Protect Yourself When Buying Real Property

Suggestions for the Prospective Buyer

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This brochure was prepared courtesy of the Georgia Association of REALTORS® to help buyers with the process of purchasing real property. The recommendations herein are general in nature and are not intended to be exhaustive. Some of the recommendations may not apply to specific properties. Buyers are encouraged to consult with experts and professionals of their own choosing to ensure that they are protected in buying real property.

There are few things in life as exciting as buying a property. However, since purchasing real estate is one of the most expensive purchases many of us will ever make, buyers should take reasonable steps to protect themselves in the property buying process. This brochure contains some general suggestions on how buyers can do this.

Broker's Compensation for Professional Services to Broker ("Compensation"). A broker's compensation in Georgia, and who pays it, is always negotiable. Such compensation can be paid by the seller, the buyer or both. Some buyers will ask the seller to pay the Compensation the buyer owes to the buyer's broker. They may do this for a couple of reasons. First, if the buyer is getting a VA loan, the buyer may not be permitted under the loan program to pay the buyer broker's Compensation. Others, particularly first-time home buyers, may not be able to afford to pay the buyer broker's Compensation if it is not included in the buyer's mortgage loan. When a buyer asks the seller to pay the Compensation owed by the buyer to the buyer's broker, the buyer is effectively making the Compensation part of the sales price for the property because most sellers will focus on their net proceeds after the broker's Compensation is paid. When the seller is not initially offering to pay the buyer's broker's Compensation, and the buyer wants the seller to pay this obligation, the buyer will usually include a special stipulation to that effect in their offer to purchase the property. If permitted by the buyer's lender, the buyer can also request the seller to make a monetary "Contribution at Closing" (as per the GAR Purchase and Sale Agreement) which can then be used by the buyer to pay for, among other things, any Compensation owed to the buyer's broker.

Read and keep a copy of any signed contract. A purchase and sale agreement is a legally binding contract. It should be read in its entirety by the buyer before it is signed to ensure that it reflects the business agreement of the parties. Verbal promises not included in the contract are generally unenforceable. Buyers should comply with all time deadlines in a contract since missing a deadline can leave the buyer in breach of contract. Getting an early start on arranging such things as inspections and financing is the best way for buyers to avoid missing deadlines. The buyer should also keep a complete copy of any contract that he or she has signed in the event a dispute arises regarding the authenticity of the contract.

Have the property inspected by a professional property inspector. Property inspectors help buyers evaluate the condition of the property based upon one or more visual inspections of the property. Most properties have at least a few items that will need to be repaired and/or replaced. A professional property inspector can assist in identifying these items by performing an inspection of the property. Requests for repairs are normally received more favorably by sellers when the need for the repairs has been documented in the report of a professional property inspector. Many property inspectors are members of professional associations that, among other things, require their members to perform a standardized inspection of the property. Buyers are encouraged to ask inspectors about their qualifications and expertise in inspecting properties before selecting an inspector.

Thoroughly investigate the property. Sellers are required to disclose known latent defects in a property. Latent defects are those that a buyer could not discover as the result of a reasonable inspection. Before completing the purchase, buyers should use reasonable diligence to investigate the property. In addition to a professional property inspection, buyers should also check for issues of personal concern. Examples include, but are not limited to, floor condition when covered by area rugs, water staining under plants, missing window screens, and any area made physically or visually inaccessible by the seller.

There are many other tests and studies buyers can do in deciding whether to purchase a property. These include, for example, a radon test to determine if the property has elevated levels of radon, mold tests to determine if the property has high levels of certain kinds of dangerous mold, well water condition and capacity tests when the property is served by well water and septic systems inspections when the property is served by a septic system.

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Properties should also be tested for lead-based paint. Normally, this is only an issue in properties built prior to 1978 (since after this time lead-based paint sales were prohibited). Ingestion of lead-based paint chips or particles can cause lead poisoning, a serious health condition, particularly in children. Buyers of an older home should read the EPA brochure entitled "Protect Your Family from Lead in Your Home". Renovators of an older home should read the EPA's Renovate Right brochure and other related materials.

Websites exist that identify certain (but not necessarily all) properties which have been used to manufacture methamphetamine and/or certain other illegal substances. Websites also exist to help identify if a registered sex offender resides in the neighborhood.

Repairs to a property can range from simple cosmetic fixes to repairs done as the result of substantial damage. Some repairs require, and some do not require, a permit from the governmental jurisdiction in which the property is located. Major systems replacement, certain renovations, and/or structural additions to the main dwelling require a permit in Georgia. Permits are issued to ensure public safety and are sometimes completed with the issuing of a certificate of occupancy ("CO") or other documentation showing that the responsible governmental entity has inspected and approved the work. Specific information about permitting requirements for the property you are considering buying may be found online at https://dca.ga.gov.

Many factors can affect the value of a property and the ability of an owner to use and enjoy it. These include, for example, the school district in which the property is located, whether the property is subject to flooding, the availability and cost of property insurance, whether the property is subject to recorded covenants and the nature of those covenants, quality of repairs and renovations, permitting issuance, the governmental jurisdiction in which the property is located and whether the property is on an historic registry or in a special tax or zoning district.

Sellers are required to disclose known latent defects in a property; but as a buyer, before completing the purchase of a property, you are encouraged to use reasonable diligence to investigate the property you are buying for issues of special concern to you.

If you are unable to view the property in person prior to your decision to purchase, you are encouraged to have another person (other than your REALTOR®) tour the property for you and attend subsequent inspections. Photos and videos are useful means of viewing a property but typically will not convey the nuances traditionally associated with a property purchase decision. Because the decision to purchase a property can be highly subjective, the person you choose should be someone who is familiar with you and understands your needs.

Inspect the neighborhood in which the property is located. The neighborhood in which the property is located can be as important as the property itself. Buyers should familiarize themselves with the neighborhood in which the property they are considering buying is located to determine if there are any objectionable conditions nearby. If buyers go far enough away from any property, they will eventually discover some neighborhood condition that they wish were not there. What those conditions are and how far away they need to be from a house before they are no longer a concern is a decision that only the buyer can make. For example, a nearby grocery store may be a convenience for some buyers and a disruptive commercial use for others. Buyers can also contact local governmental planning officials to determine what changes, if any, are anticipated in a neighborhood over time.

Have the property inspected for termites and other wood destroying organisms and obtain an Official Georgia Wood Infestation Inspection Report that can only be prepared by a licensed pest control company. Buyers should have the property they are buying inspected by a licensed Georgia pest control company for evidence of termites and other wood destroying organisms (including powder post beetles, wood boring beetles, dry wood termites and wood decay fungi). In cases where a visual inspection of the entire property is not possible due to visual obstruction, such as, but not limited to, spray-foam and/or roll insulation, floor and walling coverings, and encapsulated spaces, the buyer should consult with a licensed pest control company about preventative treatment measures which may help prevent wood infestation and property damage.

The inspection should be done even if the property has a transferable termite warranty since these warranties normally contain exclusions. As a result, buyers can understand risks they may be assuming in this area by having an inspection performed. Obtaining an Official Georgia Wood Infestation Inspection Report will identify the areas in the house where there is evidence of both active and previous infestation from termites and other wood destroying organisms. Buyers should also review any termite warranty being transferred by the seller to determine what is covered and the cost of maintaining the warranty. Some termite warranties cover both retreatment and repair while others are limited only to re-treatment.

Get a survey of the property. Buyers are encouraged to get surveys of the properties they are considering buying so that they know where the exact boundary lines of the properties are located. Buyers should request that the survey identify the location of any easements of record, whether there are encroachments onto or off of the property and whether the property is in a flood plain. Surveys are not normally done in the sale of condominium units. However, a buyer can review the condominium plat to see the location of the property that is a part of the condominium.

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Make sure that an undeveloped lot can be developed. In most parts of Georgia, lots cannot be developed for residential purposes unless they are properly zoned, have access to a public road and are served by water and sewer. If there is no ability to connect the lot to a public sewer, the buyer should verify that the lot can accommodate a septic system. This is done by having a licensed engineer perform a percolation test and evaluate whether the lot is sufficiently large for a septic tank and field to be installed. Similarly, if the lot is serviced by a well or private water system, the buyer should arrange to have the water tested to confirm that it is safe for drinking. Meeting with the local governmental department which issues building permits is a great way to get information about whether and how a vacant lot can be developed.

Buy an Owner's Title Insurance Policy. An owner's title insurance policy protects the buyer if a pre-existing title problem is discovered after the closing. Normally, a title insurance policy is purchased and issued at the closing by the closing attorney. A title problem can be as simple as a neighbor claiming to own a small portion of your property based upon a disputed fence line. However, it can also be a serious problem, such as a forged deed, where you could lose the title to your property. Mortgage lenders require the buyer to pay for title insurance covering the lender's interest in the property. However, in a world where there is an increasing amount of identity theft and the forging of documents, title insurance covering the owner is also recommended. There are different types of title insurance policies offered in Georgia. The most comprehensive are sometimes referred to as "enhanced title policies" and in some cases they protect buyers from title claims arising even after the closing date. Since the premium for title insurance is paid only once, it is recommended that buyers obtain the comprehensive policy.

Consider Purchasing a Home Warranty. Georgia law does not require the seller of either a new or existing home to provide the buyer with a home warranty. If the seller is not offering a warranty, buyers can purchase a limited warranty on both new and existing homes as a part of the purchase of the home. Buyers should review the terms of any warranty that is offered or purchased to understand what it covers and excludes and how to file a claim.

Beware of Cyber Fraud. Fraudulent emails attempting to get you to wire money to criminal computer hackers are increasingly common in real estate transactions. Under this scam, computer hackers fraudulently assume the online identity of the actual mortgage lender, closing attorney, and/or real estate broker with whom you are working in the real estate transaction. Posing as a legitimate company, they then direct you to wire money to them. In many cases, the fraudulent email is sent from what appears to be the authentic webpage of the legitimate company responsible for sending the wiring instructions.

You should use great caution in sending or receiving funds based solely on wiring instructions sent to you by email. Independently verifying the wiring instructions with someone from the company sending them is the best way to prevent fraud. In particular, you should treat as highly suspect any follow up emails you receive from a mortgage lender, closing attorney, and/or real estate broker directing you to wire funds to a revised account number. Never verify wiring instructions by calling a telephone number provided along with a second set of wiring instructions since you may end up receiving a fraudulent verification from the computer hackers trying to steal your money. Independently look up the telephone number of the company who is supposed to be sending you the wiring instructions to make sure you have the right one.

Be Careful to Avoid Needless Expenses. Some companies who can appear to the untrained eye to be conducting official government business also charge fees to obtain a recorded or certified copy of the deed. This is an unnecessary expense since the closing attorney normally provides a recorded copy of the deed to the buyer as part of the closing. However, it can take up to a month or two for the closing attorney to get the recorded deed back from the courthouse.

Assume the property you are viewing has audio/video surveillance devices in operation. Surveillance technology has advanced to the point where it cannot be seen, and more properties have it than ever before. This means that when buyers tour a property they should act and speak in a manner which reflects that they are being recorded. Conversations should be kept to a minimum and should be of a nature which does not harm the buyer's negotiating position. The property is not the place to discuss the terms of the offer the buyer is considering. Buyers should not do or say anything that could jeopardize the buyer's negotiating position or alienate the seller.

Smart Home Technologies. Smart home technology allows for the monitoring, use, control and automation of HVAC thermostats, lighting, video camera, and more. When considering a home with smart devices, you should evaluate or hire a home automation specialist to evaluate the age, functionality, compatibility, cost to operate (including any subscription fees), privacy and security of smart home technologies. While there may be operating costs with such technologies, there may also be offsetting benefits such as energy savings or potential insurance discounts. After closing, consider resetting smart home devices, changing passwords, adding multi-factor authentication and updating firmware to protect your privacy and enhance your security.

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Test Your Drinking Water for Lead. Buyers should test their drinking water to confirm that it does not contain unhealthy levels of lead. Water service lines are sometimes constructed of lead or include lead solder which can leach into the water. Lead is a toxic metal, a strong poison and a serious health hazard, particularly for children. If buyers determine during a due diligence period that there are unhealthy levels of lead in the drinking water, buyers may negotiate for the replacement of water service lines which contain lead.

Choose a REALTOR®. Not all licensed real estate salespersons (or brokers) are REALTORS®. REALTORS® agree to abide by a Code of Ethics in their dealings with buyers and sellers. REALTORS® are members of the National Association of REALTORS® and participate in a local Board of REALTORS®. REALTORS® typically have valuable knowledge regarding the price at which other properties in a neighborhood sold, how to negotiate various terms in a purchase and sale agreement and the features of different properties. REALTORS® can also provide buyers with and help them fill out a pre-printed purchase and sale agreement form. REALTORS® routinely work with and, upon request, can provide buyers with the names of attorneys, mortgage lenders, property inspectors, termite companies and persons providing other services relating to real estate transactions. Therefore, when buyers need help in finding the right property, they should always choose a REALTOR® first!

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