

The Bottom Line on Contract Negotiations

The price isn't the only factor that determines the net bottom line.

The natural focal point of a real estate purchase contract is the selling price of the home, but the price isn't the only factor that determines the net bottom line for both the buyer and the seller. Is a bargain for the buyer really a bargain if he or she is paying all the transaction costs? Is a top price for the seller really a top price if the buyer wants all the furniture to be included in the purchase price? Or if the buyer can't come up with the downpayment or qualify for a mortgage? Before you decide to go ahead with a great price, here are five other bottom-line points to consider:

- 1. What are the estimated transaction costs and who will pay for what?** Typical costs include the brokers' commission, a home inspection, a termite inspection, escrow or attorney's fees, a title search, an owner's title insurance policy, transfer taxes and recording fees. The price tags on these items vary greatly around the country. Who pays for what is a matter of both local custom and negotiation.
- 2. How much money is the buyer putting into escrow and how soon?** A big deposit -- called "earnest money" -- and a substantial downpayment are generally seen as a sign that the buyer is serious about completing the transaction. From the seller's point of view, the more money the buyer places in escrow and the sooner the money is transferred, the better.
- 3. Is there a mortgage financing contingency and how specific is it?** The mortgage escape clause is a must for buyers, unless they're paying all cash for the home. Without this contingency, buyers can be legally obligated to purchase the home even if they can't obtain financing. Further, an open-ended statement that says the buyer will obtain a loan "at the prevailing rate of interest" leaves the buyer completely exposed to interest rate fluctuations. A statement that says the loan must be at an interest rate "not to exceed xx percent" and on specified terms is preferable.
- 4. What furniture, fixtures and appliances, if any, are being sold with the property?** Technically, anything that's permanently affixed to or installed in the home is real property. Everything else is the seller's personal property. This distinction is a narrow one and it naturally leads to a fair amount of confusion. Are built-in appliances real property or personal property? What about a shelving system? A chandelier? Window coverings? Potted plants in the backyard? Sellers who intend to remove anything that's attached to the home should have that spelled out in the contract. And the same goes for buyers who expect to acquire any of the furniture or other movables.
- 5. What will happen if either side breaches the contract?** Unless an unmet contingency triggers the abandonment of the contract, it's a binding legal document. Buyers who fail to perform can lose their deposit money. Sellers who try to back out can be sued for "specific performance," which forces the sale of the home to the buyer. Many contracts also specify that disputes must be brought in small-claims court or presented for arbitration or mediation.

Tip: Ask your real estate agent to go over the standard contract with you before you receive or make a purchase offer. That way, you'll know what to expect and be prepared to negotiate the best deal you can get.

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