

## PURCHASE OF REAL ESTATE

### A. Pre-Contract

1. Prepare an Agreement for Purchase and Sale of Real Estate (Form No. 601, 602, or 603). This is usually done by the Buyer, but it may be done by either party.
2. Prepare an Affidavit and Memorandum of Agreement for Purchase and Sale (Form No. 607), if desired, for recording in the public records of the county where the property is located. This document should be used if the Buyer has some concern about the property being transferred by the Seller prior to closing.
3. Prepare an Earnest Money Escrow Agreement (Form No. 608), if necessary.
4. The documents prepared in accordance with paragraphs 1, 2, and 3 above should be executed by the Buyer and the Seller and the Earnest Money Escrow Agreement should also be executed by the Escrow Agent. All documents should be carefully reviewed by both the Buyer and the Seller with particular attention directed to the costs and expenses to be paid by the respective parties so that there will be no misunderstandings at closing.

### B. Post-Contract

- I. The Buyer should examine any leases currently in effect on the real property since title to property is usually taken subject to all existing lease agreements.
2. The Seller usually orders a Title Certificate and Commitment for Title Insurance or an Abstract and Opinion of Title, both of which will evidence current title information; however, the Buyer must make sure this has been done.
3. Order an appraisal of the property, if necessary or desired.

4. Order a survey of the property, a termite inspection and an inspection of the building.

5. Obtain Estoppel Affidavits from all mortgage holders  
(Form No. 628) and request, in writing, their permission to assume the obligations of the Seller under their mortgage along with conditions and instructions for assumption.
6. Call the zoning office of the county in which the property is located to check current zoning on the property to be sure it is compatible with your intended use.
7. Check with the city and the county real property tax collector to be sure the taxes and all other assessments have been paid and ask for the amount of taxes due for the most recent tax year, because this figure will be used to prorate taxes on the closing date.
8. Call the Recording Department for the county in which the property is located to determine their fees for recording all documents and any other fees which must be paid at the time of recording, such as documentary stamps and intangible tax, in order to prepare the closing statement.

C. Closing

- I. The following documents are usually prepared or provided by the Buyer; however, be sure that you are familiar with the documents required to be prepared or provided by the Seller, per the Seller's Checklist Sale of Real Property.
  - a. Prepare a Closing Statement (Form No. 611). Most of the figures required for the closing statement are self-explanatory. However, some discussion is necessary with reference to the prorations for taxes and interest on mortgages:
    - (l) Taxes - Real property taxes are usually due near the end of the year to which they apply

and are prorated to the date of closing, with a credit given to the Buyer for the number

of days the Seller has owned the property based on the taxes on the property for the prior year. The new owner, i.e., the Buyer, will then be responsible for paying the entire tax bill for the year in which he obtained title to the property.

- (2) Interest - Interest on most mortgages is paid in arrears, i.e. a mortgage payment which is due on November 1st will cover interest due

on the mortgage from October 1st through October 31st. Therefore, if closing is to take place on the 15th day of October, the interest for the month of October should be prorated to the date of closing, with the Buyer receiving a credit for the number of days the Seller owned the property during the month of October. The Buyer will then be responsible for paying the entire principal and interest payment due on November 1st.

- b. Prepare a Mortgage and Security Agreement (Forms No. 622, 623, 624) and a Promissory Note (Form No. 621) covering any new financing for the Buyer.
- c. Prepare an Assignment of Rents and Leases (Form No. 626), if required by any new mortgage holder.

2. The Buyer must have cash or a certified or cashier's check for the amount needed for closing, as indicated by the closing statement, and must bring an insurance policy covering the property listing any mortgage holders as "loss-payees".

3. All closing documents should be properly executed and all monies should be paid out in accordance with the closing statement.

#### D. Post-Closing

1. Record the Warranty Deed, all Satisfactions of

Mortgage, Termination Statements under the Uniform Commercial Code, new Mortgages, and Assignments of Rents and Leases, if applicable. The Buyer is generally only responsible for recording the Warranty Deed and

any Assignments of Rents and Leases required by any new Mortgage holder, together with the payment of recording fees, documentary stamps and intangible tax as required under the Agreement for Sale and Purchase; however, the Buyer should confirm that the Seller has recorded all Satisfactions of Mortgage and Termination Statements under the Uniform Commercial Code.

2. Once all documents are recorded, request that the

Owner's Policy of Title Insurance be issued or the Abstract and Certified Opinion of Title be brought current to the date of recording.