

Buyers and Closing Day

The following information is provided to take some of the mystery out of closing day.

People often ask the following questions. What should I bring to the closing? Who else will be there? How long will it take to close? What will I be signing?

The closing is the final step in the purchase of your property. The closing is where you sign all the documents that transfer ownership of the property to you. All parties taking title to the property and who are on the mortgage must attend the closing. Bring two forms of identification. At least one photo ID (drivers license or passport) and a library card or credit card. Also, you should have the proof of insurance for the property. If you did not wire the funds in advance (most title companies require wires for down payments of \$50,000.00 or above), bring a cashier's or certified check made out to the title company. Note that there may be changes at the closing, so it is usually better to bring more money to the closing as the title company will refund any overage to you at the closing. You may want to ask your lender if there are any additional items to bring.

As mentioned above, the buyers who will be on the title and the mortgage need to be at the closing. Traditionally the sellers and the attorneys for both sides are present, but often sellers execute the closing documents in advance, so they do not need to be at the closing. The title company will have a closing agent present. The closing agent will make sure all the documents are executed correctly. Additionally, the real estate agent may attend. The lender may be there as well, but if not, make sure they are available via phone should you have a question at the closing. Note, that due to Covid, it is not unusual for the sellers and their attorneys not to be present. The sellers sometimes sign powers of attorney and pre-sign the documents. The buyer's attorneys may work remotely and be live on the phone to walk the buyers through the documents they are signing at the closing.

The closing should only take an hour or so. However, there could be delays. For example, if the bank has a delay in sending the funds. The closing will not be finished until it is funded. Also, when there is a lender involved, the documents you are signing are sent (emailed or faxed) to the lender for a quick review. Sometimes, this may take a while for them to review, especially if they find any errors.

If the parties have reviewed drafts of the documents before closing, the closing should go smoothly. However, if they decide to read every line at the closing it could take hours. Note that the documents are uniform instruments that are widely used in the industry. Many of the documents contain standard clauses and disclaimers to protect the title company and lender. If you have a question about a document, always ask. The attorney and or closing agent can help. Now let us look at the actual documents.

Real Estate Transfer Documents

The seller prepares these documents and signs them. These are the documents that transfer ownership.

The information provided does not, and is not intended to, constitute legal advice; and is provided for informational purposes only. Always consult with an attorney before you enter a real estate transaction.

The **deed** transfers the real property from the seller to the buyer. The deed lists how the owner will take title (joint tenancy, fee simple, tenants by the entirety, tenants in common, in a trust, etc.). The deed is recorded with the county and becomes a public record of ownership.

The **bill of sale** transfers all the personal property that the seller is leaving at the property. Examples include appliances, mechanicals, fixtures, and other personal property as listed in the contract.

The **affidavit of title** is a sworn statement by the sellers that they own the property and have the legal right to convey the property and that there are no outstanding liens or other items (leases or boundary disputes) that can affect title that have not already been disclosed.

Lender Documents

The **note** is evidence of your debt. It contains the terms of the loan (interest rates, repayment term, etc.). The note is often sold by the original lender to another lender after the closing. If it is sold or transferred by the original lender, the terms of your loan do not change; only to whom you make your payments changes.

The **mortgage** gives the lender a security interest in your home. This is the agreement that puts your house as collateral for the loan. If you miss payments, this document gives the lender the right to foreclose on your home and sell it. The mortgage is recorded with the deed.

The **loan application** will be given to you again at the closing. The lender requires you to sign off again on the loan application to verify its accuracy. You will need to disclose any changes in your financial situation at this time (loss of job, major purchase, bankruptcy, etc.).

The **closing disclosure (CD)** should look familiar as it should be the same as the loan estimate you received when applying for the loan.

Initial escrow statement is for those using an escrow to pay real estate taxes and insurance through the lender.

Title Documents

Title insurance protects both the lender and owner from losses due to defects in the title. Such defects could include back taxes, liens, and undisclosed heirs-- to name a few.

The **title commitment (TC) (ALTA commitment for title insurance)** is what the insurance policy, noted above, is based on. The TC will show who owns the house and any liens that may affect title. The title company will review the document to ensure that the title is acceptable to the lender and in compliance with local law. The TC lists all the requirements necessary to close.

Schedule A of the TC covers the basics of the transaction (the parties, the sales price, the loan amount, and property description).

Schedule B of the TC has two parts. The first part lists the requirements that need to be met prior to closing (paying off existing mortgages or liens). The second part lists exceptions that will not be covered by the title insurance (utility and access easements, homeowner association covenants and restrictions).

The **master statement or ALTA** lists the buyer and seller charges and amounts due at closing. It also contains the final prorations of real estate taxes and homeowner association dues. The amounts of money escrowed for homeowner insurance and property taxes. This document is approved by the lender and reviewed by the attorneys.

The **disclosure statement-controlled business arrangement** informs the parties that the attorney has a financial relationship with the title company. There may also be an **affiliated business arrangement** disclosing that the lender is affiliated with the title company.

You may be asked by the title company to re-sign a **judgement affidavit**, where you list recent judgments, divorces, or bankruptcies.

A **compliance agreement** is where you agree to cooperate with the title company after closing if any corrections are needed.

A **disbursement (or escrow) agreement** with the title company allows the title company to disburse your loan proceeds.

While this is a general list, other forms may be required at closing.

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