

Selling a  
**Home**



As frequently as the rules and markets change, selling a home can be a complicated process whether you use a real estate agent to help you or not. This Guidebook shows a practical process to follow if you are preparing your home for sale, negotiating offers and managing a closing process.

If you have additional questions, ARAG can help. If you have ideas on how to improve this Guidebook, please share them with us at [Service@ARAGLegal.com](mailto:Service@ARAGLegal.com).

If you're not an ARAG member, please feel free to review this information and contact us to learn how ARAG can offer you affordable legal resources and support.

Sincerely,

ARAG Customer Care Team

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# Glossary

**Amortization schedule.** A table that shows what portion of each payment made by the borrower will be applied toward principal and to interest over the duration of the loan, until it is paid off.

**Annual Percentage Rate.** The true annual cost of borrowing, expressed as a percentage.

**Appraisal.** A written explanation of the valuation of the property, primarily based on an analysis of comparable sales of similar homes in the area.

**Adjustable rate mortgage (ARM).** A loan where the interest rate is adjusted periodically, generally from every six months to a year. The rates are often below market, but continue to increase and may balloon to higher payments during the life of the loan.

**Balloon payment.** An oversized payment due at the end of a mortgage, commercial loan or other amortized loan. Because the entire loan amount is not amortized over the life of the loan, the remaining balance is due as a final repayment to the lender.

**Closing.** The meeting when all documents are signed money changes hands.

**Contract of sale.** When the seller has accepted the buyers' offer and is in the process of closing on the sale of the property.

**Counter offer.** When an offer to buy a home is rejected as presented, but returned as a new offer with certain terms added or removed.

**Credit history.** A record of an individual's past borrowing and repaying, including information about late payments.

**Credit score.** A numeric score that measures the credit worthiness of an individual based on credit history, payment history, credit balances and the number of recent inquiries.

**Debt to Income Ratio.** The amount of debt a person has as compared to overall income.

**Escrow.** When a buyer's funds are held by a neutral third party (called an escrow agent) who works for both the seller and the buyer/borrower.

**Equity.** When the fair market value of real estate exceeds the amount of indebtedness on the property.

**Inspection.** An inspection of a prospective home done by a professional, soon after an offer is made, to establish the structural and mechanical integrity of the house.

**Lien.** A claim or interest on the real estate property stemming from an unpaid debt.

**Listing.** A Multiple Listing Service, or MLS, is a marketing database set up by a group of real estate brokers or agencies in order is to provide accurate and structured data about properties for sale.

**Note.** A promissory note securing an interest in real estate. Usually recorded in the county where the real estate is situated to evidence notice of the lenders interest in the property.

**Points.** A point is a fee equal to 1 percent of the loan amount. Discount points are prepaid interest on the mortgage loan. Origination points are charged by the lender to cover the costs of making the loan.

**Quitclaim.** Deeds used to convey any interest that the grantor might possess in the property without any warranties to the buyer.

## Step 1: Prepare Your Home For Sale

A seller has specific responsibilities during the sale process. In a traditional sale, the seller offers a home for sale at a specific price, accepts offers on certain conditions and will ultimately determine who to sell the home to and for how much.

There are several considerations that a seller must be aware of when selling a home, as well as fees and costs associated with the sale. The costs generally associated with the sale of the home include listing the property for sale, hiring an agent, closing costs and/or repairs to the property.

As you get ready to sell, one of the first decisions you'll want to make is whether you want to hire a real estate agent to help you sell, or if you want to sell it on your own.

If you hire an agent to help you sell a home, that person is there to look out for your best interests. Choose someone you feel comfortable with and who explains the home buying process in a way you fully understand.

You can find agents online and through local agencies. Many people find an agent by asking friends and family for a recommendation. Interview several agents before selecting someone to represent you. Make sure the person you select is licensed in the state you are selling in and familiar with the areas you want to live.

### **Advantage of using a real estate agent**

The role of a seller's agent varies depending on the nature of their contract. Generally, seller's agents list the property for sale and/or market the property for sale. The seller is required to pay the agent some kind of compensation for the sale, typically a percentage of the sales price. The seller can negotiate this fee with their agent, but often it is six percent of the sales price on residential properties. This is called a commission.

Hiring an agent also will provide more exposure because most traditional real estate agents share their property listings in a database called the Multiple Listing Service. Agents also represent potential buyers they can share your listing with before it even goes on the market. Some agents advertise their services and listings which leads to more exposure to potential buyers.

An agent can represent you as a single agent, a transactional agent or within a dual agency role.

- ✔ **Single agency.** In this role, the agent owes a fiduciary duty to the hiring party and general honesty duties to the other.
- ✔ **Dual agency.** In this role, the agent owes a fiduciary duty to both parties. This can be very difficult and is not permitted in many states.
- ✔ **Transactional agency.** The agent has no fiduciary duties to either, however, generally provides a limited form of representation to a buyer, a seller, or both, but does not represent either in a fiduciary capacity or as a single agent.

**Advantages of Sale by Owner.** If you decide to sell your home yourself you may save money, based on the commission you would have had to pay an agent. You also will have complete control over the transaction. You set the price, you set up convenient times to show the home and you get to negotiate with a buyer.

**Disadvantages.** You have less exposure to potential buyers which could make it more difficult to sell your home. Generally, homes that sell with an agent, on average, sell for more than those sold by an owner. An agent has the experience and knowledge necessary to advertise your property on the market and negotiate your sale.

## Step 2: Market And Show Your Home

**Listing the home for sale.** There is a fee associated with listing your home for sale on the multiple listing services which is normally covered in the fees/ commission the seller pays to the agent. Although you are not required to do so, it offers you more exposure to potential buyers.

**Listing Price/Setting the Sales Price.** Another decision to make regards the sale price. Typically the seller sets the price to list the property for sale on the market. The sales price is usually set by comparing similar properties in the same general area that have recently sold. In addition, the seller may have an appraisal of the home performed to establish the fair market value of the property. The price is generally negotiable and buyers can place bids on the property for the amount and under the terms of which they want to purchase the property.

**Protecting your Privacy While Your Home is on the Market.** Before potential buyers walk through your home, you may want to take a few precautions to make sure your private information stays private.

- **Move private documents to a desk drawer or locked cabinet.** Buyers can open kitchen cabinets and other built-in structures. If they open a drawer, make sure they are not finding important documents you don't want them to see.
- **Don't leave mail out.** Mail is often left on a table or in an open area where anyone can see it. It also tells a buyer your name and other information such as what credit you have, what associations you belong to and if you are in legal disputes.
- **Take diplomas and pictures off the walls.** Practically, this allows buyers to see the home as they want to decorate, not as you have decorated. It also makes sure that they do not know your profession or form biases on what your alma mater or family activities reveal about you.



- **Clean out closets.** Similarly, clean closets let buyers see the home from their perspective, and prevents bias they'll form based on who you are and what you can afford.



## Step 3: Negotiate Offers

At some point, you'll receive offers from potential buyers. You may accept multiple offers at once or only one at a time. Ultimately, you'll make the decision on which offer to accept.

*An offer to purchase contract* is a standard pre-printed form submitted by the buyer or agent for the seller and the agent's review and approval. Upon acceptance of the offer by the seller the contract becomes binding, subject to contingencies.

The contract should contain the:

- ✓ **Expiration date of the offer.** This is the amount of time the offer will be valid for and how much time the seller has before the offer will terminate, which could be hours, days or weeks after the offer is submitted.
- ✓ **Purchase price.** The total price buyer is offering to purchase the property from the seller.
- ✓ **Initial deposit (earnest money deposit).** Good faith deposit held in escrow, while the buyer obtains financing. Read the contract carefully to understand under what circumstances the money may be refundable.
- ✓ **Buyer down payment.** Readily available cash that will be paid as part of the sale that is not financed. The buyer will need to disclose proof of this down payment to the seller (bank statement, check).
- ✓ **Financing terms.** The rate and terms of which the buyer must receive financing for the sale.
- ✓ **Contingencies.** The certain events which would void an offer to purchase even if accepted. For example, if the buyer is unable to get financing at a certain rate or the inspection reveals serious defects in the property posing unacceptable costs to the seller.

- ✔ **Warranties.** As to title (see deeds), condition of the property.
- ✔ **Fees** associated with closing the sale. If the seller will have to pay closing costs and if so, how much.

You can either accept or deny the offer or make a counter-offer stating the terms of your offer that need to change to be acceptable. The buyer can then accept or refuse the counter-offer, or make a counter-offer to the new terms. The offer does not become a binding contract until both parties agree to the terms and sign the contract.

### **If you are making a short sale**

If you are selling a home that has a mortgage lien on it, then the mortgage loan has to be satisfied (i.e., paid off) at the closing so that the buyer receives the property free of the lien of the mortgage. But suppose the value of your home has fallen far below the balance of your mortgage, how can you get that mortgage loan paid and the lien satisfied if the sales price isn't high enough?

You may be able to get your mortgage lender to accept a short sale in which the lender agrees to satisfy its lien even though it will get less than the amount otherwise due on the loan. The lender does not have to accept a short sale, and its requirements will vary, but the ultimate goals of the seller are to have the mortgage lien satisfied and to have the loan itself written off so that the lender will seek no further monies (i.e., the deficiency) from the seller. If you have more than one mortgage on the property you are selling, all the lenders will have to agree to satisfy their mortgage liens and to not pursue you for any deficiencies.

A short sale also presents income tax issues for the seller. To the extent that a mortgage lender discharges your indebtedness (i.e., waives any claim for a deficiency), you may be deemed to have received income in the amount of the discharged debt unless you qualify under federal mortgage debt relief laws. Bottom Line: if you are seriously considering a short sale you should consult a real estate attorney to help you understand your chances, risks, protective measures and tax liabilities.

If your mortgage is guaranteed or owned by Ginnie Mae or Freddie Mac, you can get free assistance to arrange your short sale and waive any deficiency at HUD's Making Home Affordable.gov.

### **If seller-financing is suggested**

In a tough real estate market, you may be asked to consider self-financing part or all of the buyer's purchase price, especially if you own the property free and clear of liens. Consider some basic risk and burden points:

- When you decided to sell, did you expect an income stream and a retained interest in the property or did you need a flat sum of cash and to wash your hands of the property?
- What facts about the buyer do lenders know that you do not if the buyer cannot find a lender willing to provide financing?
- How are you going to make sure the security for your financing (i.e., your former property) is protected from harm, is not neglected or abused and its taxes paid?
- What will you do if the buyer is late or misses payments?
- How will you protect yourself if the buyer pledges the property for other credit?
- How will you respond if married buyers split up or abandon the property?
- Do you know how to handle foreclosures and do you really want that expense?
- Do you know how you will be taxed on the loan and repayments?

Admittedly, none of these issues might arise, and you might have a perfectly stable and uneventful experience as a mortgagee, however, seller-financing is not for the inexperienced. If you are considering it or are asked to consider it, you need to be realistic about the burdens and risks you would be assuming, and you need independent legal advice and representation before you agree to it.



## **Warrantees**

There are three types of warranties sellers provide buyers: home warranty, warranty title and repair.

**Home Warranty.** A home warranty is a quasi-insurance policy that the seller's agent can get and offer as part of the deal. The premium would then be paid by the seller at closing.

A seller also may want to provide a warranty on the appliances and or plumbing, heating/cooling, and other home systems within a specified time period after the home is purchased the buyer. This is generally for a limited amount of time (one year) and limited to specific items and situations and items in the home. Except in a new home, a seller's warranty is not required by most states but can be an added incentive for a new home buyer who is trying to limit the costs associated with repairing the home.

**Warranty of title.** On the deed of grant, Sellers are required to disclose which warranties of title they will be conveying to the buyer. A quitclaim deed has no warranties, either express and/or implied, as to title. In a general warranty deed, a seller is warranting title against any third parties making claims to title against the buyer's interest. In a special warranty deed, a seller is warranting title against parties claiming interests under him, such as heirs and other parties known to the buyer. The sales contract will dictate what type of deed the seller must provide (i.e., a quitclaim, a deed with general warranties, or a deed with special warranties).

**Making repairs to the property prior to the sale.** Sellers do not have a general duty to make repairs. The offer to purchase may contain a clause stating that if certain defects are found in the inspection the contract, even if accepted by the buyer, could cause the contract to fall through. Also keep in mind, problems that are noted on an appraisal and inspection might throw up a red flag to lenders, causing them to ask for a structural inspection to verify that there are no problems with the house. The bank might refuse to lend until repairs are made.

## Step 4: Prepare For Closing

Before you close, the house will likely be inspected. A home inspector examines the physical structure and systems of a house, from the roof to the foundation. Generally a standard home inspector's report will cover the condition of the following:

- ✓ Heating system
- ✓ Central air conditioning system
- ✓ Interior plumbing and electrical systems
- ✓ Roof, attic and visible insulation
- ✓ Walls, ceilings, floors, windows and doors
- ✓ Foundation, basement and structural components

**Prior to closing.** Other tasks that need to happen before closing include:

- **Title search.** This verifies the seller really owns the property and there are no other claims to the property.
- **Title insurance.** The lender requires title insurance to protect the investment in case the title comes into question after closing.
- **Survey.** This is a technical drawing of the property and its structures. A survey can take weeks and needs to be ordered in advance to be ready in time for closing.
- **Septic certification.** Some states require this inspection if the property you are buying has a septic tank.
- **Well testing.** Some states require this inspection if the property has a well.
- **Termite inspection.** This requirement varies by state and must be completed prior to closing.

- **Final walk through.** Generally the sales contract includes a clause that allows the buyer a walk-through inspection within 24 hours prior to closing.

**Consult an attorney.** A real estate attorney is different than a real estate agent. In some states the buyer may be required to hire a real estate attorney to assist with the closing. The role of the attorney is to:

- Help both parties understand the sales contract and mortgage loan, including how the buyer will take title on the property.
- Run or review a thorough title search to make sure there are no covenants, easements, liens, etc. registered against the property that will impede the new owner's use of it.
- Prepare and record all the legal documents.
- Evaluate any adjustments, including taxes owing and utilities costs paid, prior to the transaction closing.
- Attend the closing and review all the papers you will be required to sign.
- Ensure validly registered ownership subject only to the liabilities you have accepted.

**Seller's Disclosure.** In virtually all states, prior to closing, sellers are required to disclose to the buyer anything that may interfere with the buyer's decision to purchase the home. A written statement is signed by the seller and buyer listing all pre-existing faults or required information pertaining to the home. Anything that could be potentially harmful to the new occupant or the home itself must be addressed in the seller's disclosure.

The seller is obliged to disclose known defects, but that disclosure might be made in a form provided by his broker signed by the seller. There are different policies depending on the state where the home is located regarding home disclosures. The types of matters that might have to be disclosed could include facts known to the seller about:



- ✓ Current physical condition of the property
- ✓ Foundation issues
- ✓ Plumbing and sewage issues
- ✓ Electrical Issues
- ✓ Septic/ Sewer Issues
- ✓ Water leakage of any type, including in basements
- ✓ Termites or other insect infestations
- ✓ Roof leaks and defects
- ✓ The existence of mold and or other potentially hazardous substances and conditions (asbestos, chemicals, the presence of drugs, such as methamphetamine)
- ✓ Easements, shared driveways, encroachments
- ✓ Zoning restrictions
- ✓ Homeowner Associations and bylaws
- ✓ Whether a death occurred on the premises

Even if the buyer has a home inspection, the seller still has a duty to disclose any known issues. Consult with your agent and a real estate attorney to know specifically which disclosures are required according to state law.

## Step 5: Closing

Closing is the final step in the process. During closing, the deed is delivered to the buyer, the title is transferred, financing documents and title insurance policies are exchanged, and the agreed-on costs are paid. Some of the final documents, including the deed and mortgage or deed of trust are signed by the appropriate parties, and then delivered to the county recorder to be recorded.

**Closing costs.** Local practice establishes which side – seller or buyer – is responsible for some or all of the closing costs in a transaction. But generally, the buyer is required to pay those costs associated with its obligations in the transaction, such as:

- ✓ Agent commissions
- ✓ Loan fees
- ✓ Title insurance charges
- ✓ Recording and filing fees
- ✓ Some upfront costs: down payment, first month of the mortgage
- ✓ Buyer's portion of transaction taxes and other fees

As part of the sale contract, the seller may agree to pay a portion of the buyer's closing costs (e.g., up to a certain percentage depending on the law and type of mortgage involved).

In the offer, the buyer may ask the seller to pay some closing costs, depending on the type of loan.

- On Department of Veterans Affairs (VA) loans, the buyer may ask the seller to pay all of the closing costs, although the seller can decline that offer.
- On conventional or Federal Housing Administration (FHA) loans, the seller can pay up to six percent of the sales price which covers some of the buyer's closing costs. Again, the seller can decline to pay these costs and counter-offer a lower amount or refuse to pay any closing costs at all.

The seller is responsible for delivering the keys and title to the buyer at the close of the sale. Depending on the negotiation of the parties, the seller also may offer and maintain a home warranty on the property for a period of time on the purchased property and/or make some repairs to the home prior to closing. The seller will disburse necessary funds to pay off the agent, the seller's mortgage lender, and other parties once funds are received from the buyer.

### **Tax Implications**

Sale of real estate will trigger a variety of local and federal tax issues. The state of sale may impose transfer taxes on part or the entire selling price, or taxes on the value of mortgages and deeds recorded, and income taxes on some of the capital gain realized. The federal income tax may reach some of the seller's capital gain from the sale. If the seller is making a short sale, there may be income deemed resulting from the discharge of the seller's indebtedness. You will need to consult your agent or real estate attorney for the impact in your sale.

# Let us help you

If you need additional help or guidance, ARAG is here for you. Simply contact a Customer Care Specialist who can help you understand the benefits available to you. For more information:



Visit the Education Center at:  
[ARAGLegalCenter.com](http://ARAGLegalCenter.com), call  
1-800-247-4184 or email  
[Service@ARAGLegal.com](mailto:Service@ARAGLegal.com)







## Preparing to Meet Your Attorney

If you decide to consult an attorney about your legal matters, we suggest you complete the following worksheet prior to your meeting. By preparing this information ahead of time, you have the opportunity to clearly think through your needs and the attorney will have the necessary information to provide you with the highest level of legal service.

Start by thinking about your current situation, the communications you have received and any history you have about the legal matter. Summarize your legal needs in a few sentences. Use this as a starting point when you make your first phone call to an attorney.

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# Checklists

## Home Closing Checklist

With all of the major considerations involved in selling a home, it can be easy to miss some of the smaller tasks. These seven tasks can add up to significant time and money if not handled before you move.

- Cancel all utilities and services.** Contact every utility and service provider to end or transfer services to your new address as of the closing date. Contact your insurer to cancel coverage on your old home, get coverage on your new one and ask for any refund of prepaid premium you may have coming.
- Change your address.** Notify the post office of your forwarding address two to four weeks before closing. Change your address with credit card companies, subscriptions and financial institutions.
- Check with your homeowner's insurer about coverage for your move.** Movers generally only cover what they pack.
- Double check your HUD-1 Settlement Statement for accuracy.**
- Review charges on your settlement statement.** Make sure payoff amounts are correct and that all negotiated fees and discounts are included.
- Search for missing credits.** Be sure to account for any prepaid expenses, such as property taxes.
- Don't leave money in escrow.** Make sure the company releases money held in escrow for you.

This publication is provided as educational material only. While every effort has been made to ensure the accuracy of this publication, it is not intended as legal advice as individual situations will differ and should be discussed with an expert and/or lawyer.



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