

# Understanding the Florida Association of Realtors' Sales Contract

Many times buyers and sellers of real estate get preoccupied with price. In fact, there are many other contract issues that can be just as significant. As a buyer or seller of Florida real estate, you should be aware of the following terms in the typical Florida Real Estate contract.

1. **Financing.** Solid financing should and often does trump price. The offering price is somewhat meaningless if the buyer can't raise the cash. Page one of the Florida Association of Realtors contract spells out how the buyer will finance the purchase. Specifically, the buyer will describe:
  - How the buyer will pay for the home (cash or mortgage)
  - If there is a mortgage, whether or not the offer is contingent upon the buyer qualifying for a loan. This is the norm. If the buyer can't get a loan, the buyer can cancel the contract and receive a full refund of his deposit.
  - The size of the mortgage
  - The type of mortgage (conventional, VA, FHA)
  - The dates by which the buyer must apply for financing and show proof of approval.

All of these items must be carefully evaluated and all are negotiable. If any are unsatisfactory to the seller, he may make a counter-offer with different terms.

2. **Good Faith Deposit.** This is money that the buyer is submitting with his offer as an indication of his seriousness to purchase. The good faith deposit is always placed in an escrow account, usually owned by the broker through which the buyer is placing his offer. If the buyer's offer is not accepted, his deposit is returned in full. If the offer is accepted, the deposit is credited toward the purchase price. If the offer is accepted and the buyer backs out of the contract for any reason not covered by a contract contingency, then the buyer forfeits the deposit.

The deposit is a negotiable item. If the seller does not think that the deposit is large enough, he can make a counter offer. There is no rule of thumb on the size of a deposit. Before asking the buyer to increase the deposit, the seller needs to consider a number of factors, including:

- **The offer price and the length of time the home has been on the market.** Remember that any counter offer the seller makes, voids the buyer's offer. If the buyer rejects the counter offer, he does not have to live up to his original offer. If the home has been on the market for a long period of time with no offers, you may not want to risk a counter offer.
- **The closing date.** Recognize that you are effectively taking the home off the market from the date that you receive a fully executed contract to the date of closing. If at some point during this time period, your buyer backs out of the contract, you will have to start from ground zero on selling your home. Therefore, there needs to be some type of correlation between the deposit and the period of time between contract date and closing. For longer periods of time (like more than a month) you want to make sure that you have a larger deposit to reasonably bind your buyer to the contract and compensate you for your lost marketing time.

3. **Closing Date.** Closings usually occur at a title company. Usually, although not necessarily, both buyer and seller are present. At the closing, the buyer will provide the balance of any funds required to purchase the home (in certified funds). The seller will then relinquish title to the property by signing the deed over to the buyer. After this point the seller will no longer have access to the property. You can't close today and move out next week sometime. You must have all of your belongings out of the home as of the time of closing.

Closing dates cause more trouble than just about any other item in the contract. You should always give careful consideration to the closing date. Remember, both parties are contractually bound to that date. Neither can change it without the written agreement of the other party. Don't assume that just because your new home will suddenly not be available when promised that you can delay the closing date on the home you are selling. If the buyer will not agree to the change in dates, be prepared to make other arrangements (like storing furniture or moving twice).

4. **Items included in sale.** Certain items are automatically included in the sale (like anything attached to the wall or floor). The contract will spell out any additional appliances that are also included. If you are planning on keeping your Subzero refrigerator or the antique chandelier that has been in your family for 10 generations, make sure that it is not included in (or more safely specifically excluded from) the contract.
5. **Closing Costs – How much and Who Pays What.** As the seller, you will typically be responsible for the brokerage, documentary stamps on the deed, and possibly some or all of the title costs. Title costs in Manatee County are a

negotiable item. The contract will spell out your responsibility for title and related charges. The buyer may offer to pay them, may ask that you pay them, or more commonly, offer to split them. Don't get too emotional about who pays title – just focus on the net proceeds.

Your brokerage costs will obviously depend on the rate you negotiated with your Realtor. Documentary stamps are .7%. Title costs should approximate .5% to .6% in total. The title company will also prorate the current year's property taxes (we pay in arrears in Florida) and deduct your prorated share from your proceeds. You will receive credit for any pre-paid costs you may have paid, home owner association fees being the best example.

6. **Home Inspections and Repairs.** Unless modified, the contract will hold the seller responsible for making any repairs that are mechanical in nature, up to 1.5% of the contract price. In other words, if the contract price is \$100,000 and the home inspector finds damages where the total cost to repair is less than \$1,500, the seller is contractually bound to make these repairs and continue with the closing. If the repairs are more than \$1,500, then either party may void the contract unless one party agrees to pay the excess or unless the buyer designates which items are to be repaired such that the total cost of the selected repairs is under the repair limit (\$1,500 in this example).

Note that the repairs covered under the contract do not include cosmetic repairs. The home inspector may point out torn screens or broken floor tiles. These types of items are considered cosmetic repairs and are not covered under the contract (the seller does not have to repair these items and the buyer cannot use this refusal to void the contract).

Typically, the contract will specify the deadline for conducting the home inspection and reporting the results. By default (which can be changed), the buyer has 10 business days to complete all inspections and another 5 days to report his findings. If he misses either of these dates, then he has effectively waived his rights to an inspection.

7. **Termite Inspections.** Termite inspections work similar to basic home inspections. If evidence of termites is found, the owner must repair the damage and pay to have the home treated (or prove that there is still a warranty on the home from a previous treatment). The contract distinguishes repairs from termites from other types of repairs and sets up a separate repair limit on termite damage.

Also note that most banks ask for a termite inspection and require that the inspection occur no more than 30 days from closing. Accordingly, there is seldom a time limit (other than before closing) on termite inspections.

8. **Final Walk through.** The final walk-through is usually performed by the buyer within 24 hours of closing. The purpose of the walk through is to ensure that all required repairs have been made and that the property is still in the contract-date condition. The seller must make utilities available to the buyer for purposes of this walk through. This means that the electricity and water cannot be turned off until after closing.
9. **Three Day Cancellation Option for Condominiums.** Any purchaser of a condominium in the state of Florida has 3 days from the contract date (or date that the condo documents are received by the buyer) to void an otherwise valid contract. The law requires that the buyer have access to the condominium bylaws and articles of incorporation, the budget, the rules and regulations, and the latest financial statements.

If the buyer sees anything in these documents that he does not like within this 3 day period, he can immediately void the contract and receive a full refund on any deposits he may have made.