

The Purchase Process





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What is the purchase process?

Buying a home involves several steps, some of which may vary according to state law or local custom. In general, though, the preliminary steps include making an offer on the home, completing a purchase and sale agreement (also known as a P&S), and scheduling a home inspection.

What's the difference between making an offer and completing a purchase and sale agreement (P&S)?

In some states, the offer to purchase and the P&S are separate documents. In these states, a typical offer to purchase is a short form in which the buyer offers to purchase a specified piece of property from the seller for a specified price on a specified date. This document is a quick, formal way to establish a commitment between the buyer and seller. Usually, the signing of the offer is accompanied by a down payment (also known as earnest money).

The offer recites that if the offer is accepted by the seller, the parties will execute a P&S by a particular date. It's important to note that an accepted offer is a binding contract. For this reason, making or accepting an offer should be done with care. If you intend to seek legal advice, an attorney should be retained to review the offer as well as the P&S.

The P&S will supercede the accepted offer. It contains the finalized terms and conditions (and any remaining details) of the transaction. Once it is signed by both parties, the P&S becomes the final agreement between the parties.

In other states, only one document is used. There's no preliminary offer to purchase form; the actual offer is made directly on a standard P&S form (which might be called a purchase offer contract). This detailed contract contains all of the terms of the sale.

How do you make an offer?

In most home sales, offers and counteroffers are made through a real estate agent or other intermediary, such as an attorney. If agents and attorneys aren't involved, the buyer and seller can deal with each other directly.

The offer must be made in writing, either on a preliminary offer to purchase form, or on the actual P&S. (Oral contracts for the sale of land are not enforceable.) Normally, the buyer submits an earnest money deposit with the offer. This deposit is applied toward the down payment on the house if the offer is accepted and the deal closes, or returned to the buyer if the offer is rejected.

Once the offer has been accepted, it's possible for a buyer to lose his or her deposit if certain conditions are not met. For that reason, it's essential that the offer and/or P&S be drafted properly. It may be wise to hire an attorney for this purpose.

Caution: Before making an offer, make sure you can afford the real estate taxes and monthly insurance premiums.

How much should you offer?

That depends on several factors, including your financial situation, how much you want the house, general market conditions, a comparative market analysis and/or appraisal of the home, and the length of time the house has been on the market.

The seller's asking price should be considered a guideline. Offers may be made at, below, or above this price. The seller's flexibility depends on current market conditions and on how anxious he or she is to sell the house. Although



an old rule of thumb states that any bid within 5 or 10 percent of the asking price is reasonable, market conditions may dictate otherwise. In a seller's market, when the demand for homes is high and the supply of homes is low, a seller may have several offers on the table (some of which may even be above the asking price). In a buyer's market, however, it may be wise to bid at least 5 percent below the asking price.

Before negotiations begin, you should decide the maximum amount you're willing to pay for the house. You'll want to keep that amount "close to the vest," particularly from an agent or broker who represents the seller. Your first offer may be somewhat below this final price, leaving you room to increase your bid if necessary.

If you've found your dream house, how can you ensure that your offer will be accepted?

Unfortunately, there's no guarantee that you won't be edged out by another buyer with a better offer. However, you can do the following to make your offer more attractive:

- Make an offer at (or very close to) the asking price.
- Make your offer free of contingencies, such as selling a previous home or passing inspections. But keep in mind that eliminating these safeguards can be risky.
- Offer a large earnest money deposit to demonstrate that you're a serious buyer.
- Offer to pay the seller's closing costs.
- Get preapproved for a mortgage. You may be a more attractive buyer if the seller knows you can obtain financing.

Even if you're very interested in the home, you should keep the following points in mind:

- Maintain your perspective (there are lots of other houses out there).
- Stay objective and weigh your decisions carefully.
- Be prepared to hit a few snags when negotiating.
- Walk away from the deal if you have to.

What terms should the P&S contain?

The P&S is a legal contract containing all of the terms and conditions of the sale, including the duties of each party and the remedies if a default occurs. Once the parties sign this contract, the provisions can't be changed (unless both parties agree to an amendment). That's why it's a good idea for both sides to retain attorneys before signing a P&S.

Normally, a standard form is used (although this form may vary from state to state, or even from one real estate office to another). If you retain an attorney, he or she will probably strike out certain words or sentences in the P&S and add others to protect your interests. If you've decided to forgo an attorney and are presented with a standard form, use the form as a guideline; it's not sacrosanct. It may be wise, though, to consult with an attorney before making changes to it.

The contract will contain many provisions, including the following:

- Names of the parties: All parties to the transaction should be named in the contract. If more than one person owns the property (e.g., a husband and wife own the home jointly), it is especially important that each signs the contract.
- Property description: The property should be identified by both street address and legal description (such as the book and page where the seller's deed is recorded).
- Quality of title: The type of deed to be conveyed and the condition of the title should be stated in the contract. Because legal terminology is often used, an attorney might prove valuable in this area.



- **Personal property:** Any personal property included in the transaction should be listed. Personal property refers to items that are not permanently attached to the land or building. Examples include refrigerators, stoves, washers and dryers, and mini-blinds.
- **Purchase price:** The purchase price of the property and the terms of payment should be clearly spelled out in the contract. All dollar amounts, payment methods, and payment dates should be included.
- **Deposit:** The earnest money deposit is the money you submit to the seller when you make the offer on the house. If your offer is accepted and you fail to follow through on your commitment, the seller may be entitled to keep this money. The amount of the deposit should be stated in the contract, along with the circumstances under which the seller may keep this deposit.
- **Property condition:** Generally, the seller is required to deliver the property to the buyer in the same condition it was in when the contract was signed. The P&S should specify that any damage occurring between the contract signing and the closing date must be repaired at the seller's expense.
- **Inspection contingency:** The buyer should add a contingency or rider to the contract (if there isn't one already), allowing a home inspection by a certain date. An unfavorable inspection of the home by a professional may allow you to avoid the sale if you want. Or, the seller may agree to repair the property (up to a certain dollar amount) or lower the purchase price so that you can make the necessary repairs later.
- **Mortgage contingency:** The mortgage contingency clause seeks to make the sale dependent on the buyer's ability to obtain a mortgage commitment. Typically, this provision recites the amount of the mortgage and the date by which the buyer must submit a complete mortgage application form. The maximum interest rate acceptable to the buyer might also be recited.
- **Closing and possession dates:** The contract should set forth the closing date and the date the buyer will take possession of the home. (These dates are usually the same.) This provision should also state that the property will be delivered free of all tenants and occupants.

While it's important to protect your interests by using contingencies in the contract, it's equally important to make sure that you meet all of the obligations required to exercise a contingency. Buyers must be aware of the dates by which an inspection must occur, mortgage financing must be secured, and so on. If you don't exercise your rights under the contract by the required dates, you may severely compromise the protections in the contract.

Why should you schedule a home inspection?

Buying a home is a major investment. Naturally, you should know as much as possible about the condition of the home before you agree to buy it. For that reason, you should insist on an inspection contingency clause in your offer to purchase and/or P&S. You'll want to hire a professional home inspector to look for structural and mechanical defects in the property. You might also want to conduct a termite (or other pest) inspection and test for environmental hazards, such as radon, lead paint (if the house was built before 1978), and mold. The home inspection should reveal both positive and negative aspects of the home and help you decide whether to make the purchase.

Caution: Even brand-new homes should be inspected. Although the home might look fine to the untrained eye, an inspector may be able to uncover shoddy workmanship, potential drainage problems, and the presence of unsafe radon levels.

What does a home inspection cover?

A standard home inspection will generally cover the following areas:

- The structure of the house, including the foundation, walls, ceilings, stairs, and attic
- The exterior, including the roof, chimney, caulking and weather stripping, grading, drainage, driveways, and patio



- The interior, including visible insulation and ventilation, leaking, steps, counters, railings, cabinetry, and sinks
- The interior plumbing, such as fixtures, faucets, drains, toilets, and water heater
- The electrical system, including wiring, fixtures, and overload protection
- The heating and air-conditioning systems, including type, capacity, condition, distribution of sources of heating and cooling, controls, humidifiers, and fire safety
- The basement or crawl space, including construction, structural ability, settlement, and water penetration

There are limits to the inspection. Normally, the inspector will not move furniture or boxes that block access to parts of the house. He or she should also do nothing to damage the property (for example, by dismantling walls or systems).

Tip: You may want special features inspected, such as the septic system, swimming pool, or tennis court. If you want to test for the presence of pests or environmental hazards, you may need to hire a specialist.

What if the inspector finds problems?

Look to your P&S to determine the rights and duties of the parties. Generally speaking, though, the procedure is as follows. After inspecting the property, the inspector issues a report, noting any problem areas. If the report indicates that the house requires repairs (e.g., a new water heater or a new roof), the buyer typically has a few options:

- Request that the seller have the problem repaired by a certain date.
- Request that the seller lower the purchase price of the property to cover the cost of making the repairs.
- Request that the seller split the cost of the repairs with the buyer in some fashion.
- Last recourse? Inform the seller that the deal is off and ask for an immediate refund of any deposits.

How do you find a reliable home inspector?

In many states, home inspectors don't have to be licensed to do business. Therefore, finding a reputable home inspector will require some homework. It might be best to obtain a referral from a relative, friend, coworker, or attorney.

Caution: Be somewhat wary of referrals from a real estate agent. Although a home inspector should be independent and unbiased, a referral from an agent may encourage a more favorable inspection report. That's because the agent wants the sale to go through, and the inspector might appreciate the business.

You might want to look for an inspector who's a member of a trade association, such as the American Society of Home Inspectors (ASHI). This organization requires applicants to pass standardized tests and conduct numerous supervised inspections before being admitted as members. ASHI members also agree to abide by a written code of ethics and prescribed standards of practice designed to protect the homebuyer.

Once you've found a likely candidate, ask the inspector how many inspections he or she has conducted. Get some information on the inspector's background, too. Former home builders or structural engineers may make especially good inspectors. A real estate agent who performs inspections on the side, however, probably isn't your best bet. Finally, make sure the inspector is bonded or carries liability insurance. If you buy the home and the inspector failed to detect a serious flaw, you may be able to obtain some compensation.



How much does an inspection cost?

The price range for a home inspection varies according to geographical area. It can also depend on the age, size, and construction of the home. In addition, specialized inspections (e.g., septic inspection, pest inspection, and radon inspection) may involve extra charges. In general, you should expect to pay a minimum of \$140 for a basic inspection. The price could amount to \$500 or more, though.

What's next?

After your P&S has been signed, your mortgage application submitted, and the inspections completed, things should be fairly quiet for a while. You'll continue to submit any required paperwork to your mortgage professional, and an appraisal of the home will be scheduled for mortgage purposes. Eventually, you'll have to obtain an insurance binder. If all goes well, you can look forward to the closing process.

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