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# For Sale BY Owner

## in California

- Pick the best time to sell
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George Devine,  
California Real Estate Broker





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11th Edition

# **For Sale by Owner in California**

**George Devine**  
California Real Estate Broker

edited by Ilona Bray



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George Devine is a licensed real estate broker and a widely respected educator in the real estate field. He holds a B.A. from the University of San Francisco and an M.A. from Marquette University, and has pursued additional studies at San Francisco State University, Seton Hall University, Fordham University, New York University, and the University of California at Berkeley. Currently, he teaches real estate at the School of Management at the University of San Francisco, where he was named Outstanding Adjunct Professor. He has also taught at The Learning Annex in San Francisco and the Building Education Center in Berkeley. He was the principal instructor of a course on San Francisco Rent Control Law at New Technologies Institute and coauthor, with Ira Serkes and Ralph Warner, of *How to Buy a House in California* (Nolo). George Devine is also the author of *Managing Your Employees* (Prentice-Hall) and *Responses to 101 Questions on Business Ethics* (Paulist Press). He has served on the faculties of Seton Hall University, Marquette University, Manhattan College, and St. John's University.

For several years, George Devine wrote the popular "Real Estate Handbook" column in the *San Francisco Progress*. He has served on task forces appointed by the Commissioner of Real Estate to study ethics and professional conduct for real estate licensees in California and real estate continuing education. He has been a consultant on real estate for numerous attorneys and an expert witness in the courts of California.

As a licensed broker, George Devine offers a full range of real estate services. For more information, contact George Devine's San Francisco office at 415-661-4853.

**For my wife Joanne, who has stuck with me for 45 years.**

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# Your Home-Selling Companion

**W**ho can sell your house in California? *You can!* Without a real estate agent? The choice is yours (assuming you're at least 18 years old and not under the care of a guardian or conservator). And if you do decide to go FSBO, this book will provide you with the advice of a Realtor® with many years' experience. You can save thousands of dollars if you do.

Even if you hire a professional for part of the work, you can still save a bundle by doing the rest yourself. Yes, there are a number of procedures to follow and rules to learn, but if you're already something of a do-it-yourselfer, you won't find selling your own house difficult.

Of course, you'll do best if you understand what's ahead and follow a logical plan. That's where this book comes in. It covers the major steps involved in selling a single-family residence in California, including:

- deciding when to sell
- meeting all legal and tax requirements
- pricing your house
- advertising the sale
- preparing your house for showings
- making all required disclosures
- negotiating offers and making counteroffers
- signing a legally valid sales contract
- completing the escrow process to transfer title of the house and sales proceeds
- juggling the sale of one house and the purchase of another, if necessary, and,
- evaluating creative financing options such as seller financing or lease-option agreements.

We also provide practical, easy-to-use forms to handle the transaction yourself. If you're willing to master the details, you should be able to handle everything on your own.

However, you may need or want a real estate agent's help for some tasks—such as advertising your house on the multiple listing service, reviewing the contract paperwork, or helping you through the escrow process. If so, realize that you are not limited to hiring an agent at full commission—typically 5%–6% of the selling price, or \$25,000–\$30,000 on a \$500,000 house. You can hire an agent by the hour or negotiate a lower commission for limited services.

This book moves in roughly chronological order through the important parts of the home selling process—beginning with deciding to sell and ending with transferring title to your property.

Read the whole book before you get started. It will give you the overview you need to sell your house, on your terms. With the information you'll learn here, you'll be ready.

**TIP**

**This book covers single-family detached homes.** If you want to sell a condominium or if your house is part of a subdivision or other community-interest development with a community association, you may be subject to extra requirements. For example, condominium sellers must provide buyers with documents disclosing financial and organizational information about the condominium development. Though many of the principles in this book will apply, you'll need to follow any special legal requirements, as well any rules set forth by your community association. ●

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**B**efore rushing to put your house on the market, it's a good idea to think about whether you're ready to sell. Many factors can affect your decision—perhaps you have no choice because you simply can't afford your home anymore. Or maybe you're ready to retire and move out of the area and are anxious to cash out your equity and move on.

To decide whether now is the right time for you, you'll want to take into account your own personal reasons and the market's condition.

## What Are Your Personal Reasons for Selling?

People have many different reasons for wanting to sell their homes, such as:

**Job change.** You can't—or don't want to—commute to your new job from your old house.

**Personal status or lifestyle change.** You get married or divorced, move in with someone (or someone moves in with you), you have a new child, your daughter leaves for college, your spouse dies, your health argues against continuing to live in a house with stairs or in a city with very cold weather, or you've always wanted to try living in Hawaii.

**Investment or lifestyle upgrade.** You're selling your existing home to move up to a nicer one. Your old house isn't that bad, but now you can afford something you like more—because it's bigger; closer to work; in a better neighborhood or school district; has a pool; is a better investment; or provides something else that's important to you.

**Financial needs.** You can't afford the mortgage payments. This doesn't necessarily mean you're headed for foreclosure or bankruptcy, but it does mean that an unreasonable share of your income is going toward housing payments, and you have other priorities—like paying your other bills, saving for retirement, or paying school tuition.

While some reasons are more urgent than others, many situations fit into the “the sale can wait if it needs to” category. This doesn't mean your family isn't cramped since the new baby was born or that it wouldn't be better for your health or pocketbook to move. But it does mean that selling your house next week, or even next month, isn't essential if you are not likely to get the best price.

But sometimes, selling feels like a necessity, no matter what the market conditions are. If you're moving because you can't afford your

mortgage payments anymore, consider whether you can refinance the mortgage through your bank, borrow money from other sources, or work out an alternate payment plan with your lender. You may also find help from one of various federal programs designed to help struggling homeowners. For eligibility rules, expiration dates, and other details, see the government’s website, [www.makinghomeaffordable.gov](http://www.makinghomeaffordable.gov).

<b>Sell Now or Wait?</b>	
<b>When to Sell Now</b>	<b>When to Wait</b>
You need to sell your house for financial reasons—you can’t afford the mortgage payments and hope to move into a less expensive residence.	You’re financially strapped but your lender is willing to work out a reasonable payment schedule and you anticipate getting back on your feet soon.
You’re buying a new house and can’t afford to own two homes at once.	You’re buying a new home and can arrange “bridge” financing that allows you to wait on selling your home until you are better prepared or will get a good price.
The real estate market is about to peak in prices and you can make a larger profit by selling now than by waiting.	The market is sluggish but is likely to rebound with vigor in a year or two—for example, interests rates are going down, or the neighborhood value is expected to increase with a new retail complex.
You must move as soon as possible—for example, your new job is too far to commute—and you are sure you won’t return to the same location. Or, a pressing health concern requires a move.	You don’t have to move immediately, or you are not sure if a new location will work out, and the market favors buyers and looks like it will continue to do so (though predicting housing markets is never certain).

Likewise, remember that it’s often unwise to make major moves or decisions within at least a year or so of a serious emotional shock—for example, a sudden death in the family, divorce, or job loss—if the move can possibly be avoided or deferred.

## Short Sales and Foreclosures

Many homeowners within recent years have found themselves in a tough spot, as the value of their homes dipped but their mortgage payments increased. If you're in financial trouble and must sell your house because you can't make the payments, doing so before the bank gets involved increases the possibility that you'll walk away with a little equity, or at the very least, without damaging your credit.

You may also be able to work with your lender to restructure your payments, delay them temporarily until you get back on your feet, or refinance your current loan—for example, with a 40-year, fixed-rate mortgage or a hybrid adjustable-rate mortgage that locks in an interest rate for five or so years. Though you might not want the loan forever, it may keep you in your house for now, until the market stabilizes or your income increases.

Perhaps you're already behind on your mortgage payments, or are worried that you won't be able to sell your house for what you owe on it. In that case, you may have considered a real estate "short sale." This is preferable to walking away from the property, because it doesn't do the same damage to your credit.

With a short sale, the lender agrees to accept less than the full amount owed on the property. Lenders allow sellers to do this because foreclosures are expensive, and they stand to lose even more if that seems imminent.

However, short sales aren't always great for the seller. For one thing, it can be tough to get your lender to allow the short sale—or to make a decision at all, while you and the hopeful buyer wait weeks or months for an answer. Even if it's approved, the lender may drive a hard bargain—you may have to fight to get permission to sell your house for what you know it can bring on the open market.

Also, any amount your lender forgives is considered "income" to you. That means the lender will likely report it to the IRS, and you'll probably have to pay federal, and possibly state and local income taxes on it.

An exception will be made if you can prove you were legally insolvent at the time of the short sale (with your total debts greater than the value of your total assets), or if you come under the terms of the Mortgage Forgiveness Debt Relief Act of 2007 (H.R. 3648). This Act applies only to certain loans made during tax years 2007 through 2012. It allows you to

### Short Sales and Foreclosures (cont'd)

exclude up to \$2 million in forgiven debt if your deficiency stemmed from the sale of your primary residence (the home you live in), the loan was secured by that residence, and the loan money was used to buy or improve that residence. See a tax adviser for a personal analysis.

Finally, beware of the various scam artists whom short sales have brought out of the woods; folks who say they will take over your loan if you simply sign the house over to them, with the understanding—unwritten, of course—that they will deed the property back to you when the wolf is no longer at the door. Avoid such predators and deal only with reputable, well-established professionals whose references can be verified.

While it's true that a short sale may be preferable to foreclosure, which can more seriously damage your credit and make it much more difficult and expensive for you to buy a house in the future, you're better off selling on your own, if you can. Of course, with foreclosure looming, a quick sale works best—even if it means getting a little less cash. In Chapter 8, we'll give you some tips for making your house attractive to prospective buyers so that you can try to get out of the market before turning to the bank.

If you're in a similar situation, consider whether you can live without the immediate profit. You may be able to rent the property out for now, thus creating a steady income stream, and sell the property for significantly more later when you're able to take a step back.

According to one of the basic axioms of the real estate business, a seller who is under abnormal pressure to act almost always accepts too little. You can limit or avoid this pressure by timing your sale correctly and carefully marketing and pricing the property. You want to avoid a situation where, for example, you price your house too high, then drop the price several months later, causing buyers to think you're desperate to unload it. You may end up getting lower offers than you would have if you'd started with the lower price in the first place. This may not only delay your sale, but hurt your bottom line as well.

Moreover, if you anticipate financial trouble soon, and you're sure you won't be able to get out of it, it's probably best to put your house on the

market earlier rather than later. That's because you have the potential to rack up more debt the longer the house sits unsold, and that will increase expenses and probably make you more anxious to sell it. Again, you're likely to accept too little.

## Is It a Good Time to Sell?

Once you know whether you are ready to sell, how will you gauge the current market conditions? First, you'll want to look at whether it's a buyer's market or a seller's market. Then you'll want to consider whether the market will improve soon, and what time of year is best to sell a house.

### Market Conditions

In an ideal world, you'll be able to sell your house for maximum profit, right away. Unfortunately, that isn't always possible, especially when it's a "buyer's market." This happens when there are more homes on the market than there are interested buyers; in which case, buyers have the luxuries of time and choice, knowing that if they don't buy your property, another property—maybe even a cheaper one—will come along soon enough. Unsurprisingly, when it's a buyer's market, prices tend to be relatively low, because competition among sellers is high.

In the opposite situation, in a "seller's market," there are more buyers than there are desirable properties. Prices tend to be relatively high, and sellers have more bargaining power.

In California, it's common to find buyers' markets in some neighborhoods or cities and sellers' markets in others, depending on factors like local population trends, school quality, and employment opportunities.

In a buyer's market, it can be challenging to sell even the most beautiful home at a perfectly reasonable price. That's why, if you're able, it's best to hold off until the market improves. You're more likely to sell your house quickly and for a competitive price if many buyers are competing for a good deal.

Of course, it's not always possible to wait for the market to turn, especially because it's hard to know when that will happen. If you must sell soon, you must instead focus on aggressively marketing and pricing your home, so that it stands out in relation to others on the market. Even when that may mean accepting a slightly lower price than you might have gotten a few years ago, it can be well worth it. After all, every month that you don't sell means another month's worth of mortgage payments, real estate taxes, and insurance.

## Will the Market Heat Up Anytime Soon?

Here are signs that the market may pick up soon, and house prices begin to rise.

- 1. When mortgage interest rates are low, the pool of potential buyers goes up.** People are always waiting for interest rates to drop just a little lower—or low enough that they can afford to buy. Thus, even a relatively small decrease in interest rates may mean a huge increase in the number of people who qualify and are eager to buy your house.
- 2. When the economic climate of your region is healthy, people feel confident about the future and the pool of potential buyers widens.** Regardless of the national economy, people (and employers) may feel that your region is the place to be. But when your regional economy is slumping, it's best to hold on to your home until conditions improve. Despite ups and downs, investment in homes continues to be strong in many parts of California, particularly since they're considered one of the safer places to put your money.
- 3. At times when your area is considered especially attractive for any reason, the pool of buyers widens and prices go up.** If considerably more people are looking to buy than are looking to sell in a particular geographic area—for example, if a major recreation project or other development is planned there—prices tend to rise (often quickly) and buyers must bid competitively.

The popularity of geographic areas, cities, and neighborhoods can change quickly for all sorts of reasons. For example, San Jose became hot during the Internet boom, and single-family homes were suddenly worth millions.

Do some strategic thinking of your own. There are many ways that your area might become more desirable: The large, loud, and filthy refinery nearby is about to close; new restaurants and retailers are moving in; or public transportation systems are improving dramatically. Check your local planning department for other upcoming changes. If you conclude that better times are just around the corner in your area or neighborhood, hold off your house sale if you can.

## What Time of Year Is Best to Sell In?

At the times of the year when most people are apt to make a move, prices usually increase, sometimes significantly. Two generalizations apply:

- Spring and summer are traditionally good times to sell. House prices usually jump in the spring, absent some major external factor such as a recession. Families with children are anxious to buy so they can move during summer vacation, before the new school year. And your garden may enhance your home's attractiveness, if flowers are blooming.
- From mid-November through mid-January, the market is slow and the pool of people wanting to move begins to shrink. Most people don't think about buying a house during the holiday season. (Then again, those who do are likely to be serious and motivated buyers.)

Remember that the trick to selling anything, from doughnuts to jewelry to a single-family house, is to market your property when most folks are apt to buy. There can easily be good reasons for anyone to pay top dollar for your house at any time of year, especially if economic conditions are favorable and interest rates are low.

## Is the House in Good Enough Condition for Sale?

Perhaps you're one of the few FSBO sellers lucky enough to have a buyer lined up already, most likely a friend or relative who has always loved your home. If so, you probably won't need to spend much time on fixups. Other home sellers, however, should at least examine the existing condition of their home, and then decide:

- the extent of basic repairs required
- what improvements to make, and
- what further cosmetic touches will make the house look its best.

This section will cover those issues.

## Is Your House in Good Repair?

The typical homeowner, particularly one who has lived in a house for many years, has let a few repair issues slide, or even stopped noticing them. Before putting your house on the market, however, you'll want to take a hard look at its basic repair needs. Signs of deferred maintenance are a turnoff for home buyers, who increasingly prefer move-in ready homes, and worry that minor repair issues are a sign that bigger repairs have not been taken care of either. (Of course, if your house is a complete fixer-upper and will be priced accordingly, that's another story—you may just want to clean it up and offer it as-is.)

Take a tour around your house, inside and out, examining and checking on all the systems. For example, do all the appliances work? Do the drains run smoothly? Does the toilet in the guest wing really flush? Do all the windows and doors open smoothly? Make notes on everything that could use attention: cracked windows, dead lightbulbs, curled linoleum, missing drawer pulls, and so on. Put these items on your fix-it list, to be completed before putting the house on the market.

If you don't think you can be objective, have someone reliable—who doesn't live there already—go with you. Better yet, seriously consider hiring a professional property inspector (often a general contractor) to examine your home's structure and systems with an expert eye, and potentially spot problems of which you are unaware. Depending on what your basic inspector advises, you might want to engage specialty experts, especially pest control (“termite”) inspectors.

## Hiring Professionals for a Preinspection

The low-budget way to approach hiring inspectors is to ask them to charge you at an hourly rate and then orally alert you to the biggest repair issues. For a more complete approach, you'd pay a flat fee (typically \$300 to \$500) in order to have the inspector prepare a written report describing the findings.

A thorough inspection—be it by your inspector or a prospective buyer’s inspector—should cover the property from top to bottom. The inspector will examine the general conditions of the site, such as drainage, retaining walls, fences, and driveways; the integrity of the structure and the foundation; the condition of the roof, exterior and interior paint, doors and windows, plumbing, and electrical and heating systems.

Accompany the inspector during the examination, so he or she can give you information about the maintenance and preservation of the house and answer any questions you may have. The inspector should point out any problems that may need attention and tell you which are important and which are minor.

If you’ve arranged for a written report, it should identify which items are in good condition, and which need repair or replacement. It should also give you information about earthquake protection, general safety measures, insulation, and energy conservation. With all this information in hand, you will be more confident of the condition of your house.

To find a good inspector for your home, use the same general principle that you would use in selecting an obstetrician, accountant, dentist, or other professional—ask for recommendations from people you trust. Make sure the person doing the inspection is a licensed general contractor, or is licensed to perform specific tasks, such as termite damage, electricity, or plumbing, if your inspection only covers that one area.



#### RESOURCE

**A useful brochure, *What You Should Know Before You Hire a Contractor***, is available free of charge from the Contractor’s State License Board on their website at [www.cslb.ca.gov](http://www.cslb.ca.gov) (click “Guides and Pamphlets”) or by calling 800-321-CSLB.

For referrals to local inspectors and information on home inspections, contact a professional association, such as the American Society of Home Inspectors (ASHI), 800-743-2744, [www.ashi.org](http://www.ashi.org), or the California Real Estate Inspection Association (CREIA), 800-848-7342, [www.creia.org](http://www.creia.org).

For information on pest control inspectors and termite reports, call the California Structural Pest Control Board phone at 800-737-8188 or check its website at [www.pestboard.ca.gov](http://www.pestboard.ca.gov).

## Dealing With Repair Needs

You're probably trying to save money on this home sale, so being presented with a long list of repair needs probably won't make your day. The idea is not necessarily to do every possible fix that your house requires, but to attend to the ones that will give you the biggest bang for your buck. These are usually issues that will be most obvious or off-putting to buyers or impact the basic habitability of the home, such as a hole in the bathroom floor or a leaking roof.

Other repair issues can be left for the buyer to deal with. But you will want to be explicit about this: Explain to the buyer that you are aware of certain repair needs (it's your legal obligation to disclose them anyway, as described next) and that you have adjusted the selling price accordingly.

Some buyers actually prefer to have repairs left for them if they involve major aesthetic choices. For instance, if your kitchen has ancient and hideous vinyl flooring, you might replace it all with fresh tile, only to disappoint a buyer who would have rather paid less for the house and installed a hardwood floor there.

## Alerting the Buyer to the Inspector's Findings

One issue that stops some sellers from commissioning inspection reports is that, once a seller knows about a problem with the house's condition, the seller is expected to tell prospective buyers about it, whether it has been repaired or not. (That's California law—it will be discussed further in Chapter 7.) Commissioning inspection reports can thus sound risky; a way to raise expectations and possibly lower your house's purchase price; until you consider the following.

First, the buyers are likely to commission their own inspection reports, at their own expense, before the deal is done. A so-called "inspection contingency," making the sale conditional upon the buyer's satisfaction with the results of such a report, is a common and normal part of every real estate purchase contract. So the buyers will find what your inspector found, but you will have lost your opportunity to do the repairs on your own time and using contractors of your choosing. In fact, the buyer may simply insist that you lower the purchase price in light of the needed repairs.

Second, providing an inspection report to buyers can be a public relations plus. It makes buyers feel comfortable to know that, far from hiding anything, you have engaged outside experts to make sure your house is in good shape. The buyer may commission an additional report (after having signed the purchase contract) anyway, but will enter the transaction with the confidence that comes of knowing that major surprises are not likely in store. What's more, a few buyers may even leave the inspection contingency out of their purchase contract, and rely solely on your inspection report. (This usually happens in a bidding-war situation.)

## **When to Make Major Improvements**

Some houses need more than minor or cosmetic repairs. If your house is crying out for a new furnace, a second bathroom, and an updated kitchen, you'll have some tougher decisions to make. Invest the money up front, in hopes that the eventual purchase price will cover the cost and then some? Or simply leave the upgrading or updating to the buyer to take care of?

There's actually more of a science to this decision than you might expect. Certain types of home improvements are known for resulting in significantly higher selling prices, while others tend to make buyers yawn. If you do an online search for *Remodeling Magazine's* "Cost v. Value Report," you'll find regional averages for various types of projects.

On the whole, you'll soon discover that doing major remodeling work tends not to pay off in resale price. So unless you'll have some time to enjoy the upgrades yourself, or can effect a huge transformation at a low cost, it's probably best to leave the major work to the next owner.

## **Making the House and Garden Look Their Best for Showings**

After you've dealt with the underlying repair needs, it's time to think about how to spiff the place up for maximum buyer appeal. The farther in advance you get started on this, the more time you'll have later for important tasks like marketing and showings.

Cleanup is a basic and obvious starting point. Make sure everything is sparkling—from the windows (inside and out) to the baseboards to

the shelves in the medicine cabinet. This is particularly important in the kitchen and bathrooms. Dedicate some time initially to an extensive cleaning job, and then plan to maintain with regular spruce-ups (a quick vacuum and dust) each time you show the place.



TIP

**Get rid of pet evidence.** If you have a pet that you can move out while you're trying to sell the home—perhaps to stay with a friend or family member—consider doing so. It will save you the hassle of picking up after the pet every time a prospective buyer takes a tour, and it also prevents turning off the potential buyer who's allergic to cats or afraid of dogs. At very least, keep pets out of the home for open houses, and clean thoroughly before every potential buyer's visit.

A fresh coat of interior paint is also practically *de rigueur*. Choose soft, neutral colors. Curtains, bed coverings, and rugs should also be neutral.

Here are some other ways to get a head start on making your house attractive to prospective buyers:

- **Go for curb appeal.** Lots of buyers make quick judgments or decisions before even getting out of their cars—so the curbside impression counts for a lot. Sweep the sidewalk, mow the lawn, prune the bushes, weed the garden, and clear papers, debris, kids' toys, and the like from the yard, front steps, and porch. Remove cars from the driveway.
- **Make the entryway welcoming.** Be sure that the doorbell works and the front door doesn't creak. Buy an attractive new welcome mat.
- **Prune and trim.** Overgrown, overhanging trees or shrubs may be darkening portions of your property or making them look smaller. In particular, prune any trees or shrubs that are blocking light from entering the windows. A professional arborist may be worth the investment to avoid that scalped look.
- **Add greenery and garden color.** Consider going the extra mile and sprucing up the front door with blooming potted plants. If you're willing to spend a bit more, landscaping your property (particularly the front yard) yields great returns in home value. It also gets buyers excited about your home before they step in

the door. And if you have a front porch or other front yard space, consider creating an attractive seating area with a couple of welcoming chairs and decorative cushions.

We'll talk more about putting the finishing touches on your décor in Chapter 8, including whether to hire a stager or handle this yourself.

## Selling One House and Buying Another

If you plan to sell your home and buy another, questions of timing inevitably arise. Is it better to sell your old house before buying a new one? Or should you focus primarily on buying, even if it means that you may have to sell your present house quickly to close on the new one?



### SKIP AHEAD

**If you're not buying another house, you can skip this section.**

Also, homeowners looking to sell who can afford to own two houses at once (even if for just a short period), don't need to worry about perfectly timing their purchase and sale transactions and can go on to "Success Stories: Homeowners Who Timed It Right," below.

If you sell first, you'll be under time pressure to find another house quickly. This is stressful, and rarely results in your finding a truly good new house at a reasonable price. Even if you do find a great house, you're likely to overpay in an anxious effort to avoid spending time in a hotel.

On the other hand, buying a new house first and then scrambling to sell your old one is no fun either—especially if you're trading up substantially and need to sell your old house for top dollar to make the down payment on the new one. Selling a house fast and getting the best possible price are normally mutually exclusive concepts. Too often, people accept a lower-than-optimum price on the old house so they can make a quick sale.

Here are some constructive steps to minimize the financial and psychological downsides of selling one house while buying another.

## Check the Housing Market Carefully

Before you put your house on the market or commit to buying a new one, carefully investigate the selling prices of houses in the areas where you'll be selling and buying. It's essential that you have a realistic idea of how much you'll get for your house, and how much you'll pay for the one you buy, so you can figure out how to sell high and buy low. (See Chapter 5 for more information on accurately pricing a house.)

Also focus on whether each of the two markets is cold (favoring buyers) or hot (favoring sellers). Understanding market conditions is important to buyers and sellers, and is crucial for people who are both. Your dual position lets you adopt a strategy of protecting yourself in your weaker role while letting your stronger role take care of itself.

### Strategies in a Buyer's Market

In a cold, buyer's market, where the supply of houses outstrips the number of buyers who can afford to purchase them, you're in a stronger position as a buyer than as a seller. Consider protecting yourself by making your offer to buy a new house contingent upon selling your current one. A seller having a hard time finding a buyer is likely to accept this contingency, even though it means waiting for you to find a buyer for your house.

### Strategies in a Seller's Market

If homes are in high demand in the communities where you both own and plan to buy, it follows that selling your current house will likely be easier than buying a new one. Thus, you want to compete aggressively in purchasing a new house, while insisting on maximum flexibility as to the date you move out of your present house.

You can guarantee yourself this leeway by stipulating that the sale of your current house be contingent upon your finding and closing on a new house. When a buyer makes an offer on your house, include a provision spelling this out in your written counteroffer. Although few buyers will agree to an open-ended period, some will be so anxious to buy your house that they'll agree to delay the closing until you close on a

new house or until a certain number of days pass, whichever comes first. (See Chapters 10 and 11 for more on offers and counteroffers.)

### Strategies When the Two Markets Differ

In an ideal world, your current home would be in a hot, seller's market, and you'd be buying into a cold, buyer's market. That would give you the option of either putting your house on the market now, knowing that it won't be hard to find an affordable house as soon as you accept an offer on the current one; or of waiting to sell until you've found a house to buy, knowing that you can sell quickly. (Though if you want the double protection of having your purchase contingent upon selling your current house, a seller eager to close the deal will probably agree to this.)

The worst possible situation is if your current home is in a cold, buyer's market, but you're moving to an area where the market is hot and you'll be facing a lot of competition to find a house you like and can afford. You'll still want to try and get a buyer to agree to make the sale of your current house contingent upon finding and closing on a new one, but you'll have less negotiating leverage. You may end up owning two houses at once, as discussed below.



#### RESOURCE

***How to Buy a House in California*, by Ralph Warner, Ira Serkes, and George Devine (Nolo)**, contains practical, up-to-date information about the financial realities, legal rules, and real estate customs of buying a house in California. It covers homebuying from start to finish, including defining your home needs and budget, finding a house, working with a real estate agent, arranging financing, making an offer, negotiating, going through escrow, and dealing with potential problems. You can purchase the book at [www.nolo.com](http://www.nolo.com), which also contains free resources for homebuyers.

### Bridge Financing: How to Own Two Houses Briefly

Unfortunately, no matter how carefully you time things, you may be unable to perfectly dovetail the sale of one house with the purchase of another. You may own no houses for a time, in which case you'll have money in the bank

and need a temporary place to live. Or, you may own two houses at once, in which case the following suggestions should help you:

**Raise as much money as possible for the down payment on a new house.**

Many people rely on the profit from the sale of their old homes to make down payments on their new homes. But if you have any savings, you may want to apply that cash, even temporarily, toward your new purchase. If your savings put the second house within reach, you can maximize your cash by charging living expenses or getting an advance from your employer. Of course, you'll only want to utilize this strategy if you're confident your existing house will sell quickly, because interest rates on credit cards are usually high and you don't want to accumulate such debt indefinitely.

**Borrow down payment money from family or friends.** Point out that you need help for only a short period, and offer a competitive interest rate. Keep in mind that it's easier to borrow short-term money than to borrow a large sum for 20 or 30 years. If, for example, your parents have money put aside for retirement or your sister is saving to take a year off from work, either may be willing to tap savings to help you for the short time it will take to buy one house and sell another.

If you follow this approach, give the lender a promissory note, secured by a second mortgage (deed of trust) on your new house. You can set this up so that no monthly payments are due until your first house sells and thus there's no negative effect on your debt-to-income ratio.

**Get a bridge loan from a financial institution.** If you have no other choice, you can potentially borrow money from a financial institution to "bridge" the period between when you close on your new house and when you get your money from the sale of your old one. This loan is a short-term home equity loan on your existing house that you'll repay when your first house sells.

We say "no other choice" because bridge loans can be expensive. Lenders often charge a host of up-front points or fees for things like credit checks, appraisals, loan origination, or inspections. Interest rates are generally high, too. This wouldn't be unreasonable if you needed the money for a long time and spread the cost over many years, but it's very expensive for a loan that will probably last only a few weeks or months.

### **Money-Saving Strategies When Shopping for a Bridge Loan**

- The lender from whom you obtain your financing for your new house may offer you a less expensive home equity bridge loan than other lenders. Ask about this possibility before committing to a long-term mortgage.
- When applying for a bridge loan, ask the lender to waive inspection and appraisal of your existing house and to not charge points. If the equity in your existing house is much larger than the bridge you need, the lender may be willing.
- If you purchased or refinanced your existing house only a few years ago, find your paperwork. Some lenders will accept a recent appraisal, physical inspection, or title report in lieu of charging you for new ones. Many, though, consider the information out-of-date if it's more than six months old.
- If you don't know whether you'll need a home equity bridge loan until the last minute, see if you qualify for a stand-by personal line of credit. Although interest rates are higher than on a bridge loan (and interest paid may be nondeductible), up-front costs are minimal.
- Consider working with an experienced loan broker—a person who specializes in matching house buyers and appropriate mortgage lenders. If your situation is complex, be ready to pay for the service.

## **Success Stories: Homeowners Who Timed It Right**

Here are a few examples of homeowners who used creative solutions to take advantage of market conditions.

### **Jon and Penny Timed a Job-Related Sale to Their Benefit**

Jon was transferred by his company to Eureka in the middle of November, a thousand miles away from his former job in San Diego. Jon and his wife, Penny, realized that houses often sell for less in the winter

and thought that because the economy was stagnant, interest rates were likely to fall in the spring. They guessed that their San Diego house might go for \$15,000 to \$20,000 more in May or June. Also, they didn't want their kids' schooling interrupted. So Jon and Penny decided to put off the sale until spring.

Fortunately, when Jon explained the problem, his employer was willing to help, including putting him up in a company-owned condominium in Eureka for very reasonable rent, and agreeing to pay for his airfare to visit his family in San Diego on alternate weekends. This not only allowed Jon and Penny time to pick out a home in Eureka, but also let them wait until March to put their existing home on the market. When their house sold in April, with a June closing, Jon and Penny got a very good price. Although not every employer is as cooperative as Jon's, your boss may be willing to help take some pressure off you.

## **Ann Minimized the Financial Trauma of Widowhood**

Ann was widowed unexpectedly. Her first impulse was to sell the home she and her husband had lived in for many years. "I had to get away from the memories," she said. Ann's counselor advised that it is usually a mistake to make a major decision like the sale of a house within so short a time of such a shock. Her counselor even showed her one of several studies indicating that human beings' decision-making abilities seem to be short-circuited by grief and shock for at least a year—often two. Nonetheless, Ann felt that living in her house was too much to bear.

After checking with her tax adviser concerning the timing of her transaction, Ann rented her home to a friend's son and lived elsewhere for several months. Then, when she was ready to cope with business details, she sold the house and got at least \$20,000 more than she would have had she sold immediately after her husband's death. ●



## Do You Really, Fully Own Your House?

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**A**re you the sole owner of your property, and if not, in what legal form do you share ownership with others? The above may sound like an obvious question, but unless you're the sole owner of the home, you'll need to make sure that everyone signs off on the sale in the appropriate fashion, and deal with any complications well before the closing date. If you're uncertain about who holds "title," or ownership rights, check your deed, which will have been recorded at the county recorder's office.

Most Californians hold title to their house in one of the following ways:

- as a single man or single woman
- as community property
- as community property with right of survivorship
- as joint tenants, or
- as tenants in common.

## Single Homeowners

If you are unmarried and have sole title to your home—that is, the deed to the property is in your name alone—with no joint tenants, cotenants, or partners—you can sell the house yourself.

## Community Property

If you are married or in a registered domestic partnership, you will probably need the consent of your spouse or domestic partner to sell your home—even if you no longer live together, but have not yet divorced or dissolved your partnership. Under California's community property laws, both spouses or partners usually have an ownership interest in a house, and both must consent in writing to any sale. (Cal. Fam. Code § 1102.)

Community property ownership is often reflected on the deed by the words "as community property" after the names of the owners. But no matter what the deed says, the real estate of the great majority of married couples or domestic partners is a community property asset. Except in unusual situations, if income earned during marriage pays for part of the down payment, the mortgage, insurance, taxes, or home improvements,

at least a portion of the house is community property. Deciding whether real estate is separate or community property can be tricky, however. A house that starts out as separate property may easily become a mix of separate and community.

Of course, there are homeowners who are married or in registered domestic partnerships who own their homes as separate property. You may have owned the house prior to a marriage or received it by gift or inheritance during the marriage, and have used no community property money to pay for property taxes, insurance, mortgage payments, or improvements.

Nevertheless, escrow companies and financial institutions always require the signatures of both spouses or domestic partners when a house is sold by a married couple or registered domestic partners. They do it to protect themselves, as they can't verify separate property status short of having the seller obtain a court order establishing it. A nonowner spouse or partner may consent to the sale by signing a sales contract, escrow instructions, or a quitclaim deed that gives complete ownership to the other spouse or partner. (Sales contracts and escrow are covered in Chapters 10 and 12.)

## Using a Quitclaim Deed

A quitclaim deed is appropriate when the nonowner spouse or partner wants to be removed from the sales transaction completely.

The person who signs a quitclaim deed releases all claims to ownership, as of the date the deed is issued. It says, in effect, "I'm not saying for sure that I have any claim on the property, but whatever claim I do have, I now give up!"

**EXAMPLE:** Sue and Peter were recently married and plan to move into a new house. They first need to sell Peter's house, which he owns outright as part of a divorce settlement from his previous marriage. Sue executes and records a quitclaim deed, giving Peter any interest she might have in the house being sold. When that's done, the public record will show escrow companies, title insurance companies, financial institutions, and potential buyers that Sue has no interest in the house.

Recording requested by

Peter Hammond  
3942 Wale Lane  
Rosamond, CA 98309  
and when recorded mail  
this deed and tax statements to

same as above

For recorder's use

**Quitclaim Deed**

- This transfer is exempt from the documentary transfer tax.
- The documentary transfer tax is \$ 0 and is computed on:
  - the full value of the interest or property conveyed.
  - the full value less the value of liens or encumbrances remaining thereon at the time of sale.

The property is located in  an unincorporated area.  the city of Rosamond, CA

For a valuable consideration, receipt of which is hereby acknowledged, Susan Hammond  
hereby quitclaim(s) to Peter Hammond

the following real property in the City of Rosamond, County of Kern California:

Lot 357 as shown on the map entitled "Map of Green Acres Subdivision No. 2, Kern County, California," recorded January 15, 1976, in Volume 3 of Maps, at page 89, Kern County Records.

Date: March 1, 20xx Susan Hammond

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

State of California

County of \_\_\_\_\_

On March 4, 20xx, before me, Sandra Barker, a notary public, personally appeared Susan Hammond, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct. Witness my hand and official seal.

Signature Sandra Barker

(Seal)

A sample quitclaim deed is above; a blank form is available on this book's companion page on the Nolo website; see the appendix for the link and further information.



#### RESOURCE

**See *Deeds for California Real Estate*, by Mary Randolph (Nolo),** for more information on deeds, as well as tax and planning aspects of property transfers.

As shown on the sample quitclaim deed above, the owner spouse's name and address go in the upper left-hand corner. Then you must fill in the amount of the documentary transfer tax, a tax you must pay for transferring real estate. The rate varies widely by locality, but \$1.10 per \$1,000 is the lowest and most common amount. The tax is based on the value of the property less any debts against it. When no money changes hands (as would be the case when a nonowner spouse signs a quitclaim deed to make selling the house easier), the county may not charge the tax. Your local title company or county tax assessor's office can give you information on this.

The deed must include a legal description of the property. This can be copied from your original deed or obtained from a friendly title company hoping to get escrow business from you.

Finally, the nonowner spouse must sign the deed before a notary public.



#### SEE AN EXPERT

**What if your spouse won't consent to selling the house?** See a lawyer; this book won't help you until that problem is resolved.

## Joint Tenants and Tenants in Common

There are two other common ways by which joint owners of real estate—whether married or unmarried—can hold title in California. These are joint tenancy and tenancy in common.

**Joint tenancy.** If you take title to real property as joint tenants, all owners share property ownership equally (two owners each own 50%;

three owners each own 33 $\frac{1}{3}$ %; four owners each own 25%; and so on), with a right of survivorship. When one joint tenant dies, that share automatically goes to the surviving title holder(s).

**Tenancy in common.** If you take title as tenants in common, the owners have equal or unequal undivided interests in property, without the right of survivorship. When one tenant in common dies, the share of the deceased person passes to the person named in his or her will or living trust, or by intestate succession (the laws that govern who gets your property if you die without specifying who will get your property).

**All owners need to sign the sale documents.** For the purpose of selling property, it doesn't make much difference whether title to a house is held by joint tenants or tenants in common. If you want to sell jointly owned property, you need the signatures of all joint owners and their spouses.



#### SEE AN EXPERT

**If dealing with reluctant co-owners, get legal help.** If one or more owners won't sign, you can't sell the whole property. The mechanics of selling only a portion of a home depend on how the property is owned, and are always more complicated than selling the entire property. The details are not covered in this book; you'll need the help of a real estate lawyer.

## Partnership

A house or property may be owned by a partnership, a business owned by two or more people.

Partnerships are ruled by statutory law and written partnership agreements. Many partnership agreements require that detailed procedures be followed before real estate is sold. Furthermore, the agreement is likely to give any nonselling partner(s) the first right to purchase the share of the departing partner, at an agreed-upon price or at its currently appraised value.

Because of the many possible partnership agreement provisions that can affect the sale of real property, I do not specifically attempt to show you how to sell partnership property. The practical steps of marketing a piece of real estate outlined in this book, however, are the same whether or not the property is owned by a partnership.

## Conservators, Guardians, and Trustees

If you're a conservator, guardian, or trustee for somebody who is a minor or is legally incompetent, or if you are an executor of the estate of someone who is deceased, you must strictly follow specific provisions of California law before selling real estate. I do not cover sales by people in these groups.



### RESOURCE

**Need details on executing the estate of someone who has died?**

See *How to Probate an Estate in California*, by Julia Nissley (Nolo).

## Is Your Ownership Limited by Any Encumbrances?

Generally, an encumbrance is something that slows down or impedes motion. In legal terms, an encumbrance is something that limits ownership rights to property—and it can have the effect of slowing down or impeding the sale of your house.

For example, if you still owe money on your mortgage, your home is encumbered for the outstanding amount. Similarly, if someone has sued you, won the right to payment of damages, and properly recorded a judgment lien in the county where your property is located, title to your property is encumbered by the lien.

While these types of encumbrances are common, you'll have a hard time selling your house without paying them off. That's because the encumbrance is on the land, so even if title were to change hands, the encumbrance would stick around.

## Deeds of Trust and Other Monetary Encumbrances

Most people owe money on their house in the form of a mortgage or deed of trust. Don't worry, you can still sell your house. The key is that the sales price be more than enough to cover the total amount owed. If not, you will need to come up with the difference from another source.

**CAUTION**

**Do you owe more than your house is worth?** If you do and you must sell but can't pay the difference out of your own pocket, it's possible to arrange a short sale, in which your lender agrees to let you sell the property for less than it's worth. A short sale can be complicated and have significant tax consequences, so it's a good idea to discuss it with a legal or tax professional first.

Other monetary encumbrances include:

**Unpaid property taxes and special assessment district bond liens** (for locally elected expenditures like an airport, school, or air pollution control district).

**Liens filed by home contractors (called mechanic's liens).** California law allows any licensed contractor who furnishes labor or materials to your home to record (at the county recorder's office) a mechanic's lien against your property if you do not pay.

**Income taxes.** If you've failed to pay federal or state income taxes, the IRS or Franchise Tax Board may record a Notice of Tax Lien with the county recorder's office.

**Judgment liens.** If you are sued and lose, and a money judgment is entered against you, the other party may record a judgment lien against the title to your property. Even prior to judgment in a lawsuit, a lien may be placed against your real property by means of a writ of attachment. This document makes your property security for an eventual judgment lien that will be placed on your property if you lose the lawsuit. A judgment lien is, technically, a general lien against all your property in any county in California in which it is recorded; an attachment makes a specific piece of property security for such a lien. Sometimes a notice of a pending lawsuit (*lis pendens*) is filed against the record of a particular piece of property. Generally speaking, property with a *lis pendens* on it cannot be sold, unless the court agrees to lift the *lis pendens*—which it may do if the seller posts a bond sufficient to ensure eventual payment of any judgment. If a *lis pendens* notice has been filed against your property, you will need to consult an attorney before selling.

Normally, monetary encumbrances are paid off out of the sales proceeds of your home. Alternatively, the buyer may be willing to take them over, as long as you reduce the purchase price accordingly. Either arrangement can be made by the escrow company.

## Nonmonetary Encumbrances

Nonmonetary encumbrances limit your right to use or sell property too—often because someone else has the right to use it. When these are a problem, they are far more troublesome to resolve. Dealing with them may even require an attorney’s assistance.

Of course, some nonmonetary encumbrances don’t present any problem at all. For example, you may have an easement (described below) that allows the utility company to run wires to connect power to your house, or to enter your yard to check the gas meter. These encumbrances are common and even beneficial to the homeowner, so buyers won’t generally bat an eye at them.

However, some nonmonetary encumbrances can create quite a headache.

Here are some of the more common nonmonetary encumbrances that can be problematic:

**Easement.** An easement is the legal right of one person to use part of another person’s property for a particular purpose—for example, a neighbor who uses a path on your property to gain access to his property. To be legally certain, an easement must be recorded in public records or be obvious upon inspection. Easements are part and parcel of the land they affect, and they remain when the property changes hands. Again, some easements won’t create much of a problem, but you’ll want to know what easements there are, to deal with any that could dissuade a buyer. In some cases, easements won’t necessarily impede the sale of your property, but just reduce its value.

**Adverse possession.** We used to refer to this as “squatters’ rights.” To oversimplify, if someone occupies your property (lives there, collects rent on it, fences or posts it, or the like) without your permission for five consecutive years, in a reasonably obvious fashion, and pays property taxes on it for each of the five years, that person can make a legal claim to it. As you might guess, this seldom happens these days.

**Encroachment.** This occurs when someone builds on your property, that is, crosses your property line. When that happens, you may first have to work with the encroacher to remove the encroachment or compensate you for it. You may want to consult an attorney to help you with these negotiations.

**Trespass.** This does not constitute an encumbrance. I mention it here because if left unchallenged for long enough, a trespasser who makes

unauthorized use of your property can claim some form of easement or legal ownership, depending on the circumstances.



#### RESOURCE

**Want a detailed discussion of easements and trespassing?** See *Neighbor Law: Fences, Trees, Boundaries & Noise*, by Cora Jordan (Nolo).

How can you be sure that no encumbrances on your property exist other than the ones you know about? If you're willing to do a little research, you can check for encumbrances yourself.

Start by looking at your deed. If you don't have a copy, go to the recorder's office in the county where your property is located (or hire a service to do so for you). Look up your name in the "Grantee Index," which will lead you to the recorded deed that originally transferred title to you. In addition, the public record for your property will indicate:

- whether any judgment liens, mechanic's liens, tax liens, or other liens have been posted against your property, and
- how you hold title—whether in your name alone, as community property, or as a tenant in common or joint tenant.

Next, look up your name again in the "Trustor" or "Mortgagor" index. Here you will find a record of any mortgage or trust deed liens against the title to your property. If you wish, you can request a copy (at a nominal fee) of any of these recorded documents.

If researching encumbrances is more than you want to take on, you can wait until you've found a buyer and the property is in escrow. At that time, your title company will do the research for you (see Chapter 12). In fact, if you approach a title company before escrow, it may be willing to provide a free "property profile" in the hopes of earning your business. This is a preliminary search for encumbrances on your title—but be warned, it's probably not as complete as the search that the title company will do later, when your house is actually in escrow.



#### RESOURCE

**For more information about checking and interpreting escrow records see *The Complete Guide to Your Real Estate Closing*, by Sandy Gadow (McGraw-Hill).** ●

# Avoiding a Big Tax Bill When Selling a House

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**W**hen you sell a house, the profit that you earn is considered a “capital gain.” This gain is usually reported on your federal and state income tax returns, and can result in a hefty tax bill.

However, various exemptions or deductions are also allowed that should greatly reduce the amount you owe to Uncle Sam and his California cousin. In fact, if you’re selling your principal residence and you’ve lived there at least two of the last five years, you probably won’t owe any capital gains tax on the first \$250,000 profit you make (or \$500,000 if you’re married and file jointly).

You’ll want to know whether you’re going to have any taxable gain, and thus owe any taxes on the sale, because it may affect important factors like when you sell and how much you sell for. This chapter summarizes how to calculate your gain and take advantage of the deductions, for purposes of both your federal and state tax returns—the California rules simply track the federal rules, unless otherwise indicated. (The most obvious difference is that you’ll end up paying different amounts to the federal government than to the California government, because the actual tax rates are set at different percentages.)



#### CAUTION

**Tax laws change often.** To be sure that what you read here is still correct and applies to your situation, consult a tax attorney or accountant. Also, see “More Information: Tax Rules and Publications,” below.

## How Much Gain You Will Likely Be Taxed On

Under the federal income tax system, if you sell your principal residence at a profit, you will be taxed on the gain that exceeds \$250,000 (single person) or \$500,000 (joint owners). If any portion of your home is used for a trade or business, that portion of the profit will be subject to the recapture of any depreciation you previously deducted, and taxed at a higher rate (currently 25%).

### More Information: Tax Rules and Publications

For more detailed information on the tax consequences of selling your home, read the appropriate IRS publications:

- Publication 523, *Selling Your Home*
- Publication 530, *Tax Information for Homeowners*
- Publication 521, *Moving Expenses*, and
- Publication 587, *Business Use of Your Home*

You should also study the form and instructions for IRS Schedule D, for the reporting of capital gain.

IRS forms and publications are available from the IRS website at [www.irs.gov](http://www.irs.gov).

In addition, be sure to review corresponding California rules and procedures, which essentially follow those of the IRS. Contact the Franchise Tax Board (FTB) at 800-852-5711 or check their website at [www.ftb.ca.gov](http://www.ftb.ca.gov) for the FTB publication *Real Estate Withholding Guidelines*.

You should consult your tax specialist as to how real estate tax regulations apply in your specific case, especially if you are taking depreciation deductions for a home office or if you are expecting huge gains from selling your home (more than can be excluded from tax under the law).



#### TIP

**You don't need to be married to get \$500,000 worth of deductions.** Unmarried joint owners can separately apply the \$250,000 deduction against each of their halves (or other portion) of gain from the home sale, as the IRS makes clear in Publication 523.

If you sell your home for less than you paid for it, you will have a capital loss. You will receive no tax benefit from that loss—unless part of the property is used for a trade or business (in which case, you should consult your accountant).

More likely, you will be selling your home at a gain. If your profit is below the \$250,000 (single) or \$500,000 (joint owners) amounts and you meet specified requirements (discussed below), you are exempt from reporting your home sale to the IRS. If your profit exceeds these amounts, you are required to report the sale using IRS Schedule D, the tax form that records sales of capital assets of all kinds.

What's more, if your profits are over the exclusion amount and your modified adjusted gross income (MAGI) exceeds certain threshold amounts (in 2013, \$200,000 for singles and \$250,000 if you're married filing jointly), you will owe a Medicare tax of 3.8% on the net gain. (See your tax pro for details—we do not cover the Medicare tax further in this chapter.)

To anticipate how much of your house sale profits will be taxable, calculate your:

1. adjusted cost basis
2. amount realized from the sale
3. gain or profit, and
4. taxable gain.

This section shows you how to calculate these four items.

## Figure Your Adjusted Cost Basis

To figure your gain on the sale of your house, start with how much you paid for it. That figure is called the cost basis. However, it's not as simple as just looking back at your original purchase price. The amount you “pay” for a house also includes other money you put into it, such as the cost of unamortized loan points, loan costs from the original purchase or a refinance of the house, and any capital improvements. You'll add these up to get a new number called your “adjusted cost basis.” The higher the adjusted cost basis, the lower your taxable gain.



### CAUTION

**Only unamortized loan points count.** Unamortized loan points are up-front fees you paid when purchasing your home or refinancing your mortgage. Points that are rolled into your mortgage and paid over time don't count. If you're not sure whether you paid unamortized loan points (not every loan has them), look back at the paperwork or call your mortgage broker or lender.

Capital improvements are basically additions to your property that increase its value, that you cannot remove, and that have a useful life of more than one year. For example, a swimming pool, carport, or new kitchen are capital improvements. Less obvious examples include upgrades to components of the property such as replacing galvanized pipe with copper, putting in new insulation, or installing circuit breakers to replace a fuse box. Capital improvements do not include fix-up or repair costs, like painting or fixing a broken pipe.

To jog your memory, here is a quick checklist of common improvements:

- adding walks, sewer lines, septic tanks, lampposts, retaining walls, fences, and gates
- new aluminum siding
- installing appliances, such as washer and dryer, dishwasher, garbage disposal, central vacuum, and refrigerator
- new built-in furniture or bookcases
- adding carpeting, linoleum, or other flooring
- constructing or improving driveways, gutters, drainpipes, and dry-walls
- landscaping, including irrigation
- new furnace, heating system, air conditioning, home security system, or plumbing
- new shower or bathtub
- permanent storm windows and storm doors
- replacing a roof
- extensively renovating or remodeling the house
- room addition, including patio, deck, porch, and garage
- adding a swimming pool, tennis court, sauna, or hot tub.

**EXAMPLE:** Joe and Trudy, a married couple, purchased a house for \$271,000 and added a new bathroom at the cost of \$9,000. Their adjusted cost basis is \$280,000.

Original purchase price	\$271,000
Capital improvements	+ 9,000
Adjusted cost basis	\$280,000

You will need to go through your files to find receipts to document the improvements made to your house and decide which qualify as capital

improvements. Also hold on to them for at least three years after you sell your house, in the unlikely event you are audited.

**TIP**

**You can deduct only money you actually paid for labor and materials for capital improvements.** You can't deduct any money for the value of your labor or the labor of friends or relatives who worked on your house without being paid.

Sometimes it's hard to decide whether a particular expenditure qualifies as a capital improvement. In doubtful cases, check with a tax expert or the Taxpayer Assistance Service of the IRS (800-829-1040). Or, if you're in the do-it-yourself spirit, consult the *U.S. Master Tax Guide* published by Commerce Clearing House, available in most libraries.

**TIP**

**The cost basis also adjusts automatically under certain laws.**

For example, when one spouse dies and leaves a community property house to the other, the feds say that the basis of the entire property (the combined community property shares of the deceased and surviving spouse) increases from its original purchase price to its fair market value on the date of the deceased spouse's death.

## Figure the Amount Realized

The second step in figuring out the tax you owe is to figure the amount "realized" from the sale—that is, the amount you're walking away with. You calculate the amount realized by subtracting your selling expenses from the sales price and deductible closing costs. These include advertising costs, any loan charges paid by the seller, broker's commissions, escrow and attorney's fees, and transfer taxes. Of course, if the buyer pays any of the above expenses, such as the transfer tax, you, as the seller, cannot add them to your list of costs.

**EXAMPLE:** Let's say Joe and Trudy sell their house in 2014 for \$579,000. Their amount realized is \$545,313, per the following:

Selling price of house	\$579,000
Documentary transfer tax	– 637
Broker’s commission (5% of price)	– \$28,950
Fee paid to attorney for double-checking contract documents	– \$750
Fee paid to accountant for tax advice related to sale	– \$350
Title insurance premiums and escrow fees paid by seller	– \$3,000
Amount realized	\$545,313

## Figure the Gain

Next, you’ll calculate your actual gain. This is the adjusted cost basis subtracted from the amount realized.

**EXAMPLE:** Joe and Trudy calculate their gain as follows:

Amount realized	\$545,313
Adjusted cost basis	– 280,000
Gain	\$265,313

## Calculate Taxable Gain

Once you figure out the gain, you need to determine how much of it is taxable. First, subtract all applicable capital gain exclusions. You are still eligible to exclude up to \$250,000 of capital gain on the sale of your home and twice that amount if you are filing jointly as a married couple. To claim the whole capital gain exclusion, certain tests apply, notably: You must have owned and used your home as your principal residence for a total of at least two of the five years prior to the sale of the home. (However, partial exemptions are available depending on the percentage of your two-year occupancy.)

You can use this exemption an unlimited number of times, but no more than once every two years.

Assuming Joe and Trudy (example above) met these tests, their entire gain of \$265,313 would be tax deductible, since it is less than the \$500,000 allowed for a married couple.

## Strategies for Minimizing Capital Gains Tax

If your calculations show that you're pretty certain to make more than the \$250,000 or \$500,000 capital gains exclusion amount on your house, there are ways to avoid capital gains tax, but you'll need a tax professional's help. However, I'll briefly cover the possible strategies here, including timing your sale, asking the buyer to pay in installments, or doing a tax-deferred exchange.

### Time Your Sale

You must report your taxable capital gain, if any, in the tax year that escrow closes and you get your money from the house sale. Unless you've filed with the IRS to use a different fiscal year, the tax year begins January 1 and ends December 31.

For some sellers, it may be possible to arrange for your sale to close escrow in a tax year when you expect to receive comparatively less total income from investments, salary, and other sources—for example, if you're taking an early retirement or a job leave. If you also plan to sell a house that has appreciated dramatically, it would be advantageous to arrange the closing of the house sale in the same year you expect reduced income. If at all possible, you should avoid closing escrow in a year when you're earning a peak income or when you expect to return to lucrative employment, because if your income tax rate increases, so does your capital gain tax rate.

When it comes to timing the sale of your home, you'll also want to consider any tax deductions that may be lost as a result of the transaction. If you're selling a home and not buying another, you'll lose the homeowner deductions that you've grown accustomed to. There is little doubt that this type of change will affect your finances—the question is how much. You could, of course, earn some income by investing your sale proceeds, but unless the investments are tax-free

municipal bonds or a similar financial instrument, you will need to declare any earned interest as taxable income.

This could result in a double whammy if you also lose the deductions for mortgage interest and real estate tax that you enjoyed as a homeowner. In this case, you may wish to time the closing of your house sale for late in the tax year to take full advantage of homeowner deductions for that year.

### **Prop. 13: California Property Tax Relief**

As a result of the California initiative of the mid-1970s known as Proposition 13, property taxes are levied on your home's assessed value as of either March 1, 1975, or the date of any later transfer, except in certain transfers within a family.

People who've owned homes for many years have property taxes that are comparatively low. When they sell that house and purchase another, however, they'll pay property taxes on the price of the house being bought, which is likely to be higher than the one being sold.

To help older and disabled people deal with this, California law lets owners over age 55 (only one spouse of a married couple need qualify) or owners who are severely or permanently disabled, and who sell one house and purchase another within two years in the same county, to transfer their old tax assessment rate to the new house. Transferring the tax assessment intercounty is possible if you are moving to a county that participates in the statewide transfer system. The county tax assessor in each California county can tell you whether your county participates in the system.

To qualify, the new house cannot cost more than the amount the first house sold for if the purchase of the new house precedes the sale of the first house. If the sale is within one year of the purchase, the cost of the new house cannot exceed 105% of the cost of sale, or 110% if two years after. (Cal. Rev. & Tax Code § 69.5.) Check with your county tax assessor to see whether the law applies when you contemplate your transaction.

## Installment Sales

Another way to avoid a large tax bill is to spread the profit out over several years through an installment sale. With an installment sale, the seller is paid in installments over a period of time—and only owes taxes on the income as it is paid. If you decide to make an installment sale, you will want to consult a knowledgeable tax accountant first.

Depending on your taxable income, stringing out the gain over several years may reduce the total net tax by keeping you in a lower tax bracket. However, when you finance a sale through installments, you must charge interest on the unpaid balance, and this interest is considered taxable income.

Even if you don't charge interest, as might be the case if you sell to a family member, the IRS will impute interest (act as though you earned it) at what it considers the going rate. This rate is changed from time to time, but is usually slightly less than the interest rate banks charge for a fixed-rate long-term mortgage. (I.R.C. § 453.) The pros and cons of installment sales should be weighed carefully with a tax adviser.

**Rental property note:** There are few advantages to selling rental property in an installment sale. If you want to sell rental property in installments, see a tax attorney or tax accountant first.

## Section 1031 Exchanges

If you're facing a huge tax bill and are very determined to avoid it, you could take advantage of what's called a tax-deferred exchange or Section 1031 exchange. (See I.R.C. § 1031(a)(3).) (These were formerly called Starker exchanges.) The law was created to ease the tax burden on real estate investors, allowing those who sell one investment property to buy another property to delay paying taxes until they've sold the newer (replacement) property. However, the cost basis of the replacement property is carried over from the first property, so the ultimate tax bill will probably still be a high one.

Unfortunately, Section 1031 exchanges can only be used for investment or business property, not for personal residences. If your personal residence also has an income component (for instance, you rent out an apartment over your garage), you may be able to apply Section 1031 exchange

provisions on a pro rata basis. However, this can have a negative effect on your tax liability, because depreciating income-generating property lowers your adjusted basis in the property, resulting in increased gain.

You can turn yourself into an investor by moving out of your home and renting it before you sell it. In fact, you could rent it to its ultimate buyer, using a lease-option contract (but get a lawyer's help for this). The IRS doesn't make clear how long you'd need to rent it out, though experts say that six months would probably be the minimum. You would then have 45 days from the sale to identify the replacement property, and 180 days from the sale to take title to it.

Of course, to maintain your investor status, you'd also have to rent out the house you just bought—again, for at least six months, and some experts say at least a year. After that, you could move into it—a lot of work to put off paying tax, especially since you can probably exclude at least \$250,000 of the gain entirely.



#### SEE AN EXPERT

**The tax rules are complex, and the IRS applies them strictly.** If you're considering using any of the tax minimization techniques described in this chapter, consult a tax expert first.

## California Income Tax Obligations

The state of California may require you to make an advance income tax payment of 3.33% of your property's sale price (referred to as "real estate withholding"). The payment will be handled through your escrow company. You may eventually get a refund, but will have to wait until you've filed your regular income tax forms.

Many home sellers are exempt, however, including those for whom the home was a principal residence for two out of the last five years (following the federal IRS capital gains exclusion). For details on the exemption, see the FTB publication *Real Estate Withholding Guidelines* and California Form 593-C, *Real Estate Withholding Certificate*.

## Moving Expenses With Tax Consequences

Here are some moving expenses that may either be tax-deductible or may adjust your basis in your new home. Keep track of them and discuss them with your tax adviser.

### Direct moving expenses

Airline/train/boat/bus tickets

Car use

Gas and oil for car

Car or truck rental

Gas and oil for rental car/truck

Professional mover's fee

Lodging during trip

Storing possessions before moving into new home

### Costs of selling a home

(when paid by you as the seller)

Real estate commissions or hourly fees

Advertising

Documentary transfer tax

Appraisal fees

Escrow fees

Title fees

Points (as in FHA or VA transactions)

This book, when used to sell a home

### Costs of buying a home

(when paid by you as the buyer; not deductible presently, but add to basis)

Real estate commissions or fees

Documentary transfer tax

Appraisal fees

Attorneys' and/or accountants' fees

Escrow fees

Title fees

Costs of financing home purchase: points (deductible by buyer in year paid)

Loan points not fully deducted on prior tax returns

## Federal Tax Implications of Short Sales

As mentioned in Chapter 2, if you're in financial distress and need to sell your house, you may not get any offers that cover the amount you owe your lender. In such a situation, your lender may be willing to let you sell for the amount of the offer you do get and waive the difference. This is called a short sale. Some lenders prefer it to foreclosing.

Unfortunately, a short sale is not always a gift from the heavens. First, you should have an attorney review the lender's paperwork to make sure it really is waiving its right to come after you for the deficiency. Second, even if it is, tax laws require that you declare the amount waived by the lender as income—and pay tax on it—unless you discharge it in bankruptcy, prove you were insolvent, or come under the terms of the Mortgage Forgiveness Debt Relief Act of 2007, which applies only to certain loans made during the 2007–2012 tax years. (I.R.C. § 108.) Make sure you have a clear understanding of your potential tax liability before agreeing to a short sale. Third, lenders typically take several months to approve a short sale.

## Tax-Deductible Moving Expenses

Some expenses involved in selling a home and/or buying another are deductible when they are part of a job-related move that meets certain qualifications under IRS regulations. (See IRS Form 3903 and IRS Publications 521 and 523.)



### RESOURCE

For helpful information on moving and moving expenses see *Steiner's Complete How to Move Handbook*, by Clyde and Shari Steiner (IIP Consumer). The Steiners also provide information online at [www.movedoc.com](http://www.movedoc.com). ●



## Working With Real Estate Agents

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The fact that you decide to sell your own house doesn't mean that you should never deal with a real estate agent. This doesn't mean that your only option is to hire an agent to list, show, and sell your house, and then to pay that person the typical 5%–6% commission. Some agents charge by the hour, will lower their commissions, or can be hired for limited services. All of these arrangements are described in this chapter.

**TIP**

**Really want to be left alone by agents?** Make sure you're on the national "do-not-call" list. Once upon a time, agents would regularly cold-call FSBO sellers to see whether they were ready to give up and get some professional help. However, it is illegal for agents to call someone whose phone number is on the national do-not-call registry. Register online at [www.donotcall.gov](http://www.donotcall.gov) or call toll-free, 888-382-1222.

## Who Can Legally Sell a House in California?

Let's briefly examine California laws as to who can and cannot sell your house for you.

Basically, you don't need a real estate license to sell your own real property or to buy real property for yourself. With a few exceptions, however, state law requires that anyone who acts as your agent or broker when you buy or sell real property in California must have an active real estate broker's license or a salesperson's license placed under the license of an active supervising broker.

If you pay someone who does not have a real estate license or does not conform to one of the legal exceptions described below that allow that person to act for you as a real estate agent, you can be fined up to \$100. Your nonlicensed agent can be fined up to \$10,000 and sentenced to six months in county jail if prosecuted and convicted of violating this law. (Cal. Bus. & Prof. Code §§ 10138, 10139.) Who would be likely to discover such an illegal arrangement and turn you over to the district attorney? Most likely, a distressed real estate agent who spots an unlicensed "agent" cutting into his or her licensed activities. Since there

## Real Estate People Defined

Before getting help from someone in the California real estate business, you need to know who you're dealing with.

**Salesperson.** The foot soldier of the real estate business who shows houses, holds open houses, and does most of the other nitty-gritty tasks involved in selling real estate. A salesperson is most commonly a licensed real estate agent, who must pass a state licensing examination and be supervised by a licensed real estate broker. Most are completely dependent on commission income; they receive no other compensation from the broker they work for.

**Broker.** Like an agent, but with more education and experience. He or she must have at least two years of full-time experience as a real estate agent or salesperson, complete 24 units of collegiate real estate courses, and pass a more difficult state licensing exam. A broker can legally supervise one or more salespersons.

**Buyer's agent.** A real estate agent who helps the buyer find a house and owes a legal duty of trust to the buyer. This person may be paid a commission by the seller or be hired and paid directly by the buyer. This relationship requires a written contract.

**Dual agent.** A real estate agent usually paid by the seller but who, at least in legal theory, represents both buyer and seller. This legal arrangement must be agreed to in writing by the buyer, seller, and agent.

**Listing agent.** A real estate agent who lists the seller's house for sale and markets it. Unless there is a specific dual agency agreement, a listing agent presumably represents only the seller.

**Realtor®.** A real estate agent who belongs to the National Association of Realtors, a private trade group. A Realtor may then also belong to the corresponding state association (California Association of Realtors) and a local association or board of Realtors.

**Seller's agent.** This agent may help a buyer find a house, but is paid by (and owes a legal duty to represent) the seller. This legal relationship must be confirmed in writing by the buyer, seller, and agent.

**Selling agent.** A general—but confusing—term for whichever agent within the transaction procures a buyer. Depending on the written agreement the parties sign, the selling agent can be either the buyer's legal agent, the seller's legal agent, or a dual agent.

### Real Estate People Defined (continued)

**Subagent (or cooperating agent).** A general term for the agent, in an office different from that of the listing agent, who helps a buyer find a house. Unless all parties agree in writing that the subagent exclusively represents the buyer, or is a dual agent, he or she is legally a subagent of the seller's broker (the person the seller retains to list the house), and owes a legal duty of trust to the seller, not the buyer. He or she is paid a commission by the seller. Put slightly differently, although a subagent may work with the buyer and never even meet the seller, his or her legal duty as the seller's subagent is to the seller who pays his or her commission, not to the buyer.

California law requires that the nature of any agreement involving a salesperson or broker to buy or sell residential real estate of four units or fewer be put in writing. (Cal. Civ. Code § 2079.14.) You'll receive a standard real estate agency disclosure form.

are so many people licensed to sell real estate in California (one to every 40 adults or so), it's best to assume that many such vigilant individuals exist and are ready to holler.

### Power of Attorney

One exception to the brokerage license requirement involves people who have been entrusted with a power of attorney to carry out a particular real estate transaction by the owner(s), and who receive no compensation for doing so. You can legally give a trusted friend or relative a power of attorney to sign papers or otherwise act on your behalf to sell a house for a variety of reasons. For example, if you are unexpectedly called out of town on business when your sale is about to close, you can give your mate a power of attorney to sign documents on your behalf. In addition, when someone handles a house sale for an ill family member or friend, this is often done using a power of attorney.

Perhaps you and your sister want to sell the home of your ill father. Assuming Dad really does want assistance with the transaction and is willing to entrust the details to you, he could sign a durable power of

attorney authorizing you to sell his home for him. Once a power of attorney is signed, you should be able to sell the house yourself without problems.

The real estate license requirement is also considered unnecessary or waived in the three exceptional situations described below. It's unlikely any of these will affect you, but in the interest of thoroughness, keep reading.

## Attorney at Law Acting as Such

An attorney who is a member of the State Bar of California may legally act as a real estate agent in a transaction. The attorney does not need a real estate license, but may only charge a fee, not a commission. Because the lines of demarcation in the long-standing turf battle between the real estate industry and the legal profession are blurred, however, many attorneys who regularly handle real estate transactions get a broker's license, and members of the bar are allowed to sit for the broker's license exam without completing the usual statutory educational requirements.

## Court Order

If the court orders you to act for another in a real estate matter, that's all the license you need, period. An example is a person named as conservator for someone who is legally incompetent. Again, unless you're fairly experienced in this area, you will probably need the help of an attorney.

## Power of Sale Under a Trust Deed

The trustee—not the borrower or lender, but a third-party stakeholder under a trust deed provision in a real estate loan—may sell the property that equitably belongs to the borrower, not the trustee, without a real estate license if the borrower defaults. Individuals (as distinct from corporations) seldom are named as trustees. Again, see a lawyer if this affects you.



### CAUTION

**Don't call yourself a real estate agent if you're not.** It's against the law to do so when selling a house. Frankly, you have no incentive to do this anyway. Advertising as a FSBO makes your home more, not less, attractive for most prospective purchasers.

## Services Offered by Real Estate Agents

If you decide to work with a real estate agent, you will want to achieve the maximum results for the minimum amount of money. Real estate agents will tell you that the only thing they have to sell is their time. Your goal then is to define your needs in advance and use an agent to help you meet those needs.

For example, you will waste money if you hire an agent who does nothing more than hold open your house and show it by appointment. The agent will want the highest commission possible, but will have done the least amount of work. On the other hand, if you hire someone to help you at crucial times—to set the price (Chapter 5), to see if the buyer will qualify for a loan (Chapter 9), or to help you through escrow (Chapter 12)—you will have made the most of your relationship with a real estate professional.



### TIP

By “agent,” we mean salesperson. Usually, the term “real estate agent” refers to a licensed real estate salesperson—which can include people who are called “brokers.” Though brokers are legally authorized to supervise others, they often act as salespeople, too. So when we use the term “agent,” we’re referring to anyone acting as a licensed real estate salesperson.

The balance of this chapter describes what real estate agents can do, which will let you decide how much you want one to do. Your decision will be based on several factors, including:

- your time
- whether you need to sell quickly
- whether you’re in a buyer’s or seller’s market
- your negotiating skills, and
- how well you pay attention to details.

Also, consider the following advantages of working with a real estate agent.

**Access to the Realtors® Multiple Listing Service (MLS).** The MLS lists most homes currently on the market. Because the vast majority of real estate agents participate in the MLS, most agents helping buyers will

become aware of your house's availability, price, and features this way. Potential buyers often search MLS-derived listings online, too.

There are ways to enter your home in the MLS without having an agent, however. Some real estate firms, particularly the smaller ones, will enter your listing on the MLS for a fee. FSBO-support websites also offer this as part of their package of paid services. Your MLS listing can also indicate that you are looking for a cooperating buyer's agent who can earn a partial commission.

**Business experience.** An outstanding real estate agent will have successfully completed many transactions. His or her experience in marketing houses, screening and qualifying buyers, and handling negotiations may help your sale run smoothly. In addition, real estate agents are not emotionally involved in the sale of your home. Although they want to earn a commission, good agents can honestly evaluate your asking price, whether you need to make repairs in advance, the house's presentation, and other factors.

**Knowledge of related professionals.** A good real estate agent will be one source of referrals to title and escrow companies that you'll need to close on the sale. A competent agent can also recommend inspectors and contractors to help satisfy any inspection and repair contingencies in your house contract.

## How California Real Estate Agents Are Paid

In California, it is illegal for agents to establish statewide or regionwide commission rates. By common practice, however, most real estate agents set their individual commissions at 5%–6% of the sales price of a house. (Commissions once went as high as 8%, but competition has pushed the rates downward, except for hard-to-sell country and vacation properties.) For more expensive homes, sellers can sometimes negotiate a sliding scale for commissions.

While California law requires that agents tell prospective clients (sellers) that commissions are negotiable, most agents (except those hired for limited purposes) won't represent you for less than 5%. Because most real estate transactions involve two agents—the one producing the buyer

and the one helping the seller—the commission is usually divided 50-50 between the two brokerage offices.)

The individual agent gets a percentage—often 50%—of the brokerage office’s share. If both agents are in the same office, typically each salesperson gets a third of the commission and the office keeps a third.

## Standard Contract: Exclusive Listing

Usually, an agent asks a house seller to sign a listing agreement, called an “exclusive authorization and right to sell.” An exclusive listing obligates you to pay a commission (usually 5%–6%) if your house sells during a specified period of time—typically 90 days. Any real estate agent you deal with will have an ample supply of exclusive listing agreements.

An exclusive authorization listing obligates you to pay the full commission on the sales price, even if:

- you, not your agent, find the buyer
- your agent finds a buyer willing to pay the full price and to agree to all other terms but you change your mind and don’t sell, or
- you accept an offer on somewhat different terms from those in the listing agreement—for example, the price is lower, you provide some financing, or you pay for repairs.

If you have an exclusive authorization listing agreement, the only times you are not required to pay the full commission are when you don’t receive any offers at the full listing price or you don’t voluntarily agree to sell at different terms.

The standard contract is too restrictive and costly for anyone who really wants to go the FSBO route. The whole idea of “For Sale by Owner” is to avoid paying a full commission by doing some of the home-selling work yourself. Keep reading to learn about the alternatives to exclusive listings.

## Modifying the Standard Contract and Commission

If you want to sell your own house with some help from a real estate agent but consider a 5%–6% commission too high, here are two ways you can have your cake and eat it too:

- Find an agent who won't charge full commission unless the buyer is represented by an agent from another real estate company.
- Find an independent agent who will charge a lower commission.

**CAUTION**

**The broker is in charge.** Even though you may work with an agent to modify the standard contract or commission, the agent must be supervised by a broker, who will ultimately approve or deny the arrangement.

## Find a Broker Who Won't Charge Full Commission Without a Cooperating Agent

The exclusive authorization and right-to-sell contract contemplates that you will have one agent and the buyer will have another. The agreement, however, usually allows your agent to keep the entire commission even if representing the buyer. In other words, if you list with ABC Realty and it produces a buyer, the firm keeps the whole 5%–6% commission.

Some brokers in California, however, won't charge the full 5%–6% commission if they don't have to split it with a cooperating agent from an outside office who produces a buyer. Instead, these brokers will try to find a buyer themselves, and then charge a commission of only 2.5%–4%. The obvious problem with this arrangement is that you have no guarantee that your broker will find a suitable buyer. If the buyer has a separate broker, you'll have to pay the entire commission.

## Find an Independent Agent Who Will Charge a Lower Commission

Some independent agents not associated with a large company or franchise (but are still supervised by a broker, who must agree to any deals) will accept a total commission in the 4%–5% range (allowing for half to go to a cooperating agent) if you sign an exclusive authorization and right-to-sell contract.

On the down side, you still pay a pretty good-sized commission and agents working for buyers will be less likely to show your house, because

the commission is less. Also, some small independent agents may provide less service than you need.

## Alternative Real Estate Contracts

Many FSBO sellers prefer a completely different kind of arrangement.

The six approaches discussed below are strategies FSBOs use when working with real estate professionals, listed from the most common to the least common. All engender opposition from real estate traditionalists. Nevertheless, if you want to use one of these approaches, shop around until you find a broker who will agree to it.

### Exclusive Agency Agreement

An exclusive agency agreement lets you try to sell your property on your own while your agent also tries to sell it. If you succeed in bringing about the sale yourself, you pay no commission. If the agent arranges a sale, he or she gets the commission. The arrangement potentially gives you the best of both worlds. You can pick and choose a variety of services, such as using the Multiple Listing Service. At the same time, if you find the buyer, you avoid paying a commission.

Unfortunately, there is a very good chance that you will end up paying a full commission. Because your agent can draw on the entire resources of the real estate business, chances are pretty good that he or she, or a cooperating agent, will bring in a buyer and sell your house before you do.

Moreover, many agents won't sign this kind of listing agreement because of the high potential for disputes over who brought in the buyer. For example, what if the buyer visits your house during an agent-sponsored open house, but then later contacts you independently for a visit? Both you and the agent might believe that you "brought in" the buyer.

If you use an exclusive agency agreement, make sure it sets up a system to clearly identify who brought in the purchaser. One way to avoid disputes is for you and the agent to periodically give each other lists of the potential buyers who show an interest in the house.

## Single-Party Listing Agreement: Cooperating With an Agent

If you sell FSBO, an agent may call you and say, “I have a qualified buyer for your property. Will you cooperate by paying me a commission?” If you say yes, the agent may ask you to sign a single-party listing agreement. Essentially, the agent is offering to represent you in a transaction with a specific buyer.

However, agents have been known to use this “I have a buyer” technique when they have a few potential buyers and are just trying to backdoor you into giving them an exclusive listing. To avoid this tactic, find out:

- the name of the interested purchaser (or be sure the contract includes a provision that will provide you with the potential buyer’s name within 24 hours of signing the agreement), and
- the commission the agent wants—most will ask for something between 2.5%–6%. Keep in mind that the agent didn’t have to do any of the marketing to sell your house—you did. You should therefore feel comfortable negotiating to the lower end of this spectrum: After all, a 5%–6% commission is what you would have paid if both you and the buyer each had your own agents throughout the entire transaction.

The reason to ask for the interested purchaser’s name is to be assured that such a person really exists. The agent shouldn’t object to providing this—he or she presumably has a contract with the purchaser, which prevents you from going around the agent and completing the sale on your own (and the agent is doubly protected with the 24-hour clause, since by the time you receive the prospective purchaser’s name, you will be contractually obligated to pay the agent a commission).

If the agent agrees to a commission at the low end of the range, seriously consider the offer, especially if the prospective buyer is willing to pay top dollar for your house.

## Flat-Rate and Discount Agreements

Some real estate agents offer a package of services for a set fee rather than a commission. Typically, these agents assist sellers by providing “For Sale” signs, sales leads, help with the offer and acceptance process, and advice

during escrow. For example, see Bay Area-based Realty Advocates at [www.realtyadvocates.com](http://www.realtyadvocates.com).

Many flat-rate brokerage firms charge a fee of \$2,000 or more—equivalent to a 1% commission on a \$200,000 house. However, they frequently encourage sellers to “cooperate” with the agent who locates the buyer, thus causing the seller to incur an additional cost of half of a 5%–6% full-service commission. In fact, if the agent’s services include advertising your property on the Multiple Listing Service (MLS), you’re in essence agreeing to pay a commission to agents who bring in a buyer, although you can specify the percentage in advance.

### **Monica: How I Split the Workload and the Fee**

Several years ago, I decided to sell my own house to save what seemed like an exorbitant real estate commission. After checking prices in my area, I estimated my Sacramento County house was worth between \$180,000 and \$200,000. To test the market, I asked for \$190,000.

As soon as my listing appeared in the paper, real estate agents called and asked if I would “cooperate.” I didn’t know what they meant. Finally, someone explained it to me—would I sell to a buyer they produced in exchange for a small commission? After some thought, I decided to pay a 2.5% commission if an agent brought me a full-price offer. It turned out to be a pretty good strategy. One agent found me a buyer and did all the paperwork for both the buyer and me. True, I ended up paying a commission of \$4,750, but I got a great price for my house and did very little work to sell.

I also learned that agents didn’t resent my selling my house on my own as soon as they learned that I would cooperate on full-price offers. At my first and only open house, at least a dozen real estate people brought potential buyers.

A potential problem with flat-rate agents is that their advertised price usually covers only their no-frills service, which may not include what you need, such as listing your house in the Multiple Listing Service or negotiating with buyers. Once you’re signed up, the agent may push a more extensive and expensive combination of services. For this reason, carefully

scrutinize the list of services offered by any flat-rate or discount agent before signing up, and be sure you know the cost of additional services.

Several online companies offer excellent packages of services for a flat or discounted rate. ZipRealty ([www.ziprealty.com](http://www.ziprealty.com)), for example, is a full-service online real estate brokerage that offers discounts to sellers who use their service.

## **“Permission to Show” Agreement**

Under what’s called a “permission to show” agreement, all you agree to (most likely orally) is to let one or more agents (who represent one or more potential buyers) show your house to them. You don’t agree to sign a listing. If one of these agents presents a buyer with an offer you accept and that results in a closed escrow, you pay a commission.

Permission to show is seldom a viable alternative, since it doesn’t advance anyone’s interests. Agents receive no real guarantee of compensation for their efforts, and sellers can’t count on agents being sufficiently motivated to bring the buyers around.

## **Open Listings: Nonexclusive Authorization to Sell**

This is like the exclusive agency arrangement described above, but it may be given to more than one agent at a time. You invite a number of agents at once to help market your property, with the one who procures the buyer getting the commission. At the same time, you try to sell your house yourself so that you will owe no commission at all. This type of listing is unpopular among agents because it provides little incentive for an agent to widely advertise or market the property.

As a general rule, however, open listings are accepted by Multiple Listing Services and so some agents will put your property into the MLS for a flat fee or a percentage of the sales price. You’ll need to negotiate this with the agent—not all of them are willing to do this.

## **Paying an Agent by the Hour**

As the purchaser of a book on how to sell your own house, you may prefer not to list with an agent at all. You may, however, want at least a

little help from someone experienced in selling houses. It is not hard to get this. Many agents provide advice for an hourly consultation fee to people who are handling their own sales. This sort of help usually ends up costing you far less than a typical commission.

Hourly fees vary widely, from \$50 to \$400 an hour. You might need anywhere from two to 100 hours of services. Consult the chart below, “Real Estate Services You Might Purchase by the Hour.”

Selling a typical home involves about 80–100 hours of time spent by the seller, the real estate agent, or both. If your house sells for \$400,000 and your agent is getting a 3% commission, your cost is \$12,000. You’d have to use 80 hours of an agent’s time at \$150 an hour to get this amount. As you can see, you can save substantially by doing some of the work yourself.

Real Estate Services You Might Purchase by the Hour			
Activity	Estimated total hours	Chapter	Alternatives
Giving tax advice	3–5	3	Agents can’t help; see a tax attorney or tax accountant
Pricing your house	3–5	5	Agents often do this for free with the hope of getting a listing
Placing ads	2	6	
Posting signs	3	6	May be purchased at a sign shop or online
Holding open house	5 (per week)	8	
Showing house by appointment	2 (per time)	8	
Qualifying the buyer	2–10	9	Loan brokers who are paid by the buyers’ lender can do this
Meeting to receive buyer’s offer	2–4	10	
Preparing to counteroffer	3	11	
Presenting counteroffer	3	11	
Dealing with escrow or title company	2–10	12	Many title or escrow company employees will help you
Dealing with inspectors	2–10	12	

Before hiring a real estate agent by the hour, be clear on what services you want from the agent and what tasks you want to perform for yourself. This will help define your relationship with the agent and develop an estimate of the costs. If you're not sure, start with the bare minimum—that is, the agent looks over the contract and walks the deal through escrow—and you do everything else. Then estimate the time and money involved in adding services to that basic foundation—for example, you ask the agent to conduct your negotiations with the buyer, to hold the house open a couple of times, to pay for advertisements, and to take calls from ads. Remember, agents are supervised by brokers, so even if an agent is willing to work for you by the hour, the broker will have to consent.

Below is a sample contract to hire an agent by the hour; a blank copy of this Hourly Agent Fee Agreement is on the companion page to this book (see the appendix for the link and instructions).

Notice that the sample contract lists certain services that the agent may provide. Based on your negotiations, you may decide to add to or subtract from this list. If you include a broad list of possible services in the contract, but are worried that the agent will use this as an excuse to run up hours, be conservative when negotiating the maximum hours to be spent according to the contract.



#### TIP

**For help preparing and reviewing documents, consider hiring an attorney.** Experienced real estate attorneys can deal with the paperwork aspects of a real estate deal for only a few hours' of billable time (usually at \$150 to \$400 per hour). If you've negotiated anything unusual with the buyer, using an attorney would be particularly appropriate. If paperwork is the part of the deal you most want help with, skipping the agent and hiring an attorney might make good sense.

## Evaluating Real Estate Agents

When you look for a real estate agent, what qualifications and factors should you consider? Should the agent be affiliated with a nationally known firm? Should the agent work full time? How many years of

## Hourly Agent Fee Agreement

\_\_\_\_\_,  
 the seller(s) of the real property located at \_\_\_\_\_,  
 \_\_\_\_\_, in the City  
 of \_\_\_\_\_, County of \_\_\_\_\_, California,  
 hereby engage \_\_\_\_\_, a licensed real  
 estate agent in the State of California, to advise them as to the mechanics involved  
 in selling their own house, and perform limited services including [*preparing or  
 reviewing sales contract and other forms; evaluating comparable sales prices; placing  
 ads; receiving calls responding to ads; suggesting competent professionals, such as  
 attorneys, accountants, pest control inspectors, and general contractors; negotiating  
 with buyers; overseeing transaction during escrow period; holding \_\_\_\_\_ open  
 houses; placing the property on an appropriate multiple listing service (MLS); and*  
 \_\_\_\_\_].

Agent shall not receive a commission, but shall be compensated at \$ \_\_\_\_\_  
 per hour, not to exceed a total amount of \$ \_\_\_\_\_, based on the agent's  
 estimate that the advice required shall not call for more than \_\_\_\_\_ hours of  
 the agent's labor. Agent shall be paid as follows:

\_\_\_\_\_

\_\_\_\_\_

If the seller and agent agree that more of the agent's time is needed, an additional  
 written contract will be prepared.

It is understood that sellers are handling their own sale and are solely responsible for  
 all decisions made. In addition, it is expressly agreed that agent will not provide any  
 legal direction or tax or estate planning advice, and shall make no representation  
 concerning the physical condition of the property or the legal condition of title  
 to any party. Agent expressly recommends that sellers seek the appropriate  
 professional advice offered by attorneys, tax accountants, pest control inspectors,  
 and/or general contractors as needed.

Agreed this date of \_\_\_\_\_, by:

\_\_\_\_\_

\_\_\_\_\_  
 Seller(s)

\_\_\_\_\_  
 Agent (Company Name)

\_\_\_\_\_  
 By

experience in real estate should the agent have? What about the ethical reputation of the agent? Will you find it easy to work with the agent? Some of these questions are easier to answer than others. While you can always get rid of an agent you don't like, it's better to find someone good in the first place.

If you know an agent you like who has experience selling homes, ask whether he or she will do work on a limited-service/limited-fee basis, or work by the hour. If not, ask for referrals to someone who will. Also get recommendations from friends and relatives whose judgment you trust. If that doesn't work, call several real estate offices (look for those that have lots of SALE PENDING or, better yet, SOLD signs on houses in your neighborhood) and talk to different agents who have sold comparable homes. Title companies may also give you good leads.



#### CAUTION

**Don't be seduced by agents' suggestions that they can sell your house for more than you ever could.** Some agents use overly high sales price estimates as a way to win your business—a practice called “buying a listing.” Others will tell you that FSBOs don't have the negotiating and other skills to sell a house for the price it deserves. Be dubious about agents' motives—or, if you decide that the FSBO route may not be for you, investigate individual agents' actual sales records carefully. Ask for the list price and eventual sales price of every home they've sold in the last two or so years.

In general, you'll probably find that agents working at independent brokerages are the best candidates for limited service or a help-by-the-hour arrangement. Few agents who work for large companies, including the franchises of nationally advertised groups, will work by the hour. No matter what explanation they give, the main reasons are that their overhead is too high to allow for abbreviated services, they make far more money earning commissions, and they don't want to take on all the potential liability without proportional compensation.

Here are issues to consider when choosing a real estate agent:

- Types of services the agent or realty firm can provide to market your home. Be sure to explain what help you want and don't want.

- Hourly rate. You should be able to negotiate a lower rate if you promise to buy a high number of hours.
- The agent's specific experience selling homes like yours and providing the type of services you need. For instance, if your home is in a subdivision tract, has the agent dealt with subdivision restrictions and community associations before?
- Whether the agent works for an office that belongs to the local Board or Association of Realtors® and that participates in the local Multiple Listing Service. If not, your property won't be exposed to the market properly.
- References from previous clients and the agent's track record. For example, how quickly did the agent sell similar homes, and did the seller get full price?

Unfortunately, you'll find it difficult to locate any information on formal complaints. Although some real estate offices belong to the local Better Business Bureau, BBBs usually have no information except publicly documented cases where a firm has committed a gross enough offense to be drummed out of the corps in the public square, in which case you wouldn't be dealing with them anyway.

A local Board of Realtors® typically provides even less information, as its job is to serve members of the real estate industry, and it won't risk getting sued for trading damaging information about its members. Check the Department of Real Estate (DRE) website ([www.dre.ca.gov](http://www.dre.ca.gov)) for information on licenses that have been restricted, suspended, or revoked. The DRE's website also includes updated information on real estate laws and regulations.

Websites like Zillow and Yelp! have gotten into the act, however. On [www.zillow.com](http://www.zillow.com), go to "Find a Pro" and you'll see remarks about and ratings for agents. On [www.yelp.com](http://www.yelp.com), you can search by name, or enter "real estate agents" and your geographic area, for comments and ratings.

## Getting Rid of an Agent You Don't Like

Suppose your relationship with your real estate agent isn't working. Maybe the agent isn't advertising your house as promised or doesn't negotiate as hard as you'd like. Because many thousands of dollars are

## Splitting the Workload With an Agent Can Be Profitable

Margaret, a recent retiree, owned a single-family home and was considering moving to a condominium. She wanted to save money on a real estate commission by selling her home herself.

She didn't mind holding open houses and greeting people, but she wanted help in negotiating with anyone who made a serious purchase offer. She also wanted assistance gearing up for her first open house. In addition, she knew she'd probably receive offers through real estate agents expecting compensation, so she wanted these agents to know about her home through the Multiple Listing Service.

Margaret found an agent willing to take a reduced commission. He agreed to list her home in the MLS, and to help her with the first couple of open houses and appointment showings until she felt ready to go it alone. He also agreed to advertise the property in newspapers and put up a "For Sale" sign. Finally, he agreed to handle the contract for her. He lowered his commission—normally 3% for full service (one-half of a full-service commission)—to 2% because he would not be responsible for open houses and appointment showings. He pointed out that if another brokerage office brought in an acceptable offer, they would require motivation in the form of a 3% commission on the selling price. He also asked that Margaret agree to pay him his commission even if another agent or a buyer without an agent made an acceptable offer.

A prospective buyer—unaccompanied by an agent—fell in love with the house one Sunday afternoon when Margaret held it open. Her agent negotiated the price and the buyer signed Margaret's counteroffer. The house passed its inspections and the agent walked the deal through escrow. His commission was 2% of the \$369,500 sale price—\$7,390. Because the buyer had no agent, Margaret's agent's commission was the only one she paid. Had she listed with a full-service office, the commission would likely have been 6%—\$22,170. Margaret saved \$14,780, and had the benefit of professional assistance to the extent she felt it necessary.

involved in a house sale, you should be very satisfied with your agent. If you're not, don't hesitate to switch.

Here's how to legally end a relationship with a particular agent:

- **If you've agreed to pay the agent on an hourly basis, pay for the hours you've used and notify the agent that you don't need any more services.** For the sake of clarity, this notification should be in writing.
- **If you've precommitted to a set number of hours but haven't used them, see whether there is a practical use for the unused hours.** If there isn't, pay only for the hours you've used. The agent may demand payment for the rest. If so, point out that the agent has a legal duty to try to earn other income in the remaining hours and to subtract that income from what you owe. (This is called mitigating damages.) You may eventually decide to make a small settlement, but don't be in a hurry or pay for time you haven't used.

And don't pay a large chunk of money to someone who has done nothing to earn it. If you refused to pay because you received no services, the agent must sue you to collect. Few agents want it known publicly that they sued a seller because of their own failure to do the job. Also, before you're actually sued, you'll probably have a chance to settle the dispute for a smaller amount. If you do, get a release of all claims when you make your payment. (See Nolo's *101 Law Forms for Personal Use*, by Robin Leonard and Ralph Warner.)

- **If you've signed a listing agreement with an agent that terminates at a specific future date, ask the agent to agree to terminate the contract early, on the ground that there is bad chemistry between you.** If the agent refuses, remind him or her that no commission will be earned at all unless the property sells for your full asking price within the contractual period, and that there will be no extension of the existing contract term.

Or, if you just can't abide the thought of keeping your property on the market—in even a limited capacity—with this agent, say that you plan to submit the matter to arbitration. Virtually all listing contracts contain an arbitration clause in bold print. In addition, associations and boards of Realtors® locally have arbitration committees. Although their function is really to handle disputes between their own members, it might not hurt to tell the

agent you plan to go to such a committee, if for no other reason than to induce the agent to give up the listing.

- **If you want to terminate an exclusive listing, allay the agent's fears that you have a buyer—or another agent—in the wings and want to end the first contract early to avoid paying the commission.** As a protection against this possibility, many agents will agree to release a homeowner from an exclusive listing on the condition that the seller neither sell nor relist the property within 60–90 days unless the original agent is compensated. ●



# How Much Should You Ask For Your House?

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**W**hat is a realistic price to ask for your home? The classic definition of “fair market value” is what a willing buyer would offer and a willing seller would accept, with neither being under unusual pressure (such as in a foreclosure). But how can we arrive at an estimate of this value? It can be especially challenging in an economy where prices keep changing. Also keep in mind that the price you advertise and the price you hope to receive may be two different numbers. Below are some suggestions for estimating your house’s fair market value and setting a corresponding list price.

**TIP**

**Study this chapter carefully.** FSBOs have a reputation in the real estate industry for overpricing their homes. To avoid having your home sit on the market with no offers, you’ll want to have a solid basis for the sales price you choose.

## Determine Prices of Comparable Houses

The most important factors used to determine a house’s value are the actual selling prices (not the list prices) of similar properties (comps).

### Identifying Similar Properties

To get reliable data, real estate appraisers use the following guidelines.

**Recent sales.** A comparable sale should have occurred within six months (the more recent, the better). In a market where prices fluctuate fairly fast, comps should be on sales within the last 30 to 60 days.

**Nearby houses.** A comparable sale should be within six blocks of your house. The six-block area should be shaved if the neighborhood changes significantly in a shorter radius—for example, if a major street, freeway, or railroad clearly marks a border between two different residential areas.

**Physically similar houses.** A comparable sale should be a house similar to yours. Look for houses of like age and location, and with similar numbers and types of rooms, square footage, and yard size. This is relatively easy in developments where houses are uniform or near uniform in size, age, construction, and layout. In areas where houses were built

one at a time and differ tremendously, however, comparisons must often be made among houses with more differences than similarities. A physically comparable house a few blocks away might be in a better school district, have a great view, or be on a less busy street, which will raise its property's value.

## Finding Out Past Sales Prices

The best comparable sales data are usually in a local association of Realtors® database for the geographical area where you're selling. Realtors® can access unique information such as the agreed-upon price for pending sales. They can't, however, just open these databases up to you, because they contain proprietary information. Of course, if you're working with an agent, you should ask for this sort of help in pricing your home.

If you're not working with an agent, you can find some of this information online yourself. See for example, [www.trulia.com](http://www.trulia.com), and [www.zillow.com](http://www.zillow.com).

Although online services are the most convenient, they're not always complete. For example, homes sold privately, without advertising on the MLS, may not show up at all. If you need more or better information than you find online, ask a local title company for help. You can either provide it with the street addresses of recently sold properties and request the sales prices, or ask it to print out information on all sales on certain named streets. You can also get detailed information on a specific property (a property profile). Property profiles are typically available for free if you've done business with the title company, or if it thinks you may do so in the future.

## Ask an Agent's Opinion

Another way to determine what your house is fairly worth is to ask a real estate agent. Many agents offer a free comparative market analysis or property profile in the hope that you will list your house with them. This may include photos and profiles of comparable properties, plus a suggested price or price range for yours.

Don't feel guilty about accepting free advice even though you intend to sell your property yourself. You may end up hiring the agent to provide at least some help in one or more of the ways discussed in Chapter 4.

Agents' opinions (free or not) should be in writing, using professionally accepted appraisal techniques. If the analysis isn't in writing, the agent can too easily change the estimate if the amount doesn't seem to meet with your approval. ("Well, maybe it is worth \$659,000 instead of \$629,000; lemme see....")

Even if you get a comparative market analysis and suggested price in writing, you can't be sure that the agent isn't trying to romance you by stating that your house is worth more than it really is. To guard against this, get several analyses and do your own price comparisons. If any one agent's suggested price is too high, it should be easy to spot.

## Hire a Professional Appraiser

A real estate appraiser—not necessarily licensed as either an appraiser or a real estate agent—can give you a documented opinion as to your house's value. But no matter how experienced the appraiser is, his or her opinion is just that—an opinion. If you hire an appraiser, emphasize that you want a realistic estimate of what a reasonable buyer would pay for your property in its present condition.

For your purpose, you need a ballpark estimate of what your house is worth. You don't need photographs or detailed work sheets that normally accompany an appraisal presented in court or to the Internal Revenue Service. You do need an orally stated appraised value, or even better, a letter of appraisal giving the appraiser's opinion of the house's value and the reasons for arriving at that value.

Some appraisers—especially those licensed to perform written appraisals for lenders—provide slightly more detail in a check sheet or short-form appraisal, in which the appraiser lists recent documented sales prices of comparable properties within a few blocks of yours. If you suspect that buyers seeking Department of Veterans Affairs (VA) or Federal Housing Administration (FHA) funding will be interested in your house, be sure to get a check sheet or short-form appraisal, which is required by those

agencies. Even if your house is priced too high for VA or FHA funding (see Chapter 9), a check sheet or short-form appraisal can help you substantiate the property's value to a potential buyer during negotiations.

**CAUTION**

**Appraisers tend to err on the conservative side.** Most appraisers are closely affiliated with lending institutions, which got burned during the real estate bubble. Back in the day, lenders were happy to see appraisers put a stamp of approval on every high price that came their way—but no longer. As a result, you'll want to be clear with your appraiser that you're not yet looking for a price that will satisfy a lender's scrutiny, but simply for a straightforward estimate of market value.

If your house has been inspected recently, give the appraiser copies of any reports. In fact, you may want to have the house professionally inspected to help you set the asking price. If you don't, a subsequent inspection by a licensed contractor or pest control operator may find problems that will affect the ultimate sales price. If you're aware of the problems in advance, you can price your house accordingly.

Even if you inspect your house before putting it on the market, don't be surprised if the buyer orders his or her own inspection reports. Buyers want to be sure they know what they're getting and frequently make the house sale contingent on satisfactory inspections (discussed in Chapters 10 and 11).

**TIP**

**Ask your appraiser for suggestions on ways to maximize the sale price of your house.** Appraisers are in business to recognize factors that increase or decrease a house's value, so it's not out of order to inquire. For example, you might ask whether the appraiser feels your house could sell for \$10,000 more if you spent \$5,000 brightening up the kitchen or repainting the interior and exterior.

An attorney who handles real estate matters may be able to recommend a good appraiser, as may your bank or mortgage broker. Also, your local association of Realtors® can tell you about some of its members who appraise houses. No matter how you find an appraiser, below are some basic issues to consider when selecting one.

**Cost.** Make sure you establish the appraiser's fee in advance. A basic appraisal of a medium-priced single-family home shouldn't cost more than \$300–\$500. You'll pay more for an appraisal of a luxury home or a house with a pool, outbuildings, or other additional structures on the property.

**Time required to prepare a written appraisal report.** An appraiser should not need more than three to four hours to visit and write up a report on a single-family house.

**Method of appraisal.** Most appraisers use the comparable sales data approach described above. Ask the appraiser to state in the report how far back in time and how far away geographically were the home sales he or she considered. If an appraiser suggests a method other than comparable sales data, find out why. Steer away from any appraiser who suggests using a replacement cost approach. This may work for purchasing homeowners' insurance, but not for selling your house.

**Professional licenses or designations.** A professional appraiser must be licensed. In addition, several professional appraiser associations establish standards of education and experience, and codes of ethics. The two best known groups are the Appraisal Institute ([www.appraisalinstitute.org](http://www.appraisalinstitute.org)) and the appraisal section of the National Association of Realtors® ([www.realtor.org](http://www.realtor.org)).

**Experience.** Find out the amount and type of experience an appraiser has, including hands-on appraisals of homes in your specific area in recent years. Look for work for financial institutions or government agencies, such as the Department of Veterans Affairs or Federal Housing Administration. Ask for and check references.

**Affiliation with a real estate office.** If the appraiser is a real estate agent seeking a possible listing on your property, there may be a conflict of interest. To avoid this, either choose another appraiser or make it clear that this individual would not be a candidate for any eventual listing of your property.

## Learn the Asking Prices of Houses for Sale

While actual sales prices of recently sold homes are the best source of information in pricing your home, asking prices of houses still on the

market can also provide guidance. Despite the fact that asking prices don't tell you what a house will eventually sell for or even the house's appraised value, asking prices can give you some idea of the range of market values in your area. If you keep an eye on them over a period of weeks or months, they'll also alert you to fluctuations in the housing market.

To find out asking prices, do some window-shopping in your neighborhood. Go to open houses, either on weekends when homes are shown to the public or on weekdays when local real estate agents have their tour day (often Tuesdays or Thursdays). Also, take note of how long a house has been on the market.

Once you learn an asking price, don't confuse it with a selling price. Before saying (in a surprised tone) that "the house down the street is going for \$900,000!" ask yourself if you actually mean that the house is *staying around* at that price because nobody will pay that much.

You can also learn something about an asking price by looking at real estate classified ads in newspapers or online listings. (Ads are covered in Chapter 6.) If an ad has run for a couple of months, the owner or agent has paid a lot for advertising without selling the property, which means the price is too high by a considerable amount. If the ad contains expressions like "motivated," "reduced," "owner will carry [financing]," "owner has bought," or "must sell," you know the owner is somewhat desperate, though not desperate enough to lower what is obviously an excessive asking price.

In general, keep in mind these two points about homes that are selling slowly:

- Even the lowest asking price in the bunch is above the house's market value or else the property would have sold already.
- The longer a property has been on the market, the more likely the asking price is at least 10% over the house's true value. If several houses have been on the market for more than a month or two in the same neighborhood, all sellers have unrealistic expectations. It could also mean, in extreme situations, that some condition has lowered values in the area generally—for example, a plant closing, toxic leakage, or a sudden jump in interest rates.

## Take the Temperature of the Local Housing Market

Knowing local conditions, comparable sale prices, asking prices of similar houses, and the length of time similar houses have been on the market can help you determine how much to ask for your house. They tell you whether the market is either:

- **hot** (more buyers than sellers, and prices are going up)
- **cold** (more sellers than buyers, and prices are dropping), or
- **lukewarm** (prices are relatively stable).

This is important information, as the psychology of scarcity and abundance typically plays a major role in a house's selling price. A market perceived as hot feeds on itself and prices continue to rise. The opposite also tends to be true—falling prices triggered by an excess of houses tend to fall further, as sellers scramble to get the best prices they can.

In determining the temperature of your area, keep in mind these rules:

- If 25% or more of the houses sell within seven to ten days of being listed, the market is hot. (If 40% sell this quickly, the market is sizzling.)
- If more than half of the houses stay on the market a month or more before selling, and most sell for less than their listing price, the market is cool.

If the supply of houses on the market is steadily increasing, sales are slow, and prices of the houses in the neighborhood have decreased, the market is cold.

Reading the real estate sections of local papers for a month or more, visiting many houses, and being aware of MLS comparable sales figures and online listings are key ways to test the market.

Another good long-term gauge of a market's temperature is current mortgage interest rates. As rates jump substantially (one percentage point or more), most housing markets begin to cool. Conversely, as rates drop, more people can afford houses, and the market perks up. An exception occurs during times of unemployment, or underemployment, when consumer confidence is in the doldrums.

## Price Your Own House

Let's suppose, now, that you are an extremely thorough person and have come up with a variety of appraisals as follows:

Source	Home Appraisal
Professional appraiser you hire	\$795,000
Real estate agent A	\$805,000
Real estate agent B	\$795,000
Real estate agent C	\$798,000
Your own appraisal (from public records)	\$790,000
Asking price of comparable home next door, which has been on sale for two months	\$829,000
What owner with a comparable house down the block says she got	\$824,000

Given all the above data, with appraisals ranging from \$790,000 to \$829,000, at what price should you list your house for sale? Keeping the price below \$800,000 will probably move your house within a month in a healthy market, assuming the house is in good physical shape and the average buyer can obtain financing. But if the market in your area lately hasn't been healthy, you would probably save marketing time, which translates into money, by pricing the place below \$790,000. (Yes, that's miles off the neighbor's \$829,000 list price, but you wouldn't want your house to sit on the market for as long as that one.) If you've underpriced, which is not too likely, you're likely to learn it in a happy way by receiving multiple offers, probably in the range of \$800,000.

**How local laws can affect your asking price.** If you must comply with local laws requiring a house that changes hands to have energy-efficient devices, smoke detectors, or similar items (the most common local requirements are mentioned in Chapter 10), you need to consider how the cost of these items will affect your asking price. You can negotiate with a buyer to pay these costs, but it's usually easier to find out the total cost and add it to your asking price.

## How Roberta and Shirley Priced Their Home

As part of selling their small two-story house, Roberta and Shirley checked their neighborhood to see what similar houses had sold for. Two identical houses in not as good shape had sold for \$828,000 and \$834,000 respectively, four and six months before. They then asked several real estate friends how they would price the house. The agents gave figures of \$839,000 and \$842,500.

Roberta and Shirley were a little disappointed to hear these low amounts, as they had done a lot of work on their kitchen and yard. They decided to wait for a few months to sell the house, as interest rates were dropping. Two months later, they put it on the market for \$854,000. They quickly sold it for \$850,000.

Why did they do so much better than the experts thought they would? The drop in interest rates was part of it; there were lots more potential buyers as a result, and prices went up. But in addition, Roberta and Shirley had worked hard for three years to get their house into perfect condition. Doing this had cost money, of course, but they looked at it as an investment. Some lookers didn't seem to care that the place was perfect, but a fair number (especially older people and dual-career couples) really did. They were willing to pay a little extra for a house that needed no work.



# How to Tell the World Your House Is For Sale

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To sell your house for top dollar, you want to reach as many potential buyers as reasonably possible. If you won't have an agent doing the advertising for you, it will be up to you to do your own publicity. This chapter shows how, focusing on using the Internet, newspaper classifieds, and For Sale signs, and creating and distributing a property fact sheet. If you put all these tools to use, you're sure to reach many potential buyers.

## Marketing Your House Online

The majority of buyers start their home shopping online. Therefore, it's crucial that you use the Internet to expose your home to potential buyers. It also allows you to show and highlight the property's best features with pictures and virtual tours.

## Getting Your House on the MLS

The best way to reach maximum buyers is through the Multiple Listing Service, or MLS. The MLS is a comprehensive database of available homes, and many other websites—including professional real estate organizations like the National Association of Realtors®, individual broker or agent websites, and local newspaper websites—link into it.

It used to be quite difficult to get your home listed on the MLS if you didn't have an agent to do it for you. Not so anymore. FSBO websites may do this for a flat fee. Independent or discount brokers also frequently provide this service. The fee is usually several hundred dollars.

On the other hand, many agents use the MLS, so you may be contacted by some who hope to convince you to list the property with them. Also, a listing on the MLS implies that you'll pay a cooperating commission to agents who bring in buyers, so be sure to specify what percentage you're willing to pay in the listing. Two to 2½ % of the selling price would be considered reasonable.

## Getting Listed on FSBO Websites

Another approach is to list your home on websites specifically designed for FSBO sellers. Start with [www.owners.com](http://www.owners.com), a popular FSBO website. To find local FSBO sites, see [www.fsboguide.com](http://www.fsboguide.com).

Other sites designed to serve FSBOs include the following:

- [www.homesbyowner.com](http://www.homesbyowner.com)
- [www.fsbobasics.com](http://www.fsbobasics.com)
- [www.forsalebyowner.com](http://www.forsalebyowner.com)
- [www.salebyowner.com](http://www.salebyowner.com)
- [www.sanfransbo.com](http://www.sanfransbo.com).

These sites all vary by price and number of listings. The question to consider is whether you're satisfied having the company list your home on its own website—remember, prospective buyers must visit that site in order to see the ad—or whether you're willing to pay extra to have your property listed on the MLS. The latter usually costs an additional \$200–\$400.



### TIP

**Don't forget Craigslist!** If you live in a major metropolitan area, you probably already know about this largely free service, where people place everything from personal ads to job postings to “real estate for sale.” (Even real estate agents have started adding entries.) See [www.craigslist.org](http://www.craigslist.org) for details.

## Creating Your Own Website or Blog

If you're Web savvy, you might create your own website or blog to feature the house. If you access the Internet through a major service provider like Yahoo!, AOL, or Microsoft, they'll give you fairly simple directions on how to set up a site through them. Or you can use a service like [www.godaddy.com](http://www.godaddy.com).

On your site, include the basic information contained in your printed property statement, described below. In particular, don't forget to state your house's address (or neighborhood if you'd prefer that prospective purchasers call for that information), price, and arrangements for showing.

Include a link to a map and directions to your house, using a service like MapQuest ([www.mapquest.com](http://www.mapquest.com)) or Google Maps (<http://maps.google.com>). (With MapQuest, you can just enter your address, copy the URL that comes up for your house, and use that in creating your link. With Google Maps, however, you need to first click “Link to this page,” in order to get the full URL.)

Google’s map service has some fun features, including a satellite photo with an arrow pinpointing your house, and a hybrid satellite/map feature where your house and nearby roads are marked on the satellite image. Look carefully at the date the photo was taken, however—such photos can’t be redone regularly, and entire buildings may have been constructed or torn down in the interim.

Pay special attention to how the information is laid out—Web viewers don’t want to read long paragraphs, preferring bullet points and short sentences.

Online (digital) photos have become very important to selling homes, FSBO or otherwise. And for a FSBO sale, such photos take on added importance, potentially drawing in prospective buyers who might otherwise have been nervous about contacting you for a personal tour.

Start by showing a front view of your house’s exterior. After that, you can typically include as many additional photos as you wish. If attractive and unique features like granite countertops or hardwood floors really “sell” your house, these photos can be just as important as the exterior shots.

Be sure to declutter first, and shoot on a bright day or with a flash so the pictures don’t turn out too dark. Be selective—it’s better to include fewer, but higher quality pictures, rather than overwhelming your website visitors with photos that do not show your house to its best advantage. But it’s worth adding at least one photo of every room, so that people don’t wonder whether you’re hiding something or have overstated the number of bedrooms.

**RESOURCE**

**For more information on creating a website I recommend two books:** *Creating Web Pages for Dummies*, by Bud Smith and Arthur Bebak (For Dummies), and *Absolute Beginner's Guide to Creating Web Pages*, by Todd Stauffer (Que).

## Telling Your Social Media Friends

If you already use Facebook, LinkedIn, Twitter, or another social networking site, you're poised to tell your friends, family, connections, and people you think you might remember from high school, that your house is for sale. Compared to some people's postings concerning what they had for breakfast, yours will be relatively interesting. Let people know that you're marketing the property on your own, and would appreciate them passing the information on to any interested friends.

One advantage to these sites is that they broaden the range of people who might look at your house listing. You might attract a friend who wasn't thinking of moving, but always loved your house; or someone across the country who'd been planning a move.

If you're not a member of one of these sites, joining all of them just to sell your house might be overkill. (Learning the ropes and keeping up communications with your various social media contacts can eat hours out of your day.) But you might enjoy joining one or two anyway. Talk to your friends about which sites they use, and ask for a demonstration, before deciding which one or two you might like to try out.

## Advertise in Newspaper Classifieds

Another way to advertise your home is through classified ads in the local newspaper—online, in print, or both. Classified sections offer bargain rates (compared to display ads in the rest of the newspaper) and often cost less for private parties, as opposed to real estate agents.

## Choose the Best Paper to Carry Your Ad

One of the first questions you'll encounter, as you decide where to place your ads, is whether to go with a print ad, an online one, or both. An online ad offers the advantage that many people who don't read a particular newspaper nevertheless search its online classifieds. But don't dismiss print advertising as out of date—it still reaches many prospective home buyers who enjoy, for example, perusing lists of open houses in their local paper.

Newspaper publishers typically sell their traditional services in combination with Web advertising. For instance, the *Los Angeles Times* offers a range of combo packages, from an open house listing beginning at \$89 to a “hot property” listing, with all the bells and whistles, for \$570. Other newspapers in California all have lower circulation and, consequently, tend to have lower prices. Many sellers mistakenly think it's better to pay the higher rates and advertise in the paper that the most people read. This is not necessarily so. Often, however, papers with smaller circulation reach a more interested audience. If you expect to sell to someone who lives in the area or is already familiar with it, you're probably better off starting in a smaller paper. A large, general circulation paper like the *L.A. Times* may be overwhelming for a buyer only interested in starter homes in Laguna Niguel, but the *Orange County Register* will surely attract only buyers looking there specifically.

I would suggest that you advertise in a local paper, but not exclusively. Try placing an ad there for one edition or one week online. If you don't get any offers, there's a good chance that everyone in the immediate vicinity knows your home is for sale and you need to tell your story to a wider readership. Then advertise in a paper with a greater circulation.

If your community has a weekly “shopper” or neighborhood paper, it may be worth advertising there. The rates are certainly low—about 10%–15% of what the metropolitan dailies charge. Such publications have a controlled circulation, meaning that they are typically delivered free door-to-door and sometimes in corner boxes, but in a very limited geographical area.

Also consider special interest newsletters and publications. Think creatively and concentrate on those with a real tie-in between the interests of the publication's readers and your property. For example, if your house is in a great school district, advertising in a local parents' magazine would

be a great idea. If your land is zoned to allow the keeping of a horse, advertising in a local equine journal would make sense. If your house is a fixer-upper, you might advertise in a trade publication of local contractors.

No matter what newspaper you choose, see if it has an “Open Home Guide” or “Open House” section. The list is typically divided both geographically and by price, allowing readers to quickly zero in on homes in their price range and location of choice.

Otherwise, Open House sections are the same as any other classified ad. They include the features of the house for sale, the address, phone number, and an indication of whether it’s for sale by owner or through a broker.

## Write a Good Classified Ad

A good ad should be easy to understand (avoid abbreviations as much as possible), and should truthfully describe the important features of your home, such as its size, condition, and location.

Here is a brief list of things your ad should mention:

- address, unless you want to encourage phone inquiries only, in which case you should at least list the neighborhood
- price
- for sale by owner
- number and type of rooms
- some indication of special charm—for example, patio, hot tub, big yard, fireplace, or view
- facts about location, if desirable—for example, next to a park, school, or rapid transit
- financing facts, if noteworthy, such as owner will carry a loan
- dates and times of open house, and
- phone number for appointments.

Be sure that your ad doesn’t exaggerate or play fast and loose with the truth. One function of your ad is to screen out people who won’t be interested. Overexaggeration will waste a lot of people’s time, including yours. At the same time, if there is a particular feature that distinguishes your home, be sure to emphasize it.

The list of items mentioned above is a suggestion to work from. If buying a print ad, however, you’ll soon find that you can’t afford to

publish all the information you consider important. Just keep in mind that you're trying to get people to come to see your home, not to buy it sight unseen. So, after highlighting your house's special features, spend your advertising money on the items that people really must know: price, number of rooms, location, and how to see the home. Just don't let frugality lead you into the pitfall of an ad that is so much shorthand it comes out gobbledygook.

### **Don't Discriminate**

Though virtually nobody advertises property for sale with a stated preference as to the age, race, color, sex, sexual orientation, or religion of the buyer, you could be accused of conducting a discriminatory ad campaign if the way you advertise ends up discriminating against certain groups. This might happen if your advertising excludes particular groups of people from even learning that your house is for sale—for example, if you list your house only in places where people of a particular religious group are likely to see it. Protect yourself from possible charges of discriminatory intent by placing an ad in a newspaper of general circulation in your county.

A good way to prepare for ad writing is to do some ad reading. Identify the ones that get you interested in the homes they feature, then try to emulate their approach. Chances are these ads will be brief and clear, contain essential information, and perhaps show a touch of humor.

## **Hang “For Sale” Signs**

Good “For Sale” signs should be a major part of any campaign to sell a house. A professional-looking sign indicates that you mean business and that you'll take care of the details in the transaction. You don't want potential buyers to think that you have a schlocky house because you have a schlocky sign.

## Types of Signs

You will want to buy a few ready-made, 18" x 24", flat “For Sale by Owner” signs, which can be placed in your windows and on your front lawn. (Alternately, for the window signs, you might create something attractive on your computer.) For the lawn, you’ll also need a metal bracket for insertion in the ground. Red, blue, or black letters on a white background are particularly easy to read.

Also buy at least three A-boards, which are good for your front sidewalk and nearby intersections when you’re holding an open house. I recommend ones with a chalkboard area to list your address. You can add two of the one-sided ready-made exterior “For Sale by Owner” signs to each frame.

All in all, you should figure on spending \$150 to \$300 to buy reasonably durable and easy-to-read signs. Remember, signs can be treated as a cost of sale for tax purposes, provided the expense is incurred within 90 days of the actual sale. Don’t bother with custom-made signs: they’re significantly more expensive when you’re not ordering them in large quantities, and are more than you need to sell one house.

Obviously, your signs should be easy to read. Use adhesive precut vinyl letters or thick chalk and make clear block letters. For signs on or in front of your house, you need only list the time and day of your open house, such as “2–4 PM SUN.” For signs farther away from your house, include the street address. Don’t clutter your sign by including the price or terms. The sign is meant to lead people to the property where they will find out the details.

If you want to show the house to prospective purchasers only during stated hours, prominently list the hours on the sign at your house, along with your phone number. Some people further try to protect their privacy by putting up “For Sale” signs only during open house hours, but this obviously limits the effectiveness of your advertising campaign.

## Where to Buy Signs

To purchase signs for your house and A-boards for the neighborhood, check the Internet or yellow pages under “Signs.”

You will also likely find a number of local sign shops, office supply, or hardware stores that sell everything you need. Shops that sell A-board signs will also have signs reading “For Sale by Owner” and “Open House” suitable for tacking on your house or placing in the yard.

## Location of Signs

Where should signs be placed? For maximum visibility, include the following locations.

- At least one sign should be in the window of your house, on the side of the house, or in the yard, where it’s easy to see from both ends of the street. If you are on a corner, you will need at least two signs, one facing each street.
- On open house days, place an A-board with an arrow pointing to your house and listing the hours during which the home is open. Put it in the yard or on the sidewalk immediately in front of the house. You can also get an “Open House” sign and put it out with your “For Sale by Owner” sign.
- Place A-boards at the two corners of your block. Usually it’s best to put them on the same side of the street as your house, unless for some reason they would be more noticeable to pedestrian or vehicle traffic on the other side.
- Position A-boards showing your address at the nearest major intersection or street near your home, so that they can be seen by traffic in both directions. Never place signs more than one-third to one-half mile away—at that distance you’re probably in a different neighborhood.
- Play off others’ signs. You will observe that other open house showings in your neighborhood may begin as early as 1:00 or even noon. Great. Allow these signs to lead traffic into your neighborhood; don’t duplicate them. What you do need are signs that lead traffic from the other open houses to yours. In this regard, it helps to wait until after 1:00 to put up your signs after you know where the others are.



## TIP

**Call your city planning board or local association of Realtors® for information on local ordinances and subdivision restrictions as to sign placement.** For example, in some places, it's illegal to place signs on pedestrian medians in the middle of wide streets. And, obviously, law or no law, keep safety in mind. Avoid cluttering a corner with so many signs that pedestrians can't walk safely and motorists can't see your sign anyway.

### Selling Rented Property

If your house is currently being rented, discuss your sale plans with the tenants before you advertise. While you have a right to show the house for sale, your tenants are entitled to their privacy.

You must give tenants reasonable notice of your intent to enter and show the house—24 hours' written notice is presumed to be reasonable. (Cal. Civ. Code § 1954.) The written notice can be mailed, personally delivered, or left at the tenants' door. Your other option is to give your tenants written notice that the property is for sale and that you will be contacting the tenant verbally in order to make arrangements for showing the property, at least 120 days before you first request entry to show the place.

If you delivered a 120-day notice, it's enough to use the phone or talk personally when giving the required 24 hours' notice requesting entry.

Try to get the tenants to be cooperative, but be respectful. Limit the number of times you show the house in a given week, and make sure that your tenants agree to any evening and weekend times you want to show the house. You have the right to show the house only during normal business hours (customarily 9 a.m. to 5 p.m., Monday through Friday), after giving reasonable notice.

One way to get the tenant's cooperation is to reduce their rent somewhat during the time the house is being shown, to compensate them for the inconvenience.

If you put up a sign advertising sale of the property, make sure it clearly warns against disturbing the occupant and includes a telephone number to call for information. A good method to use is a sign that says "Shown by Appointment Only," or "Do Not Disturb Occupant."

## Distribute Your Own Property Fact Sheet

You will need to write a complete description of your house to pass out at your open house, leave out in a plastic box under your For Sale sign, and distribute elsewhere. So that you don't forget important details, prepare it a few weeks ahead. To get ideas, visit open houses and see what other statements are like.

### What to Include in Your Flyer

Your flyer should not only give the basic facts about your house, but should highlight all desirable features. Below are some of the items you should cover, in order of importance:

- address (cross streets are helpful)
- number and types of rooms (bedrooms, baths, formal dining room, eat-in kitchen, and so forth)
- special features, such as a deck, basement, attic, pool, new roof or carpet, air conditioning, fireplace, or hot tub
- number of levels
- style of house—for example, California bungalow or ranch
- neighborhood information, such as school district or proximity to parks, shops, and public transit
- financing terms, such as owner financing, down payment, assumable loans, if any (for a loan, provide interest rate, payment amount, or balloon payments), etc.
- fun features—for example, sunny yard, wonderful old tree, name of famous person who used to live there, or historical features, such as built-in woodwork or sconces
- yard (great garden, fenced in, landscaping or pond, or other feature)
- age or year built
- square feet of living area, excluding garage and attic
- garage, if any, and size (one- or two-car)
- lot size
- view and type (bay view, mountains, lake, or woods)
- home warranties, if you're offering any
- zoning

- kitchen information, listing any appliances that are included
- association fees or maintenance charges, if your home is in a subdivision
- price (place it at the end so that potential buyers see all the “goodies” before seeing the price)
- when house will be shown—days of the week and hours, with appointments arranged at other times, and
- phone number and email for information.

Your property description should be designed to achieve two goals:

- Attract people to arrange an appointment or come to your open houses.
- Provide the important facts to people who come to look at your house. This will not only save you answering the same questions over and over, it gives potential buyers something to take away with them for easy referral later. (“Was that a gas or electric range? I thought I’d written down the number of blocks to the elementary school, but...”).

In addition, you should take a photo of the front of your home and add it to the top of your printed statement. Be sure your photo shows the full house, uncluttered by cars parked in the street, bikes or toys on the lawn, and the like. You may also want to include other pictures further down the page, or on the back. Choose rooms or features that are particular selling points—for example, a remodeled kitchen, or a large living room with hardwood floors and a fireplace. Again, make sure the rooms are clutter-free.

## Where to Distribute Your Flyer

Distribute copies of your property fact sheet as widely as possible:

- Email or give fact sheets to friends, coworkers, neighbors, and business associates such as your doctor, dentist, lawyer, or insurance broker. Include a brief cover letter asking for help getting the word out on your house.
- Distribute your fact sheet to homes in neighboring blocks.
- Send several copies of your fact sheet to relocation housing or personnel departments of local corporations and universities. They often help employees who are relocating to a new area find

housing. Include a brief cover letter with your fact sheet. Call first and get the name of the personnel director, to give your letter a more personal touch.

- Send fact sheets to people who call in response to your classified ad.

Think of it this way: If you distribute 200 flyers to people who then share each flyer with friends who are interested in moving, you will have reached hundreds of potential buyers at a very low cost.

Below are four sample fact sheets. The first was used by a Nolo editor when he sold his house without a real estate agent. The second, which I wrote, advertises luxury property. The third, written by another agent, gives detailed information on a subdivision home. The last one was written by an enterprising FSBO seller.

## Sample 1

### House For Sale By Owner

1508 Rose Way (corner of Main St., three blocks below Wegman Rd.)

Small, 2-story Salt Box style, in excellent condition (a cheerful little house)

2-½ Bedrooms (the one-half is a small, but nicely converted garage, in the house)

1 Bath with tub and shower (modern and cute)

1 Living room with fireplace and lots of light

1 Dining room (small or cozy, depending on your point of view)

1 Kitchen (includes built-in/brand new gas stovetop, wall oven, dishwasher, new countertop, handmade glass-fronted cupboards, and refrigerator)

1 Laundry room with washer and dryer

Amenities include deck, Japanese fish pond with four friendly koi, picket fence, edible front yard (strawberries), new shed for garden tools, bikes, etc., and refinished wood floors throughout house.

Other facts of interest include:

- Built in 1941 on concrete slab
- Efficient and relatively new forced-air heating
- Walking distance to North Berkeley BART, Monterey Market area, and Westbrae area (Toot Sweets, Brothers Bagels, etc.—important for Sunday morning)
- Four houses from Cedar Rose park with kiddie play area and tennis courts
- Two blocks from excellent elementary school; six blocks from middle school

**Price:** \$851,900

**OPEN HOUSE** on Sunday, February 16 and subsequent Sundays 1:00 – 5:00 p.m.  
You can reach us at 555-1976 (day) or 555-0439 (evenings between 6:00 and 8:00 p.m.)

## Sample 2

### For Sale By Owner

LUXURY HOME IN SAN FRANCISCO—  
142 Erewhon Street

Only \$922,900 buys this elegant 3-bedroom, 2-bath home featuring cathedral ceilings, formal dining room, separate breakfast room, and attractive low-maintenance yard on a 33' x 100' lot.

Carpets and window coverings are included in this fine home, which offers such distinctive features as a window seat in the living room, mahogany doors and trim in the dining room, hardwood floors throughout the main floor, including random plank flooring in the living and dining area, and even a separate bathroom heater.

This pleasant residence features a 30-gallon Rudd Monel water heater. The furnace, tar-and-gravel roof, and downspouts are only four years old, and the home's interior has been painted within recent months. In addition, a 110,000 BTU gravity furnace was installed four and a half years ago; all of these features make for trouble-free living and "move-in" condition!

The garage accommodates two cars in tandem. MUNI bus #43 is at the corner, with easy access to a nearby Metro station. A shopping center, including Tower Market, is a few blocks away.

Qualified buyers should call 555-1312 for appointments to see this home.

## Sample 3

### For Sale By Owner

Residential Development in the Heights

Location: 45 Hadrian Court  
Cross Street—Laguna

**Abstract:** Three bedrooms, two bathrooms, living room with fireplace, dining area, large kitchen, breakfast room, laundry room, large private patio, one-car parking, storage.

**Description:** Constructed in 1962. The central location is convenient to schools, transportation, shops, and yet enjoys a quiet wooded setting, off of a central courtyard, and looking out to lush landscaping.

**Price:** \$730,000

**Expenses:** Taxes will be based on Assessor's Office interpretation of Jarvis-Gann Law (Proposition 13); presently expected to be 1.15% of new sale price.

The property will be reassessed upon change of ownership. A supplemental tax bill will be received that may reflect an increase or decrease in taxes based on property value.

**Maintenance:** (Association Dues) \$903/mo. which includes: professional management, taxes, insurance, water, garbage collection, window cleaning, repairs, maintenance. Blanket mortgage assessment is also included.

**Contact:** Call owners at 555-1899.

## Sample 4

### SUNNYSIDE

**Location:** 477 Meurice Avenue  
(corner of Genessee)

**Description:** Charmingly remodeled, detached, two bedrooms plus den, living room with fireplace and built-in bookshelves, dining room with built-in buffet, updated bath, updated eat-in country kitchen with dishwasher and disposal, hardwood floors, new carpet, updated wiring, mostly copper plumbing, newly painted in and out, large yard with fruit trees, full basement, bonus room (legality not warranted), and ¼ bath, garage, and room for expansion.

**Lot Size:** Approximately 112.5' x 25' x 35' (irregular); built in 1923.

**Price:** \$599,500

**Contact:** For Sale by Owner: Joseph Bruce, 555-2885.



## Preparing Disclosures About Your House

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There was a time when real estate sales basically operated on a theory of “buyer beware.” The seller could keep quiet about any problems with the house and hope the buyers didn’t find out about them. Sellers had to answer direct questions honestly, but if the buyer didn’t ask the right questions, and the seller hadn’t actually lied, any unpleasant surprises that turned up after the home was sold were the buyer’s problem.

All that has since changed.

Sellers in California today have specific legal obligations to disclose material facts about the property. In fact, California has one of the broadest disclosure laws in the nation, requiring sellers to give buyers information on far more topics concerning the house, and issue more warnings, than the average U.S. state.

Although filling out certain required forms and making these disclosures will become crucial when you enter into contract negotiations to sell the house, you should also be prepared to give disclosure information during open houses and other showings. See “Preparing a Disclosure Package for Showings,” toward the end of this chapter.

What facts are considered “material” enough to tell a prospective buyer about, anyway? To some extent, the standard disclosure forms mandated in California will guide you through this analysis, as they ask you to check off what features your house contains and describe their condition or list any defects and malfunctions. In broader terms, however, “material” means anything that would affect your home’s value in the eyes of buyers or affect a buyer’s decision to make the purchase.

For instance, suppose you own a home in San Francisco where the fog rolls in on many a day, sometimes staying for weeks in the summer. You consider it romantic. Tony Bennett even sang about it. But what if a nice young couple buys your place during a sunny season and then comes back at you in mid-July saying that you never told them it got foggy? If you could have a “do-over,” you’d probably tell them about the fog. The same principle applies to things like a nearby religious congregation whose weekly services involve loud singing and use of every available local parking space; a neon sign advertising “BEER” across the street, which sends a red flashing glow into your living room every night; or a noisy local train.



## TIP

**Disclose, disclose, disclose.** Even if your inner lawyer could readily argue that an issue with your house isn't "material" or isn't asked about on any of the disclosure forms, bear this general rule in mind: It's wiser to tell the buyer every potentially negative thing you think he or she might want to know. Many of the disclosure laws were created to give buyers the right to sue you if you haven't told them about something. Far better to tell them what you know now—even if you think it will make the property seem less attractive—than to face a lawsuit later.

## Real Estate Transfer Disclosure Statement

Sellers must, under California law, give buyers a statutory disclosure form, called a Real Estate Transfer Disclosure Statement ("TDS"). (Cal. Civ. Code § 1102.) There is a copy of this form on the online companion page to this book (see the appendix for the link). Fill the form out carefully, and have copies available at your open house and for all prospective purchasers who express a serious interest in your property. Anyone who signs a contract to purchase your house should acknowledge in writing that he or she has received your disclosure material. (See Clause 27 in Chapter 10.)

If you don't give a prospective purchaser a copy of the disclosure statement until he or she makes an offer, the person has three days (five days if the statement was mailed and not personally delivered) to withdraw the offer. Obviously, this introduces considerable uncertainty into the transaction. If someone looks like a serious prospect, go ahead and provide the disclosure statement before he or she presents you with an offer.

You are responsible for disclosing only information within your personal knowledge—you don't have to hire professionals to answer the questions on the disclosure form and need not attempt to personally diagnose symptoms you've observed of a potential problem.

You must, however, fill out the form in good faith—that is, honestly. You must also take ordinary care in obtaining the information, which means that you are responsible for including information about the property that you know or, as a reasonable homeowner, should know.

## Advising Buyers About Environmental Hazards

In addition to disclosing environmental hazards, such as asbestos or lead-based paint on the Real Estate Transfer Disclosure Statement, you must provide prospective homebuyers with a variety of informational pamphlets. Give any who are seriously interested a copy of *Residential Environmental Hazards: A Guide for Homeowners, Homebuyers, Landlords, and Tenants*, published by the California Department of Toxic Substances Control (download at [www.cdph.ca.gov/programs/CLPPB/Pages/LRCRealDisc.aspx](http://www.cdph.ca.gov/programs/CLPPB/Pages/LRCRealDisc.aspx).)

Before signing a contract, make sure the prospective buyer signs the receipt inside the *Environmental Hazards* booklet, indicating that you gave him or her a copy. Keep the receipt for your records.

You must also make lead-related disclosures if you are selling a house built before 1978. Under the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. § 4852d), also known as Title X [Ten], sellers must:

- Provide buyers with any information on lead-based paint hazards that you have in your possession from risk assessments or inspectors.
- Notify buyers of any known lead-based paint hazards.
- Give buyers a federally approved pamphlet by the U.S. Environmental Protection Agency (EPA) on lead-poisoning protection, *Protect Your Family From Lead in Your Home*. There is a copy on the online companion page to this book; you can also get copies from the EPA's website at [www.epa.gov](http://www.epa.gov).
- Complete a lead-based paint disclosure form called "Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards." A copy is available on the Nolo.com companion page to this book (see the appendix for the link).
- Include certain warning language in the contract, as well as signed statements from all parties that all requirements were completed (see Clause 27 in our contract in Chapter 10).
- Keep signed acknowledgments for three years, as proof of compliance; and
- Give buyers a ten-day opportunity to test the house for lead.

If you fail to comply with Title X requirements, the buyer can sue you for triple the amount of the damages suffered as a result.

The National Lead Information Center has extensive information on lead hazards, prevention, and disclosures. (Call 800-424-LEAD or go to [www.2epa.gov/lead/](http://www.2epa.gov/lead/). Click "Real Estate Disclosure Information.")

Items you should disclose include:

- information on defects or malfunctions in the building structure, such as the roof or windows
- environmental hazards, such as radon or mold
- homeowners' association dues
- whether or not work done on the house was according to local building codes and with permits
- the presence of any neighborhood nuisances or noises that an occasional visitor (such as a prospective buyer) might not notice but that a homeowner would (such as a dog that barks every night or interference from a neighbor's ham radio that plays havoc with your TV reception)
- items included in the property, such as a burglar alarm or trash compactor, and
- any restrictions on the use of the property, such as zoning ordinances, planning restrictions, and if you live in a planned community, "covenants, conditions, and restrictions" (CC&Rs); all this information is available from local title companies.



#### CAUTION

**What if you think the house is haunted?** Believe it or not, this is worth disclosing as well—homebuyers have sued because they weren't told about defects of a supernatural sort. But there's no need to draw metaphysical conclusions. Just tell the buyer what you've experienced, such as "groaning sound occasionally emanates from basement," or "chairs tend to move around at night."

In completing the form, be as thorough as possible. Attach additional sheets or documents if necessary.

You are responsible for making these disclosures whether or not you have—or the buyer has—a real estate agent. If any real estate agent gets involved in the transaction, the agent must make his or her own reasonably diligent inspection of the property and a written entry on the disclosure form.

If you don't know something asked for on the form and can't find out with a reasonable effort, you can make a reasonable approximation, as long as you indicate on the form that the information is an approximation based

on the best information available to you. You need not pay for a bevy of professional inspectors to come check out your home. Any inspections you or a prospective buyer have done, however, are matters of your knowledge and must be disclosed, even if you believe the findings or estimated repair costs to be exaggerated.

### Disclosing Deaths on the Property

If someone had died in a house you were considering buying, would that affect your decision? What if it was a murder or suicide? The issue of how much sellers are obligated to tell homebuyers about deaths on the property has come up a lot in the California real estate industry, but the answer isn't completely settled. The problem is that different people react differently to knowing that a death has occurred—one buyer might consider it a “material fact” while another would say, “So what?”

The case law on this subject, *Reed v. King*, 145 Cal.App.3d 261 (1983), states that a buyer has no grounds to sue a seller or agent who fails to disclose a death on the property more than three years before the sale—unless it was a horrific death, such as a murder, that would significantly lower the house's market value. Also, California Civil Code § 1710.2 implies that the seller need not disclose that an owner had, or died from, AIDS, but that the property owner or his agent should answer honestly any direct questions about the subject.

The wise course of action is to disclose any known death on the property, especially if it took place within the last three years (the statute of limitations under California real estate law). Some real estate agent associations have actually created special disclosure forms, supplementing the required Transfer Disclosure Statement, that specifically deal with deaths, among other issues. You don't need a form like this, however—they were created just to make sure sellers remember to list this sort of thing. In filling out the TDS. You can either mention the deaths in the blank lines under “COORDINATION WITH OTHER DISCLOSURE FORMS,” or add a separate explanatory page.

If you carelessly or intentionally make an error or omission in the statement, the sale may still be valid, but you will be liable for any actual damages the buyer suffers. In the worst case, a court could order that the sale be rescinded, meaning the sale would be “undone” and the house would be yours again (but no doubt your pocketbook would be significantly lighter).



#### CAUTION

**Could a buyer claim never to have received your disclosure materials at all?** Not if you require buyers to acknowledge receipt by signing copies of these materials. For details of how and when to arrange this, see “Preparing a Disclosure Package for Showings,” below.



#### RESOURCE

**Mold resources.** For information on the detection, removal, and prevention of mold see the EPA website at [www.epa.gov/mold](http://www.epa.gov/mold). See their document, *A Brief Guide on Mold, Moisture, and Your Home*. Other publications written with the homeowner in mind are available from the California Department of Public Health at [www.cal-iaq.org](http://www.cal-iaq.org). This site includes many helpful links to academic and scientific studies on the subject of mold.

Don't be afraid that disclosing all problems with your house makes it harder to sell. Most buyers suspect that an older house will have some problems. Some buyers even get a bit paranoid, suspecting sellers of covering up all sorts of nasty defects that don't exist. A full and detailed disclosure of problems will go a long way toward convincing these people that, in fact, the house isn't even worse than they think. It will also weed out some problem buyers.

If you have any doubts about the condition of important features in your house, hire a contractor to walk through with you (more fully discussed in Chapter 1). If the contractor finds problems, disclose them to all potential buyers. To be completely thorough—and to answer any serious questions you have—you can hire a licensed general contractor to inspect the house and give you a report. You can use the report to complete your disclosure form and you can also give copies of the inspector's report to potential buyers. A serious buyer will separately have his or her own inspection. (See Chapter 12.)

## Concerns Over Toxic Mold

In past decades, homebuyers hardly gave mold a passing thought. But recent concerns about its effect on human health have brought it into the public spotlight. The concern is not with the relatively benign mold that appears on shower tiles—it's with the layers of slimy, grimy, or even sometimes powdery mold that usually develops in homes that have had leaky pipes or other major moisture problems. These villains come with names like stachybotrys, penicillium, aspergillus, paecilomyces, and fusarium—and are reputed to cause everything from allergic coughs to brain damage and death. Scientists are still working to understand which molds cause what health problems and at what levels. The issue is confused by the fact that some people have major reactions to mold, while others have none at all.

If the house you're hoping to sell has a mold problem, your buyers will want to know about it. In fact, the California Legislature passed the Toxic Mold Protection Act of 2001 (Cal. Health & Safety Code §§ 26100 and following) specifically to protect homebuyers from undisclosed toxic mold problems. The law requires you to tell buyers about any significant known or suspected toxic mold in your house—though because standards have not yet been developed, what is significant remains unclear. Your safest bet is to disclose what you know. As with other hazards, however, you are not obligated to hire inspectors to search for a problem.

"My house isn't moldy," you may be thinking. But take a second look—mold can hide, and people's sensitivity levels vary, so you may not have noticed it. Check around your house for unpleasant smells, areas of obvious moisture or water damage, and your own allergic reactions. Unfortunately, not all molds have a smell, and mold may hide in air ducts, crawl spaces, or ceilings and attics.

If you suspect a problem, it may be easier to search it out and clean it up now, before any buyers are involved, than to deal with the panic that buyers may experience if they find it on their own. For information on finding a qualified inspector, see the website of the California Real Estate Inspection Association, at [www.creia.org](http://www.creia.org), or call CREIA at 800-848-7342.

## Disclosures for Properties With Common Interests

The Real Estate Transfer Disclosure Statement asks you to indicate whether the property is subject to CC&Rs or a homeowners' association, or whether it has common areas. If you are selling property with common interests or common areas:

- in a planned unit development or subdivision, including condominium or co-op units, or
- governed by any association with the right to levy dues or assessments,

you must provide as full a disclosure as possible. Be prepared to provide copies of bylaws, articles of incorporation, operating rules, CC&Rs, projected expenses (such as current regular and special assessments and fees), budgets, and deferred maintenance, and all other potentially pertinent documents. You'll also need to provide a statement describing any prohibitions on renting the property to others.

The California real estate landscape is littered with lawsuits over such matters. A standard title report generally does not disclose any of this material in detail, simply referring to CC&Rs. Also, state law requires sellers to inform buyers if the association is fighting a builder to make repairs and to provide a list of the association's demands. (Cal. Civ. Code § 1368.)

## Disclosure of Military Ordnance

Sellers who know of any former federal or state ordnance locations (sites used for military training purposes that may contain potentially explosive munitions) within one mile of the property must provide written disclosure to the buyer as soon as practicable before transfer of title. (Cal. Civ. Code § 1102.15.)

## Natural Hazard Disclosure Statement

Although the Transfer Disclosure Statement includes information on many hazards affecting the house, some of these require additional disclosures. State law requires sellers to provide buyers with a Natural Hazard Disclosure Statement indicating whether the property is in one of six hazard zones for floods, earthquakes, and fire hazards. (Cal. Civ. Code § 1103.2.)

As with the Real Estate Transfer Disclosure Statement, you'll need to give the Natural Hazard Disclosure Statement to anyone who looks seriously at your house.

You can hire a company to prepare this report for you, for example First American at [www.firstam.com](http://www.firstam.com). They'll do so on the basis of the property's legal description, without an on-site inspection.

Have the prospective buyer sign two copies of the forms, and keep a copy of each for yourself. Anyone who signs a contract to purchase your house should acknowledge in writing that he or she has received your disclosure material. (See Clause 27 in Chapter 10.)

There is a copy of the standard Natural Hazard Disclosure Statement on the online companion page to this book. (See the appendix for the link.) Here's a summary of the six hazard zones included in this statement. You will have to check "Yes" or "No" to tell the buyer whether the provision is applicable.

**Special flood hazard area** designated by the Federal Emergency Management Agency (FEMA). (42 U.S.C. §§ 4001 et. seq.) If your lender required you to obtain flood insurance when you bought your house, then your property is in a flood hazard area. If you financed your house privately or are otherwise unsure whether your property qualifies, contact the Federal Emergency Management Agency (FEMA) and ask. To find the closest office of FEMA, check the FEMA website at [www.fema.gov/national-flood-insurance-program](http://www.fema.gov/national-flood-insurance-program). FEMA's National Flood Insurance Program (NFIP) publishes hundreds of flood zone maps for California; for information, call 877-FEMA-MAP.

**Area of potential flooding** due to failure of a dam as identified by the Governor's Office of Emergency Services (OES) on an "inundation map." (Cal. Gov't. Code § 8589.5.) Also call FEMA at 877-FEMA-MAP for more information.

**Very high fire hazard severity zone** designated by a local agency. (Cal. Gov't. Code §§ 51178, 51179, 51182, 51183.5.) For fire safety information, visit the California Department of Forestry and Fire Protection's website at [www.fire.ca.gov](http://www.fire.ca.gov).

**Wildland area that may contain substantial forest fire risks and hazards.** (Cal. Pub. Res. Code §§ 4125, 4136.) For fire safety information, call your local fire department or visit the Department of Forestry and Fire Protection website.

**Earthquake fault zone** as identified by the California State Geologist. (Cal. Pub. Res. Code §§ 2621.9, 2622.) To find out if your property is within an earthquake fault zone, check with your local city or county planning department. It should have maps that show the areas. Also, contact the California Department of Conservation's California Geographical Survey Office (phone and website below).

**Seismic hazard zone**, an area where landslides, liquefaction (failure of water-saturated soil), amplified or strong ground shaking, or other ground failure in the event of an earthquake are most likely to occur. (Cal. Pub. Res. Code §§ 2694, 2696.) Within the California Department of Conservation, the California Geological Survey (CGS) publishes seismic hazard data and fault zone maps. For more information, contact their Sacramento office at 916-324-7299 and check their website at [www.conservation.ca.gov](http://www.conservation.ca.gov).

The designations of natural hazard areas are often puzzling, at least to a layperson. For example, San Francisco is not within an earthquake fault zone. That's because the fault line isn't in San Francisco—although San Francisco is famous for experiencing the ravages of earthquakes. Also, sometimes the available maps and information are not of sufficient accuracy or scale for you to determine whether or not your property falls inside or outside of a designated hazard zone, such as a high fire hazard severity zone. In this case, the law requires a seller to mark “Yes” on the Natural Hazard Disclosure Statement—unless the seller provides evidence, such as a report from a licensed engineer, that the property is not in the hazard zone. (Cal. Civ. Code § 1103.2.)

**Alternative disclosure form.** A seller may provide these disclosures on a Local Option Real Estate Disclosure Statement, described below.

## Earthquake and Seismic Disclosures

Earthquakes are a fact of life in California. To help buyers make earthquake-informed decisions, state law requires sellers to provide information to buyers on the safety of the site or location of the house. As discussed above, you must indicate on the Natural Hazard Disclosure Statement whether or not your property is in an earthquake fault zone or a seismic hazard zone. In addition, state law requires sellers to provide information on the safety of the house itself and its ability to resist earthquakes.

You must tell buyers whether or not your property has any known seismic deficiencies, such as whether or not the house is bolted or anchored to the foundation and whether cripple walls, if any, are braced. (Cal. Gov't. Code § 8897.) You are not required to hire anyone to help you evaluate your house, nor are you required to strengthen any weaknesses that exist. If the house was built in 1960 or later, oral disclosure is enough, although I recommend that you disclose in writing.

If the house was built before 1960, you must disclose in writing and sign the disclosure form, Residential Earthquake Hazards Report, included in a booklet called the *Homeowner's Guide to Earthquake Safety*. You must give the buyer a copy of this booklet and disclosure “as soon as practicable before the transfer.” (Cal. Gov't Code § 8897.1.)

The *Homeowner's Guide to Earthquake Safety* is available from the Seismic Safety Commission (SSC), at 916-263-5506 or as a download on [www.seismic.ca.gov](http://www.seismic.ca.gov). This booklet provides valuable information on how to find and fix earthquake weaknesses and a detailed list of earthquake resources—everything from hiring an inspector and getting the work done to emergency planning and geologic information.

## Water Heater Bracing

All water heaters on the property you are selling must be braced, anchored, or strapped to resist falling or displacement during an earthquake. (Cal. Health & Safety Code § 19211.) You must certify in writing that the water heater complies with the law. The Real Estate Transfer Disclosure Statement meets this requirement.

## Preparing a Disclosure Package for Showings

Your presentation of your home should include a so-called “disclosure package” that contains the following:

1. Your property fact sheet, as described in Chapter 6.
2. A copy of the Real Estate Transfer Disclosure Statement (TDS) and a copy of the Natural Hazard Disclosure Statement, both described above.
3. Copies of any pest control or other inspection reports done on the house by you and even by previous owners, unless they’ve been superseded by later reports.
4. Documentation of any repairs you made that had been recommended by any inspection report. “Section 1” items on a pest control report are those that a lender would usually require to be corrected before funding a purchase. (Of course, you don’t have to repair everything before selling the house—what repairs are made before the sale and who pays for them is subject to negotiation between you and the buyer.)
5. A page containing the following instructions: “Buyers submitting offers must accompany their offer contracts with one copy of this disclosure package, upon every page of which they have written ‘received, read, and accepted,’ and placed their signature(s) and the date. One copy will be returned to buyers for their records, along with other contract documents.”

You don’t need to make huge numbers of copies of these disclosure reports—maybe 10% of the total people who visit your house will take one. Only serious potential buyers want to lug around a stack of paper of this size.

Starting out with 25 or 30 copies is probably safe. Though making this many copies can be expensive, remember that offering these reports increases your credibility and professionalism. And, don’t forget that your copying costs are tax deductible.

## Smoke and Carbon Monoxide Detectors

California requires all single-family dwellings—and each unit of multiunit dwellings—to have smoke detectors installed before close of escrow. (Cal. Health & Safety Code §§ 13113.7 and 13113.8.) Sellers must provide a written statement of compliance with this requirement when transferring property. In addition, a law passed in 2010 (the Carbon Monoxide Poisoning Prevention Act of 2010, or SB 183) required all California homeowners to install carbon monoxide detectors by July 2011. You're still allowed to sell your home without such devices, but don't be surprised if the buyer asks you to install them. The Real Estate Transfer Disclosure Statement contains the required written statements.

### Disclosure of Registered Sex Offenders

Contracts entered into after July 1999 must include a statement regarding the availability of a statewide database on the location of registered sex offenders. See Clause 27 of our offer form in Chapter 10.

## Complying With Local Ordinances

Some cities, including Daly City and San Francisco, require sellers to issue buyers “3R reports,” showing zoning restrictions and building permits on the property. Also, some cities require energy conservation inspections prior to transfer of property. It's also a good idea to disclose to the buyer any local rent control laws. (See Clause 12 in the offer form, Chapter 10.)

Sellers in communities with local disclosure requirements passed after July 1990 may be required to use a special form, the Local Option Real Estate Disclosure Statement. (Cal. Civ. Code § 1102.6a.) Check with your city planning department or local title company for information on local ordinances and disclosures that affect your sale. ●

## Showing Your Home to Buyers

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Once you've told the world that your house is for sale, you must prepare to put out the welcome mat for potential buyers. You will need to:

- learn to respond to phone inquiries from interested people
- prepare your house for a spectacular showing, and
- conduct individual tours and open houses.

At the same time, you'll want to make sure that you are protecting yourself and visitors from potential liability, and complying with antidiscrimination laws.

## Handling Phone Calls

Your first contact with prospective buyers may well be over the telephone. People who see your house on the MLS or in a newspaper ad may call to ask questions. After all, it makes sense for them to rule out houses that are too large, too small, or too expensive without having to go see them. While you want to be honest and helpful, your goal is also to describe your house in the best way possible, highlighting attractive features a serious potential buyer would truly appreciate.

Be prepared to decide the following:

**How to answer the phone.** Answer the phone as you would ordinarily, and keep the following material next to the telephone so that you can keep notes and answer questions easily:

- copy of your property fact sheet
- a notebook or pad of paper, and
- a few sharpened pencils or working pens.

An organized, professional first impression is important—you certainly don't want to keep a potential buyer on hold while you hunt for a pen or paper.

**Who should answer the phone.** If using a landline, don't let your children answer the phone, if at all possible, during the time your house is for sale. If children must answer the phone—for example, when you're not at home—make sure they ask politely for the callers' names and phone numbers and don't give out any information concerning the house (“My parents are asking \$300,000 but they'll really take \$275,000”) or the family's selling needs (“My dad starts a new job in Peoria next month”).

**Change your voicemail message.** Leave a message like the following on your voice mail:

*“You have reached 555-2001. We can’t take your call right now, but please leave your name, telephone number, and the time and date of your call, and we’ll get back to you as soon as possible. If you’re calling about the home for sale at 950 Parker Street, it has three bedrooms and two baths, and the asking price is \$550,000. It will be open every Sunday this month from two to four p.m. If you’d like more information, let us know the best time to reach you.”*

Don’t forget to update it as needed.

**What information to give over the phone.** Most callers want to receive, not give, information and may ask many questions about the property but be unwilling to give out even their names. You have a slight advantage over the professional agent, because people who call you shouldn’t fear being pestered by an aggressive salesperson if they give you their names. At any rate, you have a right to ask who you are speaking with and find out where you can call them back with further information if and when this is necessary.

Remember—you cannot sell a house over the phone. Therefore, you may want to volunteer only limited information, such as the asking price and number of rooms, plus a few other salient facts about your house—lot size, any assumable financing, view, and the like. If the caller sounds very interested, offer to send a copy of your property fact sheet. You also want to let people know when they can see your house, either through an appointment or during an open house.

Be cautious about telling callers any more than that. Someone may call for dishonest purposes—for example, to find out when you’re not home, so as to burgle the place. Finally, you certainly don’t want to start dickering over price or terms in a telephone conversation. Tell callers enough so they can decide whether or not they want to see the property and, if so, when.

**When to show the house.** If a caller requests an appointment to see your house, be reasonable as to date and time, but make sure the appointment is convenient for you. If possible, get potential buyers to come during open house times. If that’s not possible, try to “tandem” appointments. Having more than one person look at your house at the same time tends

to heighten buyers' interest and improve your bargaining position. It also increases the chance that at least one of the prospects will show up.

Don't, however, cancel business commitments or important personal plans for an appointment to show your home. It's inevitable that some callers won't be serious buyers—in fact, some will probably schedule appointments and then not show up. To limit your frustration and wasted time, don't rearrange your life every time an interested caller wants to see the place.

## Finishing Touches Before Showing Your Home

Performing basic (or even major) repairs and cosmetic fixups was discussed in Chapter 1. Now let's look at the final steps you can take to make your house look its best before potential buyers step in the door.

You have two main options for this step: hiring a professional, and doing it yourself.

### Should You Pay a Professional to “Stage” Your House?

Staging has become the rage among real estate folks lately, in California and many other locales. It means more than just sprucing up a home for sale. Professional stagers will do any number of things to sell your home more quickly and at a higher price, including redecorating, painting, renting new furniture to make your rooms look larger or more attractive, and landscaping. They may ask you to move out, or at least remove a lot of your own furniture and other possessions.

To see what a staged home looks like, visit open houses—you'll quickly learn to recognize the staged ones. They look a bit like upscale furniture showrooms. Notice the huge vases of flowers, the mountains of perfectly placed pillows in the master bedroom, and the complete lack of unattractive personal items. A good staging job will have visitors saying “Wow!” even while knowing that the nice furniture and the personal property don't come with the house. But it's all about feeding their fantasies of the perfect life they'll live after moving in. (By the way, if you like the look the staging pro achieved, and might wish to hire him or her, ask the agent for the name.)

Another positive aspect of staging is that it helps you say goodbye to the house. When your own belongings have been packed up, you are no longer as emotionally tied to the place, and are ready to move on. As many experts have observed, that message comes across to potential buyers.

However, having your home staged costs anywhere from a couple of thousand dollars to five figures, depending on what the job entails. Whether staging is worth the cost depends on how much more buyers will pay as a result of the stager's efforts. Articles in business publications point to price increases that more than cover—or even double—the expenses of staging. And your house may sell more quickly if it looks good—saving you money if you have a mortgage to pay.

Keep in mind that any monies paid to stagers are nonrefundable if your house doesn't sell or if you change your mind and stay. And the value of staging will depend on the market you're in—a \$5,000 staging expenditure on a home with a million dollar price tag makes a lot more sense than the same amount on a \$250,000 house.

Finally, if you've decided not to pay a real estate agent to market your home, you might not want to pay a professional stager either. If you've got an eye for decorating, this is a job ready-made for a do-it-yourselfer.

## Staging Your Home Yourself

Here are every stager's first, basic steps to making a house look attractive. You can implement these yourself, without needing advanced design skills:

- **Declutter.** Limit yourself to the bare minimums—get rid of extras that make space, including storage space, look crowded. For example, box up bulky sweaters in the summer, unused toys your children used to play with, and extra kitchen utensils that are rarely used. Rather than shoving the boxes in a closet or garage, consider renting a small storage space or stowing the items with a family member or friend.
- **Take a hard look at the furniture and accessories.** That faded old armchair may be better off hidden—and the room will look bigger without it. You may also want to invest in a new bedspread and a few decorative pillows.
- **Depersonalize.** Family photos, knickknacks, and souvenirs are not just clutter, they're distraction. Potential buyers want to visualize

themselves in your home, so help them do it by taking you and your family out of the space. An attractive feature like a fireplace can get lost in the shuffle of personal items.

- **Organize all closets, cupboards, and surfaces.** Give buyers the impression that there's plenty of space for their personal items by storing yours in an orderly fashion. Find cupboard space for small appliances—like the coffeemaker or toaster—that are usually left on the kitchen counter, and clear them away when prospective buyers look at the house.
- **Illuminate.** For showings, you'll want to leave window shades up about halfway and turn on a few lights, so there is sufficient—but not glaring—light.
- **Make sure the house smells good.** People love cinnamon and pine smells. Keep some scented potpourri in an attractive container in the bathrooms. Hide the kitty litter box and eliminate any offensive odors—whether from animals, cigarette smoke, burnt food, strong perfume, or pesticides. Some sellers even dab the lightbulbs with vanilla and put a baked product in the oven on low heat.
- **Display flowers and fruit.** Put vases of flowers or fruit (such as a basket of apples or lemons) throughout the house. Include the kitchen or dining room table, fireplace mantel, coffee-table in the living room, and other locations. Bright flowers or fruit can draw the viewer's eye away from less attractive features, so if you have a particularly dingy countertop or dark corner, use them to mask it.
- **Play pleasant (but unobtrusive) background music.** Make sure there are no loud or irritating noises, such as heavy metal rock blaring from your teenager's stereo.

### Adding Little Touches on a Budget

According to Joanne, who sold her home FSBO, "I bought roses, big plush towels, candlesticks, and scented soap for a shabby bathroom, along with an inexpensive opaque rose-colored shower curtain. Everyone commented that they loved the bathroom, despite the fact that it obviously needed work."

One successful real estate broker I know always recommends leaving magazines, books, and CDs where prospective purchasers can see them. If you do this, think about the person you expect to examine your house. In some neighborhoods you might display *The New York Times* or *The New Yorker*; in others areas, put out *Sports Illustrated* or *Sunset*. The idea, of course, is to encourage prospective purchasers to fantasize about how pleasant it will be to live in your house.

## Holding an Open House

Holding an open house is not a requirement. However, there are many good reasons to do so:

- You save your own time and energy, by doing one grand home cleanup and preparation and allowing many people to see the house at once.
- You may draw people in who weren't interested enough to make a private appointment, but will be pleasantly surprised by what they see.
- You'll get free feedback about what people like and don't like about the house.
- Although you'll get plenty of "lookie-lous" and "nosy neighbors," some of them may spread the word to homeseeking friends or relatives.

## Preparing for the Open House

Here are some things you can do to make sure your open house is successful:

- **If you have small children, let them visit a friend or relative.** Children may be underfoot or demand attention when you're trying to conduct business with a potential buyer. In addition, children may blurt something out that you'd rather a prospective buyer not hear.
- **Anticipate buyers' questions and practical needs and have your answers ready.** For example:
  - Estimate the walking or driving time to the nearby commute train or bus and know fare rates and schedules and have them at the ready.



- **Be prepared to deal with “nosy nerds.”** These are not quite the same as “lookie-lous” who just go looking at houses for the fun of it. “Nosy nerds” only look at houses in their immediate neighborhood, to pat themselves on the back or console themselves concerning their own homes. Be polite—you never know, these folks may become your allies in word-of-mouth advertising. You may even want to invite them to take a look, with an invitation that could look something like this:

### You’re Invited to an Open House

We’ve loved being your neighbors; we’ll be moving soon. We’re selling our home (asking \$599,500) and will be holding it open this Sunday from 2–4 p.m. Why not drop by? Our home might be perfect for a friend or relative of yours!

John and Marcia Nolo, 950 Parker Street

- **Be prepared to talk with potential buyers.** Here are a few tips:
  - Talk about neutral subjects, such as family and neighborhood. Be pleasant, and do a lot of careful, active listening, drawing the buyers out as to their needs and preferences. For instance, if their interests include entertaining at home, they’ll be using the living-dining area a lot. If cooking is high on their interests list, they’re probably looking for a serviceable, bright, and cheery kitchen. These conversations can help you frame a subtle sales pitch geared toward the buyer’s interests and practical needs.
  - Don’t volunteer personal information that may be used against you in negotiating a sales price or contract. For example, don’t tell prospective buyers that you’re incredibly anxious to sell because you’re starting a new job out of state soon.
  - Don’t go overboard praising your house or its amenities—it may seem phony and be used against you when negotiating contract terms.
  - If a visitor doesn’t seem clearly interested, don’t panic. Many people look at hundreds of homes; others check out houses as a hobby and don’t ever really plan to buy one.

- Learn to look at your house as if you were buying it, with a view toward:
  - ✓ probable down payment, closing costs, and monthly cost of ownership, including taxes, insurance, and utility costs
  - ✓ neighborhood conveniences and services (school district, parks, shopping, transportation, and the like), and
  - ✓ local zoning ordinances, including restrictions about adding on to a house.
- Above all, keep your sense of humor. Many buyers look at houses the way they look at used cars—they search for, and pounce on, every major and minor flaw. Apparently, they believe that emphasizing the negative will get the seller to accept a low offer. Often, however, this “exaggerate the flaws” approach does just the opposite because it makes the seller mad. Try not to take negative comments personally. Just remember, people who don’t want to buy your house are not rejecting you.

## Following Up After the Open House

When the last visitor has left your open house, you still have some work to do.

1. Retrieve your signs. Store them in a place where they can be easily reached for the next time.
2. Count the number of property fact sheets you have left. If there are less than 50, print enough to cover you during the coming week.
3. Look at the sign-up or guest list. Evaluate your marketing strategy by reviewing how many visitors came from the signs, the ads, and other sources. Based on this information, decide whether or not to:
  - change the position of the signs for the next open house
  - change the placement of the ads, and
  - change the text of the ads.
4. Straighten up the place after the crowds have been through and check for anything that might be broken or missing.

## Conducting Individual Tours

While an open house is a great opportunity to show many prospective buyers your house all at once, an individual tour serves another purpose.

Unlike an open house, where many people may just be curious, the person who takes the time to schedule an individual showing is more likely a serious buyer. In fact, even interested buyers who attend the open house are likely to come back for another look.

That means that an individual tour is your opportunity to show the potential buyer all the home's best features, answer any questions, and learn what appeals to them. Even if the person doesn't end up buying your home, this gives you an opportunity to hear firsthand how others perceive it, something that's much more difficult to pick up at an open house.

Here are some tips to make showing individual visitors around your home a positive experience for everyone:

**Prepare.** Be ready to point out the best and most salient features of each room, such as, “This master bedroom has a walk-in closet,” or “The bathroom was remodeled two years ago and the plumbing was upgraded.” Additionally, expect questions about things like the neighborhood, landscaping, and repairs.

**Don't get too detailed.** For example, “The den is downstairs” or “Watch out for the low ceiling” are appropriate remarks, while extensive discourses on why you chose double-pane windows or a particular linoleum pattern are not. The key is to avoid becoming a hovercraft or a defensive guard.

**Don't point out the obvious.** The room with the stove and the fridge will be recognized as the kitchen without your saying so. You may point out special features that are not immediately obvious (for instance, that the dishwasher is brand new and under warranty), but it is usually better to put this information in a disclosure package, to create a record of material facts that have been communicated.

**Give visitors a little space.** For security reasons, you'll want to keep your eye on visitors—but this doesn't mean standing at their right elbow all the time. Invite them to explore rooms on their own, while you wait quietly in the doorway.

## Protecting Your Safety and Property

The unhappy truth is that, while it's rare, some prospective “buyers” are interested in seeing your home for just one reason: They want to “case the joint” so they can efficiently steal your possessions later. There is no way to completely prevent this, but you can and should take reasonable precautions every time your home is to be shown to strangers.

1. Don't display silver, china, expensive art, or other valuable possessions—especially those which are easily stolen or accidentally broken.
2. Make sure items like credit cards, ATM cards, checkbooks, and house keys are either on your person or under lock and key.
3. Hide or lock away all prescription or high-priced medications.
4. Remove expensive clothing from closets, such as designer dresses or fur coats. Open every accessible drawer in your house and remove or hide whatever valuables, such as jewelry, laptops, or cameras, might be easily lifted.
5. Don't discuss your personal schedule or lifestyle with strangers. Sometimes in trying to sell the neighborhood, homeowners make revealing comments, like "It's so safe here we leave the back door open during the day so the children don't need to carry a key!" Be careful if the visitor asks probing questions like, "Are you married?"
6. Avoid being home alone. For the security of yourself and your possessions, try to recruit a friend, relative, or neighbor to be present for showings. Remember, even if you feel safe around strangers, a single visitor may feel uncomfortable around you, or a couple of visitors may split up so that one can pocket a few valuables.
7. Be sure people touring your home can enter and leave through only one door, except, of course, when you are escorting them through another, such as the door to the backyard or garage.
8. Keep prospective buyers within sight at all times. If two people come to an appointment, be alert for a known scam in which one keeps you talking while the other goes through your valuables.
9. Ask everyone who visits your home to sign a guest register, as described above.
10. Consider hiring a private security guard for open houses if you own a large luxury home full of valuable objects.

### Protect Prospective Buyers, Too

While it's important to keep your home safe from predators, it's also important to protect prospective buyers from injury, and yourself from lawsuits. Check your home for anything that could cause injury, such as:

- Slippery throw rugs—take them up.
- Loose steps—fix them.
- Slick areas, such as front steps—put down rubber mats.
- Long electrical and phone cords—make sure they are out of the way.
- Unsafe electrical wires and fixtures—replace them.
- Potentially dangerous areas in yards—block them off.
- Decks and pools—childproof them.
- Medicine, cleaning supplies, or household chemicals that children could get into—lock them up.
- Pets—put them in an enclosure, even if they have always been friendly; if they are likely to be noisy, arrange for them to take a brief vacation.
- Excess furniture or clutter—store it elsewhere.

## Obeying Antidiscrimination Laws

Be courteous to everyone. If you refuse to provide reasonable access to your property or to entertain offers from anyone on the basis of their race, color, religion, gender, marital status, ancestry, national origin, physical handicap, or other similarly arbitrary reason, you're in legal trouble. In other words, unless you have a good reason to believe a particular person is a bad credit risk, a thief, or otherwise seriously undesirable—and you're prepared to defend that belief—you should show everyone your house and treat seriously any purchase offers. Evaluate each offer on its merits, treating everyone like everyone else in an unbiased manner. ●



# Making Sure the Buyer Is Financially Qualified to Buy Your House

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**B**efore you consider offers to purchase your house, you should ask yourself a basic question: “Who can afford to buy my house at my asking price?”

But isn't that the buyer's problem, not yours? Not necessarily. Your ability to sell your house is directly related to the ability of others to buy it. The higher your asking price, or the harder it is to get a mortgage loan, the smaller the percentage of potential homebuyers who can afford to buy your house. It would be very frustrating to enter an agreement with a prospective buyer and turn other potential buyers away, only to find out later that your buyer can't afford the purchase.

This chapter shows you how to determine whether a prospective buyer has the income, credit, and assets to financially qualify to purchase your house. Much of this information concerns the buyer more than you. It is included here, however, to help you avoid accepting offers from incurable optimists who will never qualify to purchase your house.

**EXAMPLE:** Martin is asking \$529,000 for his home. He receives two offers—one for \$530,000 and one for \$525,000. He initially assumes that the \$530,000 offer is stronger, but then he asks the prospective buyers some questions. The couple who offered \$525,000 have a preapproval letter from a bank for an amount that, combined with their down payment, is enough to buy Martin's house. In contrast, the prospective buyer who offered \$530,000 has no preapproval letter, offers Martin no information about her credit, and wants Martin to extend some of the financing. In this scenario, the \$525,000 offer is clearly the stronger one.



#### TIP

**Maybe you'll get an all-cash offer!** These are more common than you might expect. Buyers trying to compete with others may offer all cash, knowing that sellers appreciate knowing that the contract won't contain a financing contingency—that is, the deal won't be conditional on the buyer obtaining a mortgage. Of course, you'd still want to do what you can to verify that the buyer has the promised cash. (Some may be borrowing it from family temporarily, with the idea of getting a bank loan later. That's okay—it's a viable strategy, and even if the buyer has trouble getting a loan, you'll be well out of the picture by then.)

To evaluate a potential buyer's ability to purchase your house, you're primarily going to look at three factors: the buyer's

- credit
- income, and
- potential mortgage.

The first two are factors a lender will look at when deciding whether to lend the buyer money. But understanding what type of mortgage the buyer seeks also helps you understand the buyer's financial situation and the likelihood that he or she will qualify for that exact loan.

If the buyer is already preapproved for a mortgage, meaning that a lender has evaluated the buyer's credit and has stated, in writing, that it is ready to make a loan, you can breathe a little easier. The buyer is serious about the purchase and has taken the time to compile the financial data needed to make the purchase. But you should still want to look at the buyer's financial situation so that you don't get hit with any surprises. A preapproval isn't an absolute guarantee, and some lenders don't actually check into the buyer's finances as much as they should before they issue it. With the recent tightening up of loan availability, lenders that pull out at the last minute are an increasingly common cause of home sales falling through.

### **Lenders Insist on Appraisals**

Before approving a prospective buyer's mortgage, a financial institution will have your house appraised, even if others have already done so. No matter what price you and the buyer agree on, the lender will base the loan on the appraised value, not the selling price. Lenders typically lend up to 80% of the appraised value.

So, if you sell your house for \$400,000, but the bank appraises it at \$360,000 and agrees to lend the buyer 80% (the buyer will put down 20%), the lender will lend \$288,000 to the buyer, not \$320,000.

If a financial institution is willing to lend more than 80% of the appraised value (a big "if"), the loan terms are almost always less favorable to the buyer. This may mean more points, a higher interest rate, a shorter term in which to pay off the loan (15 or 20 years instead of 30), and a requirement that the buyer purchase mortgage insurance to indemnify the lender against loss in case of the buyer's default.

**CAUTION**

**Preapproval and prequalification aren't the same thing.** If a buyer tells you that he or she is prequalified, don't put too much stock in it. Prequalification just means that the lender has estimated how much the buyer will be able to afford—it doesn't mean the lender has agreed to lend that amount, or carefully evaluated the buyer's finances or credit history.

## Evaluating a Potential Buyer's Credit

While you may feel uncomfortable asking people about their bank accounts and personal finances, start by understanding that you are in the business of selling your house and that business transactions routinely involve checking credit. This doesn't mean you need to be abrasive or insensitive in your inquiries. It does mean that you should establish a fair but firm procedure to check the credit of all serious prospective purchasers.

### Informal Inquiries

Your first conversation with interested buyers will give you a rough sense of their financial position. Start with a few friendly questions about the type of work they do, how they like it, how long they have worked for their present employer, and whether they currently own a house.

Of course, it makes no sense to eagerly quiz every person who pokes a nose in your door. Most people who come to your house won't make an offer. Wait until someone begins oohing and aahing over your newly built deck and starts planning to change the wallpaper in the kitchen. If the person really is serious about your house, he or she will appreciate your interest.

### Credit Information Form

Assuming the answers to your informal questions are satisfactory, your next step is to actually evaluate the prospective buyer's financial ability to purchase your house. Ask potential buyers to fill out a Credit Information Form like the one shown below and provided on the companion Web page to this book (see the appendix for the link). If the

offer is on behalf of more than one borrower, be sure to get information from all. You will want the prospective buyer(s) to present this form if they make an offer.

This form will tell you how much available income the buyer has to spend on a mortgage payment and will give you some idea whether the lender will give the buyer a loan. If you add up the buyer's monthly current income and assets and then subtract out the amount of monthly debt, you'll see how much money the buyer has to spend on a mortgage payment each month. If there is very little left, a lender isn't likely to lend the cash needed to make the purchase, and the potential buyer probably can't afford your house.

Most offers indicate the amount and type of financing the buyer(s) plan to get. Before you accept an offer, you can also verify the feasibility of the financing proposal by looking into the data on the Credit Information Form. We'll explain how later in this chapter.

## Checking Credit History of Potential Home Buyers

If a potential buyer looks good on paper, you have several options for verifying credit information, depending on how thorough you want to be. The lender will check the buyer's credit before approving any loan, but you can do it as well if you want to make sure the information you have is accurate and that the buyer is likely to be approved.

Credit reporting agencies are one good source. Some will provide credit information on individuals from whom you have written permission. The Credit Information Form below provides this written permission.

One problem with the larger credit reporting agencies is that they're geared toward working with businesses that need regular credit reports, and therefore charge a membership fee before you can start requesting individual credit reports (at an additional fee). However, smaller or more specialized agencies should have price structures more appropriate to your needs.

One credit bureau that provides information on potential buyers of real estate is APSCREEN, 800-277-2733; [www.apscreen.com](http://www.apscreen.com). To locate other agencies, check the yellow pages or Internet under "Credit Reporting Agencies."

<b>Credit Information Form (page 1)</b>		
<b>Background Information</b>		
	<b>Borrower</b>	<b>Coborrower</b>
Name (including Jr., Sr., and former names)		
Social Security number		
Driver's license number		
Home phone number		
Work phone number		
Cell phone number		
Email address		
Current address	<input type="checkbox"/> own <input type="checkbox"/> rent	<input type="checkbox"/> own <input type="checkbox"/> rent
Monthly rent or mortgage payment:	\$	\$
Previous address if less than two years at current address		
Name of employer		
Address of employer		
Phone number of employer		
Job title		
How long with present employer?		
Name, address, and phone number of previous employer if less than two years at current job		
Previous job title		
How long with previous employer?		
<b>Income</b>		
	<b>Borrower</b>	<b>Coborrower</b>
Current monthly gross income	\$	\$
Monthly amounts and sources of other income (such as interest, dividends, royalties, support, and the like)	\$	\$
Total monthly income	\$	\$
<b>Assets</b>		
	<b>Borrower</b>	<b>Coborrower</b>
Name and address of financial institution holding deposit account, type of account (checking, savings, money market), and current balance of account	\$	\$
Name and address of financial institution holding deposit account, type of account (checking, savings, money market), and current balance of account	\$	\$
Name and address of financial institution holding deposit account, type of account (checking, savings, money market), and current balance of account	\$	\$

<b>Credit Information Form (page 2)</b>			
Real estate	value	\$	\$
	mortgages	\$	\$
	liens	\$	\$
	equity	\$	\$
Vehicles (year, make, market value)			
Business assets (name of business, interest in business, value of interest)		\$	\$
Other assets (specify asset type and value)		\$	\$
Liabilities			
		Borrower	Coborrower
Credit card—name of card, account number; indicate monthly payment to the right and total amount owed here: \$		\$	\$
Credit card—name of card, account number; indicate monthly payment to the right and total amount owed here: \$		\$	\$
Motor vehicle loan—indicate monthly payment to the right and total amount owed here: \$		\$	\$
Child/spousal support—indicate monthly payment to the right and total amount owed here: \$		\$	\$
Student loan—indicate monthly payment to the right and total amount owed here: \$		\$	\$
Personal loan—indicate monthly payment to the right and total amount owed here: \$		\$	\$
Other loan—indicate monthly payment to the right and total amount owed here: \$		\$	\$
<b>TOTAL MONTHLY LIABILITIES</b>		<b>\$</b>	<b>\$</b>
<p>Have you ever filed for bankruptcy? If yes, indicate the year, the court, the type of bankruptcy (Chapter 7, 11, or 13), and the circumstances that led you to filing.</p> <p>Are there any outstanding judgments against you? If yes, please explain.</p> <p>Have you had property foreclosed upon you? Have you given title or deed in lieu of foreclosure in the past ten years? If yes, please explain.</p> <p>I/we certify that all the information given above is true and accurate. I/we authorize the seller to verify any and all of the information provided above, including our deposits with all financial institutions. I/we further authorize seller to receive any and all information about my/our credit from credit reporting agencies and to verify employment with the employers listed above.</p>			
Signature of borrower		Signature of coborrower	
Date		Date	

When you contact a credit reporting agency, check its procedure for providing a credit check and the cost and time involved. Be sure the agency agrees to honor the Credit Information Form and signatures you received from the prospective buyer. If not, you will have to delay the process by getting the agency's form and the prospective buyer's signature.

Once you submit the appropriate authorization form to the agency, you should have the credit information within a few days.

The Credit Information Form also gives you permission to verify employment, assets, and liabilities of potential purchasers.

## **Additional Investors and Borrowers**

It's not unusual for buyers to get help from other people in order to qualify to purchase a house. If the prospective buyer indicates in a written offer or in conversation that a relative or friend will cosign a loan application or help finance the house through a gift, a loan, or by coborrowing, check the creditworthiness of the cosigner or coborrower. Ask these individuals to provide written verification of the information provided in the Credit Information Form from employers, banks, brokers, creditors, and so on. This may be enough; you can check further, however, if you doubt the authenticity of any of these documents.

Also, know that many financial institutions require that gift funds not exceed 95% of the down payment—that is, at least 5% of the down payment must be the borrower/buyer's own money. Banks enforce this rule by requiring that at least 70% of the down payment amount be in the buyer/borrower's own account for at least three months. Large, recent deposits are a red flag to lenders scrutinizing the qualifications of prospective borrowers.

If a friend or relative makes a gift, make sure the donor sends a letter to the recipient explaining that the gift is just that, and need not be paid back. Otherwise, the lenders will view it as a loan needing to be repaid and will make qualifying more difficult for the buyer.

## How Lenders Qualify Buyers for Home Purchase

Now that you know the gross income and major debts of the prospective buyer, you need to understand how lenders use this information. To decide how much to lend an individual buyer, a potential lender will look at the buyer's "debt-to-income ratio," which is calculated using two things:

- the prospective buyer's monthly carrying costs (the mortgage's principal and interest, and the amounts for property taxes and insurance), plus total monthly payments on other long-term debts, and
- the prospective buyers' gross monthly income.

Lenders have traditionally wanted buyers to spend no more than 28% of their gross monthly income on carrying costs, and no more than 36% of gross monthly income on overall debt (carrying costs plus other expenses like car, student loan, and revolving credit card account payments). And if the buyer has no other debts, he or she may be able to spend a full 36% just on carrying costs. In some cases, lenders even allow this to go up to 40%, for example, if the buyer has a particularly high credit score (in the 700s or higher) and a very large down payment.

Once you know how much money the buyer has each month to spend paying a mortgage, you'll need to know how much the monthly mortgage payment will be if the buyer obtains the financing proposed in his or her written offer. The easiest way to calculate this is to use an online calculator, such as the one available at [www.nolo.com/legal-calculators](http://www.nolo.com/legal-calculators). This will give you a good sense of whether the buyer is likely to get the loan he or she wants.

**EXAMPLE:** Abhaya and Sandhya want to buy a \$600,000 home, paying 10% down (\$60,000) and financing the rest. If they borrow \$540,000 for 30 years at a fixed rate of 6%, their total monthly payments, including taxes and insurance, will be \$4,295. Using the 28% qualification ratio, Abhaya and Sandhya would need to earn \$15,340 a month or a staggering \$184,080 a year to purchase the home. Of course, if housing is their only monthly cost of financing, and a lender applies a 36% ratio, they would then need a gross income of \$11,931 a month, or \$143,172 a year.

## Types of Mortgages

Once you understand the basics of how lenders decide whether to lend a buyer money and how much, it helps to know what types of mortgages are available to buyers. If you know what type of mortgage a potential buyer is seeking, you'll be able to assess how much financial risk the buyer is able or willing to assume. A buyer who can qualify for a stable loan is preferable—you know that he or she can weather any sudden change in the mortgage market, if one occurs during your negotiations.



### TIP

**In California, a “mortgage” is really a deed of trust.** What's the difference? A deed of trust gives the trustee (usually a title company) the right to sell the property, with no court approval, if the buyer fails to make the payments on time. A mortgage involves only a borrower and lender, and usually requires a more complicated judicial foreclosure proceeding if the buyer defaults. However, we use the term “mortgage” here, because it's the word in common use.

## Fixed-Rate Mortgages

Fixed-rate mortgages are the most stable kind. The interest rate on the loan is set and does not change during the entire mortgage term, most commonly 30 years (though 15-, 20-, and 40-year loans are not uncommon). However, lender qualification standards are usually more stringent, and initial interest rates may be higher than those on adjustable-rate mortgages. As a result, many prospective purchasers don't have the income to qualify for fixed rate mortgages.

## Adjustable-Rate Mortgages

Adjustable-rate mortgages (ARMs) are riskier. With ARMs, interest rates fluctuate according to interest rates in the economy. The initial interest rate for an ARM is usually lower than for a fixed-rate loan, so buyers with lower incomes who don't qualify for fixed-rate loans can often get ARMs.

If a potential buyer only qualifies for an ARM, it probably means your house is at the top of the buyer's price range. If the buyer doesn't obtain the financing on the terms specified in your contract, the deal might not go through.

## Hybrid and Other Loan Variations

Mortgage loans come in an array of flavors. The loan variation you're most likely to see starts out fixed for one or more years and then switches to an ARM. This is called a hybrid loan, and is less stable than fixed-rate loan but more stable than an ARM.

## Government-Assisted Financing

A buyer may tell you that he or she will obtain government guaranteed financing through the Federal Housing Administration (FHA), Department of Veterans Affairs (VA), or the Cal-Vet program. Unless your house meets the following qualifications, it probably won't qualify for such a program:

- If guaranteed by a federal agency, the house sells for \$987,500 or less in high-cost areas like Los Angeles, San Francisco, or San Jose, and even less in less populous counties. The limits may be higher under state programs, however.
- The house is in good condition without serious problems or structural defects.
- The buyer is financially well-qualified, with a good credit score and a gross income at least three times the total monthly payment.
- The buyer, if a veteran, has the requisite amount of military service.
- If the buyer proposes taking advantage of a program for first-time buyers, he or she really is a first-time buyer and earns less than any required maximum annual income.

For more information, go to [www.valoans.com](http://www.valoans.com), [www.calvet.ca.gov](http://www.calvet.ca.gov), and [www.fha.com](http://www.fha.com).

## Seller Financing

The traditional loan, where the buyer puts down 20% of the purchase price and borrows 80% from a bank or savings and loan, won't work if the buyer doesn't have enough for a large down payment. As a result, a buyer may ask you to help finance the purchase (along with the bank) by taking back a second mortgage on the house. This is called "seller financing," a "seller take back," or a "seller carry back."

If you don't need to receive all of your home sales price immediately, this provides a way to earn interest at competitive market rates (with monthly payments to you).

Some sellers take a second mortgage for tax reasons—for example, if you want to spread your receipt of profits realized from the house sale for investment purposes. Others take a second mortgage as an investment—you are investing in your old home.

Many sellers, however, are reluctant to take back a second mortgage. You may want to get all your cash out of the house, particularly if you are buying another home. This "I won't take a second" position might change, however, if you find it difficult to sell your house at a decent price otherwise.

## How Seller Financing Works

Here's how seller financing typically works. You may extend credit for part of the down payment (often 10% of the purchase price) with payment of this money secured by a second deed of trust in your favor. You don't actually lend cash, like a lending institution does. Instead, during escrow, you extend the buyer a credit against the purchase price of the home. The buyer executes a second promissory note and trust deed in your favor. The paperwork is prepared by the title or escrow company after you and the buyer work out the terms.

For purposes of collecting your monthly payments, your bank can set up what's called a "payment account." This means that the bank collects the payments, by setting up an account for the buyer to pay into each month. If the buyer misses a payment, the bank contacts you. Such accounts help ensure that payments are made in a timely manner with relative ease.

If the buyer doesn't make payments on either your loan or an obligation senior to it—such as the first loan or property taxes—you will be responsible for back payments on any senior obligations that are in default, before you can foreclose on your junior (second) loan. This will cost you money up front (though you will probably get it back), and about four months of your time and energy. In these situations, you will get your house back and then have to resell it. A title insurance company or attorney can assist you with initiating foreclosure, and will probably refer you to a specialized company that handles foreclosures.

### **See an Attorney If You Need a Lease-Option Contract**

Perhaps your tenant or prospective buyer truly can't afford a purchase right now, but no better offers have come your way, and you'd like to see that person buy the property one day. If you can afford to receive a small amount of cash now and a steady stream of income instead of the lump sum you'd get from a sale, a creative strategy known as a lease-option contract might help you sell.

Like a rental agreement, a lease option is a contract where you'd lease out your house for a set period of time—usually one to five years—for a specific monthly rent. However, unlike a rental agreement, the contract also gives the tenant the right (option) to buy the house for a price established in advance or at market value as of the time of sale.

It's up to you and the tenant to decide how much the tenant will separately pay for this option—it can be only a few dollars or a few thousand dollars. The tenant doesn't have to exercise the option, but isn't entitled to a refund in such a case.

One tricky thing about lease-option agreements however, is that if the terms aren't fully clear in advance, the entire contract can be found unenforceable—leading to disappointment all around, potentially after years of reliance upon it. What's more, it's not easy to get all the terms right, given the multiple issues to consider and agree on: how you'll set the house price, how long the tenant will have to close the deal, and so on. That's why we recommend seeing an attorney if you're interested in pursuing such an agreement.

## Loan Terms

What are the typical terms for a second mortgage? As illustrated in the following example, you should charge higher interest than a buyer could get on a first mortgage. Compare bank mortgage rates with certificate of deposit rates, pick the higher of the two, and raise it at least one full percentage point. This will usually allow you to compete favorably with mortgage brokers. (You shouldn't, however, charge less than the minimum rate set by the IRS—because it will tax you as if you received it in any case.)

**EXAMPLE:** Sue and Linda are looking to buy a \$500,000 house. They can borrow 80% (\$400,000), but have only 10% (\$50,000) for the down payment. They ask you to lend them the other 10% (\$50,000). This means that you will receive \$50,000 less in cash proceeds when escrow closes; instead, you will receive a promissory note from Sue and Linda for the \$50,000 they owe you.

Because holding a “second note” (second in line behind the bank lender) and deed of trust is riskier than holding a first note and deed of trust, you will want a higher rate of interest than Sue and Linda are paying the first lender. If that institution is getting 5%, you should request 6% or 7% interest. In addition, although the first lender may be lending money for up to 30 years, you should lend it for only three or five years. You can allow small monthly payments and then a large “balloon payment” at the end of the term.

## How to Prepare a Promissory Note

If you agree to finance the buyer's purchase, you'll need at least two primary documents: the deed of trust that you record, showing that you have a debt secured by the property, and a promissory note that includes the buyer's promise to repay the loan. The promissory note explains the terms you and the buyer have agreed to, including things like the interest rate, the amount borrowed, and the repayment schedule.

A sample promissory note is shown below and a blank copy is provided online on the companion page to this book. Here's how to complete each paragraph of the note:

1. Fill in your name, the dollar amount of the second mortgage loan, the address where payment is to be made, and the annual interest rate of the loan.

If there are joint borrowers, this note provides that they “jointly and severally” promise to pay the debt, meaning that they are each responsible for the entire debt, and if one doesn’t pay his or her share, the other is responsible for it.

The last sentence of the first paragraph lets the buyer/borrower pay off the note early without incurring any penalty.

2. Fill in the amount of the monthly payment, the length of the loan, and the amount of the balloon payment to be made at the end of the loan term.

An amortization table will show the monthly payment amount (principal plus interest) based on the amount, interest rate, and length of your loan. Go to [Bankrate.com](http://Bankrate.com) for a “Balloon mortgage” calculator or ask a local bank or title company for help.

You can always agree to refinance when the balloon payment is about to come due, but if you do, be sure you get an interest rate that is both competitive and favorable.

Note that the last sentence of the second paragraph requires you to give the buyer/borrower advance warning that the balloon payment is coming due.

3. This note specifies a late charge of 6% of the monthly payment for installment payments that are ten to 30 days late.

The somewhat harsh-sounding second part of this paragraph allows you to declare the entire debt immediately due and payable in the event the borrower signing the note is more than 30 days late with an installment payment. Called an “acceleration of maturity” clause, it is commonly included in notes providing for installment payments. It allows you to immediately move to collect the debt in one lawsuit. Otherwise, you would have to wait until all of the installments should have been paid (say three years down the line) to bring the lawsuit, or you would have to file a separate lawsuit for each installment, which is both impractical and expensive.

4. This note includes a provision requiring the signer of the note to pay your reasonable attorneys' fees should you win a court action to collect on the note. Without this clause, you and the borrower are expected to each pay your own attorneys' fees should court enforcement prove necessary.
5. This note makes the deed of trust to the property serve as collateral for repayment of the loan. Here you specify the address of the property (which should be the same as that specified in the sales contract), the name of the new owner, the date the deed of trust was executed, and the place and county where it was recorded. The escrow agent can help you do this.

You must record this trust deed at the office of your county recorder in order to “perfect” your lien against the property. The escrow company can accomplish this for you. Then you will have priority over other liens that may be recorded later (with a few exceptions too complicated to explain here, and unlikely to occur in most cases).

If you wish to change any of the terms of this promissory note, check with a real estate specialist.

## **Selling the Note and Trust Deed**

One way to sell your house with a second mortgage, but decrease your risk of carrying it, is to sell the note and trust deed, as soon as reasonably possible, to an investor. You can do this as a private party (within the limits mentioned in Chapter 2). Usually, though, you'll need a real estate loan broker, and the procedure is beyond the scope of this book.

Suffice it to say that you will probably sell the note and trust deed for a discount of at least 20%, meaning that you will receive only about 80¢ on the dollar, so selling a \$10,000 second mortgage will net you \$8,000. Because of the monetary loss from selling the note and the risk in keeping it, sellers who “carry paper” often insist on a higher house selling price than they would have accepted had the buyer not gotten financing help from the seller.

There are no special legal requirements for seller financing unless you are extending credit secured by real estate six or more times a year. If you are, contact the Federal Trade Commission (there are offices in San Francisco

### Promissory Note

1. For value received,  I individually  we jointly and severally promise to pay to the order of \_\_\_\_\_

\_\_\_\_\_

the sum of \$ \_\_\_\_\_ at \_\_\_\_\_ at the rate of \_\_\_\_\_ % per year from the date this note was signed until the date it is paid in full. The signer(s) of this note has the right to pay all or a portion of the principal amount owing, without penalty, prior to the maturity date stated in this note.

2.  I individually  We jointly and severally agree that this note shall be paid in equal installments, which include principal and interest, of not less than \$ \_\_\_\_\_ per month, due on the first day of each month, for a period of \_\_\_\_\_ months. At the end of that period,  I individually  we jointly and severally agree to make a final (“balloon”) payment in the amount of \$ \_\_\_\_\_. This note is subject to Civil Code Section 2966, which provides that the holder of this note shall give written notice to the signer(s) of this note, which notice shall contain certain prescribed information, at least 90 and not more than 150 days before any balloon payment is due.

3. If any installment payment due under this note is not received by the holder within ten days of its due date, a late charge in the amount of 6% of the payment due shall be paid to the holder(s) of this note. If any installment payment due under this note is not received by the holder within 30 days of its due date, the entire amount of unpaid principal shall become immediately due and payable at the option of the holder without prior notice to the signer(s) of this note.

4. In the event the holder(s) of this note prevail(s) in a lawsuit to collect on it, I/we agree to pay the holder’s(s’) attorneys’ fees in an amount the court finds to be just and reasonable.

5.  I individually  We jointly and severally agree that until such time as the principal and interest owed under this note are paid in full, the note shall be secured by the following described mortgage, deed of trust, or security agreement:

Deed of trust to real property commonly known as \_\_\_\_\_

\_\_\_\_\_

owned by \_\_\_\_\_

executed on \_\_\_\_\_, at \_\_\_\_\_

\_\_\_\_\_ and recorded at \_\_\_\_\_

\_\_\_\_\_ in the records of \_\_\_\_\_

County, California.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Location (city or county)

\_\_\_\_\_  
Location (city or county)

\_\_\_\_\_  
Name of Borrower

\_\_\_\_\_  
Name of Borrower

\_\_\_\_\_  
Address of Borrower

\_\_\_\_\_  
Address of Borrower

\_\_\_\_\_  
Signature of Borrower

\_\_\_\_\_  
Signature of Borrower

and Los Angeles) for guidelines, or check the FTC website at [www.ftc.gov](http://www.ftc.gov). In addition, if a mortgage broker arranges a loan for you, including a second that you carry, California law requires the broker to make certain disclosures to the buyer. If no broker is in the picture, you need not worry about this.

### **Negotiability of Promissory Note**

This note is negotiable—this means it can be sold—because it contains the following provisions: the names of the borrower and lender and the borrower’s address; a statement that the debt is payable “to the order of” the lender/seller; a specified principal sum to be paid and the specific rate of interest; the address where payments are to be made; the city where and date when the note is signed; and the signature of the debtor/borrower.

Should you or the borrower die, become mentally ill, or otherwise not be able to pay or collect the debt, the fact that the note is negotiable increases the chance that it will be paid—because institutions in the business of purchasing uncollected notes and collecting on them may be willing to buy it.



## The House Sale Contract

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This chapter acquaints you with the typical written offer to purchase a house. Chapter 11 guides you through the process of accepting and negotiating offers and counteroffers.

Even if a real estate agent is preparing the paperwork for you, read both chapters carefully before responding to an offer. You'll make many important decisions when accepting a written offer, and it's essential that you understand each one. Also, you need to know what terms are beneficial or harmful to your interests.

## Waiting for Offers

At the earliest, you might start receiving offers within a week or two after the first open house, assuming you have properly priced and advertised your home. If you haven't received any offers—or at least signs of serious interest—within the first few weeks, consider ways to increase your marketing efforts. (See Chapters 6 and 8.)

If, on the other hand, you expect multiple offers, you'll need to plan in advance for how to handle them. Many sellers set a deadline for receipt of offers and a date and time at which they'll hear and consider the offers.



### CAUTION

**Be prepared for buyers who believe that the first one to make an offer, wins.** Some buyers, especially those without agents, mistakenly believe that the first person to present a full price offer has contracted to buy the house. Nothing could be further from the truth—you may have to explain to these buyers that a contract isn't formed until you've agreed to the sale and you've both agreed to all the contract terms, as further explained in this chapter.

If a month or two passes and you still have no offers, one possibility is to remove your house from the market for a while and try again later. Also double-check the comparable houses to make sure you haven't set the price too high. Taking your house off the market gives the public some time to forget your listing, and gives you some time to reevaluate how you're showing and marketing the place. Then you can list it afresh, when you're ready.

If, however, other houses in your area are selling well or if you must sell as soon as possible, an obvious alternative to taking your house off the market is to reduce your asking price. Don't get so pessimistic at this point that you reduce your price more than necessary. Study what truly comparable houses are selling for in your area (using the guidance in Chapter 5) before you decide how much to lower your price.

But don't be too tentative in your price-lowering, either. In the present economic climate, dropping your list price by anything less than 10% won't ordinarily impress the homebuying public. Any savvy buyer already knows that he or she can present an offer at 10% below asking with a straight face, so you haven't really changed the calculations by much.

By lopping at least 10%, and maybe more, off your list price, you're likely to grab people's attention, perhaps inspiring some buyers or their real estate agents to take another look. You'll also help reassure buyers that you're serious about selling the place, not just stubbornly holding out for every possible penny.

Even if you end up underpricing by a bit, the market will typically correct for that. The bargain hunters will emerge in force. But they'll then (after having fallen in love with your house, of course) have to respond to the competition by presenting multiple offers at or above the asking price.

If your house sits on the market for some time, real estate agents will probably assume that you're getting sick of trying to sell it yourself. Several may try to persuade you to let them list it. If you are fed up with handling your own sale, take a look at Chapter 4, which explains the many possible ways to work with a real estate agent.

## **Only a Written Offer Is Legally Valid**

A legal offer must be in writing (preferably typed), delivered by the prospective buyer or real estate agent to you (or your agent). An oral offer to purchase real property is legally worthless—meaning you can't enforce it—if the buyer wants out of the deal. In other words, people don't have to “put their money where their mouths are” unless they have also put their promises in writing.

A written offer should be detailed, covering all important issues, including price and other terms. Most buyers will give you a short time in which to accept their offer. During this time, the buyer may revoke the offer in writing before you respond (whether you respond to the buyer or to his or her agent).

Real estate offers almost always contain contingencies—events that must happen or else the deal won't go through. If an offer is contingent upon the buyer qualifying for financing or selling his or her own home first, your home passing certain physical inspections, you taking back a second deed of trust, or anything else, the contingencies should be clearly stated along with the time allowed to satisfy and remove them.

## Offer Form Terminology

Before you look at the offer form, here are a few words on offer terminology. The important thing to understand is that the same paperwork is called by different names, each with a different legal meaning, depending on when and by whom it's used.

- **Making an offer** is when a prospective buyer fills out an Offer to Purchase Real Property form, such as the one in this book, and gives it to the seller.
- **A counteroffer** is a form used by a seller to accept some of the buyer's terms but modify others. You can counteroffer on as many terms as you want—you may respond, for example, with a higher price or a shorter time for the buyer to arrange financing or remove inspection contingencies. (Counteroffers are covered in Chapter 11 and removing contingencies in Chapter 12.)
- **A counter counteroffer** is when the buyer wants to accept some of the seller's counteroffer terms, but modify others. The back and forth dance can go on for a while with counter counter counteroffers, etc.
- The offer becomes a legally binding **contract** only when the buyer and the seller agree on all the terms in the offer (or counteroffer) and sign it. You can both sign an offer form, such as the Offer to Purchase Real Property, or a separate written document stating that all terms of the offer (or counteroffer) are accepted. Not only must you both sign the agreement, you both must also initial every page.

**EXAMPLE 1:** Mitch gives Patricia a written offer to purchase her house for \$200,000, with seven days to accept. Two days later, Patricia accepts in writing. A contract has been formed.

**EXAMPLE 2:** Same offer from Mitch; but two days later, Patricia delivers a written counteroffer for \$210,000 with an earlier closing date. Mitch sends a counter counteroffer accepting the \$210,000 but sticking to the original closing date. Patricia accepts in writing and a contract is formed.

**EXAMPLE 3:** Same original offer from Mitch; however, before Patricia signs off to say yes, Mitch finds a house he likes better. He immediately calls Patricia's agent and withdraws his offer. Although this does revoke his offer, he puts his revocation in writing and drops it off at Patricia's agent's office so there can be no misunderstanding. Mitch's offer has now been withdrawn; no contract can be formed between them unless one or the other makes a second offer and the other accepts it in writing.

## Types of Offer Forms

The Offer to Purchase Real Property form in this book includes all terms needed for making an offer or counteroffer, as you would be likely to be doing, on a house in California. Many varieties of printed offer forms are in use in California, in part because many real estate agent associations design their own forms—but they all cover more or less the same topics. Some contain numerous fine print provisions, many designed to absolve all real estate professionals in the transaction (who, after all, buy the forms) from any possible liability.

Buyers who work with large brokerage firms often use their forms. Independent agents often use forms published by the Professional Publishing Corporation (via Reveal Systems), or the California Association of Realtors®. These forms are all well written and will do the job. Still, read this chapter to understand what the clauses mean and how to change any wording you don't like.



## RESOURCE

**Interested in purchasing software that generates California real estate forms?** Consider *TrueForms*, a step-by-step computer program that produces California real estate forms. For order information, contact Reveal Systems at 800-499-9612 or check out [www.trueforms.com](http://www.trueforms.com).

Both you and the buyer must know what needs to be put into the offer form. If you are dealing with a buyer who lacks real estate knowledge and isn't working with an agent, be prepared to give the buyer the offer form discussed in detail here and set out in the companion Web page for this book (see the appendix for the link).

If you are dealing with an inexperienced purchaser or someone with a language barrier who obviously can't complete a written offer unassisted, ask the person to have his or her offer prepared by someone more knowledgeable. One good alternative is for the buyer to hire a real estate agent or lawyer at a reasonable hourly rate. Do not prepare or help prepare an offer for someone who can't do it alone. If trouble develops later, the person may claim that you took unfair advantage of him or her.

In any event, no matter what the sophistication level of a person who presents an offer to you, you must understand the typical elements in a real estate purchase contract.

## Understanding the Offer Form

Below is a clause-by-clause review of the Offer to Purchase Real Property form. (For purposes of this review, we've chopped the form into parts within this chapter—the entire form is available online on the companion page to this book.) If the buyer presents a form drafted by a commercial publisher or real estate organization, compare the information below against the clauses of the other form and note specific points you want to include or leave out.

### Opening Section (Heading)

1. Financial Terms
2. Escrow
3. Prepayment Penalty and Assumption Fee
4. Expenses of Sale
5. Property Tax and Insurance Prorations; Noncallable Bonds

6. Fixtures
7. Personal Property
8. Inspection Contingencies
9. Other Contingencies
10. Condition of Property
11. Foreign Investors
12. Rent Control
13. Title
14. Possession
15. Agency Confirmation and Commission to Brokers
16. Advice
17. Backup Offer
18. Duration of Offer
19. Other Terms and Conditions
20. Risk of Damage to Property
21. Liquidated Damages
22. Mediation of Disputes
23. Arbitration of Disputes
24. Attorneys' Fees
25. Entire Agreement
26. Time Is of the Essence
27. Disclosures
28. Buyer's Signature
29. Seller's Acceptance

### Opening Section (Heading)

Property address, including county:

\_\_\_\_\_

Date: \_\_\_\_\_.

\_\_\_\_\_ (Buyer) makes this offer to \_\_\_\_\_ (Seller), to purchase the property described above, for the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_). Buyer includes a deposit, in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), evidenced by  cash  cashier's check  personal check  promissory note  other, payable to \_\_\_\_\_ to be held uncashed until the acceptance of this offer, and to be increased to 3% of the purchase amount no later than \_\_\_\_\_ days after this offer is accepted. If this offer is accepted, the deposit shall be delivered to a mutually agreed-to escrow holder and applied toward the down payment.

**1. Financial Terms**

This offer is contingent upon Buyer securing financing as specified in items D, E, F, and G, below, within \_\_\_\_\_ days from acceptance of this offer.

\$ \_\_\_\_\_ A. DEPOSIT to be applied toward the down payment.

\$ \_\_\_\_\_ B. DEPOSIT INCREASE to be applied toward the down payment by \_\_\_\_\_ (date).

\$ \_\_\_\_\_ C. DOWN PAYMENT balance, in cash, to be paid into escrow on or before the close of escrow.

\$ \_\_\_\_\_ D. FIRST LOAN—NEW LOAN. Buyer shall obtain a new loan, amortized over not fewer than \_\_\_\_\_ years. Buyer's financing shall be  
 Conventional \_\_\_\_\_ (name of lender, if known)  
 Private \_\_\_\_\_ (name of lender, if known)  
 Government (specify):     VA     FHA     Cal-Vet     CHFA  
 Other: \_\_\_\_\_

Buyer's mortgage shall be  at a maximum fixed rate of \_\_\_\_\_% or  
 an adjustable rate loan with a maximum beginning rate of \_\_\_\_\_%, with the life-of-the-loan cap not to exceed \_\_\_\_\_ percentage points and the periodic cap not to be adjusted more frequently than \_\_\_\_\_. Maximum monthly loan payment including principal, interest, and, if applicable, private mortgage insurance (PMI), during the first year of the loan agreement, shall be \$ \_\_\_\_\_. Buyer shall pay a loan origination fee (points) of not more than \_\_\_\_\_% of the loan amount and application and appraisal fees of not more than \$ \_\_\_\_\_.

\$ \_\_\_\_\_ E. FIRST LOAN—EXISTING LOAN. Buyer shall  assume  buy subject to an existing loan under the same terms and conditions that Seller has with \_\_\_\_\_, the present lender. The approximate remaining balance is \$ \_\_\_\_\_, at the current rate of interest of \_\_\_\_\_% on a  fixed  adjustable rate loan, or a remaining term of approximately \_\_\_\_\_ years, secured by a First Deed of Trust.

\$ \_\_\_\_\_ F. SECOND LOAN—NEW LOAN. Buyer shall obtain a new loan, amortized over not fewer than \_\_\_\_\_ years. Buyer's financing shall be:  
 Conventional \_\_\_\_\_ (name of lender, if known)  
 Private \_\_\_\_\_ (name of lender, if known)  
 Government (specify):     VA     FHA     Cal-Vet     CHFA  
 Other: \_\_\_\_\_

Buyer's mortgage shall be  at a maximum fixed rate of \_\_\_\_\_% or  an adjustable rate loan with a maximum beginning rate of \_\_\_\_\_%, with the life-of-the-loan cap not to exceed \_\_\_\_\_ percentage points and the periodic cap not to be adjusted more frequently than \_\_\_\_\_. Maximum monthly loan payment including principal, interest, and, if applicable, private mortgage insurance (PMI), during the first year of the loan agreement, shall be \$ \_\_\_\_\_. Buyer shall pay a loan origination fee (points) of not more than \_\_\_\_\_% of the loan amount and application and appraisal fees of not more than \$ \_\_\_\_\_.

§ \_\_\_\_\_ G. SECOND LOAN—EXISTING LOAN. Buyer shall  assume  buy subject to an existing loan under the same terms and conditions that Seller has with \_\_\_\_\_, the present lender. The approximate remaining balance is \$ \_\_\_\_\_, at the current rate of interest of \_\_\_\_\_% on a  fixed  adjustable rate loan for a remaining term of approximately \_\_\_\_\_ years, secured by a Second Deed of Trust.

§ \_\_\_\_\_ H. TOTAL PURCHASE PRICE, EXCLUDING EXPENSES OF SALE AND CLOSING COSTS.

Buyer shall submit complete loan application and financial statement to lender within five days after acceptance. If Buyer, after making a good-faith effort, does not secure financing by the time specified, this contract shall become void, and all deposits shall be returned to Buyer.

If, after Buyer applies in good faith for financing, a professional appraisal commissioned by the lender states a fair market value below the contract purchase price, this contract shall at the option of Buyer become void and all deposits shall be returned to Buyer.

In the event of FHA or VA financing, Buyer shall not be obligated to complete the purchase, nor shall Buyer forfeit the deposit, if the offer price exceeds the property's FHA or VA appraised value. Buyer shall, however, have the option of proceeding with the purchase from any above-named lender or a different lender without regard to the appraised value.

The heading of the offer form includes the following basic information:

**Property address.** The street number, city, county, and state are sufficient—a formal legal description isn't required. If the property has no street address, the buyer will have to describe it as best as possible (“the ten-acre Norris Ranch on County Road 305, two miles south of Andersonville”).

**Date.** Enter the date of the offer.

**Full names of the buyer(s) and seller(s) and their spouses.** If the buyer isn't sure of your full name or marital status, he or she may make an educated guess. If the guess is wrong, you can correct it on the counteroffer. If you accept the offer as is, you can correct your name or marital status on the escrow instructions. If the prospective buyer is married but buying a house using only separate property, he or she may list only his or her name. Normally, however (as discussed in Chapter 2), some community property is used toward the down payment or monthly payments, which means both spouses' names should also appear on the offer.

**The price offered and the deposit, both written out (such as, five hundred and seventeen thousand) and numerically (517,000).** If you accept the offer, you'll take a deposit as earnest money. This is usually about 1% of the purchase price. Alternately, it may be a flat \$1,000 for middle-priced houses, possibly with an increase to 3% of the purchase price within a week after the offer is accepted. A buyer usually won't want to put down any more, in case he or she gets into a dispute with a seller and has trouble getting the money back. If you feel that the deposit is too low, you can ask for more in your counteroffer—a buyer may be willing to increase the deposit if your house is a particularly “hot” property and the buyer doesn't want to risk losing it.

**The form of the deposit (cash, check, or other—personal check is the most common) and to whom it is made out (the escrow holder).** See Clause 2 for more on the escrow holder. For general information on what happens to the deposit if the purchase doesn't go through, see Clause 21.

Offers to purchase a house almost always contain contingencies, that is, conditions that either the seller or buyer must meet (or the other party must waive) before the deal will close. For example, the buyer's acceptance is commonly contingent on arranging financing.

The buyer will specify how many days are needed to arrange financing. If the buyer has to start from scratch (no preapproval letter), expect financing to take a few weeks. If all that remains is an appraisal of the property, expect the buyer to have financing set up more quickly.

For the buyer's protection as well as yours, the terms of financing and payment should be specified in as much detail as possible. As part of doing this, the buyer should specify the maximum rate of interest and monthly payments he or she can make to a financial institution, as well as the minimum term of years over which the loan is to be repaid (amortized). If you obtain the buyer's credit information (see Chapter 9), you should have a good idea of whether the buyer can really afford your house.

The buyer's financing information should be outlined as follows:

**Section A.** The deposit amount as stated in the heading.

**Section B.** The deposit increase as stated in the heading, and the date by which it will be tendered, usually within a few days after the offer is accepted.

**Section C.** The proposed down payment balance—total down payment less the deposit and deposit increase.



## TIP

**In rare cases, a buyer will offer all cash, with no financing contingency.** If you're lucky enough to find such a buyer, insert the balance of the home price in Section C and draw a line through Sections D through G.

**Sections D-G.** The amount and details of each loan. If the buyer's first (and perhaps only) loan is a new first mortgage, only Section D will be completed, specifying the minimum number of years, type of financing, maximum interest rate, maximum life-of-the-loan cap and adjustment period for an adjustable rate mortgage, maximum monthly payments, and maximum fees the buyer expects to pay. If the buyer is applying for a government loan, he or she should be ready to demonstrate eligibility for it. The maximum number of points, and the amount of application and appraisal fees the buyer is willing to pay, should also be filled in.

If the buyer plans to use your existing loan as the first loan to finance the purchase, **Section E** will be completed. This specifies whether the buyer will assume the loan, take over the payments and become responsible for the loan, or buy subject to an existing loan and make the payments without taking over formal responsibility—quite unusual, and not advisable. Section E also names the existing lender, the approximate remaining balance, the current interest rate, the type of loan, and the approximate number of remaining years.

If the buyer proposes using a **second loan** to help finance the house, he or she will complete either Section F or G, depending on whether it's a new loan or an existing loan. Some buyers propose borrowing money from you (the seller) or from a friend or relative. Whatever the buyer plans, be sure it's spelled out clearly. Sections F and G mirror Sections D and E.

**Section H.** This total represents the price offered for your house.

Notice that the contract then spells out what happens if the buyer can't obtain financing. In layman's terms, the deal is off, and you must return all the buyer's deposits on the property. This also becomes the case if, despite having nearly obtained a mortgage, it falls apart because the professional appraiser hired by the lender (as a way of making sure that its collateral is worth what the buyer is paying for it) comes back with a low figure. This has become a more frequent occurrence in recent years, and it should worry you a little. But remember, the deal is only off if the buyer

says so, and someone truly interested in buying your place may be willing to come up with more cash for the down payment, thus reducing the loan amount. Alternately, you could lower the purchase price.

## 2. Escrow

Buyer and Seller shall deliver signed escrow instructions to \_\_\_\_\_  
 \_\_\_\_\_ escrow agent located at  
 \_\_\_\_\_, within \_\_\_\_\_ days  
 of acceptance of this offer. Escrow shall close  within \_\_\_\_\_ days of acceptance of this offer  
 or  on \_\_\_\_\_ (date). A deed shall be recorded in favor of Buyer at the close of escrow.

**Escrow** is the process in which a disinterested third party, usually a title or escrow company, transfers the funds and documents among the buyer, seller, and their lenders, following instructions provided by the buyer and seller. (See Chapter 12 for details on opening and closing escrow.)

This clause lists the name and address of the escrow holder you and the buyer choose. Although you do not actually open an escrow account until you accept an offer to purchase your house, do some preliminary investigation, so that you have at least a tentative idea as to the company you will use.

If the buyer proposes an escrow holder, go with that person unless you are truly attached to “your” holder and can persuade the buyer to agree. This clause also specifies the dates for delivering the written escrow instructions. These instructions authorize the escrow company to give you the money and give the buyer the deed to the property, and should be delivered a few days before the closing date.

You and the buyer need to allow enough time for the removal of all the contingencies—such as arranging financing or approving inspections—before the contract calls for the escrow to close. Unless the buyer already has financing lined up, this should be at least 30–60 days from the date the contract is signed. If the buyer has money in hand, however, you usually need to allow only 20 to 30 days to complete physical inspections of the condition of the property.

### 3. Prepayment Penalty and Assumption Fee

Seller shall pay any prepayment penalty or other fees imposed by any existing lender who is paid off during escrow. Buyer shall pay any prepayment penalty, assumption fee, or other fee that becomes due after the close of escrow on any loans assumed from Seller.

This standard clause simply states that if your existing loan has a **prepayment penalty** (it probably won't) and you are paying off the loan now before the end of the full term of the loan, you'll pay the penalty. It also states, however, that if your existing loan has a prepayment penalty and the buyer assumes the loan, the buyer will assume the responsibility for any prepayment penalty assessed after the close of escrow. This could occur if the buyer sells the house, refinances the loan, or prepays before its term runs out.

### 4. Expenses of Sale

Expenses of sale, settlement costs, and closing costs shall be paid for as follows:

	Buyer	Seller	Share Equally	
A.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Escrow fees
B.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Title search
C.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Title insurance for buyer/owner
D.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Title insurance for buyer's lender
E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Deed preparation fee
F.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Notary fee
G.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Recording fee
H.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attorney's fee (if attorney hired to clarify title)
I.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Documentary transfer tax
J.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	City transfer tax
K.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pest control inspection report
L.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	General contractor report
M.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Roof inspection report
N.				Other inspections (specify):
1.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
O.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	One-year home warranty
P.				Other (specify):
1.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

## Who Pays for What?

Use this chart as a guide to how expenses are commonly divided; it's quite all right for you and the buyer to agree otherwise.

Item	Who usually pays	Comment
Escrow fees	Buyer customarily pays in Northern California, seller in Southern California	Not uncommon for fees to be divided
Title search	Buyer customarily pays in Northern California, seller in Southern California	Buyer benefits—not unreasonable for buyer to pay
Title insurance for buyer/owner	Buyer customarily pays in Northern California, seller in Southern California	Buyer benefits—not unreasonable for buyer to pay
Title insurance for lender	Buyer	Buyer benefits—buyer should pay
Deed preparation fee	Buyer	Buyer benefits—buyer should pay
Notary fee	Buyer usually pays for grant and trust deeds; seller usually pays for reconveyance deed on the property	Grant and trust deeds help buyer purchase and finance property; seller receives reconveyance deed when paying off existing mortgage
Recording fee	Buyer usually pays for grant and trust deeds; seller usually pays for reconveyance deed on the property	Grant and trust deeds help buyer purchase and finance property; seller receives reconveyance deed when paying off existing mortgage
Attorney's fee (if attorney hired to clarify title)	Whoever hired attorney	
Documentary transfer tax	Seller usually pays, except in probate sales where buyer is legally required to pay	
City transfer tax	Seller usually pays, except in probate sales where buyer is legally required to pay	
Pest control inspection report	Buyer usually picks inspector and pays for inspection	Buyer should pay, to assure that report meets buyer's standard
General contractor report	Buyer usually picks inspector and pays for inspection	Buyer should pay, to assure that report meets buyer's standard
Roof inspection report	Buyer usually picks inspector and pays for inspection	Buyer should pay, to assure that report meets buyer's standard
Other inspections	Buyer usually picks inspector and pays for inspection	Buyer should pay, to assure that report meets buyer's standard
One-year home warranty	Seller	Sometimes seller offers to buy a policy when listing the property—if not, buyer can purchase one if desired
Real estate tax Fire insurance Bond liens (unless able to be paid off)	Buyer and seller usually prorate as of the date the deed is recorded (see Clause 5)	Both parties benefit; should be prorated

When you receive an offer form, the buyer will no doubt have checked off a list of items proposing who pays for what or the “**expenses of sale.**” There are no laws about who pays for each item—it’s largely a matter of local custom. Review this list carefully, read the chart above, “Who Pays for What,” and make any changes in your counteroffer.

Don’t feel compelled to agree with whatever the buyer proposes. For example, even if the buyer checks off that you will provide (and pay for) a home warranty, don’t run off and buy one unless you really think it will help with the sale. (Clause 8, below, contains a list of the inspections the buyer may require, or which you feel will protect you from later charges by the buyer that you failed to disclose some problem with the house.)

On the other hand, it’s probably not reasonable to expect the buyer to shoulder all the expenses that benefit both of you.



#### CAUTION

**Keep your eyes on the big picture.** You’d hate to lose the deal over a few hundred dollars. And if you drive a hard bargain, that might motivate the buyer to either walk away or do the same—for example, by stubbornly demanding you pay for all repairs when it’s time for an inspection.

#### 5. Property Tax and Insurance Prorations; Noncallable Bonds

Seller shall be responsible for payment of Seller’s prorated share of real estate taxes accrued until the deed transferring title to Buyer is recorded. Buyer understands that the property shall be reassessed upon change of ownership and that Buyer shall be sent a supplemental tax bill that may reflect an increase in taxes based on property value.

Any fire insurance policy carried over from Seller to Buyer and any homeowners’ association fees shall be prorated, that is, Seller shall pay the portion of the premiums and fees while title is in Seller’s name and Buyer shall pay the portion of the premiums and fees while title is in Buyer’s name.

Homeowners’ association special assessments shall be  paid current by Seller (payments not yet due shall be assumed by Buyer without credit toward the purchase price) or

\_\_\_\_\_ .

Buyer agrees to assume noncallable assessment bond liens (those which cannot be paid off by Seller) as follows:

\_\_\_\_\_

**Clause 5** allocates payment of property taxes, fire insurance policies carried over from seller to buyer, and any homeowners' association fees. Each owner pays only for the period of actual ownership. For example, if property taxes are \$1,000 for a fiscal year beginning July 1, and escrow closes on the next April 1, the buyer's prorated share is \$250 for the last quarter of the year (April, May, and June), while the seller's share is \$750 for the three previous quarters (July through March). You'll also specify how you'll deal with any special assessment levied by the homeowners' association.

This clause also provides that the buyer assumes any noncallable bond liens—bonds to finance local improvements such as curbs, gutters, or street lights. You may not even know whether the house has any such liens, but they'll show up on the title report. Often bonds must be paid off when a house is sold, but sometimes they can't be—that is, they're noncallable. In that case, the buyer assumes responsibility to pay the lien, but the cost of doing so is credited by the seller to the buyer in escrow. Unless you know specifically what noncallable bond liens are on the house, leave it blank. If such bond liens show up in a subsequent title search, the manner of paying for them can be dealt with in escrow instructions.

#### 6. Fixtures

All fixtures permanently attached to the property, including built-in appliances, electrical, plumbing, light and heating fixtures, garage door openers, attached carpets and other floor coverings, and window shades or blinds, are included in the sale except:

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#### 7. Personal Property

The following items of personal property are included in this sale:

- |                                |                                  |  |                                     |
|--------------------------------|----------------------------------|--|-------------------------------------|
| <input type="checkbox"/> Stove | <input type="checkbox"/> Oven    | <input type="checkbox"/> Refrigerator    | <input type="checkbox"/> Washer     |
| <input type="checkbox"/> Dryer | <input type="checkbox"/> Freezer | <input type="checkbox"/> Trash Compactor | <input type="checkbox"/> Dishwasher |

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Seller shall, by the date of possession, remove any and all other items of personal property.

**Fixtures** are items permanently attached to your house and the land it's on, such as built-in appliances or bookshelves, wall-to-wall carpeting, chandeliers, drapes, and landscaping. Fixtures come with the house unless you and the buyer agree that you will take them with you. If you want to take something considered a fixture, such as a built-in stove, be sure to list it in your counteroffer.

Everything other than real property and fixtures is **personal property**. Personal property doesn't come with the house unless the seller agrees in writing to include it. If you promise to include items such as rugs, beds, or appliances that aren't built in, be sure they are listed in your counteroffer and final contract.

Somewhere in the offer, the buyer will specify what **inspections** on the house he or she wants done—and must approve—before completing the purchase (closing escrow). If the buyer doesn't also specify—or doesn't specify to your satisfaction—how soon the inspections must be done after the offer has been accepted, include this in your counteroffer. It's normally reasonable to allow 20 working days.

Before you get overwhelmed in reading this section, be aware that it would be unusual for a buyer to require all the inspection contingencies listed in Clause 8. Often, a buyer asks only for a general contractor and pest control report, unless the buyer suspects problems requiring an inspection by a specialist.

As a very rough rule, buyers normally want to require more inspections when a house is older and expensive or vulnerable to special problems (such as near an earthquake fault or slide zone). California laws generally require a pest control report whenever residential property is sold, unless the buyer waives it and has not been induced to do so by the seller or an agent. Even then, however, the lender may require the report. So you might as well be prepared for it. (Cal. Bus. & Prof. Code §§ 8516, 8518, and 8519, and Cal. Civ. Code § 1099.)

The clause also lets the buyer cancel the contract if the inspection reports are not to his or her satisfaction. Most buyers negotiate with sellers to correct—or to monetarily compensate them for correcting—the problems before canceling the contract. (See Chapter 12 for more information on removing contingencies.)

### 8. Inspection Contingencies

This offer is conditioned upon Buyer's written approval of the following inspection reports. All reports shall be carried out within \_\_\_\_\_ days of acceptance. Buyer shall deliver written approval or disapproval to Seller within three days of receiving each report. If Buyer does not deliver a written disapproval within the time allowed, Buyer shall be deemed to approve of the report.

Seller is to provide reasonable access to the property to Buyer, his/her agent, all inspectors, and representatives of lending institutions to conduct appraisals.

- A.  Pest control report
- B.  General contractor report as to the general physical condition of the property including, but not limited to, heating and plumbing, electrical systems, solar energy systems, roof, and appliances
- C.  Plumbing contractor report
- D.  Soils engineer report
- E.  Energy conservation inspection report in accordance with local ordinances
- F.  Geologist report
- G.  Environmental inspection report
- H.  City or county inspection report
- I.  Roof inspection report

If Buyer and Seller, after making a good-faith effort, cannot remove in writing the above contingencies by the time specified, this contract shall become void, and all deposits shall be returned to Buyer.



#### CAUTION

**Never agree to pay for repairs in advance of a cost estimate.**

If the buyer tries to require this in the offer, you should eliminate it in your counteroffer, or agree to a dollar limit on the amount of repairs you will compensate.

In **Clause 9**, the buyer specifies the other **contingencies** that must be met before closing escrow. It also lets the buyer cancel the contract if the contingencies are not fulfilled to the buyer's satisfaction.

Most offers call for the removal of all contingencies within 30 to 60 days after your acceptance. There are no hard and fast rules, however; you and the buyer should decide, depending on your time constraints and how long it will realistically take to remove each contingency. If your house is in great

### 9. Other Contingencies

This offer is contingent upon the following:

- A.  Buyer receiving and approving preliminary title report within \_\_\_\_\_ days of acceptance of this offer.
- B.  Seller furnishing a Residential Building Record Report indicating \_\_\_\_\_ legal units within \_\_\_\_\_ days of acceptance.
- C.  Seller furnishing declaration of restrictions, CC&Rs, bylaws, articles of incorporation, rules and regulations currently in force, and a financial statement of the owners' association within \_\_\_\_\_ days of acceptance.
- D.  Sale of Buyer's current residence, the address of which is \_\_\_\_\_, by \_\_\_\_\_.
- E.  Seller furnishing rental agreements within \_\_\_\_\_ days of acceptance.
- F.  Buyer applying for insurance acceptable to Buyer and Lender so as to indemnify both in the event of casualty loss upon Buyer's taking title to the property, and Buyer receiving written commitment of said insurance, within \_\_\_\_\_ days of acceptance of this offer. Seller to furnish Buyer with written disclosure of existing insurance policy and any previous claims, within three business days of acceptance of this offer.
- G.  Other: \_\_\_\_\_.

Buyer shall deliver written approval or disapproval to Seller within three days of receiving each report or statement. If Buyer does not deliver a written disapproval within the time allowed, Buyer shall be deemed to approve of the report or statement. If Buyer and Seller, after making a good-faith effort, cannot remove in writing the above contingencies, this offer shall become void, and all deposits shall be returned to Buyer.

physical shape, 30 days should be adequate to remove contingencies relating to its physical condition. You might even request that physical inspection contingencies be removed within seven to 14 days. This makes sense from your point of view; sales that fall apart often do so because inspections turn up defects and the buyer and seller can't agree on who will pay for repairs, so it's better for you to work these things out earlier rather than later. A contingency based on the buyer selling an existing house will normally need at least 30–90 days for removal.

If any contingencies aren't met in the specified time, the deal is over unless you and the buyer agree in writing to extend the contingency release time. A contingency release form and a form to extend time to satisfy a contingency are discussed in Chapter 12 and blank copies

appear online on the companion page to this book. (See the appendix for the link.)

Let's review the contingencies listed one at a time.

**Item A will be selected in all sales.** The buyer will want to ensure that title (legal ownership) is good, that is, no one has a lien on the house or claims an unacceptable easement that can't be taken care of. See Chapter 12 for a discussion of these terms and preliminary title reports.

**Item B is a report on file with the local building department in some California cities indicating the number of legal (habitable under local building code standards) units on the premises.** If your place has an in-law unit or has been split to create two units, one may not be legal. If the buyer plans to rely on rental income from your house, but won't be able to legally rent out the unit, the buyer may not want to continue with the deal.

**Item C is for houses in common-interest developments, which are usually subject to covenants, conditions, and restrictions (CC&Rs).** If you live in a common-interest development, you must provide the buyer with the documents described below, which you can get from your homeowners' association. (Cal. Civ. Code § 1368.) The association has ten days to get these items to you in either print or electronic form. It can charge you for photocopying and related costs. Several of these disclosures are also required by the statutory disclosure statement discussed in Chapter 7. The documents include:

- governing documents, such as bylaws and CC&Rs
- if residency is limited by age (for example, only people over 55 allowed), a statement that the restriction is enforceable only to the extent allowed by law. (The law allowing age restrictions, within limits, is the Unruh Civil Rights Act, Cal. Civ. Code § 51.3.)
- a copy of the association's most recent financial report
- a written statement from an authorized representative of the association as to the amount of regular, special, and unpaid assessments that may be made against the property; as well as the amount of any unpaid fines or penalties
- a copy of any notices sent to you alleging that you had violated the governing documents, if those allegations remain unresolved
- in instances where the association is in the midst of a lawsuit against a builder over defective construction, a copy of the

preliminary list of the defects, as provided to association members; as well as a statement explaining that there has been no final determination as to whether the list of defects is accurate and complete

- in instances where the association has settled a lawsuit against a builder over defective construction, an accounting for which defects will be corrected and by when, and
- any change in the association's current regular and special assessments, and any fees that have not yet become due and payable.

**Item D is perhaps the most common noninspection contingency.** In hot (sellers') markets, sellers often reject offers contingent upon the sale of the buyer's current residence. In communities where sales are slower, however, sellers accept this contingency more often. Obviously, before you agree to a contingency that states that the buyer must sell an existing home before closing on yours, you want to consider whether the buyer is likely to be able to sell the present home.

Start by asking the buyer some questions about his or her house, the location, the asking price, how long it's been on the market, and similar information. If you feel that you want more assurance, you can demand that the buyer list the home with an agent and put it into a Multiple Listing Service. You can also ask for the telephone number of the buyer's agent and make regular inquiries as to the progress of the sale. This may sound harsh, but it may be what you need to do to protect yourself from a would-be buyer who rushes to make an offer on your house, enters a contract with you, and then tries to sell his or her own house based on the amount needed to buy your home and not what the home is really worth.

**Item E comes up when the place you are selling has tenants and the buyer intends to let them remain after the sale—for example, you're selling a duplex or house with an already rented in-law unit.** Under state rental laws, the buyer will inherit not only the tenants, but also the rental agreements. If the buyer feels those agreements are unreasonable, he or she may want to be able to get out of the contracts.

**Item F is a response to California's insurance crisis.** Starting in 2002, many homebuyers find themselves unable to find affordable insurance—or any insurance at all. The industry has tightened up, out of fear and rising costs due to mold and other claims. This clause allows buyers to make sure they have insurance before committing to buying your house.

**10. Condition of Property**

Seller represents that the heating, plumbing, air conditioning, electrical, septic, drainage, sewers, gutters and downspouts, sprinklers, as well as built-in appliances and other equipment and fixtures, are in working order. Seller agrees to maintain them in that condition, and to maintain all landscaping, grounds, and pools, until possession of the property is delivered to Buyer. Seller shall, by the date of possession, replace any cracked or broken glass.

**11. Foreign Investors**

If Seller is a foreign person as defined in the Foreign Investment in Real Property Tax Act, Buyer shall, absent a specific exemption, have withheld in escrow ten percent (10%) of the gross sale price of the property. Buyer and Seller shall provide the escrow holder specified in Clause 2 above with all signed documentation required by the Act.

In **Clause 10**, you are required to assure the buyer that certain mechanical systems and appliances are in good working order and to keep them that way until you turn over possession of the property. You are also required to replace any broken glass by the time you turn over the property. Be sure that defects you list here were on your disclosure form (see Chapter 7) and vice versa.

**Regarding Clause 11:** To comply with a federal law called FIRPTA, you must complete a form (available from an escrow or title company, or the IRS) stating whether you are a foreign investor as defined by that law. (I.R.C. § 1445.) If you are, the buyer must instruct the escrow holder to withhold in escrow 10% of the sale price of the house and fill out and file some papers with the IRS. The escrow agent can help with this, and your tax adviser can help you find out whether you are a foreign investor. If you're a U.S. citizen, forget about this clause.

**As for Clause 12:** Several California cities have rent control ordinances, which may restrict the rent the owner can charge a tenant, as well as control the owner's rights and responsibilities. While this is most relevant with multiunit buildings, it can decrease the value of houses likely to be rented in the future. Even if the buyer is not planning to rent the home now, conditions change and he or she may rent it out later, so be sure to disclose to the buyer all local rent control laws. If you don't know whether your house is covered by local rent control laws, call your city or county planning office and find out.

**12. Rent Control**

The property  is  is not located in a city or county subject to local rent control. A rent control ordinance may restrict the rent that can be charged for this property, limit the right of the owner to evict the occupant for other than “just cause,” and control the owner’s rights and responsibilities.

**13. Title**

At close of escrow, title to the property is to be clear of all liens and encumbrances of record except those listed in the preliminary title report and agreed to be assumed by Buyer. Any such liens or encumbrances assumed by Buyer shall be credited toward the purchase price. If Seller cannot remove liens or encumbrances not assumed by Buyer, Buyer shall have the right to cancel this contract and be refunded his/her deposit and costs of inspection reports.

### California Cities Subject to Rent Control

Berkeley	Hayward	San Francisco
Beverly Hills	Los Angeles	San Jose
Campbell*	Los Gatos**	Santa Monica
East Palo Alto	Oakland	Thousand Oaks
Fremont*	Palm Springs	West Hollywood
Gardena**		

\*Mediation only

\*\*Mediation/arbitration

**Clause 13** assures the buyer that title to the house will be in good order (clear) when you turn over possession—meaning there are no legal claims against the title by previous lenders or owners unknown to the present buyer. As discussed in Chapter 12, this title contingency is normally satisfied when a title company checks the title and issues a title report. If you are unable to clear up problems before escrow closes, the buyer has the right to get out of the contract.

**Clause 14** lets the buyer have one last look at the property right before the close of escrow to make sure that you or your tenant didn’t damage the place in anticipation of moving out and that all promised repairs have been done to the buyer’s satisfaction. It also specifies when the buyer can move in.

**14. Possession**

Buyer reserves the right to inspect the property within the three days before the close of escrow. Seller shall deliver physical possession of property, along with alarms, alarm codes, keys, garage door openers, and all other means to operate all property locks, to Buyer:

at close of escrow  no later than \_\_\_\_\_ days after the close of escrow.

If Buyer agrees to let Seller continue to occupy the property after close of escrow, Seller shall deposit into escrow for Buyer a prorated share of Buyer's monthly carrying costs (principal, interest, property taxes, and insurance), for each such day, subject to the terms of a written agreement, specifying rent or security deposit, authorizing a final inspection before Seller vacates, and indicating the length of tenancy, signed by both parties.

**15. Agency Confirmation and Commission to Brokers**

The following agency relationship(s) are confirmed for this transaction:

Listing agent: \_\_\_\_\_ is the agent of:  Seller exclusively  Buyer and Seller

Selling agent: \_\_\_\_\_ is the agent of:  Buyer exclusively  Buyer and Seller

NOTICE: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between the Seller and Broker.

Buyer and Seller shall each pay only those broker's commissions for which Buyer and Seller have separately contracted in writing with a broker licensed by the California Commissioner of Real Estate.

\$ \_\_\_\_\_ or \_\_\_\_\_% of selling price to be paid to \_\_\_\_\_ by  Seller  Buyer

\$ \_\_\_\_\_ or \_\_\_\_\_% of selling price to be paid to \_\_\_\_\_ by  Seller  Buyer

Although the buyer may want to take possession the day escrow closes, he or she may give this up during your negotiations. If you are buying another house, you may insist on not moving out until 60–90 days after escrow closes, in exchange for paying the buyer rent. Or, some sellers like to negotiate for a few days' stay beyond the closing, just to make sure the deal has really closed before they take the trouble to move out.

Should you and the buyer agree that you can stay after closing, both of you should sign a written rental agreement specifying a daily rent and/or security deposit, authorizing a final inspection, and indicating how long you'll stay. Although the contract states a per-day charge of the buyer's prorated monthly carrying costs, this can be high. You may want to counteroffer with a lower amount—for example, a flat deposit of 0.5% of the cost of the house; that's \$2,500 on a \$500,000 house.

**Clause 15** lets you and the buyer confirm your relationships with any agents involved, to avoid misunderstandings about payments to them (usually called “brokers” in legal documents such as this). For example, if the buyer makes an offer through an agent, the buyer may mistakenly assume you will pay the agent’s fee or split it.

Long before you fill out this offer form, if you are working with an agent you would have completed a “Confirmation: Real Estate Agency Relationships” form, which contains the identical information as Clause 15. It doesn’t hurt to repeat the information in the offer form.

This clause also clarifies who pays which agent or broker, and how much. The notice is required by state law. (Cal. Bus. & Prof. Code § 10147.5.) Your options are outlined in Chapter 4.

**Clause 16** means that you are not liable for giving tax or legal **advice** to the buyer and vice versa, and the real estate agents aren’t liable for giving that information to you or the buyer, either.

**Clause 17** allows you to accept a **backup offer**. It sometimes happens that contingencies in real estate contracts are never satisfied—for example, the buyer is completely unable to get financing. In anticipation of such a situation, you may want to accept a backup offer so that you have another buyer in line. Then, if your first deal falls through, you can give the buyer who proposed the second offer an acceptance in writing. The buyer then has 24 hours to accept or reject the deal.

Similarly, you may want to leave open the possibility that after you’ve already accepted an offer, a second offer will come in that is simply more

#### 16. Advice

If Buyer or Seller wishes advice concerning the legal or tax aspects of this transaction, Buyer or Seller shall separately contract and pay for it.

#### 17. Backup Offer

This offer is being made as a backup offer. Should Seller accept this offer as a backup offer, the following terms and conditions apply:

If Seller accepts this offer as a primary offer, he/she must do so in writing.

Buyer has 24 hours from receipt of Seller’s written acceptance to ratify it in writing. If Buyer fails to do so, Buyer’s offer shall be deemed withdrawn and any contractual relationship between Buyer and Seller terminated.

**18. Duration of Offer**

This offer is submitted to Seller by Buyer on \_\_\_\_\_, at \_\_\_\_\_m., Pacific Time, and will be considered revoked if not accepted by Seller in writing by \_\_\_\_\_m. on \_\_\_\_\_, or, if prior to Seller's acceptance of this offer, Buyer revokes this offer in writing.

**19. Other Terms and Conditions**


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to your liking. In that event, you will want to accept the second offer as a backup offer. More importantly, your first contract must have a wipeout clause, which you can add in your counteroffer. (See Chapter 11.)

A wipeout clause does not mean you can automatically get out of the first deal. What it does mean is that any time after two weeks following the date you sign your contract, you can demand that the first buyer remove (wipe out) his or her contingencies within a short period of time (such as 96 hours), as opposed to giving the buyer the full number of days specified in the contract (usually 20–30 days) for the removal of contingencies. If the buyer can't, your obligations under that contract are terminated and you're free to accept the second offer as your primary offer.

In **Clause 18**, the buyer gives you a deadline to accept the offer. If you don't accept by that time, the offer automatically expires unless the buyer extends it in writing.

In deciding how much time to give the seller, a smart buyer will pay close attention to your needs and negotiating strategy. If the buyer is

### Supplement to Real Property Purchase Offer

The material set out below is hereby made a part of the offer dated \_\_\_\_\_,  
 from \_\_\_\_\_ (Buyer)  
 to \_\_\_\_\_ (Seller) for the  
 purchase of the real property at: \_\_\_\_\_

Additional terms:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ etc.

\_\_\_\_\_  
 Buyer

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Buyer

\_\_\_\_\_  
 Date

bidding high to preempt other bidders, he or she will give you a very short time—maybe only a few hours. But if the buyer is bidding low with the hope of picking up a bargain, he or she will leave the offer open for a considerably longer time. If the buyer is somewhere in between these extremes, the seller has about one to three days to respond. If the buyer is making a backup offer, he or she will need to let time pass for the other deal to fall through, thus 60–90 days is a typical length.

In the space provided in **Clause 19**, the buyer lists any terms or conditions not covered elsewhere in the offer. If there’s not enough space, the buyer may write “Summarized on Supplement to Real Property Purchase Offer” and type up a form such as the sample above.

**Clause 20** states that the buyer must assume the **risk of damage** to, or destruction of, the property after getting title to it. If the house is damaged or destroyed before then, it’s your problem. The buyer can back out of the sale and get the deposit back.

This clause also requires you to maintain homeowners’ insurance on the property through the closing. Once the buyer takes title, however, it’s the buyer’s responsibility to have the insurance.

**Clause 21** deals with what happens if the buyer backs out of the deal with no good reason. If the buyer refuses to go through with the sale because a

contingency can't be fulfilled—for example, the buyer fails to qualify for a loan or is dissatisfied with the pest control inspection—you must return the deposit. But if the buyer simply has a change of heart, or doesn't try in good faith to fulfill a contingency (for instance, doesn't apply for a loan), it's considered a default and you need not return the deposit. That's what the deposit is there for: You should be compensated if the buyer decides not to go through with the purchase for a reason not covered in the contract.

This clause treats the deposit as **liquidated damages**, meaning you and the buyer agree in advance on the damages if the buyer defaults. By setting the amount in advance, you and the buyer save both time and money by avoiding court or arbitration, and you avoid the risk of a court or arbitrator awarding you a lesser amount.

California law generally prohibits sellers from keeping more than 3% of the agreed-upon sale price as liquidated damages. (Cal. Civ. Code § 1675.) If you can show that a larger amount is reasonable—that is, you

#### 20. Risk of Damage to Property

If, before Buyer receives title to, or possession of, the property, it is substantially damaged by fire, flood, earthquake, or other cause, Buyer shall be relieved of any obligation to buy the property and shall be refunded all deposits. When Buyer receives possession of the property, Buyer assumes sole responsibility for its physical condition. Seller shall maintain fire insurance on the property until the close of escrow.

#### 21. Liquidated Damages

**If Seller accepts this offer, and Buyer later defaults on the contract, Seller shall be released from Seller's obligations under this contract. By signing their initials here, Buyer ( \_\_\_\_\_ ) and Seller ( \_\_\_\_\_ ) agree that if Buyer defaults, Seller shall keep all deposits, up to three percent (3%) of the purchase price stated above.**

#### 22. Mediation of Disputes

If a dispute arises out of, or relates to, this agreement, Buyer and Seller  agree  do not agree to first try in good faith to settle the dispute by nonbinding mediation before resorting to court action or binding arbitration. To invoke mediation, one party shall notify the other of his/her intention to proceed with mediation and shall provide the name of a chosen mediator. The other party shall have seven days to respond. If he/she disagrees with the first person's chosen mediator, the parties shall ask the escrow holder to choose the mediator or to recommend someone to choose the mediator. The mediator shall conduct the mediation session or sessions within the next three weeks. Costs of mediation shall be divided equally between Buyer and Seller.

Buyer \_\_\_\_\_ Seller \_\_\_\_\_

### 23. Arbitration of Disputes

Any dispute or claim in law or equity between Buyer and Seller arising out of this contract or any resulting transaction which is not settled by mediation shall be decided by neutral, binding arbitration and not by court action except as provided by California law for judicial review of arbitration proceedings.

The arbitration shall be conducted in accordance with the rules of either the American Arbitration Association (AAA) or Judicial Arbitration and Mediation Services, Inc. (JAMS). The selection between AAA and JAMS rules shall be made by the claimant first filing for the arbitration. The parties to an arbitration may agree in writing to use different rules and/or arbitrator(s). In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9, of the California Code of Civil Procedure.

Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. The following matters are excluded from arbitration hereunder: (a) a judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sales contract as defined in Civil Code § 2985, (b) an unlawful detainer action, (c) the filing or enforcement of a mechanic's lien, (d) any matter which is within the jurisdiction of a probate or small claims court, and (e) an action for bodily injury or wrongful death, or for latent or patent defects, to which Code of Civil Procedure § 337.1 or § 337.15 applies. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to arbitrate under this provision.

Any dispute or claim by or against broker(s) and/or associate licensee(s) participating in this transaction shall be submitted to arbitration consistent with the provision above only if the broker(s) and/or associate licensee(s) making the claim or against whom the claim is made shall have agreed to submit it to arbitration consistent with this provision.

**“NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.”**

**“WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION TO NEUTRAL ARBITRATION.”**

Buyer's(s') Initials \_\_\_\_\_ / \_\_\_\_\_ Seller's(s') Initials \_\_\_\_\_ / \_\_\_\_\_

suffered significant monetary loss due to the buyer's default—a court might allow it. Also, the provision must be in at least ten-point boldface type (as shown) or in contrasting red print in at least eight-point bold type and signed or initialed by you and the buyer. This makes it clear that both parties actively chose to include the provision.

**Clause 22** lets you first try to settle any disputes that arise under the contract by nonbinding **mediation**. For example, disputes often arise when the inspection reports show that expensive repairs are needed, and the buyer asks the seller to pay for them. Mediation is a process where you and the buyer pick someone to help you reach a mutually agreeable decision. The result is never imposed on either party. Mediation is cheap, fast, and without the emotional drain and hostility of litigation. I highly recommend it.

Anyone can be a mediator, although it's best to have someone familiar with the real estate business. The person you choose should be fair-minded and work well with people. Don't suggest your agent (if you have one) or the buyer's agent. Both of you have an interest in getting someone you agree is impartial. The escrow holder may be willing to recommend someone as a mediator if you and the buyer are having trouble agreeing.

If you want any disputes to be decided by **arbitration**, you must include **Clause 23** in your contract. If you opt for it, you choose to resolve your dispute by arbitration should your attempt to settle any dispute informally or by mediation not succeed. You give up your right to a court trial.

In arbitration, you submit your dispute to one or more arbitrators for a decision. Some commentators and most real estate lawyers recommend against this clause, believing you have a better chance of winning big by going to court. I don't agree. Like mediation, arbitration is cheaper, faster, and less hostile than litigation.

#### **24. Attorneys' Fees**

If litigation or arbitration arises from this contract, the prevailing party shall be reimbursed by the other party for reasonable attorneys' fees and court or arbitration costs.

#### **25. Entire Agreement**

This document represents the entire agreement between Buyer and Seller. Any modifications to this contract shall be made in writing, signed and dated by both parties.

#### **26. Time Is of the Essence**

Time is of the essence in this transaction.

In our contract (**Clause 24**), the losing party in arbitration or litigation (you could wind up in litigation if you choose arbitration and the buyer doesn't agree, or vice versa) is responsible for its own—and the other side's—attorneys' fees and court costs. This clause is standard.

**Clause 25**, which states that this contract is the **entire agreement** between you and the buyer and that all modifications to the contract must be in writing, is simply a statement of the existing law that oral real estate agreements are not enforceable. If you're relying on anything the buyer has told you, get it in writing.

**Clause 26** is a standard clause in most contracts and emphasizes the importance of the dates you and seller agree to. It means that a missed deadline by either party is considered a substantial breach of the contract, which can result in the other party being given money damages or being allowed to cancel the contract.



#### TIP

**Put away your stopwatch.** Despite this provision, the trend is to reject cries of “she breached the ‘time is of the essence’ clause” for a delay of a few hours or days—for example, if the buyer fails to fulfill a financing contingency because things are backed up at the bank—unless you can show that you have suffered, or will suffer, damages as a result.

**Clause 27** is included to be sure that the buyer is notified of **disclosures** concerning material facts about the property, potential lead-based paint hazards, and flood or earthquake hazards. While you must disclose these in separate forms (see Chapter 7), including this clause in the offer form may bring it to the buyer's attention if you haven't yet provided the necessary disclosure forms, and is just one more way of making sure that your disclosures are acknowledged. Also, if you have given the buyer a copy of the booklet on environmental hazards issued by the state (see Chapter 7), be sure to get the buyer to acknowledge receipt of it.

This clause also alerts the buyer to the availability of a database maintained by law enforcement authorities on the location of registered sex offenders. Contracts entered into after April 1, 2006, for a sale of a house or other residential property must include this notice in not less than 8-point type. (Cal. Civ. Code § 2079.10a.) The required notice is

## 27. Disclosures

\_\_\_\_\_ By initialling here, Buyer acknowledges that he/she has received a copy of the Real Estate Transfer Disclosure Statement, Lead-Based Paint and Lead-Based Paint Hazards Disclosure (for pre-1978 houses), the Natural Hazard Disclosure Statement, and documents concerning local ordinances for smoke detectors, energy and water conservation, and conservation and inspection for hazardous waste (where applicable).

\_\_\_\_\_ By initialing here, Buyer acknowledges that he/she has received the following disclosure regarding a database of registered sex offenders: "Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet website maintained by the Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and zip code in which he or she resides."

Buyer shall, within \_\_\_\_\_ days of acceptance of this offer, make further inquiries at the appropriate government agencies concerning the use of the property. If such inquiries disclose conditions or information unsatisfactory to Buyer, which Seller cannot or will not correct, Buyer may cancel this agreement and be refunded the deposit. If Buyer fails to notify Seller in writing of unsatisfactory conditions or information, Buyer shall be deemed to approve of the condition.

### NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES

This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet website maintained by the United States Department of Transportation at [www.npms.phmsa.dot.gov](http://www.npms.phmsa.dot.gov). To seek further information about possible transmission pipelines near the property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by zip code and county on the NPMS Internet website.

different for contracts entered before this date, so be sure to use a form that is current. You are not required to provide additional information about the proximity of registered sex offenders.

The law clearly states, however, that a seller is not absolved of responsibility to make disclosures of "material facts" that would affect the "value and desirability" of a property. (These disclosure requirements are discussed in Chapter 7.) This means that if you know for a fact that a registered sex offender lives nearby, you are responsible for disclosing this "material" fact to the buyer. For more information on sex offender disclosure requirements and California's "Megan's Law," see <http://meganslaw.ca.gov>.

**28. Buyer's Signature**

This constitutes an offer to purchase the above-listed property.

Agent \_\_\_\_\_ Buyer \_\_\_\_\_  
 by \_\_\_\_\_ Buyer \_\_\_\_\_  
 Address \_\_\_\_\_ Address \_\_\_\_\_  
 \_\_\_\_\_  
 Telephone \_\_\_\_\_ Telephone \_\_\_\_\_  
 Email \_\_\_\_\_ Email \_\_\_\_\_  
 Date \_\_\_\_\_ Time \_\_\_\_\_ m.

**29. Seller's Acceptance**

Subject to: \_\_\_\_\_  
 Seller agrees to sell the property to Buyer in accordance to the terms and conditions specified above.

Agent \_\_\_\_\_ Seller \_\_\_\_\_  
 by \_\_\_\_\_ Seller \_\_\_\_\_  
 Address \_\_\_\_\_ Address \_\_\_\_\_  
 \_\_\_\_\_  
 Telephone \_\_\_\_\_ Telephone \_\_\_\_\_  
 Email \_\_\_\_\_ Email \_\_\_\_\_  
 Date \_\_\_\_\_ Time \_\_\_\_\_ m.

By signing **Clause 28**, the buyer agrees to make this an offer that will become a binding contract if you accept it. If the buyer is married, his or her spouse must also sign, unless the house is being purchased with separate property. If the buyer has an agent, the agent will sign it too, and include an address and phone number. The date and time when the buyer presents the offer should be included also.

If you sign **Clause 29**, you accept the buyer's offer as it stands. If you are married, you and your spouse both must sign, even if one spouse claims the house is separate property. A title company won't want to get involved in the complexities of California community property law and will want to see both signatures. You and the buyer may be able to review and sign the purchase documents electronically. If your buyer is represented by a real estate agent, that agent may have access to a service such as DocuSign, which allows you the very handy option of dealing with the documents and signatures using email (although hard copies may be required eventually).

When it comes to actual transfer documents (like grant deeds and trust deeds), which require notarization in order to be recorded, check with a local title insurance company to determine what is required. ●

## Offers, Counteroffers, and Negotiations

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This chapter covers responding to offers from prospective buyers and, when necessary, negotiating the price and other terms.

Before reading this chapter, however, be sure to read Chapter 10 so that you understand all terms in any offer presented to you. Most of your prospective buyers are likely to be represented by real estate agents, so I've drafted this chapter with this assumption in mind. Unrepresented buyers may be more challenging to work with—and you might want to suggest they purchase Nolo's *How to Buy a House in California*, by Ralph Warner, Ira Serkes, and George Devine.

## Listing Your House for Sale Doesn't Mean You Must Sell It

You do not have to accept any offer, not even one that meets or beats your price and other terms. Listing or advertising your home for sale is not a contract with the general public that you will sell it to anyone who offers the asking price. You have a legal right to reject an offer or remove your house from the market whenever you wish, within the following limits:

**Agent's rights.** As discussed in Chapter 4, if you list your house with an agent under an exclusive authorization or exclusive agency contract, and the agent brings you an offer that meets or exceeds your listing price and terms, you owe a commission—whether or not you go through with the sale.

**Discrimination.** If you refuse to sell to buyer A, but then promptly sell to buyer B at the same or a lower price or on more favorable terms, buyer A may take legal action if he or she is a member of a group that has historically been discriminated against. If it appears that your decision not to sell to buyer A was based on race, ethnic background, religion, sex, marital status, age, family status, or disability, you may face a lawsuit charging violation of state, federal, or local laws prohibiting discrimination. For information on antidiscrimination laws, contact the California Department of Fair Employment and Housing at 800-884-1684, or check their website at [www.dfeh.ca.gov](http://www.dfeh.ca.gov).

**Your signing the house sale contract.** This should go without saying, but some sellers seem to think that because the house is theirs, they can change their mind about the sale even after signing the “Seller's Acceptance” portion of the contract. Sellers who receive a later, higher

offer are particularly prone to this. Once you're in contract with a buyer, changing your mind is a breach of that contract and opens you up to a lawsuit demanding that you sell the house to the original buyer.

## The Offer Conference

In the lingo of the real estate world, the seller usually receives the buyer's offer at an offer presentation or offer conference. Here are some tips on how best to arrange and handle such conferences.

You are very likely to hear from agents who want to make offers on behalf of buyers, but only if you will cooperate by paying them a commission, usually 2.5% to 3.5% of the sales price. (See Chapter 4 for more on cooperating with agents.) If you do not wish to do this, politely decline to meet with agents. Alternatively, you may agree to cooperate and pay a commission, but only if offers to purchase are above a certain dollar amount.

I'll start by describing what to expect at an offer meeting with one buyer or a few buyers (or, more likely, with their agents) below. If you think there's a chance that you'll receive numerous offers, also read the following section, "Additional Considerations When Handling Multiple Offers."

## How to Handle the Typical Offer Conference

Make an appointment with the prospective purchaser for the presentation of the offer (unless you set a time in advance for the offer conference). If more than one buyer contacts you close to the same time, you may wish to schedule the appointments back to back. Although it's not legally required, I recommend entertaining offers in the order in which the prospective purchasers have contacted you.

Make it clear to prospective buyers that you expect offers to be in writing and accompanied by a cashier's or personal check (not cash) made out to an escrow or title company you and the buyer agree to. The buyer need only provide the check as a sign of good faith. You or your agent, if you have one, will hold the check uncashed until the offer is accepted. If you don't accept the offer, you return the check. It's typical to receive at least \$1,000 as a deposit, though no amount is required by law.

### Deposit Receipt

\_\_\_\_\_, Seller(s) of the property located at \_\_\_\_\_ in \_\_\_\_\_, California, hereby acknowledge receipt from, \_\_\_\_\_, Offeror(s), the sum of \$\_\_\_\_\_ in the form of a:  cashier's check  personal check  promissory note  other, payable to \_\_\_\_\_ (escrow or title insurance company). This check will be held uncashed by the Seller until the acceptance of this offer. If this offer is accepted, the deposit shall be delivered to the mutually agreed-to escrow holder named above and applied toward the down payment. This deposit will be returned to the Offeror if this offer is not accepted.

\_\_\_\_\_  
Seller's signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Seller's signature

\_\_\_\_\_  
Date

If you are working with an agent hired by the hour, this person may help conduct the offer conference. At this key stage, it may be worth it to pay for several hours of professional negotiating help. Aside from having a knowledgeable friend at your side, it allows you to distance yourself a little from negotiations over price and terms. Your representative can be the tough guy and then you can step in and compromise when the time is right.

Prepare for a quiet, businesslike meeting. Use your study or den if you have one. Failing that, use the dining room table or a coffee table in the living room, making sure the area is quiet, private, and free of clutter.

The person making the offer will present a written offer and deposit check to you. The heading of the contract provided in Chapter 10 and on the online companion page to this book (see the appendix for the link) spells out your receipt of the deposit. If the prospective purchaser's offer doesn't have language like this, you'll need to provide a separate receipt for the deposit, such as the sample shown here. There is a blank copy on the companion Web page to this book.

Sometimes the buyer will have nominated an escrow holder in the written offer. (See Clause 2 in Chapter 10.) If so, go along with the buyer's choice unless you have strong reason to disagree. Otherwise, you

will probably want to suggest an escrow holder. (For information on choosing the escrow holder, see “Opening Escrow,” in Chapter 12.)

Normally, once you receive the offer, you will want to do the following:

- If the written offer is not adequately detailed—for example, if it lacks sufficient information on financial terms—suggest that the prospective purchasers redo the offer using the form on the companion Web page to this book, getting independent help, if necessary. Alternatively, make your own counteroffer as described in “Counteroffers,” below.
- Pay particular attention to any time limit the buyer provides for you to respond in writing (Clause 18 of our offer form). If the offer demands a decision upon presentation or in a time period you find unreasonably short (say, less than two or three days), request a written amendment to the offer on the spot, allowing you more time. Do this by changing and initialing the time provision, and then have the buyer initial it also. Remember, it’s your house and you are entitled to call the shots.
- Request that the buyer provide you with a Credit Information Form (there’s one on the companion Web page to this book) or lender preapproval before you make your final decision on the offer. If the buyer completed a Credit Information Form, take a look at “Evaluating a Potential Buyer’s Credit” in Chapter 9 to see whether the buyer can afford to purchase your house.
- Carefully study the offer, including all contingencies. This should give you a preliminary opinion as to whether the sale is likely to go through if you accept the offer.
- Make sure that the buyer has received and signed copies of the disclosure forms set out in Chapter 7 (copies are on the companion Web page to this book), along with all inspection reports that have been done in the last two years. If you haven’t already given the Real Estate Transfer Disclosure Statement to the buyer, he or she has three days from receiving it (that is, the date of the offer conference) to back out of the deal.
- Make sure the offer lists the exact time and date, to avoid confusion with later counteroffers.

Typically, at this stage, you will want the buyer to tell you more or to clarify any ambiguities. For instance, if the offer doesn't specify whether the buyer is actually financially qualified to buy the house, you might ask whether a loan has, in fact, been preapproved. Or, if the offer doesn't mention when the buyer expects escrow to close, or whether he or she needs to sell a house first, you'd want to inquire about these important details.

You probably won't want to debate terms, or make an on-the-spot decision. Of course, if you are absolutely convinced that the buyer is financially qualified to make the purchase and is offering you a price and terms you simply cannot refuse, you might accept the offer right away. Alternatively, you might reject an offer that has a ridiculously low price or unacceptable terms.

But in most cases, it's best to thank the offerors courteously and tell them you will consider their offers and get back to them. If they press you for a decision, simply stand up, usher them to the door politely, and insist on time to think.

If you immediately receive an offer after a well-attended open house, how long should you wait for more offers? The answer, of course, depends on your particular circumstances—most importantly, whether you feel your asking price was high or low. Obviously, if you've asked for a very high price and get it, or if the market is slow and you doubt that other offers are forthcoming, you will probably want to accept. Otherwise, you are probably best advised to slow things down a little and wait for other offers.

## **Additional Considerations When Handling Multiple Offers**

If the real estate market in your area is relatively hot, or if you've priced your house just at, or even a little below market value, you may receive more than one offer. If your house inspires a feeding frenzy, you could find offers piling up on your desk. In such circumstances, how can you get the best price and terms, while operating in a businesslike manner?

The first thing to realize is that you have no obligation to disclose the terms of any offer to other potential buyers—though they'll be dying to know, so they can outbid the earlier offers. In fact, the terms of a particular person's offer are private and should never be revealed to

others in combination with the person's name, without first obtaining the permission of the person who made the offer.

Moreover, for the most part, it's against your interest to disclose the terms of other offers. The reason is that potential buyers trying to outguess the competition may, lacking information, bid higher just to be safe. On the other hand, there may be circumstances where you can spur better offers by disclosing information, such as if one unusually high offer has come in with contingencies you don't like. The choice is yours—but if you choose to disclose, remember not to mention any names or personal details without getting the permission of the offerors first.

If you expect multiple offers, plan ahead by preparing a sheet (to be given out with your flyers or other written information) specifying:

- A date and time by which offers must be presented, either in sealed envelopes or at a conference (tell them how to make an appointment, along with the earliest possible appointment time). State the place where offers are to be presented, even if it's at the sale property itself.
- The form in which the offers are to be submitted (you can specify a particular type of printed contract, like the contract in this book).
- Documents that you would like to accompany the offer, such as preapproval letters from lenders.
- A date and time when you will actually be considering and possibly asking questions about the offers (if this won't be at a live conference).
- A date, time, and method (fax, email, or other) by which you will respond to the offers.
- The manner in which buyers should make deposit payments. It's best to avoid the hassle of holding other people's money (even in the form of uncashed checks) by asking that deposits not accompany the offers. Instead, state that upon your acceptance, the buyer will have one or two business days to deposit a cashier's check to an escrow or title company. This means you won't have to play ping-pong with deposits from unaccepted offerors.

During the offer conferences, do your best to appear neutral with each prospective buyer. Even if you receive an eye-poppingly high offer, avoid the "Wow!" response. You don't want to raise false hopes before you've had time to review all of the offers in peace and quiet. An offer

that looks great on its face, may, on further review, appear less favorable because of shaky financing or unacceptable contingencies.

Many offerors include items you didn't ask for in the offer materials—most commonly, a letter describing the offeror's family composition and strong desire to live in your home. If you are fond of your home and want to see it go to a good new owner, you may be tempted to weigh these into your decision. Do so only with great caution, however. If your decision could be interpreted as discriminatory—that is, based on classifications protected under federal, state, or local laws, such as race, religion, marital status, or sexual orientation—you are opening yourself up to a lawsuit. Discrimination can be as subtle as choosing someone who says, "I so want my children to go to St. Mary's school!" if their offer is otherwise comparable to the rest.

**TIP**

**Check out prospective purchasers' homes, if their offers are contingent on selling them.** Use what you've learned in this book to gauge the housing market as it applies to the buyer's home. You might drive by the house in question, to see where it rates on the spectrum of crowd pleaser versus neighborhood eyesore. Also, ask whether the buyer has taken steps to put the house on the market—and if the answer is yes, ask for proof.

After you've reviewed all the offers, chances are good that you'll find one that you like. If so, ratify that offer and politely notify the other offerors, by the promised date, that you've entered into escrow. Although they will all be curious about the price and terms of the offer that you've accepted, you need not disclose these.

**CAUTION**

**Don't necessarily leap at an offer containing no inspection contingencies.** Some buyers attempt to separate their offer from the competition by waiving all inspection contingencies—essentially saying that they'll take the house as is, with no expectation that you should pay for, or reduce the sale price based on any needed repairs. But does this really protect you from all liability? Some real estate professionals point out that a disgruntled buyer can always sue you, even without a good case. The buyer might claim, "I was under pressure" or "I was discouraged from having the property inspected."

Even if the buyer ultimately loses, you'd have to defend the case. To be prudent, you might suggest to buyers making as-is offers that they have the home inspected before you've accepted their or someone else's offer, so that they can't make these claims.

If you aren't happy with any of the offers, you can counteroffer some or all of them. Your hope will be that one of the offerors makes a counter offer that meets all of your desired terms. For instance, you could counter several offers in a given price range, specifying a higher price. That puts the offerors in a race to accept. This strategy could backfire, however, if no one rises to the bait. Although you could swallow your pride and present revised counteroffers to one or more of them on terms closer to their original offer, they may, by then, have moved on to other prospects.

## Revoking an Offer

A prospective buyer may revoke (literally “call back”) an offer in writing any time before you communicate your response. For this reason, sellers are usually quick to accept favorable offers. In addition, almost all offers come with a time limit during which the offer must be accepted in writing, or it automatically ends. If you try to accept after the specified date and time, the offeror may simply say, “Sorry, but you acted too late.” Even if an offer contains a time limit, it can be revoked by the offeror prior to that time.

**EXAMPLE:** Helen listed her home for sale at \$735,000. She received an offer from Bill for \$719,500, which allowed her four days to accept. Helen decided to wait a few days before responding because she expected offers from other people who had expressed an interest in her house. Three days after she received Bill's offer, and with no other offers in sight, Helen called him to say she was bringing over her written acceptance. Before she could do so, Bill said, “I'm so glad you called; I was just about to let you know that I'm revoking my offer, because I've found another house.” Bill's revocation is legal, although he should follow it up in writing.

You and the buyer can also revoke counteroffers, discussed in “Revoking a Counteroffer,” below.

## The Art of Negotiating

When it comes to meeting and negotiating with potential purchasers, you may feel intimidated or unsure if you have no negotiation experience. There may even be a danger that a savvy buyer will talk you into agreeing to a contract that is not in your best interest.

Never reveal too much information, such as the lowest price you’ll take or the fact that you need to sell the house as quickly as possible. Obviously, you don’t want to give away as much money by negotiating poorly as you save by selling your own house. If you have any doubt as to your negotiating skill or the best strategy to follow, arrange to get help. As noted in Chapter 4, you can hire an experienced agent to help you with this crucial stage of the house-selling process at a reasonable hourly rate.

If you don’t want to negotiate yourself or have a real estate professional negotiate for you, consider friends or relatives. A good negotiator doesn’t need to be hard-boiled, penny-pinching, or manipulative. He or she should pay attention to details and have strong communication skills and common sense. Bear in mind, however, that only real estate agents and attorneys may legally be paid for negotiating a real estate transaction on your behalf.

There are several good books available on negotiation strategies, including *Getting to Yes: Negotiating Agreement Without Giving In*, by Roger Fisher and William Ury (Penguin Press).

## Counteroffers

If you receive an offer that doesn’t satisfy you, it usually makes sense to counteroffer in writing, making it clear how long the potential buyer has to accept. This normally ranges from as little as a few hours to as long as a few days, depending on the situation and your needs. Because counteroffers, like offers, are extended for a very short time, be sure that all counteroffer documents show not only the date, but the exact local time

(Pacific Daylight Time or Pacific Standard Time) of presentation and expiration.

You may want to counter all the offers in an identical fashion—either simultaneously or as they come in—or tailor your responses to each offer. Either way, you will have a contract when the first counteroffer is accepted. You'll need to immediately revoke any other counteroffers in writing, however—otherwise, you could find yourself agreeing to sell your house to more than one buyer. “Revoking a Counteroffer,” below, explains how to do this.

## Common Terms in a Counteroffer

The logical way to decide what to counteroffer is to review the terms of the offer. Any terms you agree with stay; those you don't like you can either eliminate or modify. For example, if the buyer's offer is contingent on selling an existing house or arranging financing, you will want to counteroffer with a wipeout clause if one is not already included. (See “Backup Offers and Wipeout Clauses,” below.)

Here are some of the terms you may want to alter in your counteroffer:

**Price.** Some buyers may assume that you have overpriced the house slightly to leave room for bargaining and will be surprised if you aren't willing to negotiate.

**EXAMPLE:** Sally puts her house on the market for \$610,000. Within two weeks, she has two offers for \$595,000. The offerors probably realize that Sally's house is worth around \$610,000, but are trying to bargain to get it for a little less. Here are Sally's options:

1. Sally can reject the offers and stick to her price.
2. Sally can counter with a higher price, somewhere between \$595,000 and \$610,000.
3. Sally can say, “I'm sorry, but because several people are interested in the house, the price is no longer \$610,000—I'm raising it to \$620,000.” The potential buyers, of course, are likely to be shocked. This gives Sally a chance to say that she will honor the original price if someone really wants to commit to buy it immediately.

**Financing.** If the offer contains financing terms you believe are impractical, or if you don't feel the buyer will qualify for the amount or type of loan proposed, change the unacceptable provisions in your counteroffer. If the buyer proposes that you carry a second deed of trust and you don't want to, counteroffer eliminating this provision.

**Occupancy.** If the offer doesn't give you enough time to move out, change it in your counteroffer.

**Contingency of buyer selling a house.** Often an offeror will propose to buy your house contingent on first selling the one he or she already owns. Ask yourself if the buyer has a realistic chance of selling the present home during the time period allowed. If you don't think so, refuse to accept this term. This may kill the deal, of course, but a buyer who really wants your house may be able to get short-term financial help from family or friends, or a bridge loan from a bank.

**Inspections.** Some of the buyer's inspection proposals may allow too much time. If so, propose changes.

## Making a Counteroffer

Now it's time to make your written counteroffer, which should be presented at a conference much like the original meeting. Assuming the basic terms of the deal are specified in writing in the original offer, all you need to do is specify the items you wish to change. If the changes are minor, you can make them on the offer (initialing and dating each change) or use the short form counteroffer included on the online companion page to this book. See the completed sample below.

If the offer you receive is not detailed enough to form the basis of a good contract, use the long form counteroffer on the online companion page to this book. This is identical to the offer form discussed in Chapter 10—only the heading has been changed. You're basically redoing the entire offer.

For many sales, the written offer-acceptance process is completed relatively quickly—the buyer makes an offer, the seller suggests a few changes, the buyer agrees. Sometimes, however, the process drags on, with counteroffers, counter counteroffers, and counter counter counteroffers flying back and forth for days, or even weeks. This can work well, if you and the buyer narrow the differences with each counteroffer. But don't get so caught up in negotiating that you make a bad deal.

### Short Form Counteroffer

Helen and Robert McCloskey \_\_\_\_\_, Seller(s) of the real property at  
291 Cornell Ave., Culver City \_\_\_\_\_, California, accept(s) the offer to purchase  
 the property dated February 4, 20xx \_\_\_\_\_, made by Catherine Morris \_\_\_\_\_  
 with the following exceptions:

1. Price to be increased from \$760,000 to \$790,000.
2. Financing contingency to be removed by February 27, 20xx.

<u>Helen McCloskey</u> _____	<u>February 4, 20xx</u> _____	<u>4:00 p.m.</u> _____
Seller's signature	Date	Time
<u>Robert McCloskey</u> _____	<u>February 4, 20xx</u> _____	<u>4:00 p.m.</u> _____
Seller's signature	Date	Time

## Accepting an Offer or Counteroffer

A contract is formed when either the buyer or the seller accepts all of the terms of the other's offer or counteroffer in writing within the time allowed.

You may create a valid contract if you accept an offer orally, but don't leave yourself vulnerable to possible disagreements in the future. A law called the statute of frauds, Cal. Civ. Code § 1624, says a contract for the sale of real estate must be in writing. Besides, no lender will work with you unless both the offer and acceptance are in writing. All owners, all buyers, and all their spouses should sign the contract.

You and the buyer don't legally need to sign the same piece of paper. The buyer can make an offer and you can accept in writing by a separate letter or document. The usual procedure, however, is to have both signatures on one document. To go that route, you should sign the bottom of the buyer's offer or the buyer should sign the bottom of your counteroffer, accepting it. If, for any reason, you need a separate acceptance form, use the one set out below. There is a blank copy on the online companion page to this book.

After you and the prospective buyer have signed the offer or counteroffer, do the following:

### Acceptance of Purchase Offer

\_\_\_\_\_  
 \_\_\_\_\_, the owner(s) of the property at

\_\_\_\_\_ in the city of \_\_\_\_\_,  
 county of \_\_\_\_\_, California, hereby accept the offer to  
 purchase the property made on \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
 Seller's signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Seller's signature

\_\_\_\_\_  
 Date

- Make photocopies of the contract; give one to the buyer and keep one.
- Make sure that the buyer gives you a deposit check made out to the agreed-upon escrow or title company in the amount called for in the contract.
- Keep all paperwork in a safe place.
- Give copies of documents to any real estate agent, attorney, or tax adviser who is assisting you.
- Cooperate with the buyer to begin escrow proceedings.

**EXAMPLE:** Ito presents Monique with a typed offer to purchase her house for \$800,000 with 20% down, contingent on a satisfactory structural pest control report. This is fine with Monique, but she realizes that many other provisions should be included in the final contract. So she fills out a detailed counteroffer form, plugging in Ito's proposals, along with more details. Ito reads her counteroffer and asks for a few minor changes. Monique makes these on the counteroffer form, and then initials and dates them. Ito also initials and dates the changes and then accepts in writing by signing the counteroffer form in the appropriate place. The deal is done.

## Revoking a Counteroffer

You or the buyer may revoke an offer or counteroffer in writing any time before the other party accepts in writing. You needn't state a reason. If you want to revoke a counteroffer, do so right away. Call the buyer or the buyer's agent and explain that you're revoking your counteroffer; immediately follow up in writing. The best ways to do this are by email, fax (follow up by sending the original to the buyer or agent), hand delivery, or overnight mail.

Obviously, one reason you may want to withdraw your counteroffer (and return the buyer's deposit check) is if another potential buyer materializes with a better offer. If the buyer accepts in writing during the time allowed by your counteroffer before you revoke it, however, a binding legal contract has been established and you no longer can revoke your counteroffer. This is true even though you and the buyer never sit down and sign the same document.

### Counteroffer Revocation

\_\_\_\_\_  
 \_\_\_\_\_, the seller(s) of the property at  
 \_\_\_\_\_  
 \_\_\_\_\_ in the city of \_\_\_\_\_,  
 county of, \_\_\_\_\_ California, hereby revoke the  
 counteroffer made on \_\_\_\_\_ to \_\_\_\_\_  
 \_\_\_\_\_ buyer(s) and hereby authorize the  
 escrow holders to return to buyer(s) any deposit funds tendered by buyer(s).

\_\_\_\_\_  
 Seller's signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Seller's signature

\_\_\_\_\_  
 Date

Deposit received by:

\_\_\_\_\_  
 Buyer's signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Buyer's signature

\_\_\_\_\_  
 Date

**EXAMPLE:** Jacob wanted to sell his house for \$775,000. Nancy made an offer of \$769,000. Jacob counteroffered with \$773,000 and gave Nancy three days to respond. While Nancy thought about whether to accept Jacob's counteroffer, Jacob received a second offer from Susan for \$776,000. Because Nancy had not yet accepted Jacob's counteroffer, Jacob gave Nancy a written revocation and accepted Susan's higher offer. Nancy lost out.

Above is a counteroffer revocation form. There is a blank copy on the online companion page to this book.

## Backup Offers and Wipeout Clauses

If you receive an offer that meets all your needs and is virtually certain to result in a sale, then you have little reason to accept backup offers. As it often happens, however, a good offer still leaves you wondering whether or not there is a better one yet to come, which you will be turning down by accepting the present offer. Furthermore, most offers contain contingencies that, if not satisfied or removed, will cancel the deal and put you back at square one.

To avoid starting all over if a deal falls through and to let you continue to search for better offers, many sellers accept backup offers. If you plan to accept backup offers, your primary contract must say so. You can use the following language in your counteroffer:

### **Seller's Right to Accept Backup Offers**

*Seller may enter into subsequent contract(s) with (an)other person(s) for sale of the property. Any such contract(s) shall be contingent on the termination of the contract between Buyer and Seller. Seller shall notify all other offerors of the existence, though not the terms, of this offer.*

For additional protection, sellers may counteroffer with a "wipeout clause." In the contract with the first buyer, you state that the offer may be bumped out of its primary position if the first buyer cannot remove all contingencies within a certain time (I suggest 96 hours, or about four days) of your giving notice that you have accepted a backup offer.

This clause is often referred to by real estate agents as a “72-hour wipeout clause,” as their contracts typically allow 72 hours for the primary offeror to wipe out contingencies or be wiped out of the running. I believe 96 hours is more appropriate, given that the period in question could cover a weekend when businesses are closed.

If you want to include a wipeout clause, use the following language in your counteroffer:

**Seller’s Right to Demand Removal of Contingencies**

*If, any time at least two weeks from the date Buyer and Seller enter into a contract for purchase of the property, Seller gives Buyer a written demand to remove all contingencies in Clause 8 of this contract concerning inspection reports and/or the Buyer’s ability to arrange financing and/or get approval for assumption of loans, and/or the Buyer’s ability to sell an existing residence, Buyer shall have ninety-six (96) hours from receipt of the demand if personally delivered (or five days from the date of mailing, if the demand is mailed by certified mail) in which to remove all these contingencies. If Buyer cannot do so, then the contract shall be terminated immediately. Buyer and Seller shall sign a mutual release, and all deposits shall be returned to Buyer.*

Be aware that you’re essentially saying to the buyer: “I’m giving you 20 (or thereabout) days to remove contingencies, but you’d better act quickly, because if I get a better offer, just two weeks from now, I can demand immediate removal of the remaining contingencies or the deal is off.” Some buyers may balk—and you risk losing the deal if you insist on a wipeout clause.

**EXAMPLE:** Harry offered his home for sale for \$375,000, thinking he’d be delighted to accept \$360,000. Harry was surprised to receive an offer from Eddie and Ethel for \$5,000 more than his full asking price. The offer included contingencies that Eddie and Ethel sell their existing home as part of arranging financing and that Harry’s home pass a termite inspection.

Harry called a broker friend who gave him this advice: “If you believe you priced the property accurately, accept the offer, but include a 96-hour wipeout clause. This way, if your deal with Eddie

### Seller's Demand for Removal of Contingencies

Under the terms of the contract dated \_\_\_\_\_, between  
 \_\_\_\_\_ (Buyer) and  
 \_\_\_\_\_ (Seller) for the  
 purchase of the real property at \_\_\_\_\_  
 \_\_\_\_\_ (address), Seller hereby demands  
 that Buyer remove the following contingencies specified in Clause(s) \_\_\_\_\_  
 of the contract:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ within

- ninety-six (96) hours from receipt of this demand, if personally delivered.
- seventy-two (72) hours from receipt of this demand, if communicated electronically, i.e., by facsimile, cellular phone, or email, bearing identification of the sender and a time and date stamp.
- five (5) days from mailing this demand, if mailed by certified mail.

If Buyer does not remove this contingency within the time specified, the contract shall become void. Seller shall promptly return Buyer's deposit upon Buyer's execution of a release, releasing Buyer and Seller from all obligations under the contract.

\_\_\_\_\_  
 Seller's signature \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Seller's signature \_\_\_\_\_  
 Date

Personally delivered on: \_\_\_\_\_

Communicated electronically on: \_\_\_\_\_

Mailed by certified mail on: \_\_\_\_\_

and Ethel stalls and you receive another offer, you can ask Eddie and Ethel to remove their contingencies within 96 hours. On the other hand, if you believe that you may have underpriced the property, you might want to wait a week or even raise the price to Eddie and Ethel in a counteroffer.”

On the previous page is a form to use to exercise your right to accept a backup offer and demand that the buyer remove the contingencies specified in your counteroffer. There is a blank copy on the companion Web page to this book (see the appendix for the link).

**EXAMPLE:** Jane accepted Toby’s offer to purchase her house for \$410,000, although she had only expected to get around \$395,000. The problem was that Jane wasn’t 100% sure of Toby’s ability to secure a loan, even though the financial information he provided looked pretty decent. One problem was that Toby was hoping to obtain a bank loan for 90% of the purchase price, with only a 10% down payment.

Jane insisted on a 96-hour wipeout clause in her contract with Toby. This allowed her to realistically deal with backup offers while keeping Toby’s deal on the front burner. Of course, Jane disclosed the fact of the contract with Toby to backup offerors. Two weeks later, a second offer came in for \$425,000. This buyer was willing to make a 20% down payment and had the necessary cash in hand. In a counteroffer, Jane gave Toby 96 hours to wipe out the contingency that he be able to arrange the financing his offer described. As it turned out, Toby was unable to wipe out his financial contingency. He signed a form releasing Jane from obligation under the contract and got his deposit back, and Jane was able to sell to the other buyer without delay. ●



## After the Contract Is Signed: Proceeding Through Escrow

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Congratulations! You are in contract to sell your house! But it's not yet time to move out. After signing a contract, you're usually still a month or more away from a final house sale. This chapter covers all the technical tasks involved in closing escrow or transferring ownership—including opening an escrow account, obtaining title insurance, and removing contingencies.

The time it takes between the contract signing and the close of escrow depends on what remains to be done following the signing. If you're waiting for a buyer to sell his or her existing house, the process could take a long time. If you don't have such unpredictable contingencies and foresee no serious problems with financing or inspections, you can expect to close escrow in one to three months.

You must understand the escrow process before you begin. Opening and successfully closing escrow involves detailed, picky, and often overlapping steps, so read this entire chapter carefully.

## Opening Escrow

In finalizing the sale of your house, you and the buyer need a neutral third party, the escrow holder, to:

- hold onto, and then exchange, deeds and money
- pay off existing loans
- record deeds
- prorate the property tax payments, and
- help with other transfer details.

To begin this process, you and the buyer open an escrow account with a person or organization legally empowered to act as an escrow agent. In many eastern and midwestern states, escrow is commonly handled by lawyers, and is called “settlement.” Lawyers need not be involved with escrow in California, and usually aren't, unless an unusual problem arises (for example, there is a cloud on the title), in which case either buyer or seller may wish to consult an attorney. By custom, escrow is done differently in Northern and Southern California.

**Northern California.** An escrow account is normally opened with a title insurance or title company by the buyer immediately after the purchase contract is signed. In some circumstances, the buyer and seller

## Escrow Terminology

The following are common real estate terms used during escrow:

**Close of escrow or closing.** The final transfer of ownership of the house to the buyer and payment to the seller. It occurs after both the buyer and seller have met all terms of the contract and the deed is recorded. Closing also refers to the time when the transfer will occur, such as, “the closing on my house will happen on January 27 at 10:00 a.m.”

**Closing costs.** The expenses involved in the closing process, including escrow fees and title insurance.

**Closing date.** The date escrow closes. Until all contingencies in the buyer’s offer are removed, no firm closing date can be set. Thus, during the early and middle stages of an escrow, the closing date is projected, not firm.

**Closing statement.** A document prepared by the escrow holder containing a complete accounting of all funds, credits, and debts involved in the escrow process. Basically this amounts to a statement of the amount of cash the buyer and the buyer’s lender have put into escrow, how much the seller has received, and how much money was used for other expenses.

**Demand or request for beneficiary statement.** A letter from the seller’s lender to the escrow holder telling how much the escrow holder must send the lender to pay the seller’s existing mortgage in full. The lender sends it after being notified by the escrow holder that the seller is selling the house and expects to close escrow by a certain date. If the time between opening and closing escrow is reasonably short, the seller will want to receive the demand fast, to include the calculations in the closing. If the time between opening and closing will take some time, however, the seller won’t rush the demand. A demand is typically good for only 30 days; if it comes too soon, it will expire before escrow closes, and the seller will have to request a second one.

**Final title report or final.** Just before the close of escrow, the title company rechecks the condition of the title established in the preliminary title report. If it’s the same (it usually is), the preliminary title report becomes the final report, and title insurance policies are issued.

**Funding the loan.** After the lender issues a loan commitment letter, the lender must actually fund the loan—that is, deliver the money to the escrow holder. California law requires that checks and drafts be collected

### Escrow Terminology (continued)

prior to disbursement. This means that to close escrow, funds must be deposited one or more days prior to the close of escrow.

**Legal description or legal.** The description of the parcel of land being sold that appears on the deed to the property. It has nothing to do with the buildings, but rather the land itself. The legal may specify lot and block numbers or metes and bounds (a complicated exercise in map reading), none of which should concern you. (If you want to know more about legally describing California real property, see *Deeds for California Real Estate*, by Mary Randolph (Nolo).)

**Loan commitment.** A written statement from a lender promising to lend the buyer a certain sum of money on specified terms.

**Opening escrow.** Escrow is opened when you and the buyer select an escrow agent to hold onto and transfer documents and money during the house purchase process.

**Preliminary, prelim, or pre.** The preliminary title report issued by a title company soon after escrow opens. It shows current ownership information on the property (including any liens or encumbrances on the property). If any problems are found, you can take steps to resolve them before escrow closes. The title insurance policy issued at the close of escrow is usually based on this report.

**Taking title.** Describes the transfer of ownership from seller to buyer. For example, "The buyer takes title [*gets his or her name on the deed*] next Tuesday."

may together select the escrow agent. Title companies not only provide the necessary title insurance, but also handle financing arrangements, such as collecting the buyer's down payment and funds from the buyer's lender, paying off the seller's existing lender, and preparing and recording a deed from the seller to the buyer and a deed of trust for the buyer's lender.

**Southern California.** An escrow account is usually opened by the buyer and seller with an escrow company, which prepares the necessary papers and exchanges the seller's ownership interest for the buyer's money after deducting the amount needed to pay off the seller's existing mortgage, past

taxes, and other liens. Title insurance is obtained from a title insurance company, which usually isn't otherwise involved in the escrow process.

**Other escrow holders.** Although it's unusual, escrow can be legally handled by someone other than a title or escrow company. The buyer or seller's attorney, a real estate agent participating in the transaction who has a trust account for supervising escrows, or the escrow department of a bank are all legally empowered to do the job.

## When to Open Escrow

When you accept the buyer's offer to purchase the house or the buyer accepts your counteroffer, a deposit is usually taken to the title or escrow company, and an escrow account is opened by the buyer or seller, depending on local custom. If a real estate agent procured the offer, the agent is responsible for taking care of this. The deposit is usually in the form of a check accompanying the offer. (For more information on deposits, see Chapter 10.)

## How to Find an Escrow Holder

The escrow clause (Clause 2) of the offer contract discussed in Chapter 10 has a place to enter the name and address of the escrow holder. In some situations, you may disagree with the buyer over the choice of escrow holder. Unless you feel very strongly about using "your" escrow agent or not using the buyer's, give in. You don't want the buyer to later take legal action against you based on your having insisted on an escrow holder who worked against the buyer's interests.

How do you find an acceptable title or escrow company? As with finding any service provider, it's best to get a recommendation from someone you trust, particularly someone who has sold a home. If you are working with a real estate professional on any aspect of your house sale, that person will almost surely have some recommendations.

If you are considering several recommended firms, you may be inclined to call around and compare prices, but prices tend to be pretty similar. Because of the small potential savings involved, it normally makes more sense to concentrate on finding a company that offers superior service, especially if you're handling the purchase without professional help.

Be sure that the escrow company you choose will be supportive to the self-help home seller, and not think that it's beneath its dignity to work with a nonprofessional. If you understand the basic escrow terminology (see chart, above), you'll have an easier time dealing with escrow and title companies.

## **How to Work With the Escrow Holder**

What happens after escrow opens depends largely on your escrow agent and your contract with the buyer. If the contract contains contingencies, the escrow holder will do very little until you and the buyer remove them.

The buyer's agent, if any, should help to see that the escrow process goes smoothly. If neither you nor the buyer is working with an agent, however, you'll need to handle the details yourselves. You should clearly understand what the company needs from you and when it needs it. Fortunately, it's not difficult. Make an initial appointment with the escrow agent. Bring the contract with you and use it as your guide to ask questions. Check in regularly—about once a week—to be sure you're doing what's expected and that the process is on track.

Your contract with the buyer will contain a clause specifying the date for delivering written escrow instructions to the escrow holder. These instructions authorize the escrow company to give you the money and give the buyer the deed to the property, and should be delivered a few days before the closing date. The escrow company itself can help you prepare these instructions.

## **Order Title Insurance**

Ordering title insurance from a title insurance company, usually the same company handling the escrow in Northern California, is the buyer's responsibility. The title company issues a preliminary title report, and then just before closing, a final title report and two title insurance policies. Title insurance is discussed in "Title Report and Title Insurance," below.

## The Cost of Escrow

Escrow costs, which are considered part of closing costs, are usually under 1%–2% of the purchase price. Included in the escrow costs are the preliminary and final title reports, recording of the deed, notarization, the title company's fees, the escrow company's fees (if applicable), and title insurance policies. In Southern California, the costs are divided between the escrow company and a title insurance company. In Northern California, all costs are paid to the title company.

No law specifies who pays escrow costs; you and the buyer negotiate this as part of forming the contract. For our discussion on who *customarily* pays what fees, see the chart, “Who Pays for What,” and Clause 4 in our offer form in Chapter 10.

## Removing Contingencies

Depending on the exact provisions of the contract you and the buyer sign, there will probably be several contingencies that must be removed before your sale becomes final. As buyers and sellers satisfy a contingency, they must remove or release it in writing.

You remove a contingency by executing a Contingency Release form such as the one below. (There is a blank copy on the companion Web page to this book.) You may need to print several copies of the release form so that you can remove each contingency as soon as possible. Give the original to the buyer and keep a copy for yourself.

Don't wait until all contingencies are met to execute a release. Remove each one as it is satisfied. If the structural pest control report and general contractor's report are made within a couple of weeks after the real estate sale contract is signed, but financing hasn't yet been approved, the buyer should still remove these first two contingencies. This is because the time limits for removing inspection contingencies are usually shorter than those involving financing or the sale of an existing house.

Sometimes, you or the seller may be unable to meet a contingency. If both parties agree, you can waive the contingency and release it. For example, if you condition the sale on purchasing a new house but haven't found one by the time the contingency is due, you may nonetheless

wish to sell the property to the buyer. In that case, you can release the contingency and proceed with the sale.

## Inspection Contingencies

Most house purchase contracts give the buyer the right to have the house inspected by specified inspectors, and approve the results of their reports, before going through with the sale. To do this, buyers hire and normally pay inspectors. You must let the inspectors have access to your house, as spelled out in Clause 8 of the contract in Chapter 10. There is no compelling reason for you to accompany inspectors on their rounds, but if you wish to, there should be no objection. Inspectors should have copies of your Real Estate Transfer Disclosure Statement (see Chapter 7) and all other inspection reports done in the last few years.

### When Problems Are Discovered During Inspection

Sometimes problems are discovered during an inspection. For example, your house may have termite damage, or need new wiring or foundation repairs. If the problems will be expensive to fix, the buyer may refuse to go ahead with the deal unless you are willing to pay all or part of the repair costs.

At this point, you and the buyer should negotiate over who pays for what repairs. While many sellers agree to pay for most or all repairs, all sorts of financial arrangements are possible. If you've gotten a great price for your house, you might readily agree to pay for all or most of the repairs. If, however, you feel that you underpriced the house, you will not want to pay for a lot of fix-up work. You may be better off letting the buyer walk away from the deal and putting the house back on the market. Don't be too quick to dump a buyer, however, because the next one may have the same reaction—and you're legally bound to disclose to new prospective buyers the results of previous inspections.

In many situations, negotiating to remove contingencies can be emotionally difficult. Understandably, neither you nor the buyer will want to spend large sums of money at a point where you each probably feel you've already compromised enough. You may benefit from the advice of someone experienced in negotiating real estate deals, especially if serious problems are discovered during the inspections.

**Contingency Release**

\_\_\_\_\_,  Buyer  Seller of the property at \_\_\_\_\_  
 \_\_\_\_\_ (address), hereby removes the following contingency(ies) from the purchase contract dated \_\_\_\_\_:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

If this release is based on accepting any inspection report, a copy of the report, signed by Buyer, is attached, and Buyer releases Seller from liability for any physical defects disclosed by the attached report.

Buyer's signature	Date
Buyer's signature	Date
Seller's signature	Date
Seller's signature	Date

To cover the cost of repairs, usually the buyer will ask for an escrow credit, meaning a credit against the price of the house for the amount of the repairs. In some instances, the buyer's lender will require that the buyer use the money you credit to make the repairs before escrow closes.

If the buyer assumes the responsibility of paying for some or all repairs, however, one or two scenarios will probably take place. One, the buyer will take title to the house in its substandard condition, and have to make repairs later. Or, two, the lender will insist that the repairs be made before the sale closes, in which case the buyer will have to come up with the necessary cash. The more work that needs to be done, the more likely it is that a financial institution will require that it be done prior to closing.

## Releasing Inspection Contingencies

As inspections are done on your house and reports are issued, have the buyer date and sign the inspection report and write “approved as read” somewhere on the document, assuming the buyer is satisfied that the house passes the inspection. Attach the signed report to the Contingency Release form and keep a copy.

If you agree to credit the buyer for the cost of any repairs, add the following to the contingency release, after the word “report”:

*provided that by \_\_\_\_ .m. on \_\_\_\_\_, Seller agrees in writing to extend to Buyer an escrow credit in the amount of \$ \_\_\_\_\_ against the purchase price to cover the cost of needed repair and rehabilitation work to be paid by Buyer.*

**EXAMPLE:** Mary listed her house for \$475,000, and agreed to sell it to Albert for \$450,000. Albert’s offer was contingent upon having a satisfactory pest control inspection. The inspection turned up \$10,000 worth of problems. Albert wrote Mary a memo, stating that he wouldn’t remove the inspection contingency unless she agreed to credit him in escrow with the amount of work recommended by the inspector. Mary refused, feeling that she had given Albert a good deal on the price of the house, and he should pay for the problems.

After negotiating, Albert and Mary signed a contingency release form to split the difference. In other words, Mary gave Albert a \$5,000 escrow credit. This means that by keeping the sales price at \$450,000, Albert, in effect, paid Mary \$445,000. Because Albert’s lender did not require him do the repairs prior to the close of escrow, he was free to do them at a convenient future date, but before the cutoff date. If he didn’t do the work by that date, the \$5,000 would be returned to Mary.

## Financing Contingencies

To remove a financing contingency, the buyer must provide you with written evidence that he or she has obtained financing needed to purchase your house. Usually, this is in the form of a written loan

commitment letter from a lender, or a bank confirmation if the buyer has arranged private financing. It can also be a check for the amount of the purchase price not yet paid. To remove a financing contingency, the buyer should sign a Contingency Release form.

## Extending Time to Meet a Contingency

Buyers frequently need extra time to satisfy a contract contingency. Without the extra time, the contract ends (that is, the deal falls through) unless you and the buyer agree to extend it. If you want out at this point, don't extend the time.

More commonly, however, you'll want the deal to go through, but will need reassurance that the buyer is still serious about buying your house. You may demand that the buyer increase the deposit in exchange for you granting an extension. In doing so the buyer won't pay any more for your house, but will just have more on the line to show he or she is serious about the transaction. The amounts vary, but to extend a \$300,000 offer for two weeks, \$500–\$1,000 is reasonable.

**EXAMPLE:** Julie agrees to buy Shawn's house for \$600,000, contingent upon her securing an adjustable rate mortgage at 4% or lower for 80% of the purchase price and selling her own house within 90 days. Julie arranges the financing easily, but is having trouble selling her house. Shawn feels Julie is asking too much for her house. He's also considering putting his house back on the market for \$610,000 if Julie doesn't meet the 90-day closing deadline. Julie really wants Shawn's house and knows she's in danger of losing it. She offers to increase her deposit by \$3,000 and to lower her listing price by \$15,000 if Shawn will extend her time to purchase (to let her sell her existing house) for another 60 days. Shawn agrees.

Any agreement to extend the time to meet a contingency (or to change any other term of the contract) must be in writing and signed. You can use Clause 19, "Other Terms and Conditions," of our offer form in Chapter 10 or you can use a separate form like the one below. Blank copies of both forms are on the companion Web page to this book.

### Extending Time to Meet Contingencies

The material set out below is hereby made a part of the offer dated \_\_\_\_\_  
 from \_\_\_\_\_ (Buyer) to  
 \_\_\_\_\_ (Seller) for  
 the purchase of the real property located at: \_\_\_\_\_

The final date for Buyer's removal of all contingencies set out in Clause \_\_\_\_\_ of the  
 contract, is hereby extended until \_\_\_\_\_ (month, day,  
 and year), at \_\_\_\_\_ m. (time).

\_\_\_\_\_  
 Buyer's signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Buyer's signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Seller's signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Seller's signature

\_\_\_\_\_  
 Date

If the buyer needs just a few extra days to remove contingencies because the pest control report is slow in coming or the loan approval letter is delayed over a holiday weekend, you should certainly agree to extend the time allowed. If, however, the buyer is facing more serious obstacles in removing contingencies that jeopardize the entire deal, you may want to entertain any backup offer you have accepted and issue a Seller's Demand for Removal of Contingencies to the primary buyer. A copy of the form and a full discussion on backup offers is in Chapter 11. A copy of the form is on the companion Web page to this book.

### If a Contingency Cannot Be Met

If, after trying in good faith, you or the buyer can't meet a contingency and don't agree to waive it, the deal is over. The most common reasons for this are:

- An inspection turns up extensive physical problems and the buyer no longer wants the house, or the two of you can't agree on who will pay for repairs.
- The buyer is unable to sell his or her existing house within the time provided or give you the time you need to find another house.
- The buyer can't secure adequate financing within the time provided.

If the buyer made a deposit, you and the buyer should sign a release canceling the contract and authorizing the return of his or her deposit. You do not have the right to keep the deposit if the deal falls through for failure to meet a contingency spelled out in the contract.

If, however, an inspection turns up no problems (unlikely) and the prospective buyer refuses to go ahead with the purchase (or refuses to proceed for another nonlegitimate reason), you can keep the deposit. Most sellers rarely keep an entire deposit, however, because they often can't complete a subsequent sale until the escrow with

### Release of Real Estate Purchase Contract

\_\_\_\_\_ (Seller)  
 and \_\_\_\_\_ (Buyer)  
 hereby mutually release each other from any and all claims with respect to the real estate purchase contract dated \_\_\_\_\_, for the property located at \_\_\_\_\_.

It is the intent of this release to declare all rights and obligations arising out of the real estate purchase contract null and void.

- Buyer has received his/her deposit.
- Seller has directed the escrow holder to return Buyer's deposit.

\_\_\_\_\_  
 Seller's signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Seller's signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Buyer's signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Buyer's signature

\_\_\_\_\_  
 Date

the first prospective buyer terminates; this normally can't happen until the buyer's deposit is released. Thus, even if a buyer withdraws for a nonlegitimate reason, it's common for the buyer and seller to compromise, with the seller keeping part of the deposit and returning some of it to the buyer.

Above is a release form; there is a blank copy on the companion Web page to this book.

## Title Report and Title Insurance

Title insurance is meant to insure both the buyer and the buyer's lender against certain "clouds" on the legal title to the property. A "cloud" on title is a claim that affects your ownership of the land—for example, by the heir of a former owner who claims to have inherited the property. You probably bought title insurance when you purchased the property, to insure you against any such claims. The buyer will do the same now.

The title insurance company—depending upon the policy included—insures against the possibility of undisclosed legal challenges or liens against the property, such as a forged deed or an unrecorded easement. If a claim arises and is covered by the title insurance policy, the title insurance company will pay it off. This protects the buyer from the property having to be sold to pay off a claim.

Financial institutions require a California Land Title Association (CLTA) policy and an American Land Title Association (ALTA) policy. The CLTA policy covers items in the public record, such as mortgage liens, trust deed liens, or judgment liens. The ALTA policy is more extensive, insuring against claims found both in the public record and by physically inspecting the house, such as unrecorded easements, boundary disputes, and physical encroachments.

The policies also differ regarding how much they cover and whom they benefit. The CLTA policy insures to the amount of the purchase price and benefits the buyer. The ALTA policy insures to the amount of the loan and benefits the lender. The buyer can usually buy the extended coverage for about 30% above the standard policy cost, and has to have a survey of the property done.

As soon as you and the buyer sign the house purchase contract, the buyer should order a preliminary title report (also called a prelim or pre) on the property. This report is a statement summarizing the current condition of the title to the property, especially liens, encumbrances, and easements. The buyer will want the prelim early in escrow so that the buyer, you, and the lender have time to address any problems that turn up.

The most common problems require you to pay off liens from the sale proceeds. These problems threaten your deal only if you dispute the lien and refuse to instruct the escrow holder to pay the lienholder. Other problems include a newly discovered easement; lawsuits disputing the boundary line or filed against you, the seller; CC&Rs (covenants, conditions, and restrictions); and people with outstanding ownership claims, such as an unknown heir (if the previous owner recently died). If any of these situations come up, you will likely need the help of a lawyer.

If problems arise with the title that you cannot quickly resolve, the buyer can:

- refuse to go through with the sale
- give you an extension of time, or
- buy the house with less than perfect title.

If the prelim showed no problems, or all problems have been remedied, or the buyer is agreeing to take less than perfect title, then when escrow is ready to close, the title insurance company checks the public records for any changes since the prelim was issued. If all is the same (as is the usual case), the prelim becomes the final title report. Any changes are reported in a supplemental title report. The buyer and lender must decide whether to close or call the deal off under the contract provision requiring you to provide clear title.

## **Buyer's Final Physical Inspection of the Property**

When you vacate the property (shortly before or after the close of escrow, depending on your agreement with the buyer), the buyer may wish to reinspect the property to make sure everything is in order. Often called a “walk-through,” this is the buyer’s right under any standard real

estate contract, including the one provided with this book. He or she will want to make sure that:

- no damage has occurred to the house since agreeing to buy it
- the fixtures and personal property you agreed to sell are still in the house
- all your remaining personal property has been or is being removed from the house, and
- all work called for in the contract has been done to the buyer's satisfaction.

If the buyer discovers a problem during this final inspection and escrow hasn't closed yet, he or she can:

- insist that the closing be delayed until you fix the problem
- insist that you credit the escrow account with enough money to remedy the problem—this means the buyer pays that much less for the house, or
- conclude that the problem isn't significant and close anyway.

If escrow has already closed, the buyer or the buyer's agent may contact you directly to discuss the problem. If the problem is relatively minor, you may wish to pay for it to be fixed, even if you don't think the buyer's position is entirely reasonable. After all, it isn't worth getting into a real dispute over something small—much better to solve the problem and walk away. Of course, if it's a major problem and the buyer is persistent, you may need to seek the help of an attorney.

## Closing Escrow

Escrow cannot close until the escrow holder records a deed naming the buyer the new owner and issues checks to the seller and all others entitled to be paid from the proceeds, such as the seller's lender and any lienholders. If work must be done to repair damage or substandard conditions discovered in an inspection report, money may be held by the escrow holder after the sale closes to pay the contractor.

The paperwork necessary for closing escrow should be completed a minimum of four working days before the expected closing date. You and the buyer—not necessarily together—must go to the escrow holder's office to review and sign the papers. The four-day gap allows for delays

in the transmittal of the loan documents between the lender(s) and the escrow holder.

The forms you'll be required to sign include:

- grant deed to buyer
- final escrow instructions, which need to be delivered to the escrow holder a few days before the closing date
- settlement sheet, which lists all disbursements, such as payments to your mortgage company, any other lienholders, and real estate broker(s) and other closing fees (escrow and title company fees, recording fees, and the like)
- copy of the preliminary title report
- deed of trust (and other forms) from the lender
- copies of structural pest control and other inspection reports
- FIRPTA (Foreign Investment in Real Property Tax Act) statement (see Clause 11 of the offer forms in Chapter 10), and
- any rental agreement between you and the buyer if you will live in the house for a while after the closing. ●



## What If Something Goes Wrong During Escrow?

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**T**he likelihood of a major disaster befalling your sale—such as the buyer dying or an earthquake destroying the house—is slim. But it’s possible that during escrow something will go wrong. This chapter presents only a brief overview of what may happen if your deal threatens to unravel. In that case, you’ll need the expeditious help of an experienced real estate lawyer.

Difficulties in removing contingencies are not covered by this chapter. If you or the buyer have trouble removing a contingency, such as the buyer obtaining financing or selling another house, see Chapter 12.

## The Seller Backs Out

What if you want out of the deal? Unless you’ve got a legal excuse, you’ll be breaching the contract, and the buyer can take steps to enforce it. What a court might accept as a good enough legal excuse for you to terminate the contract depends on how it applies contract law principles to your transaction. The many twists and turns of contract law and relevant court precedent are well beyond the scope of this book.

But suppose you back out of the deal after the buyer has met or waived all contingencies simply because you change your mind about selling your house or you get a better offer. Isn’t that a clear breach of contract? Yes, and the buyer’s remedy is normally to mediate, arbitrate (if you opted for either in the house purchase contract), or sue, requesting that you sell the house and pay the buyer damages based on his or her out-of-pocket costs.

**EXAMPLE:** Alex and Mack signed a contract for Alex to sell his home to Mack for \$550,000. Alex wasn’t completely happy with the price and Mack knew he’d gotten a good deal. Mack quickly removed the contingencies and was ready to close the deal. But Alex received an offer for \$570,000, which he wanted to accept. He tried to cancel the deal with Mack, offering to return his deposit. Mack refused and pointed out that if Alex didn’t complete the deal, he’d be in breach of the contract.

Alex’s lawyer advised him that if he accepted the other offer, Mack would probably pursue arbitration (they had checked it off on their

contract) and win, and the arbitrators would order Alex to sell the house to Mack and pay Mack's court costs, attorney's fees, costs of storing furniture, and costs of living elsewhere. Even though he was unhappy, Alex honored his contract with Mack.

As you can see, backing out of a deal without a good reason will cost you time as well as money. Even if you're ultimately cleared to sell the property to your buyer of choice, the delay can be very costly as you pay legal fees, make mortgage and insurance payments, or delay purchasing new property.

## The Buyer Backs Out

If the buyer refuses to go through with the deal without a good reason, you can pursue mediation, arbitration, or a lawsuit requesting payment of your damages. Damages aren't always easy to determine, however, because you have a duty to try to limit (mitigate, in legalese) your losses by selling the house to someone else. To avoid arguing over the amount of the loss, most house purchase contracts provide a specific figure (liquidated damages) for the seller's damages if the buyer breaches the contract. That amount is usually the amount of the buyer's deposit. (See Clause 21 in our contract in Chapter 10.)

A liquidated damages clause means that you are theoretically entitled to the stated amount. In practice, however, many disputes end with the buyer agreeing to allow the seller to keep part, but not all, of the deposit.

**EXAMPLE:** Alison was ecstatic when she accepted Lori's offer of \$685,000 for her home, along with a deposit check for \$7,000. A week later, before the inspections occurred, Lori told Alison that she was canceling the contract because she had found another house she liked just as much for \$670,000.

Alison told Lori this constituted a default, but Lori disagreed, since the required inspections had yet to be made and approved, and there would probably be something wrong with the house anyway. Alison told Lori she could not disapprove of the inspection reports until they were made, and only then if they turned up real problems. Because

the reports (including a roofing report, contractor's walk-through, and plumber's inspection, as called for in the contract) would likely cost Lori almost \$7,000, Alison suggested that Lori agree that she (Alison) could keep the \$7,000 deposit as consideration for ending the contract. Lori agreed when she realized that if the inspection reports didn't turn up any problems, she might be out both the cost of the reports and the deposit.

Once the buyer has made it clear that he or she doesn't intend to follow through with the deal, get it in writing and cancel escrow. This will allow you to relist the house for sale and enter an agreement with someone else.

## **The Buyer or Seller Dies**

Technically, a contract for real property is enforceable even if the buyer or the seller dies, because a deceased person's estate is responsible for fulfilling that person's lawful obligations. Just the same, you can bet your bottom dollar the title insurance and/or escrow company will put on the brakes and call in their attorneys if the buyer dies. You should do exactly the same. Chances are the executors of the buyer's estate, and possibly the buyer's inheritors, will want to get out of the deal and will be willing to pay you something for a release.

## **The House Is Destroyed by Natural Disaster**

As explained in Clause 20 of the purchase contract in Chapter 10, destruction of the house is normally handled as follows: Only when the buyer has either physical possession or legal title to the property is he or she responsible for the physical condition of the property and insurance. Until then, you are responsible. To protect yourself, make sure your homeowners' policy is in force until the close of escrow, at which moment the buyer's policy goes into effect.

If the house is flooded three days before escrow closes, you can pay for the repairs and deliver the property in the condition it was in before the

flood. If the buyer wants out of the deal, however, he or she can simply refuse to grant an extension to make the repairs.

## The Escrow Holder's Role in a Dispute

If a dispute arises between you and the buyer during escrow, you'll have to solve the problem yourselves—for example, through mediation or arbitration as indicated in the purchase contract (Clauses 22 and 23 in Chapter 10). Until then, the escrow holder sits still. If the dispute drags on long enough, the escrow holder may get tired of being stuck in the middle and initiate a lawsuit, called an “interpleader,” to have the court resolve the dispute and direct the distribution of the deposited money. ●





# Using the Interactive Forms

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This forms provided in this book can also be accessed as interactive files, available online at [www.nolo.com/back-of-book/FSBO.html](http://www.nolo.com/back-of-book/FSBO.html)

To use the files, your computer must have specific software programs installed. The types of files provided by this book, as well as the software programs you'll need to access them, include:

- **RTF.** You can open, edit, print, and save these form files with most word processing programs such as Microsoft *Word*, Windows *WordPad*, and recent versions of *WordPerfect*. Underlines indicate where to enter information. After filling in the needed text, delete the underline. In most word processing programs you can do this by highlighting the underlined portion and typing CTRL-U.
- **PDF.** You can view these files with Adobe *Reader*, free software from [www.adobe.com](http://www.adobe.com). PDFs are designed to be printed out and completed by hand.
- **XLS.** You can open, edit, print, and save these spreadsheet files with Microsoft *Excel* or other spreadsheet programs that read XLS files.

**TIP**

**Note to Macintosh Users.** These forms were designed for use with Windows. They should also work on Macintosh computers; however Nolo cannot provide technical support for non-Windows users.

Every word processing program uses different commands to open, format, save, and print documents, so refer to your software's help documents for help using your program. Nolo cannot provide technical support for questions about how to use your computer or your software.

**CAUTION**

**In accordance with U.S. copyright laws, the forms provided by this book are for your personal use only.**

## List of Forms

The following files are in Rich Text Format (RTF).

File Name	Form Title
QuitclaimDeed.rtf	Quitclaim Deed
FeeAgreement.rtf	Hourly Agent Fee Agreement
LeadPaintInfo.rtf	Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards
Transfer.rtf	Real Estate Transfer Disclosure Statement
Hazard.rtf	Natural Hazard Disclosure Statement
Promissory.rtf	Promissory Note
PropertyOffer.rtf	Offer to Purchase Real Property
DepositReceipt.rtf	Deposit Receipt
ShortCounteroffer.rtf	Short Form Counteroffer
Counteroffer.rtf	Counteroffer to Purchase Real Property
Acceptance.rtf	Acceptance of Purchase Offer
Revocation.rtf	Counteroffer Revocation
RemoveContingencies.rtf	Seller's Demand for Removal of Contingencies
ContingencyRelease.rtf	Contingency Release
Extension.rtf	Extending Time to Meet Contingencies
ContractRelease.rtf	Release of Real Estate Purchase Contract

The following files are spreadsheets (XLS).

File Name	Form Title
CreditInfo.xls	Credit Information Form
SignInSheet.xls	Sign-In Sheet

The following file is in Portable Document Format (PDF).

File Name	Form Title
Leadpdf.pdf	Protect Your Family From Lead in Your Home





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