

## Let's Make An Offer To Purchase

An offer is usually recorded on a standard form that is used by most real estate offices, and is entitled: **CONTRACT OF PURCHASE AND SALE.**

Understanding the Offer to Purchase Form is essential once your house hunting expedition is a success! You have found the perfect home, one that satisfies your needs, most of your wants... and best of all, fits your pocketbook. Now comes one of the most important phases of your home buying experience, making an offer to purchase the home.

Basically, the offer is a precisely worded document that sets out the terms and conditions between the buyer and the seller. Once the offer is made and accepted, and after any conditions (subjects) of the offer are met, the offer becomes a legally binding contract. This means that the buyer and the seller are obligated under law, to up hold their ends of the agreement, and complete the transaction. For that reason, you must be very sure you understand what is in your offer before you sign it.

A properly drafted offer should leave no room for interpretation. It should contain everything that is important to you about the home and the transaction. For example, if the MLS Listing states that the washer and dryer are included in the sale, put that fact into the offer. How about that satellite dish in the backyard? If you want to be sure it's sold with the house, say so in your offer. Having a written agreement about these things now will avoid complications later.

**Preparing the offer:** If this is the first time you've purchased a home, you probably have never seen an Offer to Purchase Form before, let alone a drafted one. Not to worry. Terry Marion is knowledgeable about this subject and will prepare your offer, taking into account all the factors that are important to you. Fortunately, Realtors don't have to reinvent the wheel every time there's an offer to be drafted. Standard Offer to Purchase forms are used by almost ALL Real Estate Boards. The wording on these forms has been thoroughly reviewed and tested through the legal system, and is broadly accepted.

**What should the offer contain?** When we prepare an offer it will contain a number of standard details, plus any conditions that are important to you. Be aware that once you sign this document, and the seller also signs it, a legally binding contract has been formed.

Legally binding means both you and the seller will be bound by the terms of the contract, and must each perform your respective obligations, as stated within that contract.

Terry Marion will make sure to include:

- Date of offer
- Date and time your offer expires
- Full legal names and addresses of both the buyer and the seller
- Full legal description of the property, including the P.I.D
- Amount of the deposit you are giving (which will be held in a trust account)
- Price Offered to purchase the home
- Amount of your cash down payment and details as to how you will finance the remainder of the purchase price.
- Your desired closing, possession and adjustment dates.
- A list of the conditions (subjects) that must be satisfied before the sale can occur.
- A list of items that are not attached to the building (chattels), but which you state are to be included in the sale price; for example, drapes, refrigerator, stove, etc. **NEVER ASSUME THAT SOMETHING IS INCLUDED.**
- Exclusions – Something that you do not want.
- Your Signature

## What happens to the written offer?

When the seller receives your “offer to purchase,” he or she has three options.

### 1. Accept the offer exactly as written.

If the seller signs your offer without making any changes, a legally binding contract has been formed.

### 2. Reject the offer.

### 3. Make a counter-offer.

If the seller changes anything at all on your original offer, the seller is considered to have rejected your offer and to be making a new offer back to you. This new offer is usually referred to as a “counter-offer”. When you receive a counter-offer, you then have the same three options as the seller had: accept, reject or make a further counter-offer. The process of counter-offers may continue until an agreement is reached.

If the counter-offer is unacceptable to you or if you have changed your mind about the purchase, the seller does not have the option of returning to your original offer and accepting it, unless you agree to it.

Ask Terry about Multiple Offer Situations?

**Accepted Offer:** Once the offer is acceptable, to both seller and buyer, all subjects or conditions must be fulfilled. For example, home inspection, financing, title perusal, bank appraisal etc. Terry will make sure these obligations are concluded in a timely fashion. The deposit will then be due, as marked on the contract and is deposited for you in trust. Once all conditions are removed in writing and communicated we have an unconditional offer.

Let us look closer at some of the specific areas in the “Offer To Purchase Agreement” that will be custom tailored to fit your specific needs.

**Purchaser:** That's you (unless you are selling the home). If you're buying the property with a spouse or other partner, each of your names should be listed exactly as you will want them to appear on the ownership document (deed) when the property is yours.

**Vendor/Seller:** That's the seller. If jointly owned, each seller's name should be listed in full, exactly as shown on the existing ownership document.

**Real Property:** This is the exact legal description of the property you intend to purchase and should also include the postal address, lot and plan numbers. Terry will make sure the property description is specific and accurate. This is most important.

**Purchase Price:** The price you are offering for the property.

**Deposit:** When you submit an offer to purchase, normally you are requested to include a deposit to demonstrate a serious intent to buy the property. This deposit will usually be in the form of a cheque' payable to the listing broker, who will place it in a trust account until the sale is completed or terminated. Your deposit provides the seller with some assurances that you will go through with the sale when the day of completion arrives.

NOTE: the deposit is not the same thing as the **down payment**. However, when an agreement is reached and the transaction is completed. The deposit will be credited in full towards the purchase price. There is no standard amount for a deposit, but the size of your deposit says something about how serious you are about buying the home.

**Clauses particular to the agreement:** As we mentioned earlier, every transaction is unique, so space has been provided (sometimes on a separate document) for any provisions that apply specifically to your offer. Sometimes there provisions are stated in the form of conditions (subjects) to the agreement. Conditions are

generally inserted at your request and for your protection. If a condition is not satisfied with the time allowed, your offer is not longer valid.

Often times, for example, the buyer will want to insert a condition (subject) in the offer to purchase that is subject to the buyer arranging a specific amount of money required for financing. Conditions must always be satisfied by a specific date or within a certain time. An unconditional offer that is signed by the buyer and accepted by the seller becomes a contract binding by both parties. However, if the seller accepts an offer containing one or more conditions, the contract is subject to those conditions. When the conditions are satisfied or "waived" (relinquished), the transaction becomes firm.

Keep in mind that if the seller receives two offers at or near the same purchase price, and one contains conditions and the other does NOT, the seller may well be inclined to accept the Unconditional offer. Terry can counsel you on the use of the wording of conditional clauses.

**Chattels included and Fixtures excluded:** In order to attract buyers, it is common for sellers to include in the selling price some chattels that are not normally considered part of the dwelling itself. These are MOVABLE pieces of personal property. Some examples are fridges, stoves, washer, dryer, and these chattels are listed as items to be included with the sale.

Fixtures are permanent improvements to a property that normally stay with the property as part of the sale. However, it isn't always clear what constitutes a fixture or whether it will stay. For example, the seller will naturally want to retain a dining-room chandelier that is a family heirloom. Since the chandelier could be defined as a fixture, it SHOULD be listed as an exclusion in the offer. From a legal standpoint, if it is a fixture and not mentioned in the agreement as an exclusion, it is then considered part of the purchase price.

If there is any doubt in your mind as to whether chattels are fixtures and part of the agreement, specifically list the items you are concerned about in writing in your offer. Where appropriate, give make and model numbers, or describe the items by color and location. Leave nothing to chance. You will avoid surprises later, when you take possession of the home.

**Irrevocability of the offer:** This is the period during which you leave the offer open for consideration by the seller/buyer. If you are not notified before the precise time and date specified that your offer has been accepted, the offer becomes "null and void" (no longer valid). Terry can assist you in determining how long you should let the seller think about your offer, but it is often a period of less than 48 hours.

**Completing Your Purchase:** The Contract of Purchase and Sale that you signed will state the completion day for the transaction. On that day legal ownership will transfer from the old owner to you in exchange for the purchase price.

**Completion Date:** This date, often referred to as the "closing date" is the glorious day when the parties expect to complete the transaction. All documentation is filed, all monies are paid out, and the property is yours. Closing dates are often scheduled for 45-75 days from the date of the agreement (and some as long as 90 days unless it is a new home and this date could be substantially longer), although this period will vary with circumstances. Terry can help to negotiate a mutually acceptable closing date.

**Time to examine title:** When buying a home, you are really paying for ownership rights that go along with it. The "title" is the legal evidence of ownership, and you want to be sure your lawyer/attorney/title/ or escrow officer has time to search the seller's title to make sure it is free of restrictions. If the seller's doesn't have title to clear ownership, there may be complications in transferring title to you on the closing date. Give your lawyer/attorney/title/ or escrow officer as much time as possible to search title prior to completing the transaction. Also speak to your lawyer/attorney/title/ or escrow officer about Title Insurance.

**Do you need legal assistance to complete the purchase?** It is normal practice for the buyer to engage a lawyer or notary public to prepare the documents necessary to transfer the legal ownership. Among other things, he or she will protect your interests by:

- Searching the title in the Land Title Office registration system to find if anyone other than the seller has any legal rights to the property and to see if there are any registered easements or restrictive covenants.
- Preparing the documents to transfer ownership from the seller to you, including the property purchase tax return.
- Ensuring that the seller's old mortgage has been properly discharged if this is required.
- Confirming that all payments for which the seller is responsible have been made.
- Arranging for you to sign the transfer documents.
- Preparing a Statement of Adjustments outlining all monies owed by you and the funds you will need to complete the transaction.
- Delivering the final amount due to the seller and ensuring you are registered as the new owner in the Land Title Office.

The day has arrived!! You have signed the documents, turned over your cheque for the final balance to your lawyer or notary. Terry will make arrangements and will meet you at your new home, do a quick walk through with you and turn over the keys to your new home.

**THE HOME IS YOURS! CONGRATULATIONS!**

**For assistance in buying a home please contact:**

**Terry Marion**

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