

## Selling or Purchasing Real Estate: The Basics of the Purchase and Sale Agreement

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The Purchase and Sale Agreement (the agreement) is the very backbone of all real estate transactions. Once the agreement is signed, both parties, buyers and sellers, breathe a little easier because the pending transaction is now formalized and the process is in motion.

The Purchase and Sale Agreement typically contains the parties' rights and obligations with regards to:

- The approximate closing date.
- What personal property is or is not included in the transaction.
- The purchase price.
- The amount of the buyer's deposit and where it will be held – usually in escrow by the realtor or by the seller's attorney in instances where no realtors are involved.
- The amount of mortgage financing that the buyer needs to purchase the house and the deadline date for obtaining the mortgage commitment.
- Inspections that the buyer wants to make, such as a structural/mechanical inspection and other inspections for radon, water, termites, etc. and the expiration date for such inspections.
- Cost adjustments to be made at the closing for property taxes, fuel, etc.
- The consequences for either party backing out

of the deal. (Defaulting)

- Any special or unique conditions, i.e., seller concessions or closing cost credits.
- Any repairs that need to be done prior to closing and by whom. Protect yourself with a licensed contractor.
- For new construction, the building plans and specifications should be attached to the agreement and made a part thereof.
- Is the deal contingent on the property appraising equal to or above the purchase price?

Remember that the law views real estate as a special and unique commodity. As such, there are special rules regarding real estate contracts, not the least of which is the requirement that it's what is in writing that counts. In general, a court will not consider mere oral agreements or statements of the parties. Therefore, it is very important to make sure that the agreement contains all of the elements that the parties have agreed upon.

Be wary of someone saying "Don't worry, that is understood and everyone is in agreement, so it really doesn't have to be in the agreement." A red flag should go up and you should respond that if everyone agrees on the terms, then what's the problem with adding it to the agreement?

One more thing, don't worry about the legalese, just have it written in normal, everyday terms so that anyone can look at the agreement and understand what the parties have agreed upon. Nebulous stipulations like agreeing to let the seller return in the spring to remove some of his prized flowers or bushes usually lead to post-closing headaches.

Being the backbone of the transaction, the purchase and sale agreement should clearly and concisely address the parties' rights and obligations. Paying careful attention to details in the agreement can mean the difference between a successful transaction or a nightmare of litigation.

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