



THE REAL ESTATE REPORT

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In the Maze — A buyer's primer for purchasing property

For first-time buyers, even those who have had experience before, the process of finding your way out of the maze of property purchase issues seems daunting. Legal Latin, real estate agent jargon, inspector terminology, lender's criteria and a lot more can cause you to feel you are back in grade school. Take heart, here is a simplified checklist of what to expect and do.

1. Investigate available properties through the internet (multiple listing sites, real estate broker websites), regional real estate ads, word of mouth, and/or by visiting real estate broker offices.
2. Make a decision whether you wish to be represented by your own broker/agent or if you will deal directly with seller brokers. Unlike the latter, the former owes you loyalty as much as your own attorney. A seller's agent/broker owes a buyer honesty but not loyalty. For present discussion it is assumed that a prospective buyer will retain his/her own agent/broker who will ask you to sign an agency disclose form to acknowledge you both agree

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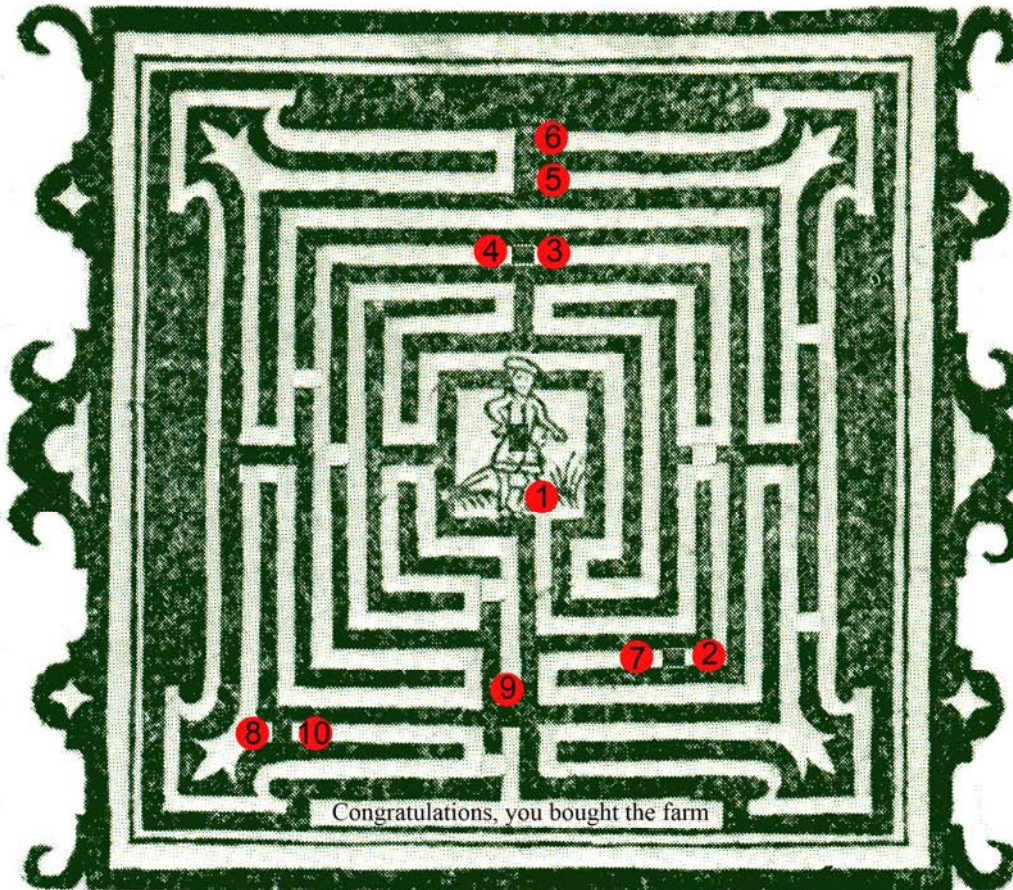


to this agency relationship. Of course you can change agents for any reason, at any time.

In some cases your buyer's agent may also be the agent for the seller of a house. This conflict of interest on the part of the agent calls for a careful discussion of how both buyer and seller can be represented with completely loyalty, usually done through assigning another agent in the real estate firm to represent either the seller or buyer. Dual agency, wherein one agent represents both seller and buyer, is legal if there is full disclosure to the parties and both accept this in writing.

3. With your agent, visit properties for sale which appear to meet your criteria: region (county, town), type (residential - single or multi-family, vacant land, commercial), size (building size, parcel acres), structure (style, layout, condition, amenities, etc), location (issues of privacy, noise, neighborhood, distance from conveniences), price (compared to similar properties). If one property meets your needs and you wish to own it, then discuss this with your agent for how the offer should be structured in term of facts and strategy. Utilize your agent's expertise to advise you on property values, potential negative issues, unseen positive qualities, and the procedures discussed herein.

The Maze of Purchase



- 1 Start Here, make an offer
- 2 Offer rejected, make a higher offer (or quit)
- 3 Seller counters with new contingency
- 4 Another buyer makes a higher offer
- 5 Bidding war, quit or make higher offer
- 6 Your offer accepted!
- 7 Seller's attorney objects to your contract provisions
- 8 Inspector finds mold in basement
- 9 Seller can't vacate, no place to go
- 10 Contingencies, terms, conditions resolved. Go to Closing

From Thomas Hill: *The Profitable Art of Gardening* (1568)

4.. The offer is in the form of a document called a purchase offer agreement or binder. It is made out by the buyer or buyer's agent and includes a description of the property, the amount offered for the property, the deposit (usually 1% of the offer, varies by county), the amount to be paid at the contract (usually 9%), and contingencies (financing, inspections, tests, appliances included, repairs, etc). Two copies are signed by the buyer and his agent, the latter presenting it (with evidence of the deposit check, a photo copy will do) to the seller's agent. To speed things up, this can be emailed or faxed to the seller's agent. This is followed by, usually, an express mailing of the original copies to the seller's agent who will have the seller sign same if all terms are agreeable.

5. The binder/offer contents. Before making out the binder, first come to an estimate of market value of the property. Your agent/broker should show you evidence of recent comparable sales and make adjustments in value for differences between the sold properties and the one you wish to purchase. Consider what price you will offer. Sellers tend to somewhat overprice a property, anticipating somewhat lower offers. Some properties may be overpriced and that will encourage you to offer appreciably less. The seller may have recorded contingencies in the listing agreement (appliances don't remain, delayed closing, contingent on buying another house).

Next, decide if a mortgage will be required, how much to be borrowed, amount of down payment required or desired, at what prevailing rate (adjustable or fixed - there are other options), and for what term (usually 15 to 30 years). A buyer will find it advantageous to have already lined up funding and be able to supply the seller with a letter of approval for a mortgage in an amount to cover the offer (but be prepared to have a second letter to cover a subsequently agreed final selling amount when needed). The lending institution must supply you with a list of all closing costs.

Now consider additional contingencies to add to the binder. If you do not agree with some or all of a seller's contingencies, amend them in the binder. Seller and buyer contingencies may be negotiated before a final agreement. Once mutually agreed, contingencies must be met by both parties, by a certain date, and certainly before the closing date.

Contingencies usually include provisions like the following:



If you are looking for a nice home there are no end of surprises if you are willing to go out on the back roads of more distant counties. This grand 1794 early Federal house, while not for sale, is an indication of what can be found, especially in rural counties of upstate New York where prices are much lower than those within two hours of New York City. Fine Federal, Greek Revival and Italianate houses are scattered all over the place, and in the villages too.

A. Clear and insurable title.

B. Satisfactory results from an inspection and tests. An inspection by a licensed inspector or engineer should include the structural integrity of the building; the grade and condition of building features (utilities, kitchen and bathroom fixtures and plumbing, electrical system, heating system, hot water system, roof, siding, foundation, etc.). You may elect to have tests done for: septic system functioning, water purity (if a well), presence of mold, pests, and radon.

C. Also specified in the binder are what appliances are included (stove, refrigerator, dishwasher, sometimes other equipment). Fixtures, such as chandeliers, sconces and other objects fixed to the structure, are assumed to go with the property unless the seller has excepted them in the listing agreement, although a buyer may ask that some or all remain.

D. If there are repairs, replacements or new features which the buyer desires (generally expected for conditions which require correction to meet state building code or to correct unsafe conditions or a survey to prove the property is as represented), the buyer should list them as contingencies which the seller must satisfy, usually at the seller's expense.

E. Although not often specified in a binder, a buyer can require (the contract may specify) that the house not only be vacated by the seller at closing, but of all the seller's possessions removed, even to being "broom clean."

6. Negotiations. The seller will either accept, reject, or accept with modifications the binder. If not accepted, negotiations between the two agents on

behalf of the seller and owner may come to an acceptable compromise (if not, the buyer may withdraw and receive his deposit back), leading to a revised offer signed by both parties. When this happens it said that there has been "a meeting of the minds," between seller and buyer, the point at which real estate agents/brokers have legally earned their commission. A binder is a legal contract so the parties, if they have not already consulted their attorneys, should avail themselves of the period of days to do so which the law provides. Ask your attorney about the implications if either buyer or seller fails to continue after having signed a binder (or subsequent contract) for reasons other than those stated as contingencies already agreed to.

7. The Contract. Between an agreed offer and a subsequent contract there is a period of time, usually two to four weeks, wherein some of the contingencies should have been met, fi-

ancing approval obtained and inspections commenced.. The contract is drawn by the attorneys (in some counties by the seller's broker), signed by the parties and the larger (9%) deposit paid (to be held in the escrow account of the seller's attorney pending a successful closing).

Contingencies, if not already met, are listed in the contract with specified dates to be satisfied, in all cases before the closing. The contract should specify that the buyer takes possession on the day of closing unless other arrangements have been mutually agreed to, along with other provisions to protect the interest of both parties. If a seller has agreed to satisfy certain contingencies and fails to do so, he may be liable for damages for breach of contract. If a buyer chooses not to go ahead with the purchase even after all contingencies have been met, he/she may also be liable for damages, such as the lost of his/her deposit.

8. The Closing. The closing is usually scheduled two to four weeks after the contract is signed when all contingencies are anticipated to have been met. A "walk through" inspection of the property is done just before the closing hour by the buyer and both agents. At the closing, buyer and seller (and usually their agents) and their attorneys are present. Also present is a representative of the financing institution and the title company. When all contingencies are deemed to be satisfied, any "cloud on the title" or liens satisfied, credit for fuel and electric paid by seller adjusted, funding approved and title insurance granted, papers signed, payments by checks made, then title is transferred to the new owner, along with the keys. The title will be recorded with the county real property office. Your attorney will have explained various closing costs.

9. Agents for seller and buyer may find themselves doing quite a bit after the initial "meeting of the minds" to insure that the contract and closing take place. They should realize that, although they have legally earned their commission, in practice they may get nothing if there is no closing.

Satisfying contingencies on the property are something agents will want to work on diligently. Are the repairs being made? Has the seller removed a fixture reserved by the seller in the offer agreement? How can inspection issues be resolved? Is the financial institution going to approve the mortgage or should another be approached? If there is a problem with the title or with title insurance, or a lean, that is a problem for the attorneys to work on.

10. After the closing, everyone should be happy or at least content. The agents' interests are in keeping both parties satisfied. Follow up with the buyer may mean advise on repairs, restoration, renovation and who to get to do these.