

STEP FIVE

PURCHASE AND SALE CONTRACT

Once you have found a property that you would like to own, you must negotiate the terms of the purchase with the seller. You will then sign a binding contract called the Purchase and Sale Agreement (“P&S”). This document usually binds you to purchasing the property and prevents the seller from selling the property to another buyer. Because this document is the most important one you will sign, your agent will assist you throughout the process. You may also want to obtain legal representation to help negotiate the terms of the contract. If you use a NACA Buyer’s Agent, this may be provided to you at no cost.

Remember to check with your Housing Consultant prior to completing the P&S to determine whether you and the other parties to the agreement are eligible to participate in the NACA program. You also need to verify that you qualify for the amount you are offering. You will need to inform your Housing Consultant of the taxes and insurance on the property. The listing broker should be able to provide these to you.

The listing broker/agent representing the seller will require a deposit before agreeing to hold the property for you. Depending on the contract, your deposit may be forfeited and you may be liable for any damages to the seller if you fail to perform the obligations specified in the P&S. To protect your rights, the P&S must allow you to void the agreement or renegotiate the terms if the home inspection is unsatisfactory or you fail to obtain a mortgage commitment. You should also add other requirements and conditions that you deem necessary.

In some states, you must first make a written offer which specifies the price, deposit amount, length of time provided to inspect the property (NACA requires ten days) and terms that allow you to back out of the purchase. The offer, at minimum, must be contingent on a satisfactory inspection and a mortgage commitment. While an offer is also a binding agreement, you will need to sign a P&S that contains the complete terms of the sale.

The initial draft of the P&S is usually provided by the listing broker, who represents the seller. Most of its terms will therefore favor the seller. You need to ensure that any changes inserted to protect your rights are actually written into the contract. If the seller has agreed to repairs or renovations, these items must be attached and signed by the seller as an amendment to the P&S. Most P&S agreements limit your options to back out of the deal. At a minimum, you must make sure that you can void the contract for the following reasons:

- An unsatisfactory inspection
- Failure to obtain a mortgage commitment by the date specified (you must alert the seller if this happens)
- Damage or vandalism to the property after the P&S is signed
- Property must appraise (the seller can reduce the price)

You may negotiate almost all the terms of the Offer and P&S, including:

- **The purchase price.**
- **The amount of the earnest money or deposit.** Most NACA buyers only put \$500 down as earnest money. In areas where there is high demand for housing, you may need to deposit \$1,000 or more. Because NACA does not require downpayments or closing costs, these funds will be applied to the pre-paid expenses due at closing.
- **Option period to complete a property inspection.** The option period allows you time (5 to 10 days on average) to complete a property inspection and review the report to see if there are any hidden or undisclosed defects. During the option period you can determine whether or not you want to continue with the P&S contract, negotiate repairs, seek estimates for repair work or cancel the contract and look for a more suitable property with less repair requirements. Earnest money is generally refunded if you cancel the P&S contract before the option period expires.
- **The time until the commitment date.** NACA requires a minimum of four weeks from the mortgage application date. Loans are often closed within two to three weeks of the mortgage application.
- **The time until closing.** NACA suggests six weeks from the mortgage application date, although most closings happen much more quickly, as previously stated. You may have to agree to a shorter time frame initially and then, if necessary, request an extension. Sellers will usually provide an extension if the sale seems likely, since it would take far longer to re-market the property.
- **The repairs you want the seller to make.** Most contracts specify the sale of property “as is.” You have to make sure that repairs or work you want the seller to do are actually *written into the contract*. A verbal agreement is not sufficient. In some instances, the seller will not do the repairs but will provide funds at closing for the buyer to make the repairs. Those funds would be escrowed by the closing agent at closing and dispersed once the repairs have been completed.
- **The units you want vacant, if any.** Of course, NACA requires that at least one unit is vacant for you to live in. If you are uncomfortable with the current tenants, you should require that the units are vacant at closing. Most standard contracts do not require this. If you will be doing substantial rehab work on several units, you may want them to be empty at closing. It can be difficult for contractors to complete work when units are occupied with tenants.
- **The items that will remain with the property.** Which items will remain (such as the washer and dryer or refrigerator) and which will be removed (such as the trash in the basement or backyard) need to be specified in the P&S or amendment to the P&S.
- **Who pays which costs associated with the closing?** The lender pays the buyer’s closing costs and the seller is responsible for closing costs that are customarily paid by the seller. In cases where the seller would pay the buyer’s closing costs, the seller should instead allocate the money towards the interest rate buy-down.