



## The Basics of Making an Offer

A written proposal is the foundation of a real estate transaction. Oral promises are not legally enforceable when it comes to the sale of real estate. Therefore, you need to enter into a written contract, which starts with your written proposal. This proposal not only specifies price, but also all the terms and conditions of the purchase. For example, if the seller offered to help with \$2,000 toward your closing costs, make sure that's included in your written offer and in the final completed contract, or you won't have grounds for collecting it later.

REALTORS<sup>®</sup> have standard purchase agreements and will help you put together a written, legally binding offer that reflects the price as well as terms and conditions that are right for you. Your REALTOR<sup>®</sup> will guide you through the offer, counteroffer, negotiating and closing processes. In many states certain disclosure laws must be complied with by the seller, and the REALTOR<sup>®</sup> will ensure that this takes place.

If you are not working with a real estate agent, keep in mind that you must draw up a purchase offer or contract that conforms to state and local laws and that incorporates all of the key items. State laws vary, and certain provisions may be required in your area.

After the offer is drawn up and signed, it is usually presented to the seller by your real estate agent, by the seller's real estate agent, if that's a different agent, or often by the two together.

### What is in an Offer?

The purchase offer you submit, if accepted as it stands, will become a binding sales contract. So it's important that the offer contains all the items that will serve as a "blueprint for the final sale." The offer includes items such as:

- address and the legal description of the property
- sale price
- terms: for example, all cash or subject to you obtaining a mortgage for a given amount
- seller's promise to provide clear title (ownership)
- target date for closing (the actual sale)
- amount of earnest money deposit accompanying the offer, whether it's a check, cash or promissory note, and how it's to be returned to you if the offer is rejected - or kept as damages if you later back out for no good reason
- method by which real estate taxes, rents, fuel, water bills and utilities payments are to be adjusted (prorated) between buyer and seller
- provisions about who will pay for title insurance, survey, termite inspections, etc.
- type of deed to be given
- other requirements specific to your state, which might include a chance for an attorney to review the contract, disclosure of specific environmental hazards or other state-specific clauses
- a provision that the buyer may make a last-minute walkthrough inspection of the property just before the closing
- a time limit (preferably short) after which the offer will expire
- contingencies, which are an extremely important matter and that are discussed in detail below

## Contingencies - "Subject to" Clauses

If your offer says "this offer is contingent upon (or subject to) a certain event," you're saying that you will only go through with the purchase if that event occurs. Here are two common contingencies contained in a purchase offer:

- **The buyer obtaining specific financing** from a lending institution: If the loan can't be found, the buyer won't be bound by the contract.
- **A satisfactory report by a home inspector**: for example, "within 10 days after acceptance of the offer." The seller must wait 10 days to see if the inspector submits a report that satisfies the buyer. If not, the contract would become void. Again, make sure that all the details are explicitly stated in the written contract.

## Negotiating Tips

You're in a strong bargaining position, that is, you look particularly welcome to a seller, if:

- you're an all-cash buyer
- you already have a preapproved mortgage and you don't have a present house that has to be sold before you can afford to buy
- you're able to close and take possession at a time that is especially convenient for the seller

In these circumstances, you may be able to negotiate some discount from the listed price.

On the other hand, in a "hot" seller's market, if the perfect house comes on the market, you may want to offer the list price (or more) to beat out other early offers.

It's very helpful to find out why the house is being sold and whether the seller is under pressure. Keep the following considerations in mind:

- every month a vacant house remains unsold represents considerable extra expense for the seller
- if the sellers are divorcing, they may want to sell quickly
- estate sales often yield a bargain in return for a prompt deal

## Earnest Money

This is a deposit that you give when making an offer on a house. A seller is understandably suspicious of a written offer that is not accompanied by a cash deposit to show "good faith." A real estate agent or an attorney usually holds the deposit, the amount of which varies from community to community. This will become part of your down payment.

## Buyers: the Seller's Response to Your Offer

You will have a binding contract if the seller, upon receiving your written offer, signs an acceptance just as it stands, unconditionally. The offer becomes a firm contract as soon as you are notified of acceptance. If the offer is rejected, that's that - the sellers could not later change their minds and hold you to it.

If the seller likes everything except the sale price, or the proposed closing date, or the basement pool table you want left with the property, you may receive a written **counteroffer** including the changes the seller prefers. You are then free to accept it, reject it or even make your own counteroffer. For example, "We accept the counteroffer with the higher price, except that we still insist on having the pool table."

Each time either party makes any change in the terms, the other side is free to accept, reject or counter again. The document becomes a binding contract only when one party finally signs an unconditional acceptance of the other side's proposal. However, the seller reserves the right to accept any other offer until the point that it has been fully accepted.

### **Buyers: Withdrawing an Offer**

Can you take back an offer? In most cases the answer is yes, right up until the moment it is accepted, or even in some cases, if you haven't yet been notified of acceptance. If you do want to revoke your offer, be sure to do so only after consulting a lawyer who is experienced in real estate matters. You don't want to lose your earnest money deposit or find yourself being sued for damages the seller may have suffered by relying on your actions.

## **Sellers: Calculating Your Net Proceeds**

When an offer comes in, you can accept it exactly as it stands, refuse it (seldom a useful response) or make a counteroffer to the buyers with the changes you want. In evaluating a purchase offer, you should estimate the amount of cash you'll walk away with when the transaction is complete. For example, when you're presented with two offers at the same time, you may discover you're better off accepting the one with the lower sale price if the other asks you to pay points to the buyer's lending institution.

Once you have a specific proposal before you, calculating net proceeds becomes simple. From the proposed purchase price you can subtract the following costs:

- payoff amount on present mortgage
- any other liens (equity loan, judgments)
- broker's commission
- legal costs of selling (attorney, escrow agent)
- transfer taxes
- unpaid property taxes and water and other utility bills
- if required by the contract: cost of survey, termite inspection, buyer's closing costs, repairs, etc.

Your present mortgage lender may maintain an escrow account into which you deposit money to be used for property tax bills and homeowner's insurance. In that case, remember that you will receive a refund of money left in that account, which will add to your proceeds.

## **Sellers: Counteroffers**

When you receive a purchase offer from a would-be buyer, remember that unless you accept it exactly as it stands, unconditionally, the buyer is free to walk away. Any change you make in a counteroffer puts you at risk of losing that chance to sell.

Who pays for what items is often determined by local custom. You can, however, negotiate with the buyer any agreement you want about who pays for the following costs:

- termite inspection
- survey
- buyer's closing costs
- points paid to the buyer's lender
- buyer's broker fees
- repairs required by the lender
- home protection policy

You may feel some of these costs are none of your business, but many buyers - particularly first-timer buyers - are short of cash. Helping them may be the best way to get your home sold.