

Understanding a Real Estate Transaction

FIRST-TIME HOMEBUYERS SHOULD

know the basic contracts used in purchasing a home. Since buying a home is often a person's largest single purchase, it is advisable to seek the advice of a lawyer.

■ How do I make an offer to purchase real estate?

A buyer makes an offer to purchase real estate by delivering to the owner a *real estate sales contract*. A real estate sales contract must be in writing, set out the basic terms of the agreement, and contain a legal description of the property sufficient to identify the property with reasonable certainty.

■ How does the seller deliver title to real estate to the buyer?

The seller delivers a *deed* to the buyer to convey fee simple title. The deed should be recorded in the real property records of the county where the real estate is located to give public notice of the change in ownership.

A *general warranty deed* is customarily used to convey title to real estate. A general warranty deed obligates the seller to defend the title against undisclosed exceptions and defects created by the seller and all prior owners.

Exceptions to title that should be disclosed in the deed are set forth as "reservations, encumbrances, and/or exceptions" to the title. A reservation is an interest in the property "reserved" by the seller (reservation of an undivided 50 percent interest in the minerals). An encumbrance is a lien for the payment of liabilities (a lien to secure payment of ad valorem taxes). An exception is an interest in real estate that "takes away from" the fee simple title (an easement for utilities).

■ Are there forms of deed other than a general warranty deed?

In a special warranty deed a seller (grantor) agrees to defend title from "defects" caused by the grantor only, not by any prior owner. A *deed without warranty* conveys title with no warranty by the grantor. Title passes to the grantee but the grantor is relieved of responsibility to defend the title. A *quitclaim deed* conveys only the title the grantor has at the time. The grantor is not stating that he has title, only that to the extent he has title, he is conveying it.

While there are circumstances when a special warranty deed is appropriate, a deed without warranty or quitclaim deed customarily should not be accepted in an arms-length third-party transaction.

■ Is there a way to buy real estate that does not require the buyer to pay the full purchase price in cash at the closing of the transaction?

There are two ways to purchase real estate without the buyer tendering the full purchase price to the seller in cash at the closing. The first is *seller financing* and the second is by a *contract for deed*.

When the seller provides seller financing, the seller becomes the lender in the transaction. The portion of the purchase price financed by the seller will be evidenced by a promissory note. Payment of the promissory note is secured by a lien on the real property created by a deed of trust.

The second way to purchase real estate without tendering the full purchase price is the execution of a contract for deed. The contract for deed sets out the amount of the purchase price and requires the buyer to pay the seller a down payment and to make monthly installment payments until the balance of the purchase price is paid in full. A contract for deed is unique because (a) the buyer obtains immediate possession of the real estate, but (b) the seller remains the record title owner.

■ If the buyer borrows money to purchase real estate, how does the lender secure the repayment of the loan?

The loan is evidenced by a promissory note. A *deed of trust* is executed by the buyer (borrower) to create a lien on real estate to secure the repayment of the promissory note. If the borrower defaults, the deed of trust provides the remedy of a non-judicial foreclosure sale. (Section 51.002 of the Texas Property Code.)

■ Can a buyer enter into an agreement with a seller that gives the buyer a right to buy real estate in the future?

An *option contract* gives the buyer an option to purchase real estate in the future at a purchase price and upon terms agreed upon at the time the option contract is executed. An option contract is similar to a real estate sales contract, except it does not obligate the buyer to purchase the real estate.

This information is adapted from the Texas Real Estate Forms Manual by members of the State Bar Committee for the Texas Real Estate Forms Manual. To purchase the manual, visit www.texasbarcle.com.