

Purchasing a Home in Colorado

Purchasing a home is one of the most important legal transactions you'll ever undertake. It's important to know your legal rights and understand the process.

Working With a Real Estate Agent

In Colorado, real estate agents have what's called a "**fiduciary duty**" to the home seller, which means they legally represent the seller, not the buyer. In Colorado, this means that the agents are held by law to owe specific duties to the person who they are representing, in this case the seller. The seller's agent must disclose to potential buyers all adverse material facts actually known by the seller's agent about the property. In addition to duties or obligations that are set forth in a listing agreement or other contract, a fiduciary's duties include:

- Loyalty
- Obedience
- Disclosure
- Confidentiality
- Reasonable care and diligence
- Accounting

You may want to hire a "**buyer's agent**," which is someone that will act on your behalf. The buyer's agent must disclose to potential sellers all adverse material facts actually known by the buyer's agent including the buyer's financial ability to perform the terms of the transaction and if a residential property, whether the buyer intends to occupy the property. The sales commission is then split between the seller's and buyer's agent.

When selling a house, disclosure of all pertinent facts actually known to the seller is critical, even though it may impact on the ability to complete the sales transaction or on the ultimate sales price of the house.

A seller should disclose the following potential house defects:

- Plumbing and sewage problems
- Water leakage of any type, including in basements
- Termites or other insect infestations
- Roof defects
- Heating or air conditioning system problems
- Property drainage problems
- Foundation instabilities or cracks
- Problems with title to the property
- Lead paint - for homes built prior to 1978)

Purchase Agreements

When you find a house you'd like to buy, you'll put together and sign a purchase and sales agreement, often called a "sales contract" in Colorado, which contains all of the terms of the transaction, including the following:

- The names and addresses of the sellers and purchasers
- The purchase price and amount of down payment
- Arrangements for financing
- The legal description of the property
- A provision that title to the property shall be good and marketable of record, subject to reasonable easements
- The condition of the property at the time of sale
- Date of settlement and possession
- Statement of the settlement costs
- Provision as to who bears the risk of loss if the property should be damaged prior to settlement
- Liens on the property

An important thing to remember is that you should consult your Colorado real estate attorney before you sign the contract. The real estate transactions involved in purchasing a home give rise to a number of legal questions that a lawyer with a real estate background and experience is best equipped to answer.

Inspection

It's always a good idea to hire an independent professional home inspection service before you buy a house. A home inspection is a visual examination of some combination of the structural, mechanical, electrical and plumbing systems that is designed to identify material defects in those systems and components. You can make your offer contingent on inspection.

Every inspection should include an evaluation of at least the following:

- Structure
- Roof
- Exterior
- Heating and cooling systems
- Plumbing
- Electrical system
- Interior

Legal Title Issues

When a home is purchased, **title insurance** is also purchased. Based upon a search of public records, a **title search** brings attention to any known property title problems before the closing takes place. It also insures against loss due to certain title defects. Your real estate lawyer or title company will investigate the legal title of the property you want to buy, and may find issues you'll need to understand.

In Colorado, an **implied easement** exists where a person grants lands to which there is no accessible right-of-way except over her or his land or retains land that is inaccessible except over the land which the person conveys. In such instances a right-of-way is presumed to have been granted or reserved. Such an implied grant or easement in lands or estates exists where there is no other reasonable and practicable way of egress or ingress and it is reasonably necessary for the beneficial use or enjoyment of the part granted or reserved.

The property you're interested in may also be subject to a "**lien**," which is a charge on the property to satisfy a debt or other obligation owed by the current owner of the property. A lien encumbers property for as long as it exists.

In Colorado, liens on a piece of property may include:

- Mortgage or trust deed liens
- Construction or mechanics' liens
- Tax liens
- Municipal liens
- Judgment liens

Closing Costs

In Colorado, you can expect to pay for the following charges - called "closing costs"- at the time you purchase your home:

- Down payment
- Pre-paid items, which are collections in advance for loan interest, homeowners insurance and property taxes
- Credit report
- Property appraisal fee
- Origination fee
- Discount points
- Improvement location survey
- Recording fees
- State documentary fees
- Real estate closing fees (normally split 50/50 between buyer and seller)

The seller typically pays for the following closing costs:

- Lender's title insurance
- Real estate closing fees (normally split 50/50 between buyer and seller)

RESPA

The US Department of Housing and Urban Development's (HUD) Federal Housing Administration (FHA) administers several regulatory programs to ensure equity and efficiency in the sale of housing. One of these programs, under the Real Estate Settlement Procedures Act (**RESPA**), applies to almost all mortgage loans and mortgage companies, not just FHA-insured mortgages.

RESPA protects consumers by mandating a series of disclosures that prevent unethical practices by mortgage companies and that provide consumers with the information to choose the real estate settlement services most suited to their needs. The disclosures take place at various times throughout the settlement process. Certain disclosures are required at the time of loan application, before closing occurs, at closing, and after closing.

Mortgages

At the time of purchase, you'll sign a **promissory note** that legally obligates you to pay back the money you borrowed to buy your house. A promissory note is, in effect, an "IOU." You promise to pay your lender the full amount, payable in equal monthly installments, at the interest rate previously agreed upon. Your lender will keep the original until you completely pay off the loan. In Colorado, the document you sign as a security interest in your house is called either a

mortgage or a **deed of trust**.

Both deeds of trust with private power of sale and mortgages are used as security instruments. Mortgages require judicial foreclosure while deeds of trust do not. Because mortgage terms and rates may vary, it's a good idea to shop around and get the best possible deal.

Private Mortgage Insurance

If you put down less than 20% on a home mortgage, lenders often require you to have "**private mortgage insurance**" (**PMI**). PMI is a type of insurance which protects the lender in the event the borrower defaults on the loan. PMI is a cost added to the monthly payment of many conventional loans. The loan servicer collects these monthly premiums and pays them to a private mortgage insurance company.

The Homeowners Protection Act of 1998 (**HPA**) establishes rules for automatic termination and borrower cancellation of PMI on home mortgages. Under HPA, you have the right to request cancellation of PMI when you pay down your mortgage to the point that it equals 80% of the original purchase price or appraised value.

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