U. S. Legal Forms, Inc.

Multi-State Guide to Selling (and Buying!) Real Estate
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Multi-State Guide to Selling (and Buying!) Real Estate

1. Introduction

This Guide is meant to help Buyers and Sellers become familiar with the various procedures involved in the process of buying or selling a home, and has been written as an overview especially for individuals who are not using a real estate agent. Some sections of the Guide may be more useful to Buyers, and some to Sellers, while some sections will be informative to both. We suggest that you read the entire Guide from start to finish. Whether you are selling or buying, it will benefit you to know as much as possible about the entire situation and all involved parties. The basic steps of home sale/purchase are covered, including the Buyer's financing options, the initial signing of the Contract, Seller's Disclosure and entry into the Escrow period, the various home inspections and insurance concerns, and finally the Closing, where all the t's are crossed and i's are dotted. You are encouraged to thoroughly question the various professionals that you will encounter in the home sale/purchase process, including (but not limited to) the loan officer, home inspector, and escrow agent. These persons will provide in-depth explanations of subjects that can only be generally discussed here. These professionals are valuable sources of information and guidance in their areas of expertise.

2. Buying vs. Renting

Once you are sure you will be remaining in a given area for a period of years, the wise financial decision is to obtain a mortgage loan from a lending institution and buy a house. The only reason you would <u>not</u> want to buy a house is if you may have to (or want to) pick up and move at any time.

Buying is the opposite of renting. Making your monthly mortgage payments is like putting money in a piggy bank for later use-- you will get much of it back when you sell the house. This is called building up "equity," which is "actual ownership" of your home. Though much of your first few years of payments will be kept by the bank as interest on your loan, some of this money will be paying the principle on the loan. The principle is the actual amount you borrowed. As you pay back the loan, the house becomes more and more "your house" and less and less "the bank's house." If you eventually pay off your entire loan, you have something to show for it! You have a place to live that belongs to you (rent free!), and if you want to sell, the entire purchase price will go to you. If you decided to sell before paying off your entire loan, you would still get back a substantial portion of the money you had paid in month by month.

Monthly rent payments are often no less than what you could be paying on a monthly mortgage. Yes, buying a home requires some up-front expenses for initial fees, insurance expenses, property taxes and maintenance. Apartment living requires none of these expenses. But these costs are tiny in comparison with "throwing away" a rent check every month. When you buy, you are investing your monthly mortgage payments-- much of this money will come back to you eventually. Buying a home also offers tax advantages that renting does not. As a Buyer, you may deduct the interest on your mortgage payments and your property taxes. Buying a house could only be wasteful compared to renting if you move within a year or so of buying. If you know you won't be moving, buying may be the best financial decision you can make.

3. Do you qualify for financing?

Depending on your credit rating, level of income, assets and other factors, you may or may not qualify for a loan large enough to purchase a home. The surest way to find out is to apply to a lending institution for a loan of the amount you think you will need for the purchase. You may qualify for an FHA or VA loan, discussed below. You will either be accepted for the loan amount, or instructed on how to improve your "credit profile" over time in order to become eligible. If the loan you qualify for is not enough to purchase the house you want, you might ask if the Seller will consider financing the difference for you (see below, Owner Financing).

4. Financing

A. The "Mortgage"

Because most homes cost more than the amount of cash the ordinary person has available, the typical Buyer will have to borrow money in order to afford a house. A mortgage is a loan obtained for the purpose of purchasing real estate. If you qualify for a loan, the lender will lend you money that you repay over many years (normally 15 or 30 years), with interest. In addition, you agree that if you cannot make the payments, the lender has the right to "foreclose the mortgage," take possession of and sell your house in order to repay themselves for the loan you are unable to pay back. The "mortgage" itself is a legal claim on the real estate that secures the promise to pay the debt.

The "principal" is the amount of the loan. "Interest" is the fee you pay the lender for keeping their money over a long period of time, paying it back only slowly. The lender recovers the interest more quickly than the principal, and therefore your first few years of monthly payments will consist more of interest payment than principal payment. As the mid-point of the life of the loan passes, more and more of each monthly payment represents principal. You can pre-pay principal, which will shorten the life of your mortgage, and thereby reduce the amount of interest you have to pay.

Your monthly payments encompass paying off the principal and interest, your homeowner's insurance, your property taxes, and your mortgage insurance (unless you manage to put down 20% or more of the purchase price of the property, in which case mortgage insurance may not be required). You will typically receive a small paper book with tear-out stubs for each monthly payment to send with your check. You might also ask the lender if electronic payment (by automatic monthly deduction from your checking account, for example) is an option, and whether you get any favorable treatment is available for making payments automatically.

B. Loan-to-Value Ratio and Mortgage Insurance

The loan-to-value ratio is the percentage of the total sale price of the property that you are allowed to borrow. For example, a mortgage with a loan-to-value ratio of 90% would mean that you could borrow up to 90% of the cost of the property, but that you would have to make a down payment of the other 10% of the cost. If the property cost $100,000, you could borrow $90,000 and would have to put $10,000 down.

Lenders typically require the Buyer to purchase mortgage insurance to protect the lender in case the Buyer cannot make payments. If this were to happen, the lender would be reimbursed by the mortgage insurance company, who would then engage in the messy business of foreclosing on and selling your property-- saving the lender this trouble. The cost of mortgage insurance will increase your monthly payment by an average of $20 or more per month for the life of the mortgage loan, so it is nice to avoid this expense if possible.

Normally, if you are able to make an initial down payment of at least 20% of the price of the property, the lender will have enough confidence in your ability to pay off the mortgage that they will not require mortgage insurance, and you save a lot of money in the long run. Be sure to ask your lender how much you must put down in order to avoid the requirement of mortgage insurance. Remember that earnest money deposited by you at the time of the initial signing of the purchase contract is applied to the down payment.

C. Basic Characteristics of a Loan

1. Fixed Rate Mortgage vs. Adjustable Rate Mortgage

Fixed or Adjustable refers to the interest rate you pay. With a fixed rate mortgage, the rate never changes throughout the life of the mortgage. You know that every month you will have to pay a certain amount. If interest rates skyrocket, you will be safe with your locked-in rate (if rates fall substantially, you can always refinance your mortgage, meaning that you get a new loan at the lower interest rate-- which of course involves some up-front cost). If the economy experiences inflation, your monthly payments will not change, and you'll likely have more money to pay them with.

An adjustable rate mortgage on the other hand may offer an initial lower interest rate than a fixed rate mortgage, with the rate stepping up later on. Normally there is a cap on the maximum you might pay, but if interest rates rise, you will find your monthly payments rising. Of course if rates fall, you will benefit, but again there may be a cap on how low your payments can go-- and in 2002, interest rates are at an all-time low and won't be dropping any further. Adjustable rate mortgages are most attractive if you think you might be moving soon and don't care much about the interest rate increases that you won't be around to pay.

2. 15 Year Mortgage vs. 30 Year Mortgage

These are the two time periods typically offered for repayment of the loan. A 15 year mortgage is advantageous because you will be able to get a lower interest rate than a 30 year mortgage-- in effect the lender is rewarding you with the lower rate for paying them back twice as quickly. Your monthly payment will be in the neighborhood of 25-30%- higher (not double!) than if you had a 30-year mortgage, but if you can handle the payments, you will save a lot of money in the long run. Ask your lender to show you a comparison of the total you will pay out over the life of a 15-year vs. a 30-year mortgage, and you will be impressed by the difference in the total paid. This difference is due not only to the increased interest rate for a 30-year loan, but also (and mainly) because you are paying interest for 30 years rather than 15.

You might opt for the 30 year mortgage if you feel uncomfortable with the larger monthly payments necessitated by the 15 year mortgage. You might try to pay off your mortgage early (if you have the extra money), adding an extra amount on a monthly basis for paying down principal and thereby reducing interest. In this way, you could pay off a 30-year mortgage in (for example) 20 years, and save a lot of interest expense. Be sure to confirm with your lender that there is no penalty for pre-payment. If you are interested in income tax deductions, the 30-year mortgage is more advantageous in this respect, due to more tax-deductible interest being paid over the first two-thirds of the life of the mortgage.

3. "Points"

The purchase of one or more "Points," also known as a "Discount Points," is an option on most mortgage loans. One point costs one-percent of your total loan amount, and if purchased, may reduce your interest rate by 1/8 of a percentage point. For example if you wanted to purchase two points on a $100,000 loan at 7% interest, you would pay $2000 up front to the lender in order to reduce the interest rate by 2/8 percent (.250) to %6.75. This saves you money in the long run, and might be an attractive option if you know you'll be staying in the house a long time-- and if you can afford the additional up-front cost. Ask your lender to show you a comparison of loans with zero points, and one or more points.

D. Pre-Qualification and Pre-Approval

Before you start looking for a desirable property to purchase, you need to find out how much you can borrow. Otherwise you have no basis for deciding on a price-range that is practical for you. To find out how much you can borrow, get pre-qualified with a lender. Consult family, friends or co-workers to find a lender in your area that has a good reputation and financial stability. If you compare lenders, call them on the same day to check their rates, because interest rates can change daily. Call them or visit their office in order to determine what size loan you can be pre-qualified for. Pre-qualification consists of your answering a short series of questions regarding your income, assets and debts, and the lender giving you a ballpark figure of what amount loan you qualify for. This is not a commitment from the lender, but it is a good starting point for you to know "how much house" you can afford.

Pre-approval is the lender's commitment to you for a loan of a certain amount at a certain rate. This commitment has a time limit. You could go ahead and get pre-approved as you zero in on the house you want, or wait until you have signed the initial contract on the house to get approved-- you will be given time to obtain your financing between the signing of the contract and the closing of the sale. In order to get approved for your loan, you (and your spouse, if applicable) will need to submit the documentation to your loan officer. Examples of information requested includes:

1) Address of the property you want to purchase
2) The Contract you have signed for that property
3) Federal W-2 forms from the last 2 years
4) Tax returns from the last 2 years
5) Pay stubs from the past 2-4 months
6) Documentation on any long-term debts
7) Bank statements on all accounts
8) Documentation on any investments and/or other assets or income.

The address and Contract are not required for pre-approval, but will ultimately be required for appraisal purposes. The lender will appraise the property in order to make sure it is worth at least the amount of the loan they intend to make to you-- otherwise their loan would not be fully secured by the property.

The above information is necessary for the lender to form an accurate idea of how much money you can afford to repay. The maximum amount of the loan you are offered will be based on this information and your credit history. The lender will order your credit history report in order to ascertain your reliability in repaying debts.

E. RESPA

The Real Estate Settlement Procedures Act (RESPA) requires lenders to disclose information to potential customers throughout the mortgage application and approval process. RESPA protects borrowers by mandating that lenders fully inform them about all closing costs, lender servicing and escrow account practices, and business relationships between closing service providers and other parties to the transaction. A "Good Faith Estimate" will be furnished to the borrower, listing all fees paid before closing, all closing costs, and any escrow costs you will encounter when purchasing the property. The lender must supply the Good Faith Estimate within three days of receiving your approval application so that you can make comparisons when shopping for a loan.

F. Types of Loans

Several types of financing are available, including the "conventional loan," the VA (Veterans Administration) loan, the FHA (Federal Housing Administration) loan, and possibly "owner financing" or assumption of an existing loan. Each is discussed below.

1. Conventional Loan

A conventional loan is an ordinary loan from a bank, savings and loan, mortgage company or other lending institution. Often, a down payment is required, or may be helpful in reducing the interest rate or certain fees, such as mortgage insurance. If you qualify for the loan (meaning the lender believes you are capable of paying back the loan), then the lender will loan you money, but will take your home as "security" (meaning that if you cannot make the payments, they will foreclose on the loan and sell your home in order to recover the money you owe them). A conventional loan is the easiest type to get and does not involve as much "red tape" as VA and FHA loans, which both involve the federal government. You should shop around for the best Annual Percentage Rate (APR) of interest you can get for your loan. Lenders will explain the various details of the different varieties of loans that are available, for example fixed or variable interest rate loans. Fees will be included with your loan, be sure to ask about all fees that will be applied. You do not have to pay these fees up front, they are added to the total amount you have to ultimately pay back.

2. VA Loan

The VA loan is only available to eligible Armed Services veterans, has a longer processing time than a conventional loan and requires more paperwork. You may contact the Department of Veterans Affairs at 1-800-827-1000 to determine if you qualify, to request a Certificate of Eligibility, and to ask for a list of lenders in your area that offer VA loans. A down payment is often necessary if the VA's appraisal of the property is lower than the purchase price (which is often the case). This down payment may not be borrowed from a commercial lender, though it may be borrowed from a friend or family member. The benefits of a VA loan include: probability of receiving a lower interest rate than that of a conventional loan, no penalty if you are able to pay off your loan early, and no requirement for mortgage insurance, since the VA is insuring a large part of your loan.

3. FHA Loan

The Federal Housing Administration is an agency of the federal government whose purpose is to encourage home ownership by lower-to-mid income people. An FHA loan is available to anyone with good credit, but has a maximum amount depending on the area in which you plan to buy. This maximum is in the lower end of the housing market, but can be up to 97% of the purchase price. At least a small down payment is required, as is mortgage insurance which must be purchased by the buyer at the cost of 0.5% of the loan amount. Like a VA loan, the down payment may not be borrowed from an institutional lender. Due to the smaller down payment than the typical conventional loan, the interest rate on an FHA loan may be a bit higher. There is no pre-payment penalty. FHA loans are available at FHA-approved lenders, including most typical institutional lenders from which you would obtain a conventional loan.

4. Owner Financing

Owner Financing refers to the owner of the property (the Seller) financing the sale for the Buyer. In this situation, the Buyer would make monthly mortgage payments to the Seller instead of to a bank or other lending institution. Most Sellers want their money “up front” and are not willing to risk the complications of the Buyer defaulting on payments several months or years later, in which case Seller would have to foreclose on the house and remove the buyer, which would involve legal action. However, for one reason or another, some Sellers may want to finance a Buyer’s purchase. The option for Owner financing appears in Section 3 of the Contract.

5. Assumption of Existing Loan

If the Seller has an existing mortgage loan, it may or may not be possible for the Buyer to simply take over the payments on the Seller’s loan. Whether or not this is possible will depend on the characteristics of the existing loan, the credit-worthiness of the Buyer and other factors. As a Buyer, you may want to enquire whether or not assumption is a possibility, but you will want to carefully compare the pros and cons of the existing loan to new financing you might be able to obtain. As likely as not, you will be able to obtain more favorable financing by getting your own, new loan.

5. Real Estate Agents

A real estate agent can help in finding a suitable home at the right price, but real estate agents have to be paid. Realtors have access to computer databases containing information on all regional property sales and can accurately ascertain the value of property in any area. In transactions where there are real estate agents representing both Buyer and Seller, the Seller normally pays all agents out of the sale proceeds (though this may vary by region). However, if the Seller is selling the home himself, without an agent, then he may not be willing to pay the Buyer's agent. Buyer may have to pay the agent himself. When a Buyer is considering obtaining an agent, the Buyer should question the agent on how the agent's fees will be paid in the even that the home purchased is "For Sale by Owner."

A. Seller's Agent

A Seller's agent represents only the seller, and has no duty to potential buyers other than those prescribed by law, such as (in most states) to reveal any defects the agent knows of to the Buyer. The Seller's agent is typically paid by the Seller from the proceeds of the sale of the property. An agent can be very helpful to the Seller in setting an accurate price for the property due to the agent's knowledge of the local real estate market.

The Seller's agent, while helpful, must be paid a commission from the proceeds of the sale. The fee is negotiable, but usually all the real estate agencies in one area will be charging the same rate-- normally around 6% of the sale price of the property. If your home sells for $150,000, you will be forking over $9,000 to your agent at closing! This is money that you would be keeping for yourself if you sold your home <u>without</u> an agent. Selling without an agent requires being home more often during the day to show the house, meet inspectors, etc. (difficult if you and your spouse work), and requires you to take on the other procedural responsibilities that would typically be handled by your agent. The agent could be a valuable resource for you in setting the price on your house and advising you about the local housing market (whether it is busy, slow, etc.), and how this should effect your mindset in regards to price. An agent is nice, but so is keeping that 6% of your money! Your decision on whether or not to use an agent will depend on your circumstances and priorities.

B. Buyer's Agent

A Buyer's agent represents only the Buyer, and has no duty to the Seller. The Buyer's agent is typically paid by the Seller from the proceeds of the sale of the property (part of the 6% paid by the Seller to the Seller's agent is paid to the Buyer's agent). A Buyer's agent can be very helpful to the Buyer in determining whether a fair price is being asked by the Seller, due to the agent's knowledge of the local real estate market. If the Buyer's agent is going to be paid by the Seller (clarify this at the outset), there is no real downside for a buyer using an agent and a lot of potential benefit. The agent will try to be as helpful as possible to the Buyer in hopes that the Buyer will use them again a few years down the road when the Buyer is ready to sell the house they found with the realtor's help.

C. "Dual" Agent

A dual agent is a real estate agent who represents both buyer and seller. The dual nature of the agency relationship is typically disclosed in a disclosure statement given to each party, which must be agreed to and signed by each party. The agent facilitates the sale, working for both parties, and but does not have a higher duty to one party than the other.

6. Real Estate Attorneys

Though it is possible to sell a home without hiring an attorney, it is often useful to employ one for one or more of the following functions:

1) Providing legal advice on real estate matters.

2) Reviewing documents.

3) Representing you at the "closing," or handling/hosting the closing.

Discuss the fees your lawyer will charge for tasks including review of documents you have prepared, preparation of documents if necessary, representation at closing, and/or actually handling/performing the closing its component activities. If the price seems high, shop around. A reasonable range is $250 - $750 to handle a closing, depending on the region in which you live. Lesser services should be much less. Talk to friends and relatives regarding the role lawyers played in their home sale. Make sure to find an attorney who handles real-estate transactions on a regular basis. The attorney will likely be glad to discuss with you whether hiring him or her is a good idea for you, and what tasks and services the lawyer could perform. If the lawyer is abrupt or seems to have little time for or interest in your inquiries, find another lawyer to talk to.

7. Setting an Asking Price

A. Neighborhood Comparisons

How much is your house worth? The answer can be found in what similar houses are selling for in your neighborhood. Local real estate agencies are good sources of information on local housing market prices. Call an agency and ask for a Comparative Market Analysis, a document listing recent sale prices for homes in your area. The agent you talk to will try to get you to agree to let them sell your house, but (assuming you want to avoid paying thousands of dollars in commission) you should tell the agent you haven't decided to sell yet, but you'd like to see what houses are selling for, and you'll keep the agent in mind if you decide to sell. This approach should result in you receiving the Comparative Market Analysis in the mail.

The internet is a hit-or-miss option for obtaining the same information. Some sites claim to be able to show you the sale prices for homes in your neighborhood, but many of these sites have only limited coverage or may not contain updated information. If you are comfortable working with an internet search engine and navigating info-heavy web pages, you should be able to find several sites that might be of help to you. HomePrice.net and Realtor.com are two sites you may want to try.

Once you have determined what similar homes in your area are selling for, you should drive by these houses and get a feel for how big the yard is, what condition the property is in, and any other elements you feel would make the home more or less valuable. If your home has a bigger yard and is in better shape, chances are you are safe in setting your asking price higher.

B. Pre-appraisal, Pre-inspection?

If you are willing to pay a few hundred dollars, a home appraisal specialist will do all this background pricing work for you, and give you an accurate assessment of the value of your home. A professional appraisal can be helpful in justifying your asking price to potential buyers, and will let you know if your ideas about how much you can get for the house are realistic.

If your house is old or in questionable condition, you may want to have a home inspector examine the house for you in order to point out problems that might be of great concern to potential buyers. You can then fix these problems and will probably end up paying less to do so than if a potential buyer's inspector identifies the same problems. Hiring the inspector will cost you a few hundred dollars, so it may not be something you want to do if you feel your home is in good condition.

C. Seasonal Selling

Some things to remember about seasonal selling: Homes sell best in the spring and summer (or whenever it is comfortable to be outside in your region). Another seasonal variable is that families with children aren't likely to take their kids out of school to move during the school year. They'll wait until spring/summer to buy the house and make the move when the kids are out of school. Because more buyers will be out looking in spring and summer, you'll be able to set your asking price higher. As implied above, in very warm regions where summer involves unbearable heat, buyers will be more likely to do their shopping in fall or spring. Sellers may be able to set higher prices in the fall, however the school problem still applies.

D. Appliances and Fixtures

Remember to consider everything included in the sale when setting the sale price, especially the appliances. If any unusual appliances are to be included in the sale, the price should reflect this addition. Anything connected to a gas line or built-in is ordinarily included in the sale. The stove is typically included, regardless if it is electric or gas, as is the dishwasher. The refrigerator, and clothes washer/dryer are typically not included in the sale. A "fixture" – anything attached to the property by being built-in or screwed in, is included in the sale unless specifically excluded in the contract or disclosure.

E. The Temptation to Overprice

There are disadvantages to overpricing your home. If other nearby homes for sale are less expensive, your home may take longer to sell. A large proportion of potential buyers view a home during the first month in which it is listed for sale. If possible, you should keep track of these people and notify them of any subsequent price reduction (e-mail is perfect for this). These buyers are likely to be more interested in the more reasonably priced houses in your area. After a month or two, people may begin to wonder why your house has been on the market so long, and whether this is an indication of something being wrong with your house.

Only if you are not in a hurry, or just testing the market, should you consider overpricing your house-- someone may fall in love with your house and pay your asking price. If this is your goal, make sure the contract you ultimately sign has NO provision requiring that, "The property must appraise for at least the agreed sale price." U.S. Legal Forms, Inc.'s, Contract for Sale and Purchase of Real Estate does not contain such a provision, but other contracts very well might. Such a contract provision is beneficial to the buyer in that it protects him from unwittingly agreeing to pay "more than the house is worth." Of course, from the seller's perspective, the house is worth as much as any individual buyer is willing to pay for it, on the assumption that they really like the house and have considered nearby alternatives. If you are a buyer, you would do well to make sure such a provision is included in your contract. There is a space in the USLF Contract (mentioned above) for optional provisions where you could write in this provision. Lenders may require an appraisal and might not loan you more than the appraised value of the house.

F. Improving Your Property

Spending money to "improve" an already pristine, updated house will not increase the value by much-- probably by less than the amount you spend. But if your house is in poor condition, improvements can result in a big jump in marketability and asking price, especially improvements to the kitchen and bathrooms. Your house only gets one chance to make a first impression on potential buyers. Make sure they see it with its best foot forward. Anything to improve the exterior of the home, shrubs, etc., helps. Make sure the home and yard are well manicured, neat, free of weeds, debris and toys, and uncluttered. Additional flowers or potted plants may be beneficial. Rake leaves, pick up limbs, and cut the grass regularly while your home is on the market. The light and doorbell should be in working order. Repaint your door if needed. Repair, clean or replace any lose, bent, dirty or detached shudders, screens or gutters-- you may have been overlooking these little inconveniences for years, but they stand out to potential buyers as indicative of the general condition of the property and level of care provided by the current owners.

Inside your house, clean, clean, clean. Have a friend comment (honestly) on your progress. Make your house appear spacious by removing clutter and providing plenty of light (consider brighter bulbs). Dark colors may turn buyers off. You may want to consider re-painting a dark room with white or off-white paint. Clean up your closets and garage, and other storage areas to whatever extent possible. Eliminate squeaks, rattles and wobbles, and repair past water stains on walls or ceilings by using Kilz-type sealer spray and paint. Your local hardware store will have good advice on how to remedy these problems, and all the products you need. If prospective buyers see water stains, they will think there is still a leak, even though the leak has been fixed. Repair leaking plumbing or faucets by replacing rubber washers or gaskets. Again, the hardware store will be helpful. Repair sticking doors, cabinets and windows and nail down loose molding.

G. Home Warranty Insurance

A home warranty insurance policy, provided by the seller, is becoming commonplace in home sales nationwide. Buyer may be wise to request one of these insurance packages, pay for one himself, or ask the seller to split the cost if the seller has older appliances or does not offer a "Home Warranty" policy. Such a policy is desirable for buyer because it typically covers any breakdowns in appliances and the heating/cooling system for a year after the sale. Having a Home Warranty Policy gives buyer piece of mind that if the appliances fall apart as soon as the seller moves out, the insurance will be there to cover the problem. The Home Warranty policy covers appliances and items not covered by the standard homeowner's insurance policy. If the seller chooses to provide a home warranty policy, seller should advertise the fact, as it will make the home more attractive to potential purchasers and can raise the asking price. Ask the home warranty company of your choice about the details, options and prices.

8. Advertising and Showing

A. Advertising Without an Agent

In order to get your house sold, you have to get the word out to potential buyers that your home is on the market. You have to advertise. A chief advantage of using a real estate agent to sell your home is that the agent acts as your "advertising executive," using a database known as the "multiple listing service" to get the word out to all other realtors that your home is for sale. This makes advertising easy. As mentioned before however, the problem with using a realtor is the big commission you pay them once your house gets sold (around 6% of the total sale price – thousands of dollars!). Some forward thinking real estate offices are trying to make a little money and capture potential customers by offering use of their multiple listing service (and some other services) for a greatly reduced flat fee. This could be money well spent in your effort to advertise your home. Call all the local real estate offices you can, and ask if they will allow your home advertisement onto the multiple listing service for a flat fee.

B. Newspaper Ads

In addition to (or instead of) using the multiple listing service, it is essential that you call your local newspapers and ask about real estate sales advertising. For a reasonable price you can place an ad, probably with a picture, that will run for several weeks. You will have to write a brief advertisement blurb to send to the newspaper. The best models for you to look at will be in existing advertisements. Looking at these will help you get a feel for what your add should say. Include your asking price, number of rooms and any special features (whirlpool, pool, game room, gourmet kitchen, etc.) that make your home attractive. If your home is near nice schools, or has been recently built, include that info. Include the address of your home and a number at which you can be reached. Invite readers to call and set up a visit.

C. Yard Sign and Flyers

You will need a "For Sale By Owner" sign in your front yard. Purchase one from a home-supply store or make one yourself. Make sure your sign looks nice, is durable, includes your phone number, and can be seen and read clearly from the street. Stick-on lettering is your best option for the purpose of visibility. Your sign will need to have an attached clear envelope to hold the flyers you'll need to prepare. These flyers should be printed on 8½ x 11 paper and include your description of the home (including address), the asking price, and your phone number. Print a picture of the home at the top of the flyer if possible. Place a sufficient number of copies in the envelope on the yard-sign. Check to see that there is a sufficient amount of flyers remaining each day, and refill as needed. If your house is on an out-of-the-way street, you may need to put up some directional signs pointing the way through the neighborhood to your house. The sign should say "Home For Sale," and have an arrow pointing in the right direction. Place enough signs to leave a trail to your home from nearby busier streets. These signs are available at home-supply stores, and should be placed on corner telephone poles, at the base of stop signs, etc. Don't place in a neighbor's yard without permission.

D. Internet Advertising

Many internet websites offer the same home listing services as newspapers. More people are browsing homes on the internet every day, and it may be in your interest to check into placing an add on one or more real estate websites. Use an internet search engine to search for the terms "Real Estate Advertising." Two websites we found offering national for-sale listings were:

For Sale By Owner Advertising Service
http://www.fsboadvertisingservice.com/

and

BuyOwner.com
http://www.buyowner.com/

Please note, U.S. Legal Forms, Inc., is not affiliated with these sites, nor do we warrant their services or usefulness.

E. Hold an Open House

You may find it useful to hold an "Open House." Invite friends, neighbors and co-workers and tell them to bring a friend. Advertise the open house in the real estate section of your local paper, and put an "Open House" sign in your front yard showing the date and time of the open house. Make sure your sign is up a week or two ahead of time. Your main goal in holding the open house is not to sell the home (though you may happen to find a buyer), but rather to broadcast the fact that the house is for sale. The people who attend the open house will spread the word to others. Make sure plenty of flyers are available and try to hand them out to people as they leave. Weekends are obviously the best time to hold an open house. You might get lucky and find a buyer, but the main objective of your open house is to inform your neighbors and enlist them in your sales campaign. You should have completed property disclosure statements available.

F. Showing the House

Always appear nicely dressed and friendly when you show your house. Obviously a special effort should be made to ensure the house is clean when you know a potential buyer is coming for a look. If you have pets, make sure they are on a very short leash and kept in a storage area or outside in their pen-- pets, especially dogs, should not have the run of the house (or yard) while you are showing the house. Cats will normally make themselves scarce when strangers are about. Children, on the other hand, may require special consideration depending on your circumstances. Answer questions about the home truthfully ("I don't know" is always acceptable if you really don't know an answer) and give your visitor a copy of the seller's disclosure statement for the home. Always get the name, number and e-mail address of the person to whom you showed the house, in order to inform them if you decide to lower your asking price in the future.

9. Making an Offer

As a Buyer, you don't want to overpay for the house you purchase. The Seller of course wants to get as much as he can for his house, so his asking price is likely to be somewhat more than he is ultimately willing to settle for, in order to give himself some room to negotiate. As the Buyer, you obviously want to pay the minimum acceptable price for the house-- but what is this minimum?

Making a very low offer might land you the house for cheap, but it more likely will cause the seller not to take you seriously. If the housing market in the area in which you are looking is at least moderately active, the Seller will have no fear of rejecting your low offer. You will soon be out-bid by someone who is willing to pay closer to the asking price for the house.

In order to make a competitive offer, it is very helpful to know how much comparable houses (close to the same square footage, number of rooms and features, etc.) have recently sold for in the area. If you know this, you have a basis for knowing what the house is actually worth, and can gauge your offer accordingly. Other factors can influence the ultimate sale price, including how urgently the Seller needs the money or needs to move (and how urgently YOU want/need to buy the house), the level of activity in the housing market, the amount of work needed to “update” the house, etc.

When making an offer, you will submit a written offer to the Seller. You should be pre-approved for financing in at least the amount you are willing to pay. The offer can be in the form of U.S. Legal Forms, Inc.’s, <u>Contract for Sale and Purchase of Real Estate</u>, with the appropriate items filled in to your liking. The seller will either accept your offer, reject your offer outright (in which case you can make another offer), or reject your offer but make a counter offer for your acceptance, rejection or counter-offer.

10. The Contract

The Contract is the central legal document through which Buyer and Seller (“the Parties”) agree upon the terms and conditions of the property sale. Because real estate sales are relatively complex and important transactions, state law normally requires a written, signed contract for such transactions to be enforceable. This legal requirement is rooted in practical reality: with so many details involved in the typical home sale, the Parties could easily become confused and fall into disagreement over their various rights and responsibilities related to the sale. The Contract provides an organized framework within which the Parties can proceed with the sale process from beginning to end without unnecessary disputes, omissions or misunderstandings.

11. Seller’s Disclosure

A “Seller’s Disclosure of Property Condition” statement, or similarly named document, is required by law in many states. This is a form on which the Seller reveals all known information about the condition and age of the property (and sometimes appliances), including any known defects. Most disclosures require the Seller to reveal only what he knows, and do not require the Seller to go to special lengths to discover unknown problems. In fact, most questions on a disclosure allow approximations (provided they are labeled as such), or “unknown” as answers. Most litigation following home sales is due to defects that the Buyer discovers after the sale, and then blames the Seller for concealing. In order to make a home sale less likely to end in an unfavorable lawsuit, a Seller should be honest and thorough in all disclosures.

As a Buyer, you should not think that a seller’s disclosure statement is a substitute for Buyer’s Inspections. The Seller is only obligated to reveal what they know, and defects hidden from the Seller will not appear on the disclosure. Unscrupulous Sellers may even try to hide defects. The only way to discover the true condition of a property is to have it inspected by a professional.

12. Buyer's Inspections

Property Condition options of your contract may include one or more of the following:

(1) Buyer accepts property "as-is";

(2) Buyer will conduct desired inspections; or

(3) Buyer accepts "as is" if Seller will make certain repairs.

Most Buyers will want the house inspected, and will (and should) have second thoughts if a Seller attempts to sell the house while forbidding any inspections, unless there are special circumstances. Most lending institutions also require inspections before they will make a loan to the prospective Buyer. Option two will therefore most likely be used in all home sales. Typical inspections include pest (termite) inspection, contractor inspection (includes electrical, plumbing, heating systems), roof inspection, swimming pool inspection, and foundation inspection.

If the Buyer's inspections reveal various defects, the parties are free to re-negotiate the Contract, for example lowering the sale price in order to allow for future fixes that will be necessary, or having the Seller agree to fix defects prior to the sale. Seller may consider the "defects" insignificant or exaggerated, and may not be willing to make allowances for fixing them-- in which case the Buyer might walk away from the deal (recovering any earnest money previously paid) or, if wanting the house bad enough, be willing to ignore certain marginal "defects."

13. The "Home Inspection"

Buyers and lenders will normally insist on various "home inspections," including but not limited to, soil, foundation, electrical, structural, heating/cooling, appliance, plumbing, roof, pest/termite and swimming pool inspections. Most of these inspections will be taken care of all at once by a "home inspector" service. The inspector will come to the house, and spend time looking at everything in order to make a detailed report, which will be submitted to the Buyer (a copy should be furnished to Seller). Defects may be revealed that were unknown to the Seller and/or not included in a "Seller's Disclosure of Property Condition Statement." At this point, the Buyer and Seller will be armed with sufficient knowledge to make final negotiations on the sale price of the house, or Buyer may decide that too many problems have been revealed and decide to get out of the deal, recovering any deposited earnest money.

14. “As-Is” Sale

“As-is,” relates to the condition of property. If something is sold “as-is,” it means that it is being sold with all defects, whether apparent or hidden, and the Buyer cannot claim afterwards that defects were concealed from Buyer. When purchasing something “as-is,” the Buyer is taking the risk that there may be something seriously wrong with the item or property, but is buying it anyway-- usually because it is such a good deal, or buyer is unwilling to pay the price for a professional inspection.

15. Contingencies

A “contingency” is an event that must occur prior to a second event happening. In home sales, the sale of the home can be contingent on many things, for example on the Seller making requested repairs or the Buyer obtaining financing. If a contingency does not occur, then the contract cannot be completed, and earnest money may be awarded to the Seller or returned to the Buyer, depending on what the contract says about the circumstances.

16. Earnest Money and Escrow

Earnest money is money deposited by the Buyer (usually one to three percent of the sale price, $1,000.00, or whatever regional custom dictates- the amount is negotiable) at the time of the initial signing of the contract. Depending on your State, the earnest money is deposited with the seller, real estate agent, escrow agent or attorney.

An Escrow Agent is a neutral third party who holds the various monies involved in an escrow account, pays parties, and ensures that the money changes hands at the same time as the deed is recorded and ownership transferred. Who the Escrow Agent varies from state to state and can include attorneys, title insurance companies, real estate agents, escrow companies, closing companies, etc. The Seller should already have an Escrow Agent on standby, ready for when a buyer is found and the contract initially signed.

If the Buyer backs out of the contract for any reason that is not allowed in the contract, they have “defaulted” and thereby forfeit the earnest money to the Seller as liquidated damages. Seller might also pursue “specific performance” (forcing Buyer to go through with the purchase), but this would require a court case and could be potentially costly in time and money.

17. Title Insurance

A title insurance Owner’s Policy is typically purchased by or for the Buyer in order to safeguard against any title problem that may arise after the sale -- for example, a dispute involving someone else claiming partial ownership of the property. With an Owner's Policy, the new owner will be able to rely on the title insurance company to address any expensive legal problems that may arise, and to pay for any actual damages suffered by the Buyer.

Assuming the Buyer is borrowing money from a lending institution in order to make the purchase, the a Lender's Policy will be required insure the mortgage lender that there are no encumbrances against the property. If it turns out that a prior valid lien exists when the house is later sold, the Lender's Policy will reimburse the lender the full amount of what is owed.

Buyer and Seller should agree on a title insurance company for the transaction. The Escrow Agent will be able to recommend a reliable company. Who pays for the various policies of title insurance vary depending on regional custom, and is ultimately negotiable. The cost of title insurance is part of closing costs and responsibility to pay or divide these costs should be agreed to in the Contract.

18. Prorationing

Prorationing relates to any cost associated with home-ownership that must be divided due to the ownership of the home changing in mid-year. The best example is property tax, which is assessed on a yearly basis. For example, assume the property tax on the property is $1,200.00, and the tax year runs from Jan. 1, to Dec. 31. If the sale closes (and ownership transfers) on July 1 (mid year), and the property tax bill will be assessed against the new owner at year's end, then $600 should be credited by Seller to Buyer to represent that Buyer and Seller each lived in the house for one-half of the year, and are therefore paying proportionate, or "prorated" taxes. Any other items that lend themselves to prorationing should be handled in like manner. The Escrow Agent will calculate and/or check prorated figures.

19. The Closing

The "closing" is the final meeting that typically occurs at the escrow agent's office. All contingencies will have been satisfied by the time this final stage is reached. Buyer and Seller both attend the meeting, along with loan agents, any real estate agents, and any other parties with a financial interest. Buyer presents a paid homeowner's insurance policy or a binder and receipt showing that the premium has been paid. Numerous documents are signed, including loan documents. You should take time to check over these papers to make sure everything is correct prior to signing. The escrow agent will explain each document and answer any questions you may have. A list of all monies to be exchanged is distributed, the money is exchanged, and ownership of the property is transferred. The Seller will give the Buyer the keys to the property.

"Closing costs" are paid at closing or financed into your mortgage. They normally consist of at least the following:

1) Property taxes (prorationed)
2) First 30 days interest on your loan
3) Loan origination fee
4) Survey fee
5) Documentation preparation fees
6) Escrow fees
7) First payment to escrow account for future real estate taxes and insurance
8) First premium for mortgage insurance (if applicable)
9) Title insurance (owner’s and lender’s)
10) Paid receipt for homeowner's insurance policy (plus flood insurance, if applicable)
11) Transfer tax
12) Mortgage tax
13) Recording tax (for recordation of your deed and the mortgage)

The “settlement statement” is a document that will be provided by the escrow agent/closing attorney. The settlement statement is a listing of every amount and every item paid by the Buyer and Seller, the distributions of those funds, and the remaining cash that should go to the Seller. The settlement statement often refers to the Buyer as the “Borrower” because the Buyer is the one taking out a real estate mortgage. The escrow agent/closing attorney will explain the settlement statement in detail, and you can request a copy a few days prior to closing in order to familiarize yourself with the document.

20. Good Luck!

USLF hopes this Guide will help you conduct a smooth purchase or sale of your home. If you are not using a realtor, remember that your lender is the most valuable source of information and answers regarding your financing, as is the escrow agent regarding the closing. Whenever you have a question, do not hesitate to ask these persons. We hope this Guide has answered most of your basic questions, and provided you a helpful framework in which to understand the process of buying and selling real estate.

State Real Estate Information - Closing

Who Normally Conducts the closing?	Attorney	Title Company Agent	Lender	Private Escrow Agent	Real Estate Agents	Escrow	Bank
Alabama	X						
Alaska		X	X	X			
Arizona		X					
Arkansas [1]	X	X					
California							
Colorado	X	X			X		
Connecticut	X						
Delaware	X						
District of Columbia	X	X					
Florida	X	X					
Georgia	X						
Hawaii [2]	X	X[2]		X[2]			
Idaho							
Illinois	X[3]	X	X				
Indiana	X	X	X		X		
Iowa	X				X		
Kansas	X		X		X		
Kentucky	X						
Louisiana[4]	X	X					
Maine	X						
Maryland	X						
Massachusetts	X						
Michigan	X	X	X		X		
Minnesota	X	X	X		X		
Mississippi	X						
Missouri	X	X	X		X		
Montana						X	
Nebraska	X		X		X		
Nevada		X				X	
New Hampshire	X						
New Jersey	X	X					
New Mexico						X	
New York	X						
North Carolina	X		X				
North Dakota	X		X				
Ohio		X	X				
Oklahoma	X	X	X		X		
Oregon					X		
Pennsylvania	X[5]	X			X		
Rhode Island	X	X					X
South Carolina	X						
South Dakota	X	X	X		X		
Tennessee	X	X	X				

1 Title companies handle Escrow. Attorneys handle closings.
2 Attorneys must prepare documents but Escrow handles by Escrow or title company.
3 Only Attorneys may prepare the documents
4 Notary must authenticate the documents
5 Approved attorneys

Texas		X					
Utah		X	X				
Virginia	X	X					
Vermont	X						
Washington	X	X	X	X			
Wisconsin[1]		X	X				
West Virginia	X		X		X		
Wyoming							

1 Attorney Conduct in Milwaukee

State Real Estate Information – Instrument of Conveyance

What is the instrument of conveyance used in your state to convey the property to you?

	Instrument of Conveyance	Security Instrument
Alabama	Warranty Deed	Mortgage is customary
Alaska	Warranty Deed	Deed of Trust
Arizona	Warranty Deed	Deed of Trust. Contract for Deed also common.
Arkansas	Warranty Deed	Mortgage is customary
California		
Colorado	Warranty Deed	Deed of Trust
Connecticut	Warranty Deed	Mortgage
Delaware	Special Warranty (WD also used)	Mortgage
District of Columbia	Bargain & Sale Deed	Deed of Trust is most common.
Florida	Warranty Deed	Mortgage
Georgia	Warranty Deed	Security Deed
Hawaii	Warranty Deed or Assignment of Lease	Mortgage
Idaho	Warranty Deed or Corporate Deed	Mortgage or Deed of Trust
Illinois	Warranty Deed[1]	Mortgage
Indiana	Warranty Deed	Mortgage
Iowa	Warranty Deed	Mortgage most common. Deed of Trust also used.
Kansas	Warranty Deed	Mortgage
Kentucky	Grant Deed or Bargain & Sale Deed[2]	
Louisiana	Warranty Deed or Act of Sale	Mortgage
Maine	Warranty Deed	Mortgage
Maryland[3]	Grant Deed	Deed of Trust is most common. Mortgage also used.
Massachusetts	Warranty Deed or Quitclaim Deed	Mortgage with private power of Sale
Michigan[4]	Warranty Deed[4] Land Contracts Common	Mortgage
Minnesota	Warranty Deed	Mortgage most common. Deed of Trust also authorized
Mississippi	Warranty Deed	Deed of Trust
Missouri	Warranty Deed	Deed of Trust
Montana	Warranty Deed, Corporate Deed or Grant Deed	Mortgage, Deed of Trust & Contract of Deed
Nebraska	Warranty Deed	Mortgage or Deed of Trust
Nevada	Grant Deed, Bargain & Sale or Quitclaim	Deed of Trust
New Hampshire	Warranty Deed	Mortgage
New Jersey	Bargain & Sale Deed	Mortgage Deed of Trust also authorized
New Mexico	Warranty Deed	Mortgage or Deed of Trust
New York	Bargain & Sale Deed	Mortgage
North Carolina	Warranty Deed	Deed of Trust

1 Declaration of Sale price must be included in the deed.
2 Deed must show amount of Sale refer to prior instrument of record & preparer.
3 Attorney must be included & deed must state consideration.
4 Warranty Deed must state full considerations or affidavit attached.
5 Dower rights still exist.

North Dakota	Warranty Deed	Mortgage
Ohio[5]	Warranty Deed	Mortgage
Oklahoma	Warranty Deed	Mortgage
Oregon	Warranty or Bargain & Sale Deed	Land Contracts Common. Mortgage or Deed of Trust
Pennsylvania	Special or General Warranty Deed	Mortgage
Rhode Island	Warranty Deed	Mortgage
South Carolina	Warranty Deed	Mortgage
South Dakota	Warranty Deed	Mortgage
Tennessee	Warranty Deed	Deed of Trust
Texas	Warranty Deed	Deed of Trust
Utah	Warranty Deed	Mortgage & Deed of Trust
Vermont	Warranty Deed	Mortgage
Virginia	Bargain & Sale Deed	
Washington	Warranty Deed	Mortgage & Deed of Trust
Wisconsin	Warranty Deed / Land Contracts	Mortgage
West Virginia	Warranty Deed	Deed of Trust
Wyoming	Warranty Deed	Mortgage

State Real Estate Information – Transfer Taxes

Does your State require the payment of transfer taxes?			
	YES	NO	
Alabama		X	
Alaska		X	
Arizona		X	
Arkansas	X		Documentary tax
California	X		
Colorado	X		Documentary transfer tax
Connecticut	X		Documentary & conveyance tax
Delaware	X		State transfer tax
District of Columbia	X		Transfer tax
Florida	X		Documentary tax
Georgia	X		Transfer tax
Hawaii	X		Conveyance tax
Idaho		X	
Illinois	X		State and County transfer tax
Indiana		X	
Iowa	X		Documentary tax
Kansas	X		State Mortgage tax
Kentucky	X		
Louisiana		X	
Maine	X		
Maryland	X		Transfer tax
Massachusetts	X		Documentary tax
Michigan	X		State transfer tax
Minnesota	X		Transfer tax & Mortgage tax
Mississippi		X	
Missouri		X	
Montana		X	
Nebraska	X		State documentary tax
Nevada	X		Owner & State transfer tax
New Hampshire	X		Documentary tax
New Jersey	X		Transfer tax
New Mexico		X	
New York	X		Mortgage taxes. City transfer taxes
North Carolina	X		Transfer tax
North Dakota		X	
Ohio	X		Transfer tax
Oklahoma	X		Documentary transfer tax
Oregon	X		Transfer tax
Pennsylvania	X		Transfer tax
Rhode Island	X		Documentary tax
South Carolina	X		Mortgages tax, transfer tax
South Dakota	X		Transfer taxes
Tennessee	X		Mortgage tax, Transfer tax

Texas		X	
Utah		X	
Vermont	X		Transfer tax
Virginia	X		
Washington	X		Reserve tax
Wisconsin	X		Documentary, transfer & mortgage tax
West Virginia	X		Documentary tax
Wyoming		X	