The goal of every seller is to maximize profits, and every prospective buyer wants to get property as cheaply as possible. Having to pay a real estate commission or other professional fees as part of a real estate deal only works at odds with these goals. Consequently, many business people who are sophisticated when it comes to negotiating real estate deals may feel comfortable with doing a lot of the work themselves on real estate deals. However, even sophisticated business people will still rely on professional advice when it comes down to actually closing a deal, as the potential pitfalls can be so significant. The bottom line is that you should seriously consider hiring real estate professionals, and professional fees should be factored in as a cost to doing real estate transactions.

There are many things that can go wrong that you may end up seriously regretting that you did not hire an attorney to look after your best interests in the transaction. The benefit of competent legal advice on a real estate deal stands on its own. There are so many things that can go wrong on a real estate deal that you may well end up kicking yourself if you don't hire an attorney to help you with the transaction. You may even end up hiring a lawyer on a lawsuit, which could end up to be a lot more expensive. Purchase agreements will clearly state that real estate agents are not providing legal advice. An attorney will be in a better position to provide you with essential legal advice and to do so with more impartially than may be the case with your real estate agent. That is why we strongly recommend that both a seller and a buyer consult with **Goodwin, Gillis & Heck, PLC** BEFORE entering into a real estate transaction.

Real estate purchase contracts can be extraordinarily simple but they usually end up being very complex and lengthy documents, in order to try to address all the "what ifs" that are typically involved in a real estate transaction. Goodwin, Gillis & Heck, PLC. can assist you with all aspects of the transaction from beginning to end which may include the following:

* Parties
* Recitals (background facts as to why the parties are doing the deal)
* Description of the property
* Sales price and terms of payment
* Title and title insurance
* Closing date
* Escrow provisions
* Conditions to closing
* Representations and warranties
* Environmental and hazardous waste provisions
* Zoning and land use issues
* Rights to inspection
* 1031 exchange provisions, if applicable
* Liability insurance requirements
* Indemnification and hold harmless provisions
* Remedies if a party breaches
* Rights to amend and modify

* Term and termination
* Rights to assignment or delegation of rights
* Attorneys' fees and costs
* Arbitration rights, if any
* Governing laws
* Other standard provisions

**The Purchase Agreement**

After deciding to sell a property, placing it on the market, and identifying a potential buyer, the seller's next step is to negotiate a purchase agreement. To be enforceable against the seller, the agreement must be in writing. If the document names the parties, sufficiently describes the property, and states the consideration and the time within which it is to be paid, the document is generally sufficient to cover conveyance of the property.

Note that a binding contract can be created by a document as informal as a receipt for deposit, and a seller should be wary of signing any preliminary document.

Although the contract between the parties may take many forms, the most common is a purchase agreement or a buy and sell agreement. The agreement may also take the form of an option to purchase or a right of first refusal. No matter which document is used, the more specific and detailed it is, the less potential there is for conflict.

The purchase agreement is the most important document in the sales transaction. It is not a letter of intent: it is a binding contract for the sale of property and should cover all aspects of the transaction. If any difficulties arise before a closing, the purchase agreement will be used to resolve them.

A purchase offer or agreement contains all the details of the offer to purchase a piece of property. An agreement is binding only once the document has been agreed to and signed by the buyer and seller. Often in the purchase of real estate, there are a number of offers and counter offers until an agreement is reached. Items and conditions that are often included in the purchase agreement include:

* Description, legal and common, of the property
* Purchase price
* Amount of earnest money or down payment
* Features and fixtures which are to remain
* Home inspection results
* Anticipated financing & closing date
* Final inspection and move-in condition
* Penalties for breaking the offer
* Response time to accept the offer
* Obtaining clear title to the property
* Clean inspection report

**Mortgages**

## Assumption of Mortgage

In a mortgage assumption, the new purchaser assumes the original debt to the mortgagee. A formal assumption requires a written assumption agreement from the holder of the mortgage loan and may be with or without release of the original mortgagor. In most Federal National Mortgage Association mortgages, there is a due-on-sale clause, and the lender has no obligation to permit assumption.

## Long-Term, Fixed-Rate Institutional Mortgage Loans

Long-term, fixed rate institutional mortgage loans are 20-,25- and 30-year mortgages. These mortgages remain a dominant force in the marketplace because individual borrowers prefer them. Further, with federal legislation permitting the enforcement of due-on-sale clauses in some cases, such mortgages are not a source of problems for lending institutions.

## Other Forms of Mortgages

Other types of mortgages have been developed in recent years. Of these, adjustable rate mortgages are the most popular. It calls for the interest rate to be adjusted according to a national annual or semiannual index. The amount of the adjustment per interval has a maximum increase or decrease. In addition, such mortgages often have a maximum and a minimum interest rate over the length of the loan. These loans tend to be of short duration, such as five years, but they may have options to renew a then-current rates. These mortgages pose substantial risk due to terms and rates.

The rollover mortgage is simply a short-term mortgage. Usually, the lender will commit to extend it by rolling it over one or more times at the then-existing market interest rate.

Graduated payment mortgages provide lower initial payments, which then increase. Beware: such mortgages require that the borrower forecast increased income with accuracy. The graduated payment adjustable mortgage loan combines an adjustable rate of interest with a graduated payment schedule.

A shared appreciation mortgage permits the lender to share in the appreciation of the property. A portion of the appreciation is payable to the lender at a later date and is usually based on an appraisal of the home. Shared appreciation mortgages have limited applicability because of usury limits.

A reverse annuity mortgage is designed to allow senior citizens to take the equity out of their home in the form of a monthly payment. However, a problem develops when the borrower outlives the term of the annuity and is forced to make a balloon payment or lose the property. These programs are more likely to see increased use if they are combined with some type of insurance program to avoid the problem.

**Standard Financing Documents**

The standard financing documents in a residential real estate transaction involving a commercial lender include a promissory note and a mortgage. Various disclosures and truth-in-lending statements and a closing statement are provided as well.

## Note and Mortgage

Usually both the promissory note and the mortgage used in a residential transaction conform to the uniform documents of the Federal National Mortgage Association/Federal Home Loan Mortgage Corporation (FNMA/FHLMC).

## Truth in-Lending Disclosure Statements

The federal Truth-In-Lending Act requires disclosure of certain credit information and gives the borrower certain claims for damages for the right of rescission for violations of the act. Its purpose is to protect the consumer. The principal disclosure is the annual percentage rate that is designed to reflect the actual cost of the funds, including commitment fees, interest and similar charges.

## Real Estate Settlement Procedure Act

The Real Estate Settlement Procedure Act (RESPA) governs all lenders who take federally insured mortgage loans on one-to four-family residential dwellings. Federally insured mortgage loans include any loan made by an institution whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC). All banks and savings and loan institutions in the state of Michigan should fall into that category. The lender must also furnish the borrower with a good-faith estimate of settlement costs that includes origination fees, appraisal fees, credit report fees, inspection fees, private mortgage insurance fees, recording and escrow fees, transfer taxes, and title insurance fees. In addition, at the closing, the person who conducts the closing must give the seller and the buyer a settlement setting forth all closing costs.

## Title

A title search and the issuance of title insurance means ownership of property can be cleanly conveyed to the new owners. During the search, the history of the property is researched verifying that all previous claims or liens have been satisfied, allowing a clear title to be issued. If any claim is overlooked, the title insurance protects the owner from the claim. Remember that if it's not in writing on a real estate deal, it's not enforceable.

A deed transfers ownership of property from one owner to the next. Deeds are recorded in the county where the property is owned. There are two types of deeds in Michigan:

Warranty deed- which guarantees no other person owns or
has claims against the property

Quit claim deed- transfers interest in a piece of property from one owner to the next. A quit claim deed provides no guarantee from other interests or claims

**We help buyers and sellers with all sorts of real estate transactions, from purchase agreements, negotiating and drafting land contracts, actions to determine interests in land, quiet title actions and zoning and land use. Whether you are buying or selling we have the experience to help you protect and minimize your risk.**


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