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Residential Real Estate Transactions in Iowa

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Synopsis: This is a short 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

- If the buyers will obtain a loan to finance the purchase, the buyers should consult a loan officer at a lending institution to prequalify for a loan. This will assist the buyers in knowing the amount of cash and loan proceeds available for the purchase of the property. Sellers will feel better assured that the buyers can complete the transaction if the buyers have already passed preliminary bank credit approval.
- If there is a real estate agent involved, certain things should be noted:
 - A real estate agent (Realtor® is the registered mark of a professional organization to which some real estate agents belong) is *not* required for the sale or purchase of any real estate. Any person may sell his or her own real estate without a real estate agent. Note, however, that if a real estate agent signs a listing agreement with the sellers, the agent probably is entitled to a commission if the property sells, regardless of whether the agent actually presented the buyers to the sellers of the property.
 - As a general rule, real estate agents work for the sellers. Ascertain whether the agent is the agent a buyers' agent only or whether there is the possibility of dual representation.
 - Typically, the sellers pay the commission of the agent. The usual commission in the Ames area is seven percent of the gross sales price, and certain agencies tack on fixed "processing fees" to their commission. The commission, therefore, is a factor in determining the price at which real estate will be sold.
 - 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.
- Sellers must prepare and give to buyers a residential property disclosure statement as 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. (After July 1, 1993, a seller of one to four dwelling units must complete a disclosure statement regarding the condition and characteristics of the property (Iowa Code ch. 558A).)

- Sellers may need to prepare and give to buyers a residential lead paint disclosure required by federal law for older homes. (After December 6, 1996, 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).)
- Determine the items of property that will be removed by the sellers and kept by the buyers, especially appliances, fixtures (things attached to the land or structures), window treatments, etc.
- 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.
- 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

- A contract for the sale/purchase of land is not enforceable unless it is in writing signed by both buyers and sellers.
- If no real estate agent is involved, the sellers and buyers should determine who will be responsible for committing the agreement to paper.
 - There is no set or 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.
 - No particular form is required. Neither the buyers nor the sellers are required to have an attorney. It is advisable in all legal matters 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. *Great caution must be exercised in using off-the-shelf forms or computer programs because they rarely take into account community practices or laws.*
- 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 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 care must be taken in drafting amendments, changing forms, and filling in the blanks of forms.
- Every residential real estate contract will address certain minimum items:
 - **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. The parties may agree on more or less.
 - **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.
 - **The contingencies**, such as, buyers obtaining a commitment for a loan, buyers’ sale of current home, pest inspections, mechanical inspections, land survey work, etc.

- 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

- 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 and supply a report.
- The typical purchase agreement will include a mechanism for addressing “material” deficiencies found in the course of inspections.
- 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.
- In typical mortgage-loan-financed transactions, the buyers must take the steps necessary to put the mortgage lending process in motion.
 - 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.
 - Sellers should obtain evidence from the buyers that the lender has approved a loan for the sellers’ property.
 - 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.
 - 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

- 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.
- An “abstract of title” is (quite literally) an “abstract” of the “public records affecting title” to property.
 - 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.
 - “Title” essentially refers to the ownership of the property or parts of the property or legal rights in the property.

- 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.
- Because of certain Iowa statutes and 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.
- 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.
 - 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.
 - This process may take anywhere from a week to four 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.
- 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.
 - The attorney’s “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.
 - 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.
 - 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.
- With the title opinion, the buyers and lender know who must be paid so that (a) the buyers can have good title and (b) the lender can have the first lien on the property.
- In most other states, this title search, review, and reporting process is conducted by a “title company,” which is the abstractor minus the attorney’s opinion. The title company gives its opinion of title along with a title insurance policy in which the title company may “insure 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.
- 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.* Preexisting liens stay with the property even if the ownership of the property changes.

Closing/Settlement phase

- Closing or settlement of the transaction generally 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.
- Strictly speaking, 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.
- 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.
- 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.
 - 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.
 - The settlement agent also coordinates any post-closing work that may be required and files transaction information with the Internal Revenue Service.
- A “settlement statement” describes how the money exchanged in the transaction will be applied toward the purchase price and expenses of the transaction.
 - 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.
 - 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.
 - 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 sellers usually are responsible for having a deed prepared. A deed is a legal document, which, in most cases, must be prepared by a licensed attorney. 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.
- 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 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.

Post-closing (Final title work) phase

- 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.
- 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.
- 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.
- 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.
- 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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