that seems to be “just perfect” for you, you may want to close the deal right away and move in! STOP! Before you get swept away with the excitement of the moment there are a number of things that you will want to check. The time to ask ques-

tions and check facts is before buying.

1. **CONDITION OF THE HOUSE**—Is the electrical service in good condition and is it ample for your needs? What is the condition of the heating system? Is the basement in good condition or is it wet and damp? Is the house properly insulated? Is the roof in satisfactory condition? Are the interior walls solid and suitably finished (dry walls or plaster walls)? Any evidence of leaks or cracks? Are there roof gutters all around the house and adequate downspouts and splash blocks? Is there sufficient closet space for your needs? Do the doors and windows open and close properly? All of these items should be addressed in the seller’s property condition disclosure statement unless the property owner is exempt from completing such forms.

If you have any concerns you may want to have the house inspected by a person qualified to perform such work. The money you spend for such a report may be a very wise investment.

2. **DETERMINE LOT BOUNDARIES**—It is wise to ask that the seller have a surveyor check and mark the boundaries of the property. You may find that a part of the garage is on the neighbor’s lot. This sort of thing does happen!
3. **STATEMENTS MADE BY LICENSEE OR OWNER OF PROPERTY**—If you are concerned about statements made to you by the property owner or the licensee, what should you do? Ask them to put it in writing.
4. **ZONING RESTRICTIONS**—Ask how the area is zoned. Zoning is established by local government which designates the type of buildings and how they may be used, such as: residential, commercial, industrial.
5. **RESTRICTIVE COVENANTS**—These are private agreements which restrict the use and occupancy of real property. Such things as the purpose of the structure to be built, architectural requirements, setbacks, size of the structure and aesthetics are only some

examples.

6. **CONTINGENCIES**—A contingency is a provision placed in a contract which requires the completion of a certain act or the happening of a particular event before that contract is binding. Often a buyer will submit an offer to purchase contingent upon his or her obtaining financing or rezoning. If there should be any conditions such as this, you will want to be sure that they are discussed and written into the purchase contract.
7. **TAXES**—Find out the cost of property tax (general) and if there are any special assessments regarding roads, streets, sewers, electrical, etc. The taxes may increase with the purchase of a home generally the tax year after the purchase.
8. **EASEMENTS**—An easement is a right or privilege one party has to the use of land of another for a special purpose consistent with the general use of the land. Examples of easements are those given to telephone and electric companies to erect poles and run lines over private property, easements given to people to drive or walk across someone else's land, and easements given to gas and water companies to run pipelines to serve their customers. Find out what easements exist on the property you intend to purchase.

YOU ARE NOW READY TO MAKE AN OFFER

Most real estate licensees use standard forms for offers, filling in the numbers and exact terms. You should be extremely careful about what is stated. The terms of the offer will be the terms of the sale, if accepted. **BE SURE THAT THE CONTRACT IS EXPLAINED TO YOU, ITEM BY ITEM, BEFORE SIGNING THE CONTRACT.**

If you are buying through a real estate licensee, the licensee will assist you in writing up the offer. If not, work with a lawyer to draft the sales contract. Remember, a real estate licensee is not a lawyer and cannot give you legal advice. If you have any doubts about the sales contract, consult a lawyer.

The following items should be clearly stated in the contract which you submit for the seller's consideration:

1. ITEMS TO BE INCLUDED IN CONTRACT:

- (a) The contract must state the sales price, payment provisions and be properly signed. If there are no

provisions as to the method of payment, the law presumes it is to be a cash sale. The contract should state, when applicable, the amount of deposit, the amount to be paid at closing, the method of payment of the balance if you are assuming an existing mortgage or to qualify for a new mortgage, and any other pertinent financial provisions. This information would appear under the financing provision section of the contract. If it is a Contract for Deed, do you have the right of prepayment without a penalty?

- (b) Make sure the contract contains everything in the house or attached to it that you intend to buy. Many misunderstandings arise over appliances, drapes, carpets, fireplace tools and screens, etc.

These items and anything else to remain with the house should be discussed and included in the contract. **CHECK THE HOUSE CAREFULLY TO SEE WHAT IS TO REMAIN WITH THE HOUSE.**

- (c) The description of the property should be sufficient to positively identify the property. It is suggested that the contract include the legal description in the seller's deed, as well as the street address.
- (d) The contract should state how long the offer is to remain in effect. In other words, how long does the seller have to accept the offer? The typical clause states "this offer will become null and void unless it is accepted by April 18, 19__". This language will automatically terminate the offer unless the seller reacts within the stipulated time.
- (e) If financing is necessary, how long after the offer is accepted do you have to arrange financing? This should be stipulated in the contract.
- (f) The time of closing the transaction and the time that possession of the premises is to be given to the buyer, may not be the same. To prevent possible misunderstanding, the date of possession should be stated.

2. **EARNEST MONEY DEPOSIT**

It is customary for a purchaser to put down a cash deposit when making an offer to purchase real estate. This cash deposit, commonly referred to as "earnest money," binds the purchaser and gives evidence of his or her intention to carry out the terms of the contract. The contract must be in writing and signed by all parties.

Normally, this deposit is held by the broker in his trust account. The contract should state how the earnest money is to be held. If the sale goes through, it is applied to the total price. If the offer is not accepted, or if the seller fails to perform or if the offer is contingent upon obtaining financing, or if for any reason it is not your fault that the transaction does not close, you are to be refunded the deposit, unless a dispute arises. However, if you fail to follow through on the transaction after your offer is accepted, you may forfeit the earnest money deposit.

3. OFFER PRESENTED FOR SELLER'S ACCEPTANCE

Once the contract has been prepared the licensee will take or convey the offer to the seller, as soon as possible. For an offer to become binding, the seller must accept everything in it as presented. The rejection or change of even the smallest portion of the offer is a rejection of the entire offer and voids the contract. You have the option to accept the changes made by the seller or you may make a counteroffer. If you do not make a counteroffer and accept the seller's changes, the contract will be valid.

When the offer is accepted, there is a binding contract between you and the seller. In case of nonperformance, either party can go to court and seek specific performance by the other party to the contract.

4. FINANCING

You are expected to arrange financing in accordance with the terms of the contract after your offer has been accepted (Refer to the section on financing) and within the time limit specified in the contract. Failure to do so could be construed as "failure to perform" and jeopardize your earnest money deposit. Therefore, it is very important that you make every effort to obtain financing if this is a stipulation in the contract.

5. TITLE EXAMINATION

Most purchase agreements are conditioned on the seller being able to convey good title. Usually, the seller must provide the buyer with an Abstract of Title within a specified time limit. A title search should be done by a lawyer of your choice, who will examine the records of the transfers of ownership of the property, mortgages and other claims of record. If someone else has a claim to the property, the seller's title to it is not "clear." You are not obligated to complete the purchase in that case unless it is cleared by

the seller at his expense. Your lawyer will evaluate the title, and advise you if your title is clear.

6. **TITLE INSURANCE**

Insurance is available to protect a real property owner or lender up to a specified amount against certain types of loss, i.e., defective title or unmarketable title. There are two types of title insurance:

- (1) The lender's policy which is for the benefit of the mortgage lender.
- (2) The owner's policy which is for the owner's benefit.

7. **INSURANCE**

The homeowner's policy is a single package policy designed to give the property owner protection against a wide variety of risks. These include the regular fire, windstorm, and other natural elements plus other possible risks. These additional risks might include liability to third parties, theft, water damage, explosion, vandalism, riot and commotion, fall of aircraft, smoke and glass breakage. The homeowner is able to secure all of these coverages in one policy at a lower cost than if purchased under separate endorsements.

Homeowners insurance policies do not cover floods. If the property you are considering is in a flood plain, discuss the possibility of obtaining flood insurance with your insurance agent. Information about flood insurance may be obtained from the Oklahoma Water Resources Board at (405) 530-8800.

8. **CLOSING**

When all the inspections and examinations are successfully completed, and the financing has been arranged, the transaction can be closed.

In most parts of Oklahoma, this is done in a face-to-face meeting of the buyer, seller, licensees and representatives of the lender. Occasionally, attorneys may be present representing either party. The meeting usually takes place at the lender's office, a closing company, the broker's office or in the office of an attorney. All the papers are signed and exchanged and the seller is paid. The buyer will generally have to pay money at that time to cover the downpayment and closing costs. The lender will tell you in advance how much will be required.

9. **RECORDING**

To establish clear title to your property, the deed you receive must be recorded in the county in which the

property is located. You should be sure this has been arranged and will be done as soon as possible after the closing. If it is not done, and another person received title to the property and records it first, litigation is sure to follow which could be very costly if you are to establish a clear title.

METHODS OF FINANCING A HOME

Almost everyone who buys a house borrows the money to pay for it. This is done most often through a note and mortgage, but is sometimes done by a contract for deed.



A mortgage involves making the house itself the security for the loan. The buyer receives the deed from the seller, and so becomes the legal owner, subject to the mortgage. The buyer gives the lender the right to foreclose and obtain possession of the house if he fails to repay the loan. This is called a mortgage. Typically mortgage loans are repaid over 20 to 30 years. Payments are made each month and include both principal and interest.

In a contract for deed purchase, the seller in effect, extends credit to the buyer. The seller remains the legal owner of the house and receives monthly payments from the buyer which include principal and interest, usually over a period of several years. Contract for deed sales are usually made when a typical mortgage loan cannot be obtained, and the buyer and seller are both anxious to do business.

This type of financing is not always in the best interest of either the buyer or seller. An attorney should be consulted.

There are many factors to be considered when searching for a loan. Terms may vary considerably even in the same town.

- (1) **RATE OF INTEREST.** Interest rates do vary depending upon the nature of the loan. It is important to shop for the best possible rate available at the time you are considering the purchase of a house. For example, here is what happens to your monthly principal and interest payment when the interest rate is raised from $9\frac{3}{4}\%$ to $10\frac{1}{2}\%$ on a 30-year loan. On an \$80,000 loan this would increase the monthly payment from \$688.00 to \$732.00, an increase of \$44.00 per month. At $11\frac{3}{4}\%$ interest the monthly payment would be \$808.00 per month, an increase

of \$120.00 per month compared to the same loan at 9³/₄% interest.

- (2) **LENGTH OF MORTGAGE PERIOD.** The longer the period of the mortgage, the less each monthly payment, but the total interest you pay is more. Lenders differ in the maximum number of years for which they make mortgages, depending upon the age of the house and other homes in the neighborhood. Most home mortgages are for periods of 20 to 30 years.

Some loans may be obtained with a “balloon” payment which permits smaller monthly installments for the first few years for, say three years, at which time the full unpaid balance, or balloon payment becomes due.

CAUTION: It is often assumed that if the payments are made the lender will renew and extend the final balloon payment for another limited term of small principal payments. But the lender is by no means legally obligated to do so, and circumstances can force the lender to require a full payoff on the note when due.

- (3) **ACCELERATION CLAUSES.** You should pay careful attention to what will happen if payments are not made on time. In many cases, the terms of the loan provide that if there is a default in payments, or a failure to meet other requirements such as insurance or taxes, the entire debt is accelerated and becomes due at once.
- (4) **DUE-ON-SALE CLAUSE.** If a mortgage contains this clause, the mortgagor is required to pay off the mortgage debt, at the lender’s option, when the property is sold. This clause eliminates the possibility of the buyer assuming the mortgage without the lender’s consent.
- (5) **PREPAYMENT CLAUSE OR PENALTY.** This permits paying off the mortgage before the end of its term. This right is necessary if refinancing is to be possible or if you want to sell before the mortgage is paid in full. Many people do not remain in the house they have bought for the full term of the mortgage. To be able to buy a new house, you must be able to pay off your old mortgage when you sell or have the buyer qualify and assume the mortgage. Many lenders charge a penalty for prepayment, but not all do. You should ask about this.
- (6) **INSURANCE AND TAXES.** Lenders usually require you to insure the property. Many lenders

require you to prepay your property taxes to the lender. This is called “escrowing” the taxes. The lender holds the money each year until the taxes are due, to be sure they are paid; however, your monthly payment may include money for taxes and insurance.

- (7) **DOWN PAYMENT.** In order to obtain a mortgage loan, you will be required to make a down payment. The amount of the down payment will depend on the lender and on the type of loan. The federal government insures many home loans. By protecting the lender against loss in that way, it makes loans possible for people who can only afford to make a small down payment.
- (8) **ORIGINATION FEE.** When a borrower makes application for a mortgage loan, the lender incurs a number of expenses which includes such things as the time its loan officer spends interviewing the borrower, office overhead and the costs to process and close the requested loan. Some lenders may charge a fee called the origination or loan origination fee to pay the cost of these administrative expenses. The fee is quoted as a percentage of the loan amount, for example, one point. “Points” are percentage points of the amount of the loan. One point = 1.0%. Thus a lender quoting a loan origination fee of one point is saying that, for a \$65,000 loan, its fee to originate the loan will be \$650.00

The lender may also charge additional “Points” in order for the borrower to buydown or obtain a lower interest rate. These “Discount Points” may be in addition to the loan origination fee. Finally, in addition to the origination fee, the lender may charge other expenses incurred in making the loan including, but not limited to, fees for credit reports, appraisals, title searches, loan underwriting, mortgage filings, surveys and so on.

- (9) **TYPE OF LOAN.** Real estate loans today are categorized into three general types. They are Veterans Administration (VA) direct loan and loan guaranty programs, Federal Housing Administration (FHA) insured loans, and Conventional Loans which include any loans not guaranteed or insured by a Federal or State agency. The conventional loan lender may require private mortgage insurance (PMI), similar to FHA’s mortgage insurance that is government insured. However, PMI is made by private companies and not the government, This insurance is usually required for loans over 80% loan value.

(a) **Veterans Administration Loan.** The main purpose of the VA loan is to assist veterans in

financing the purchase of reasonably priced homes, including condominium units and mobile homes with small or no down payments.

VA loan financing is available only to veterans and certain unremarried widows and widowers. VA financing is limited to owner/occupied residential (1 to 4 family) dwellings. There is no down payment required although lender may request small down payment. With regard to home loans, the law requires that the VA loan may not exceed the reasonable value of the home. There is no prepayment penalty as is common with other types of loans. Buyers are prohibited from paying discount points (except in refinancing and certain defined circumstances); however, buyers can pay a 1 percent origination fee.

(b) **Federal Housing Administration Loan.**

Under an FHA insured mortgage, both the property and the borrower must meet certain minimum standards.

The interest charged on the loan cannot exceed the maximum authorized by law to be charged on FHA insured loans. This rate is set by the Secretary of Housing and Urban Development.

In addition to interest, the borrower is charged one-half of one percent per year of the outstanding loan amount as a premium for the FHA insurance, which protects the lender from loss, together with a onetime origination fee of 1 percent of the mortgage principal amount.

The property must be appraised by an approved FHA appraiser prior to the loan being made; this fee is normally absorbed by the buyer. FHA insures loans for up to thirty years. Thus the low closing costs, the relatively low down payment and the long amortization period permitted under FHA, have all aided in providing residential financing for millions of people who otherwise would not have been able to purchase a home.

Please note that FHA changes its regulations from time to time and current provisions should be ascertained from the lending institution or local FHA office.

- (c) **Conventional Loan.** A conventional loan is one that is neither government insured nor guaranteed. Since the conventional lender is not provided with either governmental insurance or a guarantee against loss, his risk is higher. The higher risk of conventional loans is reflected in both a

higher interest rate and a larger down payment requirement. The specific terms and provisions of the loan are established by the individual lenders and vary according to local market conditions, consumer needs, and state regulations.

- (10) **DISCOUNT POINTS.** Discount points are usually charged by a lending institution when the FHA or VA interest rate is less than the market, or conventional rate. As with service charge points, one point equals one percentage point (1%).

If a mortgage loan made at a fixed FHA or VA interest rate of 12 percent (12%) is compared to a similar mortgage loan made in the conventional mortgage market at 12½ percent (12½%) interest, the FHA or VA loan yields one-half percentage point less in interest. If both loans were offered to an investor at the same price, he or she would choose to buy the 12½ percent (12½%) loan. The only way to sell the 12 percent (12%) loan is to reduce the price, or discount it to bring up its yield.

Generally, one point of the mortgage principal is deducted for each one-eighth-percent ($\frac{1}{8}\%$) difference in the interest yield. In the case of the 12 percent (12%) and 12½ percent (12½%) loans, there is one percentage point difference in yield which equals four-eighths ($\frac{4}{8}$), therefore a difference of four percentage points would be discounted.



SELLING A HOUSE

TYPES OF LISTING AGREEMENTS

The basic types of listing agreements are: Open Brokerage listing, Exclusive Right to sell or lease listing agreement, Exclusive Brokerage Sell or Lease listing agreement, and Net Brokerage listing agreement.

OPEN LISTING

Under an Open Brokerage Listing, the owner lists his property with several brokers at a specified price, agreeing to pay a commission on that price or any other price that may be accepted by the owner. However, the owner retains the right to list his property with other brokers.

In an Open Listing the owner pays a commission only to the broker who is the procuring cause for the sale of the property. If the owner sells it to a buyer which he himself procures, he is not obligated to pay a commission to any broker holding the open listing. The disadvantage of this type of contract is that it is likely to produce quarrels over the commission if several brokers are involved.

EXCLUSIVE BROKERAGE LISTING

Under an Exclusive Brokerage Listing, the owner agrees that the commission for the sale will be payable only to the broker named in the listing agreement and agrees also that the property will not be listed with other brokers. However, if the property is sold by the owner to a buyer which he himself finds, then the broker is not entitled to a commission. An Exclusive Brokerage Listing, as compared to Open Listing, permits the broker to apply his best efforts, unhampered by possible interference from other brokers.

EXCLUSIVE RIGHT TO SELL OR LEASE LISTING

An Exclusive Right to Sell or Lease Listing agreement is like an Exclusive Brokerage Listing in all respects except the broker is given the sole and exclusive right to sell the property during the listing period. Even if the owner himself should sell the property to a buyer procured by the owner, the broker is entitled to a commission. The broker can apply his best efforts, secure in the knowledge that his right of a commission, and recovery of his expenses for advertising and soliciting, cannot be defeated by anyone during the listing period.

In general it is common for all listings to provide that if the property is sold within a stated period of time after the expiration of the listing, to any party with whom the listing broker negotiated and whose name was revealed in writing to the owner by the broker, then the owner must pay the broker his commission.

NET LISTING

A Net Listing, which can occur in connection with any of the four types of listings specified above, is a contract to find a buyer for the property at a certain net price to the owner. For example: The owner may give a Net Listing of \$12,000 on his property to the broker. If the broker finds

a buyer at \$12,000, he receives no commission. If he finds a buyer at \$15,000, he earns \$3,000 commission. In the latter case, the courts will strictly interpret the listing contract and if the terms are not clear and definite, there may be a ruling that the broker is entitled only to a fair commission and may not keep the full amount above the Net Listing price when it exceeds the usual commission. Of utmost importance in any listing agreement is the broker's duty of honesty, with his party.

Net Listings are generally being discontinued in the sale of developed property. They are frowned upon by courts, brokers' organizations and governing bodies. If the property sells for the net listed price or less, the broker receives nothing; if it sells for much more, the courts may not let him keep it all. In addition to there being no set price, an Open Net Listing does not obligate the owner to restrict his listing to one broker, which in this case may lead to serious consequences. Thus, on an Open Net Listing given to three different brokers, the brokers may quote three different prices on the same property, thereby casting a reflection on the honesty and integrity of the real estate business.

NOTE: Be sure you understand the terms of the listing agreement before you sign it.

MULTIPLE LISTING

Technically, a Multiple Listing is not a separate kind of listing. Generally, it is an Exclusive Right to Sell or Lease Listing, with the additional feature that the other participating brokers may also sell the property. Brokers, usually members of a local real estate board, combine their interests through the facilities of a central listing bureau. Any broker who is a member of the multiple listing exchange may sell any property registered with the exchange. When the property is sold, the listing broker and the selling broker divide the commission according to the multiple listing exchange agreement. In order to authorize this procedure, specific mention should be made in the listing agreement.

DETERMINING THE LISTING PRICE

One of the most vital services a competent licensee can render is that of offering his or her knowledge and expertise in aiding a prospective seller in determining a proper listing price. The licensee should help in arriving at a figure that hopefully is the market value. A licensee should not be a party to any listing containing a substantially inflated figure.

NET TO SELLER ESTIMATE AT TIME OF LISTING

Whenever a listing is taken on a parcel of real property, it is appropriate for the listing licensee to prepare an estimated net proceeds to the seller based upon the listed price and the financing arrangements assumed in the listing agreement. Another estimate should be prepared for the seller at the time an offer is received on the property.

TERMINATION OF THE LISTING

A real estate listing agreement may be terminated or subject to termination by: (1) Performance of the agreement by the broker; (2) Expiration of the listing period; (3) Non-performance on the part of the broker; (4) Revocation of the listing agreement by the owner (In so doing, the owner may be held liable to the broker for breach unless the owner has justified grounds); (5) Mutual Consent; (6) Death of broker or owner; (7) Insanity of broker or owner; (8) Destruction of the property; (9) Bankruptcy, except in any case where the bankruptcy has no effect upon the listing agreement in question or the subject property.

NOTE: As relates to termination by expiration of the listing period, under Oklahoma Real Estate Commission Rule 110.3 (a), a broker or sales associate may possibly be subject to a suspension or revocation of his or her license for making a listing or service agreement without a date of termination.

MARKETING THE PROPERTY

Once you have selected and employed a real estate broker, the problem of marketing the property becomes largely your employee's. His or her skill and knowledge in this area is a considerable reason for your having employed the broker.

The marketing of real property is divided into two primary activities: advertising the property and showing the property. There are many proven methods of both advertising and showing property. The methods to be utilized by the licensee should be left to his or her own discretion as long as such methods are not in conflict with good ethical practices, the Real Estate Licensing Code or the Real Estate Commission Rules.

Advertising residential property is usually done through local newspapers. The real estate licensee will make sure that the advertising is in no way in violation of the Fair Housing Laws.

Showing the property may provide some inconvenience for the owner. The licensee will try to arrange a time for showing that will be most advantageous for both you and the prospective buyer.

OFFER TO PURCHASE

Once an interested buyer has been found, the real estate licensee assists in the negotiations between the seller and the buyer. The method whereby this is done is called the Offer to Purchase. The licensee will work for the benefit of or assist the prospective buyer, depending on the relationship the buyer chooses in the preparation of the offer. This is most often done on a standardized contract form. The offer may also be prepared by an attorney. In either case, the buyer will have been informed as to the costs he will be expected to pay at the time of closing according to the terms of that particular offer. One of the functions of the selling associate is to keep the buyer informed of the transaction.

The licensee will bring the offer to the seller and discuss any and all aspects of it. One of the functions of the listing licensee is to keep the seller informed. For this reason, the licensee should prepare a statement showing the seller what costs he will be expected to pay and what the seller's net amount should be according to the terms of that particular offer.

The seller, before accepting an offer to purchase, must comply with the Residential Property Condition Disclosure Act and the Lead-based Paint Disclosure Act, which provides the purchaser with information regarding property conditions.

The seller does have the power of acceptance; however, the offer may be rejected or the seller may choose to make a counteroffer. In the event a counteroffer is made, the legal positions of the buyer and seller reverse. This process of counteroffers may continue until an agreement is reached or it becomes obvious that the buyer and the seller are unable to come to a meeting of the minds.

Once there has been a meeting of the minds, i.e., an agreement between the buyer and the seller, and a contract is executed, the house is considered sold. However, the terms of the contract need to be met. While the buyer is probably arranging financing, the seller is having the abstract brought to date so that the buyer's attorney can render an opinion of the title. The buyer usually has the right to arrange for a plumbing and termite inspection. The buyer's lending institution may require an appraisal of the property and a survey or lenders inspection certificate.

Depending upon the terms of the contract, there may be additional contract requirements to be met. The real estate licensee will make the arrangements for these while keeping the seller fully informed.

TITLE INSURANCE

Title insurance is becoming a more common part of real estate transactions in Oklahoma. This insurance insures the buyer against title defects that would normally appear in county records. The premium for this insurance is a one-time expense for the buyer and covers the period of time up to the time the buyer takes title. Often the lending institution will require title insurance be taken out to insure their interest in the property. There will, then, often be two title insurance policies on one property. One will be called the buyer's title policy and the other the mortgagee's title policy. The reason for the duplication is that the lending institution wants to see that there are no other liens superior to theirs and the buyer wants to see that there are no clouds on the title which would restrict his/her degree of ownership or use of property in the manner for which it was purchased.

CLOSING OR SETTLEMENT

The real estate contract will specify a date upon which closing or settlement will be held. Settlement is the act of prorating the various credits, charges and settlement costs in order to close the real estate transaction.

The Real Estate Settlement Procedures Act of 1974 requires that both the buyer and the seller be given copies of the settlement statements. These statements will allow you to have knowledge of all the settlement costs. The person who is conducting the closing will explain each item on the settlement statement. The closing can be conducted by the real estate broker, a closing company, the lending institution or an attorney. It is at this time that the seller conveys title to the property by way of a deed and receives, in exchange, the net amount of the agreed upon selling price of the house.

The settlement process is a very detailed one governed by the terms of the contract and the law. In many cases wherein an item is not covered in the terms of the contract, the law will prevail. The sales contract can spell out responsibility regarding payment of expenses at settlement. Unless the terms of the contract specify otherwise, the seller is expected to pay the cost of the transfer taxes, the real estate commission, any attorney's fees incurred by

the seller, and a prorated share of the taxes, insurance, and utility bills up to the day of the settlement.

The buyer is expected to pay the title examination fee, the cost of drafting financing documents, recording fees, appraisal fee, cost of the survey or lenders inspection certificate, title insurance, and any attorney's fees incurred on behalf of the buyer; however, all costs are negotiable between the buyer and seller.

Possession of the property by the buyer is a negotiable item in the contract terms but usually takes place at the time of settlement or closing.

SELLER BEWARE

Have you ever been curious as to how so many people could become wealthy by using the techniques learned while attending one of the "nothing down" or "how to become wealthy in real estate" seminars? If there exists a secret formula for the rapid accumulation of wealth legally, it would not be for sale at any price.

The Oklahoma Real Estate Commission has become concerned about the fact that if several people quickly become wealthy dealing in real estate, others on the other side of the same transactions could have quickly and unfortunately lost everything they have invested in real estate. Usually, those who stand to lose are the sellers who agree to be a part of the buyer's unorthodox creative financing arrangement where such sellers assume the risks.

Essentially, there is nothing wrong with most innovative or creative financing if all parties are fully aware of the potential risks and fully understand the ramifications involved in such risks. However, the fact is that many owners (sellers) are not fully aware of the potential disasters that may occur when some of the unusual financing arrangements and techniques are utilized.

The Oklahoma Real Estate Commission has issued an alert to all real estate licensees in the State wherein they are advised to insure that all parties, in these types of transactions are fully informed as to the full ramifications of this type of activity and to further suggest appropriate financial and legal consultation.

With regard to the general public, the Oklahoma Real Estate Commission recommends that sellers secure competent advice and counsel before becoming involved in a real estate contract. The admonition is much more urgent when a seller is exposed to the possibility of some of the following typical financial arrangements or terms which could jeopardize the seller financially:

Cash to buyer;
Buyer walk-a-way;
Equity sharing;
Mortgage subordination clause;
Note without a mortgage;
Agreement to withhold recording a mortgage;
Seller to secure new loan prior to sale or closing;
Exchange of loan proceeds for items such as Treasury Bond;
Certain lease purchase plans;
Offer to purchase without valid earnest money deposit;
Promissory note as earnest money;
Contract addendum or terms not incorporated in the contract or listed as an addendum;
Rebate or zero coupon arrangements (particularly if not shown in the contract)
Concealing information from a lending institution.

The legitimate purchaser will not object to a seller obtaining competent financial and/or legal advice before the seller enters into a contract relating to real estate. Some of the special arrangements for financing may be appropriate and legitimate if properly structured and the parties all know the inherent risks. No effort is made to discourage the use of innovative or creative financing.



DISCRIMINATION

The Federal Fair Housing Acts of 1968 and 1988 provide that it is unlawful to discriminate on the basis of race, color, religion, sex, familial status, handicap, or national origin when selling or leasing residential property. It covers dwellings and apartments, as well as vacant land acquired for the construction of residential buildings and prohibits the following discriminatory acts:

1. Refusing to sell, rent, or negotiate with any person, or otherwise making a dwelling unavailable to any person.
2. Changing terms, conditions, or services for different individuals as a means of discrimination.
3. Practicing discrimination through any statement or advertising that restricts the sale or rental of residential property.
4. Representing to any person, as a means of discrimination, that a dwelling is not available for sale or rental.
5. Making a profit by inducing owners of housing to sell or rent because of the prospective entry into the neighborhood of persons of a particular race, color, religion, or

national origin.

6. Altering the terms or conditions for a home loan to any person who wishes to purchase or repair a dwelling, or otherwise denying such a loan as a means of discrimination.
7. Denying persons membership or limiting their participation in any multiple listing service, real estate brokers' organization, or other facility related to the sale or rental of dwellings as a means of discrimination.

In 1978, the United States Department of Housing and Urban Development entered into an Affirmative Fair Housing Marketing Agreement with the Oklahoma Real Estate Commission.

The agreement has the dual objective of ensuring that all professional services of a licensee are equally available to all persons regardless of race, color, religion, sex, familial status, handicap or national origin and ensures that all newly licensed persons in the real estate business are informed of and held to their responsibilities under the fair housing laws. The agreement also evidences the commitment of the Oklahoma Real Estate Commission to utilize its powers in achieving the objectives of the agreement and provides for the sharing of information by HUD and the Commission. HUD will also offer technical assistance to the Commission to further the agreement's objective.



OKLAHOMA FAIR HOUSING

The Oklahoma Fair Housing Law covers essentially the same ground as the federal law except that it also prohibits discrimination based on age or handicap.

Under this act, the Human Rights Commission is given the responsibility of providing technical assistance and public information to assist in preventing and eliminating discriminatory housing practices.

Affirmative action by the Human Rights Commission may include ordering payment of actual damages, punitive damages not to exceed \$5,000.00, ordering the rehiring or reinstatement of an employee or agent discriminated against because of obedience to the fair housing laws of the state.

ROLE OF THE REAL ESTATE COMMISSION

The law establishing the Oklahoma Real Estate Commission became effective on January 1, 1950. The Commission was established for the protection of the public and to carry out the statutory functions as determined by the Legislature.

The Commission consists of seven members. They are appointed by the governor and confirmed by the Senate for a term of three years, staggered so the terms do not all expire in the same year.

The primary responsibilities of the Commission are (1) administer and enforce the license law; (2) create and enforce necessary rules; (3) to license, by examination, only qualified applicants as real estate brokers and sales associates; (4) investigate possible and alleged violations of the license law and rules; (5) prescribe curricula and standards for entry level real estate educational programs; (6) prescribe curricula and standards for the continuing education of licensees; (7) administer the Education and Recovery Fund; (8) conduct hearings and possibly impose disciplinary actions against licensees for violations of the Law or the Rules and Regulations.

The Oklahoma Real Estate Commission is charged with the responsibility of investigating complaints which are brought to its attention involving real estate licensees whereby misconduct is alleged. The Commission's jurisdiction is over the license of the licensee involved in the complaint. The Commission may not force a licensee to specifically perform under the terms of a contract, nor may it recover damages. The complainant must file a civil action in order to seek specific performance or damages. If the dispute involves a small amount, the matter may be settled in Small Claims Court.

The following outlines the procedures which the Commission follows in investigating consumer complaints.

All complaints to be investigated by the Oklahoma Real Estate Commission are required to be in writing and filed on forms furnished by the Commission. The person registering the complaint must offer a clear and concise statement of the facts constituting the alleged violations.

A copy of the complaint is then forwarded to the licensee who must, within 15 days from receipt of a copy of the complaint, file an answer.

Once the licensee's response is filed with the Commission's office the matter is then turned over to an Investigator who is charged with the responsibility of inves-

tigating the complaint. Priority of investigation is normally based on the date of receipt of the complaint.

We hope that the foregoing aids the public to more fully understand the investigative and disciplinary procedures followed by the Oklahoma Real Estate Commission.

For general information, the public may contact the Oklahoma Real Estate Commission at (405) 521-3387. For specific legal advice, however, it is suggested that an attorney who is familiar with real estate law be contacted.



GLOSSARY OF TERMS

ABSTRACT OF TITLE—A written history from the original source of title to the present that summarizes all instruments of public record that affect a title.

ACCELERATION CLAUSE—A clause authorizing the lender to collect the total debt if a borrower defaults in his mortgage payments.

AMORTIZED LOAN—A loan in which the principal as well as the interest is payable in monthly or other periodic installments over the term of the loan.

APPRAISAL—An estimated value of property, obtained from an analysis of property.

APPRECIATION—An increase in the worth or value of a property due to economic or related causes.

ASSUMPTION OF MORTGAGE—Acquiring title to property which has an existing mortgage on it and agreeing to be personally liable for the terms and conditions of the mortgage, including payments.

BUILDING CODE—An ordinance specifying minimum standards of construction of buildings for the protection of public safety and health.

COMMISSION—Payment to a broker for services rendered, such as in the sale or purchase of real property; usually a percentage of the selling price of the property.

CONDEMNATION—A judicial or administrative proceeding to exercise the power of eminent domain, through which a government agency takes private property for public use and compensates the owner.

CONTRACT FOR DEED—A contract for the sale of real estate wherein the purchase price is paid in periodic installments by the purchaser who is in possession although title is retained by the seller until final payment.

COUNTER OFFER—A new offer made as a reply to an offer received, having the effect of rejecting the original offer, which cannot be accepted thereafter unless revived by the offeror's repeating it.

DEED—A written instrument that, when executed and delivered, conveys title to or an interest in real estate.

DEED RESTRICTIONS—Limitations placed upon the use of real property in the deed to that property.

EASEMENT—A right to use the land of another for a specific purpose, such as for a right-of-way or utilities.

EARNEST MONEY DEPOSIT—An amount of money deposited by a buyer under the terms of a contract. If the buyer defaults, it is usually forfeited. If the seller defaults, it is to be returned to the buyer. It is applied on the purchase price if the sale is closed. The earnest deposit may be an item of value other than money.

EMINENT DOMAIN—The right of a government or municipal quasi-public body to acquire property for public use through a court action called condemnation, in which the court determines that the use is a public use and determines the price or compensation to be paid to the owner.

ENCROACHMENT—A building or some portion of it, a wall or fence, that extends beyond the land of the owner and illegally intrudes upon some land of an adjoining owner or a street or alley.

ENCUMBRANCE—Any lien, such as a mortgage, tax lien or an easement, which is a restriction on the use of the land.

EQUITY—The interest or value which an owner has in his or her property over and above any mortgage indebtedness.

FHA LOAN—A loan, insured by the Federal Housing Administration and made by an approved lender in accordance with the FHA's regulations.

FORECLOSURE—A legal procedure whereby property used as security for a debt is sold to satisfy the debt in the event of default in payment on the mortgage note or default of other terms in the mortgage document.

JOINT TENANCY—Ownership of real estate between two or more parties who have been named in one deed as joint tenants. Upon the death of a joint tenant, his or her interest passes to the surviving joint tenant or tenants by the right of survivorship.

JUDGMENT—The formal decision of a court upon the respective rights and claims of the parties to an action or suit. After a judgment has been entered and recorded, it usually becomes a general lien on the property of the defendant.

LEASE—A transfer of possession and the right to use property, to a tenant for a stipulated period, during which the tenant pays rent to the owner.

LIEN—A right given by law to certain creditors to have their debt paid out of the property of a defaulting debtor, usually by means of a court sale.

LISTING AGREEMENT—A contract between an owner and a licensed real estate broker by which the broker is employed to sell real estate on the owner's terms within a given time and the owner agrees to pay a commission to the broker for his services.

MARKETABLE TITLE—(Merchantable Title) Good or saleable title, reasonably free from risk of litigation over possible defects.

MORTGAGE—A conditional transfer or pledge of real estate as security for the payment of a debt. Also, the document creating a mortgage lien.

MULTIPLE LISTING—An exclusive listing (generally, an exclusive right to sell) with the additional authority and obligation on the part of the listing broker to distribute the listing to other brokers in the multiple listing organization.

NET LISTING—An employment contract in which the broker receives as his or her commission, all excess monies over and above the minimum sales price agreed upon by broker and seller. Because of the danger of unethical practices in such listing, its use is discouraged in Oklahoma.

OPTION—An agreement to keep open for a set period an offer to sell or purchase property.

PERSONAL PROPERTY—All moveable property and anything not permanently attached to the land. Anything which is not real property.

POINTS—An added loan fee charged by a lender to make the yield on a lower-than-market value FHA or VA loan, competitive with higher-interest yield of a conventional loan.

PREPAYMENT PENALTY—A charge imposed on a borrower by a lender for early payment of a loan principal. The purpose is to compensate the lender for interest and other charges that would otherwise be lost.

REAL PROPERTY—The land and anything that is affixed to the land or is incidental or appurtenant to the land.

REALTOR—A registered trademark which may only be used by members of the state and local real estate

boards affiliated with the National Association of Realtors.

SPECIAL ASSESSMENT—A legal charge against real estate levied by a public authority to fund the cost of public improvements such as streets, lights, sidewalks, street improvements, etc.

SUBDIVISION—A tract of land divided by the owner, known as the subdivider, into blocks, building lots, and streets according to a recorded subdivision plat, which must comply with local ordinances and regulations.

TAX LIEN—A claim against property arising out of non-payment of the taxes; the property may be sold by the taxing authority.

TENANCY IN COMMON—A form of co-ownership by which each owner holds an undivided interest in real property as if he or she were sole owner. Each individual owner has the right to partition. Unlike a joint tenancy, there is no right of survivorship between tenants in common.

TITLE—Evidence of a person's right or interest in property.

TITLE INSURANCE—Insurance that a title is clear or clear except for defects noted; a policy of insurance that indemnifies the insured for loss occasioned by unknown defects in the recorded title.

WARRANTY DEED—A deed in which the grantor fully warrants good clear title to the premises. Used in most real estate deed transfers, a warranty deed offers the greatest protection of any deed.

ZONING ORDINANCE—The use of police powers by the governing body to regulate and control the use of real estate for the health, morals, safety and welfare of the general public.