

Residential Real Estate Transactions in Iowa

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Synopsis: This is an overview of the steps involved in a residential real estate transaction in the Ames, Iowa area. The overview breaks the typical transaction into six basic phases and describes the common steps. The purpose of this document is to provide a basic familiarity with these steps, the terminology frequently used, and common things to know about real estate transactions. Every real estate transaction is as unique as the buyers, sellers, and property involved and may not follow the pattern described here. The steps described in this overview may occur in a different sequence or not at all. Other communities may have slightly different practices.

Property shopping phase

- 1 Before heading out to do real house shopping, buyers who need or plan to use conventional financing through a bank, credit union, or similar lender generally should consult a loan officer at a lending institution and take steps to prequalify for a loan.
 - 1.1 While not required, this will assist the buyers in knowing the amounts of cash required and loan proceeds available for the purchase of the property. In other words, the buyers will know what they can spend.
 - 1.2 Buyers and sellers both will feel better assured that the buyers can complete the transaction if the buyers have already passed preliminary bank credit approval and know what the buyers can afford to buy.
- 2 A real estate agent may provide valuable assistance in marketing the property and matching a buyer with a seller. A real estate agent is not, however, required for the sale or purchase of any real estate. (Note that the term Realtor® is the registered mark of a professional organization to which some real estate agents belong. As used in this document, the phrase “real estate agent” is intended to include all agents.)
- 3 If there is a real estate agent involved, certain things both buyers and sellers should note:
 - 3.1 As a general rule, real estate agents work for the sellers. The buyers must be aware of whether the agent is a buyers’ agent only or whether the agent is engaged in dual representation. Most agents will explain their rules and the limitations on their services. Buyers should expect to receive and be asked to sign a disclosure from the real estate agent describing the relationship. (The Iowa Real Estate Commission publishes the disclosure form on its website.)
 - 3.2 Real estate agents, like lawyers, physicians, plumbers, and factory workers, do not work for free. Like many other services providers, they have only their time and expertise to sell and many ongoing overhead costs. The listing and selling companies and their independent contractor agents all split the commission paid upon sale.
 - 3.3 Typically, the sellers pay the commission of the agent. The usual commission in the Ames area is seven percent of the gross sales price. Agencies also tack on fixed “processing” or “administrative” fees to their commission. The commission, therefore, is a factor for sellers in determining the price at which real estate will be sold. If a real estate agent signs a listing agreement with the sellers, the agent probably is entitled to a commission if the property



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- sells, regardless of whether the agent actually presented the buyers to the sellers of the property.
- 3.4 For buyers, a real estate agent may be able to provide listing sheets and detailed information about properties for sale, locations, costs, and other helpful information tailored to finding the right real estate.
- 4 Sellers must prepare and give to buyers a *residential property disclosure statement*. This disclosure is required by Iowa law. Buyers will want to review the disclosure for information about defects and age of mechanical and structural components and determine the depth and breadth of inspections they may wish to obtain. Link to the Residential Property Disclosure Statement on singerlaw.com: <http://bit.ly/pikr6k>.
- 5 Sellers may need to prepare and give to buyers a *residential lead paint disclosure* required by federal law for older homes. A seller of a dwelling constructed before 1978 must complete a disclosure statement regarding lead-based paint (Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 USC 4852d; 40 CFR 745). If there is a potential for lead paint, the sellers are to provide the HUD brochure “Protect Your Family From Lead in Your Home.” Link to disclosure form at singerlaw.com: <http://bit.ly/pFdDBO>. Link to the brochure at singerlaw.com: <http://bit.ly/pCV1bG>. These documents are also available on the hud.gov website.
- 6 If the property is served by a septic system, buyers should ascertain the condition of the system. Under Iowa law, a private sewage disposal system must be inspected by an inspector licensed by the Iowa Department of Natural Resources. The inspector will fill out the *Time of Transfer Report*. Buyers and sellers will need to agree on the allocation of costs if the system fails inspection. If weather prevents inspection, a *binding acknowledgment* between the seller and the County will be signed. The binding acknowledgment is an agreement to have an inspection completed and repair or replacement made, if necessary, at the earliest practical time. The county recorder cannot record the property transfer or conveyance document unless a Time of Transfer Report or binding acknowledgment is received. The Iowa DNR’s website (www.iowadnr.gov) has details and lists of certified inspectors (search for “time of transfer”). Link to Time of Transfer Report at singerlaw.com: <http://bit.ly/oa9LQ8>. Link to sample binding acknowledgment at singerlaw.com: <http://bit.ly/nlyMNq>.
- 7 Sellers should make clear and buyers should clearly understand the items of personal property that will be removed by the sellers and kept by the buyers, especially appliances, window treatments, satellite dishes, etc.
- 7.1 The law typically treats plants and other landscaping and fixtures (things attached to the land or structures) as part of the real estate, and so part of the land and structures that the buyer is buying.
- 7.2 It is better to list as staying or going individual things that are or appear to be attached to avoid problems later in the process.
- 8 Buyers will want to visually inspect the structures and surrounding lands, considering: obvious defects, property corners, access to public right-of-way. Buyers should learn the history of the property, know the property as well as possible, and know the sellers.
- 9 If there is no real estate agent involved, it is appropriate and customary to communicate directly with the sellers to work out the major terms of the sale orally. (See the “Offer-acceptance phase,” below.)

Offer-acceptance phase

- 10 A contract for the sale/purchase of land is not enforceable unless it is in writing signed by both buyers and sellers.
- 11 If no real estate agent is involved, the sellers and buyers should determine who will be responsible for committing the agreement to writing that will be signed.
 - 11.1 There is no required practice for preparing the purchase agreement. On one hand, the buyers' frequently wish or need to initiate the process to bring the "offer" to the table for acceptance by the sellers, especially where there are special contingencies. It is also fairly common for sellers to desire to state their terms for acceptance by the buyers.
 - 11.2 No particular form is required. Neither the buyers nor the sellers are required to have an attorney. As with surgery or mechanical maintenance, it is advisable in to obtain the assistance of a qualified professional. An attorney can provide a variety of forms tailored to the needs of the parties to the real estate transaction. More important, an attorney can often prevent disputes by a well drafted document.
- 12 If a real estate agent is involved in the transaction, the buyers' agent in most cases will propose to use a standard form. The form often is compiled or published by the local board of Realtors®. This form is generally acceptable for standard residential real estate transactions, but it is not "required." Because it forms the basis for a binding legal contract, it is extremely important to read through any form contract to be sure you understand the terms. Again, stock forms may or may not address the contingencies required by the buyers and sellers in a particular transaction.

Great caution must be exercised in using off-the-shelf forms or computer programs.
- 13 Great caution must be exercised in using off-the-shelf forms or computer programs because they rarely take into account community practices or laws. Great care must be taken in drafting amendments, changing forms, and filling in the blanks of forms as many forms have several interrelated terms.
- 14 Every residential real estate contract will address certain minimum items:
 - 14.1 **The price to be paid**, including the amount of earnest money (deposit) to be paid with the acceptance of the offer. It is somewhat common to provide a deposit of \$500 to \$1,000 in typical residential transactions. A percentage of the purchase price can also be appropriate. The parties may agree on more or less. Payment of this *consideration* is not to be omitted because it binds the parties to the agreement.
 - 14.2 **The date for buyers to take possession**. The date depends upon the various factors, including: the date sellers can or wish to be removed from the property, the date the sellers can be prepared to move in, abstracting, title examination, document preparation, and loan work. Thirty to sixty days is generally reasonable.
 - 14.3 **The contingencies**, such as, buyers obtaining a commitment for a loan, buyers' sale of current home, pest inspections, mechanical inspections, land survey work, etc.
- 15 It is not uncommon for the sellers and the buyers to exchange various offers and counter-offers in the course of negotiating the final agreement. It also is not uncommon for the parties to make changes to the original offer and initial them. In general, there is no binding agreement until both buyers and sellers have agreed in writing signed by both parties to the same terms.

Contingency fulfillment phase

- 16 After the parties have agreed to the terms of the purchase, they must take reasonable steps to fulfill their contractual promises. For example, if the buyers wanted certain inspections, they can arrange to have their designated inspectors view the property within a specified time period and supply a report.
- 17 The typical purchase agreement will include a mechanism for addressing “material” deficiencies found in the course of inspections. For properties served by septic systems, for example, this is an important item to be included.
- 18 When a lender is involved, buyers may want to have an appraisal contingency that makes the sale conditional upon the finding by a qualified appraiser that value of the property meets or exceeds the value agreed. Lenders will require that the value be supported by an appraisal to qualify for the loan.
- 19 Buyers and sellers occasionally renegotiate certain terms in the purchase agreement during this time. This is entirely dependent upon the parties and the circumstances. For example, inspections frequently result in some adjustment of the purchase price or minor repairs.
- 20 In typical mortgage-loan-financed transactions, the buyers must take the steps necessary to put the mortgage lending process in motion.
 - 20.1 Lenders usually require the buyers to provide a copy of the purchase agreement. The loan officer will probably inquire about the sellers’ abstract and seek to start the title work phase described below.
 - 20.2 Sellers should obtain evidence from the buyers that the lender has approved a loan for the sellers’ property.
 - 20.3 Buyers and sellers should check with the lender to determine whether the lender has any special requirements. If a lender is involved, the buyers will almost certainly have to arrange with the sellers a time for an appraiser to view the property and for a pest inspection.
 - 20.4 The appraisal is quite important in the lending process. The appraised value should closely match the agreed purchase price. If the appraised price is substantially lower than the purchase price, the lender may not make the loan or the buyers may be forced to bring more money to the closing or, depending on the terms of the purchase agreement, the deal may fall through altogether.
- 21 Sellers should be aware of whether the buyers intend to use government-backed loans. In these cases, the sellers should be certain to inquire into the lender’s requirements. With certain government loans, the buyers cannot be charged for certain items that may customarily be the buyers’ responsibility, and there may be limitations on closing cost credits.

Title work phase

- 22 The purchase agreement almost always provides that the sellers are responsible for providing to the buyers an *abstract of title* showing *merchantable title* to the property. Usually, the sellers will have an abstract that they obtained when they purchased the property, and in most circumstances, this abstract forms the basis for the title work that follows and will be delivered to and become the property of the buyers.
 - 22.1 An “*abstract of title*” is (quite literally) an *abstract* of the *public records affecting title* to property.
 - 22.2 The “*public records affecting title*” generally include things like all of the deeds, easements, mortgages, tax, and court records that have been filed with the county offices and have anything to do with the property.

- 22.3 “*Title*” essentially refers to the ownership of the property or parts of the property or legal rights in the property.
- 22.4 “*Merchantable title*” is basically a title that is saleable or marketable with a reasonable expectation that the ownership is not going to be subject to legal attack.
- 22.5 An “*abstract of title*,” therefore, is simply a compilation of summaries (“abstracts”) of all of those public records that has been prepared and certified as complete and correct by a professional (an abstractor) skilled at researching and listing such documents.
- 23 Because of certain Iowa statutes and industry title standards, an abstract must cover a period of the preceding forty years. Sometimes, however, the abstract will cover a period of time from the original sale from the U.S. government.
- 24 Sellers need to turn over their abstract to the buyers, the buyers’ lender, to their own attorney, to the buyers’ attorney, or directly to an abstractor and one of these persons will order a *continuation* of the abstract at least through the date of the purchase agreement.
- 24.1 A “*continuation*” refers to (a) a search by the abstractor of the public records that have been filed since the abstract was last prepared and (b) the adding of pages to the existing abstract describing those additional records. (For example, assume that the sellers took title in 1990 and that the abstract was then updated through the filing of the sellers’ deed and mortgage. The abstractor would examine the public records and add to the abstract any transactions shown in the public records since 1990.) The abstractor then recertifies the abstract.
- 24.2 This process may take anywhere from a couple of days to a couple of weeks depending on the abstractor’s work schedule, the season, and the deadlines imposed. The sellers are usually responsible for the cost of this work.
- 25 When the abstract has been continued to date, an attorney specified by the buyers or the buyers’ lender will examine the abstract and render a *title opinion*. Purchasers and lenders in Iowa typically rely upon the title opinion (sometimes called a “preliminary title opinion” or a “title examination report”) of an attorney.
- 25.1 The attorney’s preliminary “title opinion” given before the transaction identifies (a) the owner of the property and (b) whether anyone else may have rights in or claims against the property.
- 25.2 In reviewing the abstract of title, the examining attorney almost always applies the Iowa Land Title Standards published by the Iowa State Bar Association, the attorney’s knowledge of statutory and common law, and the attorney’s knowledge of local customs and practices.
- 25.3 Usually, these rights or claims consist of things like the sellers’ existing mortgages; judgments for small claims, child support, etc.; easements; restrictive covenants; and property taxes. Most attorneys will also note any restrictions on the use of the property if the information is reflected in the abstract, such as zoning or other government regulations and restrictive covenants.
- 25.4 Depending upon the work load of the attorney, the deadlines imposed, and the complexity of the title issues presented in the abstract, the attorney’s title examination process may be completed in a matter of hours or a few days.
- 25.5 The cost of the title opinion is typically the buyers’ or the lender’s expense.
- 26 With the title opinion, the buyers and lender know who must be paid so that (a) the buyers can have good merchantable title and (b) the lender can have the first lien on the property.
- 27 If there are problems with the sellers’ title to the property, expected or unexpected, sellers may need qualified legal counsel to assist them in correcting the title issue. Judgments and tax liens may sometimes be resolved by the payment of money from the sellers’ proceeds of the

transaction, but boundary issues, ownership problems, stray deeds or mortgages, divorce proceedings, and similar problems usually require professional assistance.

28 In most other states, this title search, review, and reporting process is conducted by one “title company,” which is the abstractor minus the attorney’s opinion plus an insurance company. The title company, which may or may not employ an attorney in its process, may give its opinion of title, but more commonly simply issues a “commitment” for the later issuance of a title insurance policy. The commitment, like the attorney title opinion identifies liens and other matters of interest relating to title. Up to this point, the process is not unlike the processes in most other states except for the separation of the search function from the review function. Iowa does not have title insurance per se. Unless the buyers really want the insurance product, the buyers are relying on their attorney’s opinion, which is the functional equivalent of the commitment obtained from a title insurer.

28.1 A lender probably will require and, in the course of the loan closing process, obtain a lender’s policy. Buyers may also purchase an owner policy from an out-of-state insurer or you can get it through Iowa Title Guaranty, which is a semi-independent state owned entity that issues a guaranty cum insurance policy that is the same as the American Land Title Association (ALTA) policy. Buyers can get a tag-along owner policy, often at no cost or a reduced price, when the lender obtains a lender policy. Most buyers do not think the extra expense is necessary as the examining attorney is generally called upon to rectify any error or omission.

28.2 There is a never-ending debate about the cost and efficacy of title insurance in Iowa and elsewhere that is beyond the scope of this document. Suffice it to say, that a title company may provide a policy that “insures over” certain defects rather than fixing them. In Iowa, the defects cited in an attorney’s opinion must be addressed. Iowa is reputed to have the cleanest property titles in the United States as a result of this process.

Buyers are charged with knowing the contents of the public records even if they have never set foot in the local county offices.

29 Preexisting liens stay with the property even if the ownership of the property changes.

30 No matter how reliable, honest, or upstanding the sellers may be (or perceived to be), these title examination steps are not steps to be skipped. Buyers are charged with knowing the contents of the public records even if they have never set foot in the local county offices.

Closing/Settlement phase

31 Closing or settlement of the transaction refers to a point in time when the purchase agreement is fulfilled, in other words, the buyers surrender possession of the real estate, hand over the keys as necessary, and give a “deed” in exchange for a payment by the buyers to (or for) the sellers.

32 The purchase agreement dictates when the closing or settlement of the transaction will occur. The purchase agreement often will contain language that allows the buyers and sellers to adjust the date. The date can be adjusted if the buyers and sellers agree to the change.

33 It is *not* entirely common for buyers and sellers to meet together, face-to-face, to settle loan-financed residential real estate transactions. If there is no lender or real estate agent involved, the

- buyers and sellers may meet face-to-face in the offices of one of the attorneys to settle the transaction, but this is not required.
- 34 In most cases, there will be some skilled real estate professional (typically the sellers' attorney, the buyers' attorney, the lender's attorney, or someone hired by the lender) who will perform the function of "settlement agent" for the transaction.
- 34.1 The settlement agent's job is to collect the sellers' payment information and documents, to prepare a "settlement statement," to collect the buyers' payment or loan proceeds or both, to check the requirements of the title opinion, to file the necessary documents, and to disburse the funds to the sellers or for the sellers to any lienholders.
- 34.2 The settlement agent also coordinates any post-closing work that may be required and files transaction information with the Internal Revenue Service.
- 35 A "settlement statement" describes how the money exchanged in the transaction will be applied toward the purchase price and expenses of the transaction.
- 35.1 Property taxes are one item that always appears on the settlement statement in some form. In Iowa, the property tax year runs from July 1 through June 30. The tax rates are fixed in July or August. Tax bills are sent out in August. Taxes may be paid in two installments for the preceding year in September and March. (Property taxes are more like a water bill, paid after you know what quantity you have used as contrasted with a rent payment given before you use the property.) Consequently, a settlement statement usually has two components for property taxes: (a) taxes already levied for last year during the sellers possession, and (b) prorated taxes that will be levied for the current property tax year not yet completed. The sellers usually give the buyers a credit against the purchase price for these amounts, and the buyers then assume the obligation to pay the taxes when they actually come due. Because the prorated future taxes are not actually levied at the time of closing and the actual tax rate is not known or knowable, they are necessarily estimated based on the last tax bill.
- 35.2 If the title opinion showed that the property was encumbered by mortgages or other liens, the sellers will need to supply to the settlement agent a loan account number and an authorization to determine the loan pay-off amount. The settlement agent typically arranges with the sellers' lender to obtain a release of mortgage lien in exchange for a designated pay-off amount. If the lien was something other than a mortgage, the sellers are obligated to provide a release of the lien at the closing so that the buyers can have good title.
- 35.3 Sellers are responsible for a transfer tax imposed on the sale of most real estate in Iowa. This tax is \$0.80 per \$500.00 of valuation. For example, the tax on the sale of a \$200,000.00 property is \$319.20. In addition, the sellers generally are responsible for the costs of recording any documents to correct title problems. The Story County Recorder has a transfer tax calculator here: <http://www.storycounty.com/recorder/taxcalc.htm>.
- 36 The sellers usually are responsible for having a deed prepared.
- 36.1 A deed is a legal document, which, in most cases, must be prepared by a licensed attorney.
- 36.2 A deed must contain specific pieces of information and meet certain minimum formatting requirements. The sellers may contact an attorney of their choosing to have the deed prepared.
- 37 The sellers must supply at closing a deed to the real estate along with two administrative forms, a "*declaration of value statement*," which discloses the purchase price of the real estate and is used by the Iowa Department of Revenue and the local assessor for tax purposes, and a "*groundwater hazard statement*," which discloses whether there are septic systems, underground storage tanks, wells, hazardous wastes, or private burial sites on the land and is used by the Iowa Department of Natural Resources to track these problems. Link to the Groundwater Hazard Statement on

singerlaw.com: <http://bit.ly/netfx1>. Link to the Declaration of Value Statement on singerlaw.com: <http://bit.ly/qG9awR>.

Post-closing (Final title work) phase

- 38 When there is a lender, the lender typically delivers to the abstractor the abstract, the deed, mortgage, and any other documents required to be filed. The abstractor conducts a preliminary search of public records to be assured that there have been no additional filings affecting the property. After the search, the abstractor delivers to the appropriate county offices the documents to be filed. The abstractor then prepares a continuation up through and including the documents then most recently filed of record.
- 39 When there is no lender, the buyers' attorney typically delivers the abstract and deed to the abstractor and requests that abstractor search the public records, record the documents, and provide an abstract continuation.
- 40 The attorney who provided the preliminary title opinion then customarily reexamines the abstract. If there is a lender involved, the attorney will prepare a final title opinion (sometimes called a "mortgage lien certificate") certifying that the buyers obtained good title and that the lender has the first lien.
- 41 When the final title opinion is completed, the lender or the lender's settlement agent may apply for Iowa Title Guaranty (or, in certain instances, title insurance). This insures the lender against defects in title and is generally required of "secondary mortgage market" loans. The loan customer has little or no awareness of this process; however, the lender almost always charges the premium to the customer.
- 42 When the abstract examination is completed, the abstract is almost always delivered to the buyers. (Occasionally, the lender holds the abstract as additional security, but this practice has almost entirely died out.) The abstract usually becomes the property of the buyers. The abstract is valuable personal property, which should be kept in a safe place because it is expensive to replace.



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