

## STEP—BY—STEP CLOSING PROCESS

### PRE-CONTRACT STAGE:

#### *Seller — List the House for Sale*

Most often this is done with a real estate agent. You will sign a contract with that agent's firm. This contract is called a Listing Agreement or an Exclusive Right to Sell Agreement. This document creates important responsibilities for you. Read it carefully and consult your attorney before you sign. The Listing Agreement sets forth the amount of commission you will pay, along with any additional expenses. It tells you how long you are bound to this company and even gives the realty company rights after the agreement ends. Remember, that all of these terms are negotiable.

#### *Purchaser — Obtain Mortgage Pre-Approval*

Before you find the house of your dreams, be sure that you can afford it. Have your lender check your credit, income and debt load to determine how much house you can really afford. Even after the lender tells you how much you can afford, take a look at your own finances, life style and future plans to see if that amount works for you. It may be that you do not want to spend that much on house payments for the next 30 years.

### CONTRACT STAGE:

The Bar Association of Erie County, in conjunction with the Buffalo Niagara Association of Realtors, has created an attorney drafted standard residential contract (the "Contract"). This was done to standardize closing transactions and minimize misunderstandings. The Contract has a number of blanks for the realtor to complete, but importantly, is subject to review and approval by the attorneys for Seller and Purchaser. Generally, the Contracts are prepared by the Purchaser's realtor and are then signed by the Seller and Purchaser. Thereafter, they are delivered to the attorneys for review and approval. Even though this review period exists, you should only sign a Contract that is fully complete, correct and accurate. Do not hesitate to consult with your attorney before signing the Contract.

The attorney approval allows the attorneys to review the transaction, the particular needs of the parties and the peculiarities of the property, and allows the attorneys to determine if any changes need to be made to the Contract. Each attorney has three (3) business days following receipt of the Contract to approve the Contract, disapprove the Contract or approve the

Contract on certain conditions. The Contract needs to be delivered to the attorneys within two (2) business days following its full execution.

*During this contingency period it is important for you to discuss with your attorney any issues you might have with occupancy dates, planned uses and improvements for the property, and any other factors relating to the transaction.* It is possible for your attorney to negotiate changes or even cancel the deal during this time. If both parties agree to the changes, an Addendum will need to be drafted and signed by the Sellers and Purchasers.

### **PROPERTY INSPECTION:**

Paragraph 9 of the Contract sets forth the contingency for the Purchasers to have the property inspected and for the results of that inspection to be acceptable to the Purchasers. That provision also establishes the time frame for this contingency. It is very important to note that the Purchaser must not only complete his or her inspection during that time frame, but must also give, in a very specific way, notice of any unacceptable results to the Seller.

If the Purchaser's inspection shows defects in the property that Purchaser had not previously seen, the Purchaser can ask the Seller to either make certain repairs or reduce the Purchase Price. The Seller is not obligated to agree. Generally the realtors and/or the attorneys will negotiate to try to resolve these issues. If the property defects are too great, the Purchaser can simply elect to cancel the Contract. Whatever the Purchaser decides, the key is that if the Purchaser wants repairs, a credit or to cancel, the notice must be received by Seller or the Seller's Attorney before the end of the Property Inspection Period as set forth in Paragraph 9.

### **MORTGAGE APPLICATION:**

Paragraph 10 creates the contingency for the Purchaser to obtain financing for the purchase. The Purchaser is obligated to apply for a mortgage in a set time frame. The Purchaser must apply, diligently pursue and accept a Loan Commitment. A commitment is the lender's written approval to give the loan.

**Provided the Purchaser "locks-in" the interest rate at the time of application,** the Purchaser is protected if the interest rate at the time of application exceeds the rate inserted in the contract. However, if the Purchaser does not "lock-in" the interest rate at application ("floats" the interest rate), the Purchaser must accept any interest rate with any points for which he will qualify. Thus, if the Purchaser does not set the interest rate at application, the Purchaser takes all the risk if interest rates increase before closing and the Purchaser must pay whatever expenses are necessary to obtain a Loan Commitment.

If the Purchaser does not obtain the Loan Commitment by the date set forth in Paragraph 10, either the Seller or Purchaser can cancel the Contract.

### **DOCUMENT ORDERING – SELLER**

Except for condominium sales, the Seller is obligated to provide the Purchaser with a title search showing all recorded documents relating to the property from 1920. Usually, the Seller has the search from his original purchase. That document just needs to be continued by a

search company from the date the Seller bought the property. Continuing the search is checking all of the recorded documents in the Erie County Clerk's Office relative to the Seller and the property.

In addition, the Seller must have a new survey of the property prepared. A survey is prepared by a professional surveyor and is a depiction of the boundary lines of the land along with all buildings, fences, pools, etc.

It is important for the Seller to deliver the Seller's old search and survey to his or her attorney as soon as possible after the Contract is signed because it takes a few weeks for the search continuation and the new survey. The Seller's attorney will also provide the Purchaser's attorney with paid tax receipts.

### **TITLE EXAMINATION – PURCHASER**

Once the Purchaser's attorney receives the search and survey from the Seller's attorney, he or she will begin to examine the title. The title examination is a critical task for the Purchaser's interests. It is how the Purchaser is assured that he or she will actually own the property, free of any adverse claims from any other party.

The Purchaser's attorney will first look at the title search to be sure the "chain of title" is not broken. This means that all of the correct parties transferred out their ownership of the property. We make sure that we not only check the search, but actually look at all of the recorded documents in the County's records. We do the same for all easements and restrictions. An easement is the right of someone else to use your land. It is very important that your attorney determine whether or not that right to use some of your land is contrary to your current or intended use of the property. Restrictions are limitations on your ability to use the property. Common restrictions prohibit fences, swimming pools, basketball backboards, hot tubs and the like. The attorney must check to be sure the restrictions have not been violated. **If the Purchaser has any planned uses or planned improvements to the property, it is critical that the Purchaser add these in Paragraph 12A of the Contract.** In that circumstance, if any of the Purchaser's planned uses and/or improvements are not permitted by the restrictions and/or easements, the Purchaser can cancel the Contract.

In addition, the Purchaser's attorney will examine the title for any open liens or encumbrances on the title and will make sure the survey accurately depicts the property dimensions and improvements. Any title defects need to be cured by the Seller prior to Closing.

### **MORTGAGE PROCESSING — Purchaser:**

Often the Loan Commitment is issued with conditions. These are items that must be addressed by the Purchaser before the closing can take place. It is very important for the Purchaser to take care of these conditions as soon as possible. Once all of the conditions are satisfied, the lender will issue the "authorization to close." Most lenders require 3 to 14 business days thereafter to close.

**INSURANCE — Purchaser:**

Once the Purchaser has commenced the loan application, it is time to start shopping for homeowner's insurance. It is important for the Purchaser to determine what insurance coverage and deductible are appropriate (be sure to consult your Loan Commitment for the lender's insurance requirements). We will need the insurance information about three (3) weeks before the Closing Date. Your lender will not schedule your Closing without proof of insurance and a receipt for payment of the premium for the entire first year.

**CLOSING DOCUMENT PREPARATION — Seller:**

The Purchaser's attorney will send the Seller's attorney a title report setting forth the title issues which must be remedied by the Seller's attorney. The Seller's attorney will then prepare the deed, required affidavits, guarantees and ancillary documents necessary to clear title. Once the closing is scheduled, the Seller's attorney will also prepare the Closing Statement showing the Purchase Price plus any tax reimbursements credits and other amounts due to the Seller, less any credits due the Purchaser.

**CLOSING FIGURES:**

The lender will provide a statement of all of the lender's closing costs on what is called a Closing Disclosure. The Purchaser's attorney will review the Seller's Closing Statement and the lender's closing figures and will then determine how much money the Purchaser needs for closing and how those checks need to be drawn. Usually, these figures are available a day or two before closing, depending on how quickly the lender prepares its figures.

**UTILITIES:**

Once the Closing is scheduled, the Seller needs to call the companies providing gas, electric and water to obtain final readings and to arrange the turn over of the services. The Purchaser must also call the utility companies to establish these connections in the Purchaser's name.

**CLOSING:**

At the Closing, the Purchaser signs a plethora of documents for the lender. The most important of these are the Note and the Mortgage. The Note is the promise to repay the money borrowed and the mortgage is recorded to be the lender's lien on the property to secure repayment. Once the mortgage documents are signed by the Purchaser, the lender will release the checks from the loan proceeds. In exchange for these loan proceeds checks and the Purchaser's checks, the Seller's attorney provides the deed, ancillary documents. The deed, mortgage and ancillary documents are then recorded. Finally, the Purchaser is given the keys to the house!