CONSUMER GUIDE

TO BUYING OR SELLING A HOME



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1. Introduction



This guide is written to help home buyers and sellers who are working with real estate agents understand the buying and selling process as well as agency relationships. It is not intended as a substitute for the guidance of a real estate agent or legal advice from an attorney in a real estate transaction.

Further information about the Nebraska Real Estate Commission, and consumer and community resources, can be found on the Commission's website: https://nrec.nebraska.gov/

2. Real Estate Agents/Real Estate Brokers/Brokerages

Any agent assisting or offering to assist you with the sale or purchase of a home must be a licensed real estate agent in the state of Nebraska. All agents must either do business as a designated broker running their own company, or work for a designated broker as an associate broker or salesperson. **You do not have to use a real estate agent, but an agent will use their resources and experience to help you find a buyer or seller, provide the disclosures and forms needed, and also guide you through the steps necessary to complete a real estate transaction.**

You can verify licensure and look up disciplinary history of any Nebraska licensee on the Nebraska Real Estate Commission's website at https://nrec.nebraska.gov/

3. Agency

A real estate agent working for you has a fiduciary duty to represent your best interest. They must also reduce all purchase offers and counter offers to writing when requested to do so, and present those offers to the other party to the sale, provide you with an estimated closing cost statement when offers are written and presented, and provide you with the forms and information necessary to enter into and close a real estate transaction.

Not all agents work for you. For example, if you go to an open house the host agent will likely be a seller's agent. As a potential buyer you should not disclose negotiating points, such as the highest price you are willing to pay for the property, to anyone but your own agent. Agents may work as Buyer's, Seller's, or Dual Agents (representing both parties) in a transaction. If an agent does not represent you, you are considered their customer and not their client. A customer is not owed the fiduciary duty of acting in the person's best interest, or a duty of confidentiality, but an agent treating you as a customer may not make misrepresentations or fail to disclose material facts related to a property or transaction that are not otherwise disclosed and that the agent is aware of.

4. Agency Disclosure

A real estate agent offering their services to you should provide a written **Agency Disclosure Form** for you to sign before you discuss your motivation for buying or selling, price you are willing to accept or pay, or other significant information related to your potential real estate transaction. The disclosure form will state what type of agency they will provide if you move forward with representation or a transaction. Agents can act as a buyer's

agent, seller's agent, or dual agent, or you may be considered a customer if you are a party to the transaction, but the agent is not acting on your behalf.

If the agent does not represent you, they should indicate who they represent on the form, for example, if you are an unrepresented buyer talking to a seller's agent, they should provide an agency disclosure form to you indicating they are a seller's agent, and that you are an unrepresented customer in the transaction.

An agency disclosure is not a contract, and does not obligate the client or customer signing it. The signing of the document is only to record and acknowledge that the disclosure was presented to you as required by law.

Limited Agency Under Nebraska agency law, buyer's and seller's agents act as "limited agents." They have a duty to act in good faith on behalf of the client, but may not enter into agreements or sign contracts on behalf of their client. Agents should offer advice and expertise, but the ultimate decision on matters related to the transaction, sale price, and choosing closing service providers such as banks, inspectors, and title companies, are ultimately up to the client procuring the services, or buyer and seller both if it is something that must be mutually agreed upon.

5. Seller's Agent

In order to act as a seller's agent assisting in the sale of a home, the seller must enter into a written listing agreement between the brokerage the agent works for and the seller (the seller's agent will typically be authorized to sign this form). The listing agreement must state when the listing begins and ends, as well as providing specific terms of compensation for the brokerage. Compensation, often referred to as a "commission", may be a percentage of sale price, a flat fee, a mix of both, or other terms as long as specifically stated and capable of being calculated with certainty.



Terms of compensation are negotiable between the parties. Brokerages often have usual and customary fees. You are not legally obligated to pay those fees, but the brokerage may or may not choose to deviate from them in any negotiation that occurs. Either party may walk away if a listing agreement has not yet been entered into and choose to work with someone else if terms cannot be agreed to.

Discuss methods of communication to be used with your seller's agent. Real estate transactions can move quickly, so be sure you understand and agree on how informal communications with regard to showings and transactions will occur to avoid delays and mistakes--phone call, text, email, etc.

All parties with an interest in the property, such as husband and wife, or heirs in an estate situation, should sign the listing agreement, unless there is a legal document or court order such as a power of attorney authorizing one party to act on the seller's behalf.

Your seller's agent should make a good faith effort to assist you in the sale of your property. You should discuss marketing efforts and strategies prior to entering into a listing agreement and make sure everyone is on the same page. Any specific requirements beyond a good faith effort and obligation may be stated in writing in the listing agreement

Once entered into, a listing agreement is a binding contract for the term of the listing, so read all terms carefully, ask questions, and seek the advice of an attorney if you want further clarification.

When choosing the asking price for your home, you should also consider the asking and sale prices of similar properties in the area, your own motivation and timeline for selling, and your agent's advice. Your seller's agent should assist you with marketing your property, negotiating and writing counter-offers and purchase agreements, providing estimated closing costs, and other paperwork and aspects of the completion of any real estate transaction entered into.

If you want to end a listing agreement early and the agent does not agree to the termination you should always talk to an attorney. Choosing to terminate a listing contract without the broker's release may result in you still owing a commission on the sale of the property.

6. Buyer's Agent

A licensee may work on behalf of a potential buyer and act as a buyer's agent without a written agreement, though such agree-



ments are permissible, they are not required. However, an agency disclosure form (see Section 4) indicating "buyer's agent" should be filled out and provided to the buyer prior to showing houses or discussing the buyer's motivation for buying or price they are willing to pay for a property.

A buyer's agent is customarily paid by a "split" of the commission paid to the listing broker (seller's agent) in the listing agreement. Additional charges and fees are permissible, but if there is any payment to the buyer's agent required on the part of the buyer it must be specifically agreed to in writing.

Discuss methods of communication to be used with your buyer's agent. Real estate transactions can move quickly, so be sure you understand and agree on how informal communications with regard to showings and transactions will occur to avoid delays and mistakes--phone call, text, email, etc.

Your buyer's agent should assist you finding a home, negotiating and writing offers and purchase agreements, providing estimated closing costs and other paperwork and aspects of the completion of any real estate transaction entered into.

7. Dual Agency

A Nebraska real estate licensee may represent both parties in a real estate transaction. In order to establish dual agency a specific agreement consenting to the dual agency must be signed by both the buyer(s) and the seller(s). A dual agent works as both buyer's and seller's agent. They are required to withhold confidential information on behalf of either client from parties on the other side of the transaction.

If you are not comfortable with dual agency you may withhold your consent and procure your own agent or represent yourself if a buyer, or refuse to allow the dual agency if a seller who has already entered into a listing agreement and not previously agreed to allow dual agency to occur.

8. Preparing to Sell and Buy

Sellers should strongly consider and discuss with their agent any clean up or repairs needed on the property. Sellers may show and sell their property in any condition they choose as long as known defects are disclosed, but a quicker sale and/or higher price will result from a neat and well maintained property.

Fair Housing Discrimination in housing on the basis of race, color, national origin, religion, sex, disability or familial status is prohibited in Nebraska. Covered entities generally include residential property owners, property managers, realtors and multiple listing services. Unlawful housing practices generally include discrimination in the advertisement, acquisition (showing, negotiating for or transmitting offers for sale or rental), financing, or possession and enjoyment (terms, conditions, privileges) of residential property. For more on fair housing go to: https://nrec.nebraska.gov/legal/fairhousing.html

The seller of a home is required to fill out a **Seller Property Condition Disclosure Statement,** which your agent should pro-



vide. The form is also available on the Commission's website at: https://nrec.nebraska.gov/pdf/forms/SPCD.pdf. The form is not a warranty, but must accurately state the condition of the property at the time of sale to the best of the seller's knowledge. The form should be filled out at or prior to the property going on the market, and amended if any conditions change, or knowledge of conditions change on the part of the seller prior to the sale. Failure to disclose conditions or defects on the form (basement leakage, air-conditioning does not work) may result in a contract dispute if discovered prior to the sale, or liability for the seller if discovered after.

Buyers should start by considering neighborhoods and price ranges, as well as getting pre-qualified for financing (if not a cash buyer) when looking for a home. If buyers already own a home they plan to sell, they should prepare their own house for sale as described above. Sellers are more likely to entertain an offer if they know the buyer has the ability to complete the transaction.

Showings and Privacy Digital cameras and recording devices are everywhere these days. In addition to removing or limiting access to valuables, sellers should be aware that buyers and agents may take pictures of their homes during showings, and may even post those pictures to social media. If there are things they want to keep private they should remove them or keep them out of sight. Buyers should be aware that security cameras and listening devices are common in homes, and private discussions with their agent or partners regarding negotiations or offers are best done off property.

New Construction There are many benefits to buying either a new or existing home, some obvious, some less so, but too many to go into here. Buyers should note that buying a pre-constructed or spec home is similar in many ways to buying a pre-owned home. Building a home, buying a lot (the real estate transaction) and entering into a contract

with a builder to construct a new home (a services contract) is a much different process. Building a home will allow the buyer to choose the floorplan, colors and finishes they want, but it will also take a significant amount of time selecting those options. The closing date will involve more variables, including the weather, and material and labor availability. If building a home, the buyer may work with their own buyer's agent, the builder's agent, or the builder directly. Establish in advance who you will work with to make sure the project goes smoothly, and understand the other party's role in the transaction (do they represent the builder or you?). As with a purchase agreement, make sure changes to the building contract are agreed to in writing.

9. Offers and Counter Offers

Buyers should ask for a copy of the **Seller Property Condition Disclosure Statement** prior to making an offer on a home, and must be provided the form prior entering into a binding purchase agreement.

In considering the purchase price in an offer, buyers should consider the price of comparable properties, the current real estate market (are similar homes selling quickly or slowly) and the advice of their real estate agent. Buyers should also consider, in addition to the sale price offered, whether they want to put **contingencies** in the contract. A contingency is a condition that must be met in order for the contract to be enforceable. Common contingencies include buyers having their purchase be contingent on the sale of their own property, the property purchased appraising for at or above the offer made, or the purchase being subject to the buyer being able to obtain financing. Contingencies protect the buyer, but may make the contract less attractive to the seller, as they create less certainty about the completion of the sale.

Personal Property A residential real estate purchase contract is for the purchase of the house and the land it sits on, but where does the home or real estate end and personal property begin? Personal property such as furniture, potted plants, etc., is not part of the sale unless specifically identified and included. Some items are easy to classify, central heating and air conditioning is attached to the property integral to its use, is considered part of the real property, and included in the sale. Other items may be more difficult, such as an outdoor sound system with speakers mounted to the ceiling, or window treatments and appliances. The most common personal property items specifically included in contracts are items like or refrigerator and stove, but buyers should also think about other items, such as window treatments, maybe a wall clock that seems to fit the spot perfectly, identify those items that they want to have included in the sale, and have them written into their offer or on a bill of sale. Sellers may always counter offer if there are things they want to take with them, or things they feel they need additional compensation for.

The **Closing date** should also be considered in the offer. A cash sale will probably work with a sooner closing date than a property purchase subject to inspection, appraisal and financing contingencies, which can take a considerable amount of time to complete.

Offers for the purchase of real estate generally contain a provision for an earnest money deposit or down payment. There is no set amount or percentage for such deposits, but they typically range from $500 on up, and may tend to rise proportionately to purchase price. If a deal falls through because of an unmet contingency, the buyer will generally be entitled to receive their earnest deposit back. If the buyer backs out, but is still obligated to purchase, they may not be entitled to the earnest money. In practice, real estate purchases are often complicated, and both buyer and seller may feel that, according to the terms of the contract, they are entitled to the earnest money. In such cases, a split of the deposit may be negotiated. If parties cannot agree

to the release of the deposit, the deposit should be held until an agreement is reached, or the matter goes to court or arbitration.

Electronic Contracts and Disclosures An increasingly common practice for brokerages, financial institutions, and other service providers, is to use electronic documents for contracts and disclosures associated with a real estate transaction. Electronic documents, contracts and signatures are legal and enforceable. You should retain copies of all such documents, and ask your agent or service provider for paper copies for your records if you are uncomfortable with keeping digital records. Review electronic documents and disclosures the same way you would a paper document, don't just skip from signing box to signing box. Ask your agent any questions you may have about the documents. They may not have all the answers, but if they don't, they should be able to refer you to someone who does. Closing companies will generally provide paper copies of the various closing documents, including purchase contracts, mortgage documents, disclosures and closing statements, at the real estate closing. Retain a copy of these documents for your records.

Buyers will often have an **inspection period** written into the contract, giving them the right to rescind the contract after the inspection reports are received, or if inspection issues arise. Common inspections include whole house, roof, heating and air, also referred to as HVAC, and termite. If structural issues are suspected, the buyer may want to get a structural engineer's report. Inspection periods are typically short for the benefit of both parties who will not have to be tied up in a transaction that will not close for a long period of time.

Home Inspectors are not licensed or regulated by the Nebraska Real Estate Commission or any other state or local government agencies. A home inspection requirement is a common provision in residential purchase contracts. A home inspector, who does a whole house inspection, is not

necessarily an expert in roofing, foundations, plumbing or electric. If a home inspector identifies a significant issue it is prudent to follow up with an inspection and/or estimate from a licensed contractor with expertise in the repair needed. Consult your agent or friends and relatives who have recently purchased a home for recommendations on a trustworthy and competent inspector.

The offer should also address how **other costs** such as closing costs, inspections, and repairs needed pursuant to inspection reports, will be addressed.

Lastly, the offer should have a specific expiration date and time. The expiration should specifically state a time, often as soon as the day the offer is made, or the day after.

If the seller is represented by an agent with an exclusive listing agreement, the offer should always be presented to the seller's agent, who will then present the offer to the seller. The seller will have an opportunity to accept the offer, reject the offer, or counter-offer. If the seller does not accept an offer or counter offer before it expires, it is considered to be rejected. A seller is not required to accept any offer, even if it is at full asking price with no contingencies (although rejecting such an offer may re-



quire paying their agent a commission for bringing in a ready, able and willing buyer). All aspects of an offer are negotiable and must be agreed to in writing by all parties to the transaction.

The **seller** should review all aspects of the offer and negotiate, counter offer, or reject those that do not meet their requirements. A counter offer should also have an expiration or time limit for acceptance.

10. Purchase Agreement

All contracts for the sale of real estate must be in writing and signed by all parties to be valid and enforceable. Your agent should make sure that not only are the main provisions regarding sale price and closing date in the agreement, but also that any agreements regarding repairs or contingencies are stated in writing and agreed to by all parties in the purchase agreement, or an addendum to the purchase agreement. If the closing date changes, which is not uncommon, it must also be agreed to in writing.

Husband and Wife are both considered to have an interest in their primary residence by Nebraska law, even if acquired prior to the marriage or by inheritance. The signature of both sellers, husband and wife are needed for to create a valid purchase agreement unless there is a power of attorney or some other legal document giving one party the authority to act on behalf of the other, or a power of attorney or guardianship allowing some other party to act on behalf of all the owners.

The copy of the signed purchase agreement should be provided to all parties to the transaction after execution.

Should you wish to back out of a purchase agreement and the other party does not agree, we recommend that you talk to an attorney before making any final decisions.

11. Sale Pending, the time Between Contract and Closing

You have just entered into a purchase agreement, and are taking a deep breath after house hunting or house showing, negotiations, and paper review. Often the level of activity from the time of the search or selling does not slow down at all, as inspections, repairs made due to inspection results, financing and other activities must still be completed. The original purchase agreement may have to be amended or clarified as the buyer and seller work through the process. While neither party is obligated to change or agree to anything, being reasonable and considering how the other party would feel about the situation will usually help in furthering negotiations and successfully closing the transaction.

Phishing Schemes and E-mail Fraud

Efforts on behalf of scammers are pervasive in real estate and other industries, and any expectation of efforts to stop the scams being entirely successful are probably somewhere in realm of very optimistic to totally unrealistic. However, we can make every effort to ensure that these efforts to defraud are not successful.

There have been cases of the entire purchase price of a home being routed to an overseas, fraudulent account. The most common scams involve an email, a text or phone call soliciting account information or personal information from members of the public involved in pending real estate transactions.

Scams, ransomware, wire fraud and hacks are usually achieved via email. They may be fake email addresses with a letter or two changed in a name, or an actual hack into an agent or firm's email system, using the actual email address of an agent or other party involved in the transaction. Treat

such solicitations with extreme caution, and please remember the general cyber safety rules as well, do not open suspicious attachments or links.

Never give out account information, routing numbers, or other personal information such as social security numbers based upon unsolicited electronic communication, **if in any doubt pick up the phone and call the number provided by your agent, loan officer, title company, etc. in prior correspondence, don't call the number provided in the email. Talk to your agent or someone you have met through the sales process and confirm authenticity of any communication before following up on any suspicious requests.**

If negotiations break down and one party or the other does not want to complete the transaction, they should always seek a signed release of the contract and mutual settlement or release of the earnest deposit. If the other party will not agree to a release, the Nebraska Real Estate Commission strongly suggests seeking the advice of an attorney before deciding to "walk away" from a contract.

Financing Frequently a person who purchases a home needs to borrow the money for the purchase. Usually this will be arranged by a note and *mortgage* or by a note and *deed of trust*.

When the buyer gets a loan, the property is used as *collateral*, or security for the loan. The buyer will give a *mortgage* or *deed of trust* and sign a *promissory note*. Upon *closing*, the buyer, as mentioned earlier, receives a *deed* from the seller and becomes the legal owner of the property. Through the *mortgage* or *deed to trust* the buyer promises to do certain things, i.e. make the payments, keep the property insured, etc., and also gives the lender the right to *foreclose* and take possession of the property if he or she does not fulfill the terms of the *mortgage or deed of trust*.

What should be taken into consideration when you are looking for financing in the purchase of your home? The following should be considered:

1. Interest Rate of the Loan—many lending companies allow you to "lock in" on a rate if you feel you are getting a very favorable rate, or the rates are likely to go up.

2. Term of the Loan—how long you have to pay the loan back, usually in monthly installments. 30, 20 and 15 year loans were once standard. Lending companies are often more flexible with the term of the loan these days. Please note that lower terms will result in higher payments, but often will carry a slightly lower interest rate, and also will result in the buyer paying a much lower overall interest over the term of the loan.

3. Acceleration Clause—generally a provision that allows the finance company to legally collect the balance of the loan or foreclose due to late payment or failure to maintain a loan requirement such as homeowner's insurance. It is important to review and understand the acceleration clauses of any loan.

4. The Prepayment Clause -- this clause allows the loan to be paid off before the end of the term of the loan. This is usually necessary because very few people remain in the house they have purchased for the full term of the loan. Therefore, upon the sale of the property, they need to pay off the loan before purchasing the next property. Lenders may charge a penalty for prepaying the loan. Such clauses may also allow the buyer to pay additional principle on the loan, paying off the loan early, and reducing interest payments. It is important for you to find out if the lender will charge this *prepayment penalty* and under what conditions.

5. Escrow of Insurance and Taxes -- you will be required by the lender to maintain insurance on the property as a protection against loss. The property insurance premium may be made part of the monthly payment. You may be required to pre-pay the property taxes to the lender either in lump sum or on a monthly basis as part of your payment to the lender. In each case the money is held in *escrow* by the lender and paid by them on the respective due date. This

policy varies with the lender, and you should know ahead of time which method will be used.

6. Down Payment—probably already discussed if you have prequalified for a loan, most types of loans require the buyer to pay a certain percentage of the purchase amount in advance in order to secure the loan.

7. The Type of Loan -- real estate loans are categorized into four general types: A) the VA (Department of Veterans Affairs) loan guaranty program; B) the FHA (Federal Housing Administration) insured loans; C) the RECD (Rural Economic and Community Development) direct and guaranteed loans; and D) the conventional loan which is a loan not guaranteed or insured by a Federal or State agency.

It has become a more common practice for sellers to continue to market their homes and accept back up offers on their homes to be completed only if the first deal falls through. This practice is legal as long as the existing purchase agreement is disclosed to potential buyers. A seller may not legally break an existing contract solely because a better back up offer has been made.

12. Real Estate Closings

Real Estate Closings are usually handled by a title insurance company. They may also be handled by a real estate broker, banking institution, or attorney. The closing agent acts as escrow agent for needed closing funds, will provide you with a closing statement with the actual costs of closing and disbursement of funds, and usually provide a physical office to sign the various closing documents.

Your real estate agent is not required to be present at your real estate closing, but the Nebraska Real Estate Commission considers it a best practice consistent with the agent's role as advisor to the client.

Title insurance Companies are often used as closing agents in residential real estate transactions. The title insurance company reviews the County Register of Deeds office and other relevant sources to make sure the seller owns and can sell the property, as well as noting any recorded liens, easements, etc. that affect the title. The title insurance policy protects you against defects to title if it is not as stated in their description. They also act as closing agent, holding and disbursing funds and providing the office where documents are signed at closing.

Occupancy rights to the new property (moving in) will generally occur on the day of closing as provided in the purchase agreement, but other arrangements can be made for early or late occupancy. Always get such agreements in writing, signed by all parties.

13. The Nebraska Real Estate Commission

The Nebraska Real Estate Commission created this document, and licenses and regulates real estate agents in the state of Nebraska. If you have questions about this guide, or feel a licensee has acted inappropriately you may call the Commission at (402) 471-2004, or email us at realestate.commission@nebraska.gov.

The Commission has the authority to discipline agents if a violation of the Nebraska Real Estate License Act has occurred. The Commission does not regulate the transaction, and cannot award damages or enforce or revoke contracts. Such actions must be pursued through the courts or arbitration if they cannot be worked out through mutual agreement of the parties.



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