



# State Bar of South Dakota

## **Law and Real Property**

### **What is Real Property?**

Real property is land together with any improvements attached thereto. It also may be referred to as "real estate" or "realty".

### **Buying a Home**

For many people, buying a home is the single most significant financial step of a lifetime. Involving your lawyer at the appropriate time in the process can help avoid costly mistakes.

### **What is a Purchase Agreement?**

Typically, when an agreement is reached on price, a purchase agreement (also known as a sales contract or contract for deed) is signed by the parties. Before signing, you should make sure that it correctly expresses your agreement with the seller on such important details as the sale price of the house, method of payment, the time set for your taking possession, and what fixtures, appliances and personal property are to be sold with the home

If a realtor is involved, the first document is usually called an Offer and Acceptance. In this, the potential buyer makes a written offer to purchase, containing in abbreviated form most of the material typically included in a purchase agreement. The seller then has a certain number of days, usually four or five, in which to sign the "Acceptance". If the seller fails to do so, the "Offer" is considered rejected.

The above material is not meant to be complete, but it does illustrate the importance of any document dealing with real estate. Before you sign anything dealing with real estate, whether as a buyer or seller, you may want to have your lawyer review the proposed document and determine if it protects your interests.

## **Title Services**

To insure that you receive clear title to the home, title services will have to be performed by an abstracting company and your lawyer.

A title search involves the abstracting of information concerning the title which is available in public records.

An abstract of title is made from the records found during the title search. Pertinent legal documents are compiled which provide a condensed history of the property ownership and related matters. This is the abstract of title. Typically, this is paid for by the seller.

A title examination is performed in order to locate any defects in the title which could later impair your ownership or use of the property. Your lawyer will examine the abstract of title. If the examination turns up any flaws (for example, a lien against the property or a disputed boundary), your lawyer can advise you how to insure that these are corrected before you make payment. You will receive a written opinion from your attorney setting out any defects and pointing out things not revealed by an abstract (such as recent construction) Typically, the buyer pays for the title opinion.

Many financial institutions now require title insurance instead of an abstract of title and a title opinion. The cost of title insurance is normally shared equally by buyer and seller. Title insurance is supposed to protect home buyers from loss due to a mistake made by the title searcher, or because of a legal defect of a type which does not appear in the public records. Such mistakes rarely occur, but when they do, they can be financially devastating.

Title Insurance policies vary in scope of coverage, and many have a number of exclusions. If you choose to obtain title insurance, having your lawyer review the available policies can insure that you choose the policy best suited for your needs. In some localities, only one source of title insurance is available, but the commitment and its terms should still be examined by your lawyer

## **Landlord-Tenant Relations**

**Who is a tenant? Who is a landlord?**