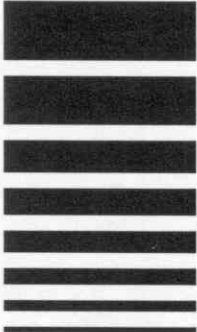




Consumer Guide

TO BUYING AND
SELLING HOMES



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Revised Winter 2003

Consumer Guide to Buying and Selling Homes

INTRODUCTION

The Nebraska Real Estate Commission has published this booklet to aid consumers in the buying and selling of real estate. The processes involved in a real estate transaction will be described, as well as, the roles of the various individuals who may take part in the transaction.

The Commission feels that it is important for you, as a consumer, whether buyer or seller, to understand the role, or roles, of the other people who will be involved in the transaction.

Even though the Guide describes the processes involved in a real estate transaction, it should not be expected to substitute for consultation with an attorney, an appraiser, or any other professional who has expertise in areas in which you may need advice during the purchase or sale of a home.

An extensive glossary is available on pages 33 to 43. We urge you to use it frequently for definitions of unfamiliar terminology. **Items defined in the Glossary are *italicized* in the Guide for your convenience.**

ADDITIONAL CONSUMER INFORMATION AVAILABLE ON WEBSITE

It is our hope that the consumer will take the time to visit the Real Estate Commission's website at: www.nrec.state.ne.us. A section identified specifically as Consumer Information has been included on the site. This information contains a number of electronic links to other websites that may prove useful to you as you proceed through your real estate transaction. In addition to an electronic version of this Guide, the Consumer Information section will also contain information on consumer protection services such as the Better Business Bureau, a variety of government sites, and various sites with educational content. It is our hope that this additional information proves useful to you as you proceed through your real estate transaction.

Real Estate Licensee's Role

For the purposes of this publication, the procedures involved in buying and selling real estate will be outlined with emphasis on a transaction involving a real estate *licensee*. Therefore, understanding the role of a licensee in the transaction is of paramount importance and will be discussed first.

Whether you are a buyer or a seller, the selection of a licensee to assist you in a real estate transaction is a most important consideration. Licensees work in the business every day and have up-to-date knowledge about the real estate industry and the various related businesses that can be involved in a real estate transaction. They, therefore,

can be very helpful as the complicated process of buying or selling real estate progresses.

Under Nebraska law there are two types of real estate licenses, salesperson and broker. Each real estate company must have a broker, referred to as a designated broker, under whom the licenses of salespersons and/or other broker licensees, known as associate brokers, are placed. The salespersons and associate brokers under the supervision of the designated broker are known as *affiliated licensees*. When entering into a *brokerage relationship* with an *affiliated licensee* you, as the buyer or seller, are actually entering into the relationship with the designated broker. The *affiliated licensee* with whom you are working is entering into the relationship with you on behalf of his or her designated or employing broker.

The licensee's primary function is to bring together buyers and sellers. The real estate transaction, itself, is between the buyer and the seller and all agreements surrounding the sale of the property are strictly between the buyer and the seller. The *licensee* does NOT guarantee or warranty the sale or any portions of it.

In a real estate transaction the *licensee* will be acting, in most situations, as a limited agent for either the buyer or the seller. There may be situations where, with the informed, written consent of the buyer and the seller, the *licensee* may function as a limited *dual agent*. Nebraska law requires the *licensee* to disclose who they will be representing, at the first practicable opportunity during or following the first substantial contact with you, as a buyer or seller, unless you have already entered into a *brokerage relationship* with another *licensee*. The *licensee* is required to provide you with a Real Estate Commission prepared and approved disclosure pamphlet which describes the various *brokerage*, or *agency, relationships* allowed in Nebraska. You should be sure to ask for, receive and review this pamphlet upon beginning discussions with a real estate *licensee*. The *licensee* will answer any questions you may have regarding possible *brokerage relationships*. If you have questions that the *licensee* cannot answer, you may want to seek legal advice.

When a *licensee* is representing you, you are his or her *client*. When a *licensee* is representing someone else in the transaction, you are his or her *customer*.

Although a *licensee* owes a duty to deal fairly with both the *client* and the *customer*, these are distinctly different relationships with different duties. Any time you deal with a real estate *licensee* in a real estate transaction, you should ask who the *licensee* is representing, what duties or obligations they owe to you and what tasks the *licensee* will perform for you.

The Selling Process

As an owner, who has decided to offer your home for sale, you may decide to use the services of a real estate *licensee* to assist you in that sale. If you do, at the earliest practicable opportunity during or following the first substantial contact with you, as a

seller, the *licensee* meeting with you must provide you with a Real Estate Commission prepared and approved disclosure pamphlet, entitled "Brokerage Relationships in Real Estate Transactions", which describes the *brokerage*, or *agency, relationships* allowable in Nebraska. The *licensee* must also disclose what *brokerage relationships* are offered by the real estate company which the *licensee* represents.

If the pamphlet is not given to you, you should request a copy for your review as soon as possible.

When you employ a real estate *licensee* in the sale of your home you will be asked to sign a *listing agreement* in which you will agree to pay a certain amount of money, known as a *brokerage fee* or *commission*, upon the sale of your home for the services provided. It is important to remember that the *brokerage fee* is negotiable when you are entering into the *listing agreement*. When you sign the *listing agreement*, you are employing the *licensee* to act as a *seller limited agent* in the sale of your home. The *listing agreement* is actually a contractual agreement between you, the seller, and the designated broker for the real estate company with whom the *licensee* is affiliated. The specific *licensee* with whom you are working is an *affiliated licensee* of the designated broker for that company. It should be noted, here, that not only does the *listing agreement* put the designated broker, the "listing" *licensee* and possibly other licensees with the real estate company in your "employ" but, with your written approval, other licensees with other real estate companies may also be in your "employ" as *subagents*. All licensees acting as a *seller limited agent* must try to obtain the best acceptable offer for you as the seller. Since the *listing agreement* is a legally binding contract that you are signing, it is of the utmost importance that you read and understand all the provisions included before you sign the *listing agreement*. If you do not understand them, you should seek legal advice.

Another point that should be emphasized, here, is that all contracts, agreements and changes in them should be in writing so that the provisions are clear to all parties involved in the transaction and so that all matters in the transaction are documented.

There are several types of *listing agreements* into which you can enter. Some of the terms in these contracts are negotiable, including the amount of the *brokerage fee* or *commission* to be paid and the duration of the *listing agreement*. The most commonly used type of listing is the *Exclusive Right to Sell*, which may be placed in *Multiple Listing Services*, if available.

A term which needs to be explained, here, is *Multiple Listing Service*. *Multiple Listing Service (MLS)* is **NOT** a type of *listing agreement* that is entered into between the seller and designated broker. However, it is an often times misunderstood term. *Multiple Listing Service* is the name given a service performed by a local board of Realtors, a professional organization, in which a real estate company may be a member. After joining the *Multiple Listing Service* a member company submits listings to the Service and agrees that they will allow other *MLS* members to cooperate in the sale of the

properties listed therein and to share compensation. With your written consent, as the seller, other real estate companies may act as your *subagents* through the *MLS* and/or allow *buyer limited agents* to assist in the sale of the property. The *Multiple Listing Service* also provides necessary information to other *MLS* members to assist in the sale of properties listed therein. Therefore, it is not a type of formal listing, but a marketing tool used by members of the *MLS* to expose properties to a wider market base.

Another document which all sellers of residential *real property*, upon which one to four dwelling units are located, are required to complete is the Seller Property Condition Disclosure Statement. If you are working with a *licensee*, the *licensee* will normally provide you with the required form at your first meeting. These forms should also be available at local retail forms suppliers. You will be asked to complete the form to the best of your knowledge. After it is completed, signed and dated, it will be provided to prospective purchasers. You should be aware that if a *licensee* knows of an error, inaccuracy or omission in the information provided on the form that he or she is required, by law, to attach a written statement setting out the known error, inaccuracy or omission.

In listing a property for sale one of the most important services a *licensee* can perform for the seller is suggesting a listing price for the property. This suggested price is arrived at after careful inspection of the property and after comparing it with past sales of comparable properties and existing properties which are on the market. This process is called a *market analysis*. It should be noted that a *market analysis* is not the same as a *fee appraisal* performed by a licensed or certified appraiser.

At the time of listing your property for sale, you may wish to ask the *licensee* to prepare an estimate of the proceeds, that you could expect to receive after the sale of the property. This estimate will be prepared according to contingencies called for in the *listing agreement* such as the price and other financial arrangements. This will only be an estimate because changes may take place in the final sale document due to negotiations that may take place during the selling process with the buyer.

Many times certain items of *personal property* cause disputes between the buyer and the seller. The most common examples of these items include, but are not limited to, gas grills, free standing bars, drapes, propane tanks, stoves, refrigerators, water conditioners etc. If a seller does not wish a certain item, or items, to be included in the sale of the property then those items should be specifically excluded in the *listing agreement* as "not to be included in sale". Another, and perhaps better, way may be used to alleviate this problem. That is, to take the item down and/or put it away and replace it, if necessary, with a substitute before the property is shown. By doing either of the above a considerable amount of trouble can be avoided at the time of the sale.

After entering into a *listing agreement* to sell your property, it becomes the responsibility of your designated broker and the *affiliated licensee* who listed your

property to market your property using the expertise they have acquired through education, experience and knowledge gained while in the real estate business.

A part of the marketing process will probably include advertising your property in the media available and showing your property to prospective buyers. With your written permission a sign can be placed in your yard advertising the property for sale. It is the designated broker's and the "listing" *licensee's* responsibility to make sure that all marketing is carried out with a high degree of ethics and in compliance with all applicable federal, state and local statutes, rules and regulations and ordinances.

The ultimate goal of all marketing is to sell the product. After finding a buyer interested in your property, the *licensee*, as your limited agent, will attempt to negotiate the sale on the terms and conditions acceptable to you, the seller. This process begins with the presentation to you of an Offer to Purchase from a prospective buyer. It should be noted that all written offers are required by law to be submitted to the seller.

As a part of making the offer, normally the buyer will put down a reasonable cash deposit, commonly known as an *earnest money deposit*, to bind the buyer and show you, the seller, that this is a sincere offer by the buyer and that upon acceptance the buyer will go through with the transaction as provided for in the terms of the contract.

The *earnest money deposit* is held by a designated broker pending acceptance of the offer. After acceptance of the Offer to Purchase the *earnest money deposit* is deposited in that broker's trust account and, if that broker is not the listing broker, then it is transferred to and held in the listing broker's *trust account*. With the written authorization of all parties to the transaction, a third party, such as an attorney or title insurance company may be used to close the transaction. In this case, the *earnest money deposit* would be held in that third party closing agent's *trust account*. These types of *closings* have become known as "escrow closings". If the sale "closes", the earnest money is applied as a credit to the buyer at *closing*.

If you refuse to complete the transaction or if, for any reason that is not the buyer's fault the sale is not completed, then the earnest money will be refunded to the buyer. If, however, the buyer, after acceptance of the offer, does not follow through with the transaction, the earnest money may be forfeited to you. In addition you, as the seller, may be able to seek other damages from the buyer, and you may wish to consult an attorney.

Disputes can arise between the seller and the buyer over the return or forfeiture of *earnest money deposits* when a transaction is not consummated. You should be aware, as either a buyer or seller, that designated brokers are required to handle the funds as directed by the Nebraska Real Estate License Act and Rules and Regulations. In general, brokers will require a mutual release before releasing the *earnest money deposit* if there is a dispute.

After a potential buyer is found and the Offer to Purchase contract has been completed, the Offer is presented to you, the seller. At this time, the "listing" *licensee* must also present you with a written estimate of costs to be paid by the seller and the approximate amount the seller will receive as a result of the acceptance of this Offer. This estimate will include a listing of the categories of costs and an estimate of these costs that are reasonably available at that time. It should be emphasized that the costs which are estimated, are only estimates and the actual closing cost figures will be disclosed to you at a later point, prior to *closing*.

As the seller, you may accept the Offer, reject the Offer or modify the Offer by submitting a *counter-offer*. But the decision is yours to make, not the licensee's. If a *counter-offer* is made by the seller, the buyer may accept, reject or submit still another *counter-offer*. This process will continue until an agreement is reached or until it is obvious that no agreement can be reached. Each of the *counter-offers* presented should have reasonable expiration dates by which acceptance, or rejection has to occur.

After agreement between the seller and the buyer regarding the terms of the sale, and after each of you have signed the contract, the house is considered sold. However, before the sale can be consummated all the terms of the contract must be met by both parties. This may include contingencies such as financing. What must be done before the *closing* on the property depends on the terms agreed to in the *Purchase Agreement*. The "listing" *licensee* will oversee the completion of these terms while keeping the seller informed as to the disposition of the sale. In "escrow closings" the *closing* entity normally oversees the completion of the terms of the sale.

In the *Purchase Agreement* contract a date will be established on which the *closing*, or settlement, of the sale will take place. All provisions of the contract are to be met by that date and on that date final financial matters are completed.

The Real Estate Settlement Procedures Act of 1974 governs the *closing* of most sales. It requires that both seller and buyer receive copies of *settlement statements* which give a full disclosure of the costs involved in the sale. Each item on the *settlement statement* is to be explained by the person conducting the *closing*. The closing date is also when the seller conveys *title* to the property by way of a *deed* and receives the net amount of the sale price agreed to in the *Purchase Agreement*.

What costs are involved in a sale and who pays them? Each transaction can be different and is governed by the terms of the contract and the various laws governing real estate transactions. It is, unless otherwise specified in the contract, the seller's responsibility to pay the *transfer taxes* (revenue), any attorney fees incurred by the seller, a *prorated* share of the real estate taxes and insurance and utilities to the day of possession. It is the buyer's responsibility to pay for the cost of preparing the buyer's financial papers, most recording fees, any *appraisal* fee, the cost of any survey and any attorney fees which the buyer incurred. Another cost which is customarily divided

equally between buyer and seller is title insurance. It is used to furnish evidence of *marketable title*. Another, but less used method to provide evidence of *marketable title* is for the seller to pay to have the *abstract of title* updated and the buyer to pay for a title examination. It must be emphasized that all these are negotiable items and may be changed by the terms of the *Purchase Agreement* into which the buyer and the seller have entered.

Compensation, in the form of the *brokerage fee* or *commission*, to any licensees involved in the transaction may be paid by the buyer, the seller, or a third party. A seller can agree that the real estate company with which they listed their property may share, with another real estate company, any compensation paid by the seller. This is true whether the compensation is shared with a *subagent* of the seller, a *limited buyer agent* or a *dual agent*.

The Buying Process

As a potential buyer of real estate you may seek the assistance of a real estate *licensee* in order to purchase a home. This selection is one of great importance. Real estate licensees working with you, as the buyer, may work with you as your limited agent, a *seller limited agent* or they may work with you as a limited *dual agent*. *Licensees*, by law, in Nebraska are considered to be a *buyer limited agent* unless they have entered into written agreements to represent sellers or act as dual agents. As a buyer, you are not required to enter into a written agreement in order for the *licensee* to represent you. You may be asked to enter into written agreements to be represented and you may do so. However, just as with a *listing agreement* to sell property, you should make sure you understand all terms and conditions in the written agreement. If you do not, you should seek legal advice prior to entering into such a written agreement.

Disclosure of the *brokerage* or *agency relationship* under which the *licensee* will be working with you must be made to you at the earliest practicable opportunity during or following the first substantial contact with you as the buyer, or prospective buyer, unless you have already entered into a *brokerage relationship* with another *licensee*. Licensees have a Nebraska Real Estate Commission prepared and approved disclosure pamphlet entitled "Brokerage Relationships in Real Estate Transactions" which will explain more fully the *brokerage relationships* available and the duties and obligations of licensees in each relationship.

The *licensee* will ask you questions about what you want and need in a house, what you don't want and what your financial situation is. This is called "qualifying" the buyer. This information is very important. It will be the information the *licensee* requires to show you only those properties which meet your needs and wants and are in your price range.

When looking at houses to purchase, additional information is required by Nebraska law to be given to you by the seller. All sellers of residential property, i.e. *real property* on which no fewer than one nor more than four dwelling units are located, must provide

the buyer with a Seller Property Condition Disclosure Statement prior to the buyer becoming obligated to purchase the residential *real property*. This Disclosure Statement must be provided by the seller whether the house has been listed for sale with a real estate company or is being sold directly by the owner.

The Disclosure Statement sets out certain information about the property which will assist you in making an informed decision regarding any offer to purchase you may want to make. You should ask to see the Disclosure Statement before executing any Offer to Purchase. You should also be aware that if a real estate *licensee* who is representing the buyer is involved in the transaction and knows of an error, inaccuracy or omission in the Disclosure Statement, the *licensee* is required, by law, to attach a written statement setting out the known error, inaccuracy or omission.

The following concerns will provide information about the property which will assist you in making an informed decision regarding an Offer to Purchase and may be addressed in the *Purchase Agreement*:

1. You may decide that you want to have certain inspections completed by an appropriate professional regarding the roof, mechanical equipment, the basement, electrical system or other parts of the house and land. These inspections are generally the buyer's expense. You also can consider purchasing home warranty insurance. However, these policy coverages may vary.
2. At some point, you may want to locate the boundaries of the property. It does happen, that the boundaries are different than what the seller and buyer believe and that improvements you are buying are located on someone else's property. Unless provided for differently in the contract, this, too, would be a buyer's expense.
3. You may want to determine if there are zoning restrictions which have been imposed by local governments designating the type of buildings and how they are to be used, such as: residential, commercial, industrial, etc.
4. You should also determine what restrictive *covenants* are in place. Restrictive *covenants* are private agreements which restrict the use and occupancy of *real property*. Such things as the use of the structure, architectural requirements, setbacks, size of the structure and aesthetics are only some examples.
5. *Easements* which exist on the property you intend to purchase should also be considered. An *easement* is a right or privilege one party has to the use of the land of another for a special purpose consistent with the general use of the land. Examples of *easements* are those given to telephone, electric and cable companies to erect poles and run lines over, or to place underground lines on, private property. *Easements* can be given to people to walk or drive across

someone else's land. *Easements* can be given to gas and water companies to run a pipeline to serve their customers.

6. Contingencies in any contract entered into for the purchase of *real property* should also be considered. A contingency is a provision placed in a contract which requires the completion of a certain act or the happening of a particular event before the contract is binding. Often a buyer will submit an Offer to Purchase contingent upon his or her obtaining financing or rezoning. If there are any conditions such as this, you will want to be sure that they are discussed and written into the *Purchase Agreement*.
7. Taxes are an item of importance to many buyers. Find out the cost of real estate taxes (general) and if there are any *special assessments* regarding roads, streets, sewers, electrical, etc.

After receiving satisfactory answers to any questions or concerns you may have and everything seems satisfactory to you, you may enter into a *Purchase Agreement*.

The Offer to Purchase will usually be written on a standard form with the various figures and terms filled-in by the *licensee*. IT IS EXTREMELY IMPORTANT FOR YOU TO KNOW AND UNDERSTAND WHAT IS STATED ON THE OFFER TO PURCHASE BECAUSE, IF ACCEPTED, IT WILL BE THE TERMS OF THE SALE. MAKE SURE THAT THE OFFER IS THOROUGHLY EXPLAINED TO YOU AND YOU HAVE NO QUESTIONS REGARDING THE TERMS **BEFORE** YOU SIGN THE OFFER TO PURCHASE. IF YOU HAVE ANY CONCERNS REGARDING THIS CONTRACT, SEEK THE ADVICE OF AN ATTORNEY.

Before the Offer to Purchase is presented to the seller for his or her consideration the following should be clearly stated in the contract.

- a. The contract must state the sale price, payment provisions and be properly signed. If there is no provision as to the method of payment, the law presumes it is to be a cash sale. The contract should state, when applicable, the amount of the *earnest money deposit*, the amount to be paid at *closing*, the method of payment of the balance, if you are assuming an existing *mortgage* or arranging for a new *mortgage*, and any and all other pertinent financial provisions. This information would appear under the financing provision section of the contract.
- b. Make sure the contract contains everything in the house and on the property, or attached to it, that you intend to buy. Many misunderstandings arise over appliances, carpets, fireplace tools and screens, chandeliers and other attached light fixtures, gas grills, free standing bars, drapes, propane tanks, stoves, refrigerator, garage door openers and controls, water conditioners, etc. (Note: see Glossary for definition of *Personal Property*). These items and anything else to remain with the property should be discussed and included in the contract.

CHECK THE HOUSE AND GROUNDS CAREFULLY TO SEE WHAT IS TO REMAIN WITH THE HOUSE.

- c. The legal description of the *real property* should be sufficiently definite to identify the property.
- d. The contract should state how long the seller has to decide to accept the offer. The typical clause states "this offer will become void unless it is accepted by (Month/Day/Year) at (specific time)". This language will automatically terminate the offer unless the seller reacts within the stipulated time or unless the offer is modified or withdrawn.
- e. How long you have after the offer is accepted to arrange any financing should be included in the contract.
- f. The time of *closing* the transaction and the time that possession of the premises is to be given to the buyer may not be the same. To prevent possible misunderstanding, the date of possession should be stated.

It is also a normal procedure for the buyer to put down a reasonable cash deposit, commonly known as an *earnest money deposit*, to bind the buyer and show the seller that this is a sincere offer by the buyer and that upon acceptance you will complete the transaction as provided for in the terms of the contract.

The *earnest money deposit* is held by a designated broker pending acceptance of the offer. After acceptance of the Offer to Purchase the *earnest money deposit* is deposited in that broker's trust account and, if that broker is not the listing broker, it is then transferred to and held in the listing broker's *trust account*. With the written authorization of all parties to the transaction, a third party, such as an attorney or title insurance company, may be used to close the transaction. These have become known as "escrow closings". In these closings all parties to the transaction must authorize the designated broker to transfer the *earnest money deposit* to the third party closing agent; and the buyer and seller must agree on what terms any additional cost for such closing will be paid, i.e. buyer and seller split the fee or one or the other pays the fee. Certain financing options may designate which party pays this fee. If the sale "closes", the earnest money is applied to the total price of the property.

If the offer is not accepted or if the seller refuses to complete the transaction or if, for any reason that is not your fault, as buyer, the sale is not completed, then the earnest money will be refunded to you. If, however, the buyer, after acceptance of the offer, does not complete the transaction, the earnest money may be forfeited. In addition the seller may be able to seek other possible damages from you.

Disputes can arise between the seller and the buyer over the return or forfeiture of *earnest money deposits* when a transaction is not consummated. You should be aware,

as either a buyer or seller, that designated brokers are required to handle the funds as directed by the Nebraska Real Estate License Act and Rules and Regulations. In general, brokers will require a mutual release before releasing the *earnest money deposit* if there is a dispute.

At the time you prepare an Offer to Purchase, the *licensee* must prepare a written estimate of the closing costs you will be expected to pay. This estimate will include a listing of the categories of costs and an estimate of those costs that are reasonably available at that time. Remember, these are estimates and could change.

As soon as possible, after preparation of the offer and you signing it, the Offer to Purchase will be presented to the seller. If the seller accepts the offer, then the contract has become binding on both parties. A rejection, or a modification in the form of a *counter-offer* from the seller, makes the contract null and void. However, should the buyer accept, in writing, the modifications which were made by the seller, then the contract is considered valid. An estimate of closing costs will also be made at the time any *counter-offer* from the seller is presented to you. After acceptance of the offer by both parties the contract is legally binding on both.

After acceptance, the buyer will be expected to arrange for the financing set forth in the contract. The *licensee* with whom you are working may help you arrange financing. The various types of financing are discussed later in this "Guide".

Another issue that arises at this time deals with the *title* to the property. The seller will normally furnish a "*title insurance*" policy, wherein a *marketable title* is insured by a title insurance company. When the property is sold, the buyer then needs a new title insurance policy to protect his or her rights in the property. *Title insurance* protects the buyer against title defects, i.e. defective title or unmarketable title. The insurance is a one-time expense and covers the period of time up to the time the buyer becomes the owner of the property. Often times, the lending institution will require *title insurance* to insure its interest in the property, also. There will then be two title insurance policies. The reason for the two policies, i.e. the buyer's title policy and the mortgagee's title policy, is that the lending institution, the mortgagee, needs to be assured that there are no other *liens* superior to its and you want to see that there are no *encumbrances* on the *title* which would restrict your degree of ownership, or use, of the property for the purpose for which you purchased it. The purchaser may want to have the title insurance policy examined by an attorney since title insurance policies usually contain some exclusions. These exclusions could render the policy useless in protecting the buyer's interest in the property.

A less common approach today to provide evidence of *title* is for the buyer to have the *title* for the property examined by an attorney. Your attorney will examine the *abstract of title* to determine if the *title* is "clear". That is, that no one else has any claim to the property and that the seller can convey *marketable title* to you. If the *title* is not "clear", then the seller would ordinarily have a reasonable amount of time to "clear" the

title. If the seller cannot produce a "clear" *title*, then the buyer would not have to go through with the purchase.

Financial institutions will also require at the *closing* that you provide an insurance binder or some other evidence of a Homeowner's or hazard insurance policy.

When all of the terms of the contract have been fulfilled, including inspections, examinations and financing, the transaction can be closed.

At the *closing*, all necessary documents will be signed and exchanged and the seller will be paid. It is the buyer's responsibility to have the final amount of settlement funds available as reflected on the closing statement. Under Nebraska Statutes, real estate transactions must be closed using "good funds". Under these Statutes, "good funds" include, but are not limited to, lawful money of the United States, cashiers checks, certified checks, bank money orders, etc. The *closing* procedure will be explained to you by the real estate company, the attorney or the title insurance company that closes the transaction.

One last thing you should be sure to check is that the *deed* to your newly acquired property is recorded, as soon as possible after *closing*, in the county where the *real property* is located so that you establish your interest in the property. This is the buyer's responsibility but this may be done by the *licensee* or the party *closing* the transaction. However, you should make sure it is done.

We would again emphasize the fact that the sale of the property is between the buyer and the seller. The real estate *licensee* is the person who brings the buyer and the seller together. **It is not the real estate licensee's role to guarantee or warranty the property which was purchased.** Licensees are not responsible for replacing or repairing defects in the property. These are items that need to be negotiated between the buyer and the seller, as the *principals* in the transaction. This, however, is not intended to indicate that licensees can willfully misrepresent the property. In fact, by law, they cannot. And if they were to do so, they could be subject to disciplinary action by the Real Estate Commission and, possibly, civil litigation.

Financing Information

Frequently a person who purchases a home needs to borrow the money for the purchase. Usually this will be arranged by a note and *mortgage* or by a note and *deed of trust*.

When the buyer gets a loan, the property is used as *collateral*, or security for the loan. The buyer will give a *mortgage* or *deed of trust* and also sign a *promissory note*. Upon *closing*, the buyer, as mentioned earlier, receives a *deed* from the seller and becomes the legal owner of the property. Through the *mortgage* or *deed to trust* the buyer promises to do certain things, i.e. make the payments, keep the property insured, etc.,

and also gives the lender the right to *foreclose* and take possession of the property if he or she does not fulfill the terms of the *mortgage* or *deed of trust*.

What should be taken into consideration when you are looking for financing in the purchase of your home? The following should be considered.

1. The Rate of Interest - *Interest rates* will vary between financial institutions.
2. The Length of the Borrowing Period - The length of the *term* of the *promissory note* can vary. A longer term may reduce the amount of the monthly payment but the total amount paid for the property will be more since there will be considerably more interest to pay.
3. The *Acceleration Clause* - An *acceleration clause* can cause the entire debt of the loan to become due and payable if the buyer defaults in payments or fails to meet other terms of the *promissory note*, *mortgage*, or *deed of trust*. It is important to fully understand the conditions of default that might trigger the *acceleration clause*.
4. The Prepayment Clause - This clause allows the loan to be paid off before the end of the term of the loan. This is usually necessary because very few people remain in the house they have purchased for the full term of the loan. Therefore, upon the sale of the property, they need to pay off the loan before purchasing the next property. Lenders may charge a penalty for prepaying the loan. It is important for you to find out if the lender will charge this *prepayment penalty* and under what conditions.
5. The Due-On-Sale Clause - If a *mortgage* or *deed of trust* contains this clause, the borrower is required to pay off the debt, at the lender's, mortgagee's, option, when the property is sold. This clause eliminates the possibility of a new buyer taking over the payments on the debt without the lender's consent.
6. The Insurance and the Taxes - You will be required by the lender to maintain insurance on the property as a protection against loss. The property insurance premium may be made part of the monthly payment. You may be required to pre-pay the property taxes to the lender either in lump sum or on a monthly basis as part of your payment to the lender. In each case the money is held in *escrow* by the lender and paid by them on the respective due date. This policy varies with the lender and you should know ahead of time which method will be used.
7. The Down Payment - In order to obtain a loan you will, in most cases, be required to make a downpayment which will be a certain percentage of the purchase price of the property, dependent on the type of loan which you are acquiring. (See "The Type of Loan".)

8. The Type of Loan - Real estate loans are categorized into four general types: A) the VA (Department of Veterans Affairs) loan guaranty program; B) the FHA (Federal Housing Administration) insured loans; C) the RECD (Rural Economic and Community Development) direct and guaranteed loans; and D) the conventional loan which is a loan not guaranteed or insured by a Federal or State agency.
- A) The Department of Veterans Affairs (VA) Loan - The VA loan was instituted to assist veterans in financing the purchase of reasonably priced homes, including *condominium* units, and mobile homes, with small or no downpayments. This loan is available only to veterans and certain unremarried widows and widowers. It is limited to owner occupied residential (1-4 family) dwellings. No downpayment is required. The loan may not exceed the reasonable value of the home. There is no *prepayment penalty*. Specific terms will be explained by the lender or VA officials.
- B) Federal Housing Administration (FHA) Loan - Purchasers wishing to use an FHA-insured *mortgage* must meet certain minimum criteria. The Secretary of Housing and Urban Development sets a maximum mortgage amount which cannot be exceeded on FHA-insured loans. A charge will be made to the borrower for the FHA insurance premium. This insurance protects the lender from loss. The property must be appraised by an FHA roster/panel appraiser prior to the loan being made with the cost normally charged to the purchaser. FHA loans may be insured up to thirty years. For exact and current FHA regulations you will need to contact your local Financial Institution or FHA office.
- C) Rural Economic and Community Development (RECD) Loan - RECD can make subsidized loans directly to eligible low and very-low income applicants to buy, build, repair or relocate a home which will be their primary residence. The household must not already own an adequate home. Additionally, they must be unable to obtain the necessary financing through conventional financing sources. The dwelling must be modest in size, design and cost. RECD also has a Guaranteed Rural Housing Program. This program is directed towards moderate income households as there is no subsidy involved. The loan is actually made by an approved RECD lender who, in turn, receives a guarantee from RECD. The maximum mortgage amounts are the same as authorized under the HUD-FHA insured program. A loan of 100% debt to value can be made under this program. Therefore, a household will generally only be responsible for the closing costs. Both of the above RECD homeownership programs can only be made in rural areas. In Nebraska, rural areas are generally defined as communities of 20,000 population and less.
- D) The Conventional Loan - Since, in this type of loan, the lender is not provided the protection against loss by governmental insurance or guarantee, the

lender's risk may be greater. Private Mortgage Insurance (PMI) may be purchased from the private sector through various entities to provide higher loan amounts and to insure the lender against loss due to default of payments. There are various types of conventional loans that may be available; and therefore, terms vary and need to be scrutinized according to your needs, wants and capabilities.

9. The Origination Fee - An origination fee is the fee charged by a lender for the costs incurred by the lender in processing a housing loan.
10. The *Discount Point* - *Discount points* may be charged by the lender. Each point equals one percent of the loan amount. The lender may do this when the *interest rate* being charged the buyer is less than the true market *interest rate*.
11. Other Costs to the Borrower - Other costs may include, but not be limited to, the purchase of credit reports on the borrower, an on-site *appraisal* of the property, *title searches* and review, legal and recording fees, etc.

DISCRIMINATION

In 1968, the Federal Government passed the Federal Fair Housing Act, which was amended in 1988, and is contained in Title VIII of the Civil Rights Act of 1968. This law provides that it is unlawful to discriminate on the basis of race, color, ethnic group, religion, sex, disability, familial status or national origin, when selling or leasing residential property. It covers dwellings and apartments, as well as vacant land acquired for the construction of residential buildings, and prohibits the following discriminatory acts (The following paraphrases the prohibitions and are not exact quotations.):

1. Refusing to sell, rent, or negotiate with any person, or otherwise making a dwelling unavailable to any person.
2. Changing terms, conditions, privileges or services for different individuals as a means of discrimination.
3. Practicing discrimination through any statement or advertisement that restricts the sale or rental of residential property.
4. Representing to any person, as a means of discrimination, that a dwelling is not available for inspection or sale or rent.
5. Making a profit by inducing, or attempting to induce, owners of housing to sell or rent because of the prospective entry into the neighborhood of persons of a particular race, color, religion, sex, handicap, familial status or national origin. (Blockbusting)

6. Altering the terms or conditions for a home loan to any person who wishes to purchase or repair a dwelling, or otherwise denying such a loan as means of discrimination.
7. The discharging or demotion of any employee or agent or discriminating in the compensation of an employee or agent because they have complied with the non-discrimination sections of the law.
8. Interfering, coercing, threatening or intimidating a person in the exercise and enjoyment of rights granted under the Act.

The Nebraska Fair Housing Act, effective in September of 1991, presently includes most of the provisions as outlined above.

On July 7, 1978, the United States Department of Housing and Urban Development entered into an Affirmative Fair Housing Marketing Agreement with the Nebraska Real Estate Commission. The agreement had the dual objective of ensuring that all professional services of a licensed real estate agent/broker are equally available to all persons regardless of race, color, religion, sex or national origin and ensuring that all newly licensed persons in the real estate business are informed of, and held to, their responsibilities under the fair housing laws. The Affirmative Fair Housing Marketing Agreement was updated and re-entered into by the Nebraska Real Estate Commission on September 13, 1990. The 1990 Agreement incorporated the statutory requirements of the 1988 Fair Housing Amendments Act which became effective March 12, 1989. Entering into the original Agreement and the 1990 Agreement also evidences the commitment of the Nebraska Real Estate Commission to utilize its powers in achieving the objectives of the Agreement and provides for the sharing of information by the Department of Housing and Urban Development and the Commission. With the signing of the original agreement, Nebraska became one of the early states to adopt the National Affirmative Fair Housing Marketing Agreement for Real Estate License Law Officials. Nebraska was also one of the earliest signatories to the updated Agreement.

Copies of the Federal Fair Housing Act and the Nebraska Fair Housing Act are available from the Real Estate Commission's office or the Nebraska Equal Opportunity Commission.

Certain discriminatory acts are also prohibited in sections of the Nebraska Real Estate License Act, which is also available from the Nebraska Real Estate Commission office.

Real Estate Commission's Role

The Nebraska Real Estate Commission was established by the Nebraska Legislature in 1943. The forerunner of the Commission arrangement was an Advisory Committee with the Secretary of State acting as the Commissioner of Real Estate. The Commission

was established to protect the public interest and to enforce the provisions of the Nebraska Real Estate License Act.

There are presently seven members on the Real Estate Commission. The Secretary of State serves as chairperson. The other six are appointed by the Governor to terms of six years with one new Commissioner being appointed each year. Four of the members must be active, licensed real estate brokers who have been engaged in real estate as brokers for at least five years. Of the other two members, one must be a licensed real estate salesperson with at least three years experience and the other must be a representative of the public.

The major duties of the Commission are to administer the provisions of the Nebraska Real Estate License Act; to establish the necessary Rules and Regulations; to license real estate brokers and salespersons; to investigate alleged violations of the License Act and/or Rules and Regulations; to register certain sub-divided lands; to register certain retirement communities; to register certain membership campgrounds; to conduct educational workshops for licensees; to approve real estate schools, courses and instructors; to maintain quality control over real estate education programs; to develop real estate education courses; and to conduct hearings on alleged violations of the License Act and/or Rules and Regulations.

As indicated above, one of the major responsibilities of the Nebraska Real Estate Commission is ". . . to investigate alleged violations of the License Act and/or Rules and Regulations. . .". Therefore, the Commission only has jurisdiction over the real estate license of the *licensee*, i.e. to censure, suspend or revoke the license. The Commission cannot recover damages or require specific performance by a *licensee* or the parties to the transaction under the terms of a contract. To recover damages, or to seek specific performance, an individual must file a civil action against the *licensee* or the other party to the transaction. Matters involving damages in small amounts may be settled in Small Claims Court.

Complaints referred to the Commission must be in writing and on forms provided by the Real Estate Commission. The complaint must include a clear concise statement of the facts regarding the violations being alleged. After a review of the complaint by the Real Estate Commission staff, a copy of the complaint is forwarded to the *licensee* who may file a written response to the complaint. After the complaint is investigated, an investigative report made to the Commission, and there is reason to believe that a violation of the Nebraska Real Estate License Act or Rules and Regulations may have occurred, the case is set for a public hearing.

If, however, after the investigation there may not be probable cause to believe a violation has occurred, an investigative report is made to the Real Estate Commission citing allegations and the results of the investigation. The Commission then decides whether to: 1) set the matter for public hearing; 2) dismiss the matter; 3) redraft the complaint on the Commission's own motion; or 4) take other appropriate action.

A Real Estate Commission public hearing is similar to a court proceeding in that the *licensee* has the right to be represented by legal counsel and may have witnesses. Commission counsel acts on behalf of the complaining person (Complainant). Testimony is heard, evidence is introduced and witnesses may be cross-examined. Complaining persons usually will be called to testify and may be subpoenaed for other purposes, such as giving depositions.

After the public hearing, the Commission will render its decision based on the evidence presented at the public hearing. If the Commission finds that the *licensee* did, in fact, violate the License Act or Rules and Regulations, it will then take disciplinary action in the form of an order of censure, suspension or revocation of the licensee's license. If it finds no violation, the Commission will issue an order of dismissal.

GLOSSARY OF TERMS

ABSTRACT OF TITLE - A summary or digest of the conveyances, transfers, and any other facts relied on as evidence of *title*, together with any other elements of record which may affect the marketability of the *title*.

ACCELERATION CLAUSE - Clause in trust deed or *mortgage* giving the lender the right to call all sums owing the lender to be immediately due and payable upon the happening of a certain event.

ADVERSE MATERIAL FACT - A fact which (1) significantly affects the desirability or value of the property to a party and is not reasonably ascertainable or known to a party or (2) establishes a reasonable belief that another party will not be able to, or does not intend to, complete that party's obligations under a contract creating an interest in real property.

AFFILIATED LICENSEE - An associate broker or salesperson who is under the supervision of a designated broker.

AGENCY RELATIONSHIP - See *Brokerage Relationship*.

AMORTIZED LOAN - A loan that is completely paid off, interest and principal, by a series of regular payments that are equal or nearly equal. Also called a Level Payments Loan.

APPRAISAL - An estimate and opinion of value; a conclusion resulting from the analysis of facts. See *Fee Appraisal*.

APPRECIATION - An increase in value of real estate.

ASSUMPTION OF MORTGAGE - The taking of *title* to property by a grantee, wherein he or she assumes liability to the lender for payment of an existing note secured by a *mortgage* or *deed of trust* against the property; becoming a co-guarantor for the payment of a *mortgage* or *deed of trust* note.

BROKERAGE FEE - A designated broker's compensation for performing the duties of his or her *brokerage relationship*; in real estate practice, a specified dollar amount, a percentage of the selling price of property, percentage of rentals, etc. The designated broker normally shares his or her *brokerage fee* with the *licensee* with whom the *client* or *customer* is working.

BROKERAGE RELATIONSHIP - The relationship created between a designated broker and his or her *affiliated licensees* with a *client*, pursuant to Neb. Rev. Stat. Sections 76-2401 et. seq., relating to the services to be performed.

BUILDING CODE - A systematic regulation of construction of buildings within a municipality established by ordinance or law.

BUYER LIMITED AGENT - A single limited agent with duties and obligations to the buyer as set out in Neb. Rev. Stat. Sections 76- 2401 et. seq. and 301 NAC Chapter 1 and who has entered into a *brokerage relationship* with, and therefore only represents, the buyer in the real estate transaction. This relationship may be entered into in writing. However, under Nebraska law, *licensees* are considered single, limited agents of the buyer unless they have entered into a written *brokerage relationship* with a seller or are a limited *dual agent*.

CLIENT - A buyer or seller who has entered into a *brokerage (agency) relationship* with a *licensee* pursuant to Neb. Rev. Stat. Sections 76-2401 et. seq.

CLOSING - The final settlement of a real estate transaction between buyer and seller.

CLOSING STATEMENT - The computation of financial adjustments between buyer and seller, as of the day of *closing* a sale, to determine the net amount which the buyer must pay to the seller to complete purchase of the real estate and seller's net proceeds.

COLLATERAL - This is the property subject to the *security interest*.

COMMISSION - See *Brokerage Fee*.

CONDEMNATION - The act of taking private property for public use by a political subdivision; declaration that a structure is unfit for use.

CONDOMINIUM - A system of individual fee ownership of units combined with joint ownership of common areas of the structure and the land.

CONTRACT FOR DEED - A contract ordinarily used in connection with the sale of property in cases where the seller does not wish to convey *title* until all, or a certain part, of the purchase price is paid by the buyer. See *Land Contract*.

CONVENTIONAL MORTGAGE - A *mortgage* securing a loan made by investors without governmental underwriting, i.e. which is not FHA insured or VA guaranteed.

COUNTER-OFFER - A rejection of an offer by a seller along with an agreement to sell the property to the potential buyer on terms differing from the original offer.

COVENANT - Agreements written into *deeds* and other recorded instruments promising performance or nonperformance of certain acts or stipulating certain uses or nonuses of the property.

CUSTOMER - Buyer or seller in a real estate transaction in which a *licensee* is involved but who has NOT entered into a *brokerage (agency) relationship* with that *licensee*.

DEED - Written instrument which, when properly executed and delivered, conveys *title*.

DEED OF TRUST - *Deed* given by borrower to trustee to be held pending fulfillment of an obligation, which is ordinarily repayment of a loan to a beneficiary (lender).

DEED RESTRICTIONS - The term, as used relating to *real property*, means the owner of *real property* is restricted or prohibited for certain purposes. For example, the requirement in a *deed* that a lot may be used for the construction of not more than a one-party dwelling, costing not less than one-hundred thousand dollars (\$100,000.00), is a deed restriction; also a legislative ordinance affecting all properties in a given area, such as requiring that improvements on property shall not be constructed any closer than twenty-five feet from the street curb, is a restriction by operation of law.

DEPRECIATION - Loss of value in *real property* brought about by age, physical deterioration or functional or economic obsolescence. Broadly, a loss in value from any cause.

DISCOUNT POINTS - Additional charges made by a lender at the time a loan is made. Points are measured as a percent of the loan, with each point equal to one percent. These additional interest charges are paid at the time a loan is closed to increase the rate of return to the lender so as to approximate the market level.

DUAL AGENT - A limited agent, who with the written informed consent of all parties to a contemplated real estate transaction, has entered into a *brokerage relationship* with, and therefore represents, both the buyer and the seller. The dual agent has certain

duties and obligations to both the buyer and the seller as set out in Neb. Rev. Stat. 76-2401 et. seq.

EARNEST MONEY DEPOSIT - A portion of the down payment made by a purchaser of real estate as evidence of good faith at the time an Offer to Purchase is made. Normally applied to the purchase price at *closing*.

EASEMENT - Created by grant or agreement for a specific purpose, an easement is the right, privilege or interest which one party has in the land of another. For example, a right-of-way.

EMINENT DOMAIN - The right of the government to acquire property for necessary public or quasi-public use by *condemnation*; the owner must be fairly compensated.

ENCROACHMENT - The building of a structure or construction of any improvements, partly or wholly on the property of another.

ENCUMBRANCE - Anything which affects or limits the fee simple *title* to property, such as *mortgages*, *deeds of trust*, *easements* or restrictions of any kind. *Liens* are special encumbrances which make the property security for the payment of a debt or obligation, such as *mortgages* and taxes.

EQUITY - The interest of value which an owner has in real estate over and above the *liens* against *real property*.

ESCROW - The deposit of instruments and/or funds with instructions to a third neutral party (Escrow Agent) to carry out the provisions of an agreement or contract; when everything is deposited to enable carrying out the instructions, it is called a complete or perfect escrow.

EXCLUSIVE AGENCY LISTING - In this form of listing the owner of the property lists the property with one designated broker and no others and, therefore, that designated broker will receive the *brokerage fee* or *commission* upon the sale of the property, unless the owner sells the house to a buyer that the owner was responsible for finding. When the owner sells the property in the latter situation, no *brokerage fee* or *commission* would be paid to the designated broker.

EXCLUSIVE RIGHT TO SELL LISTING - In this form of listing the owner agrees to give one designated broker the sole right to sell the property for a period of time. If the property sells during that time period, the seller owes a *brokerage fee* or *commission* to the designated broker. In contrast to the *Exclusive Agency Listing* and the *Open Listing*, if the owner sells the property to a buyer that the owner finds, a *brokerage fee* or *commission* is still due the designated broker.

This type of listing is used in the vast majority of transactions. It can be advantageous to the owner because the designated broker and those applicable *affiliated licensees* will apply their best efforts and upon the consummation of the transaction, will receive the *brokerage fee* or *commission* and recover any expenses.

FEE APPRAISAL - The act or process of estimating values of real estate or any interest therein for a fee. In Nebraska, a fee appraisal must be performed by a registered, licensed or certified appraiser. See *Appraisal*.

FORECLOSURE - Procedure whereby property pledged as security for a debt is sold to pay the debt in event of default in payments or terms.

INTEREST RATE - The percentage of a sum of money charged for its use.

JOINT TENANCY - Joint ownership by two or more persons with right of survivorship; all joint tenants own equal interest and have equal rights in the property.

JUDGMENT - The final determination of a court of competent jurisdiction of a matter presented to it; money judgments provide for the payment of claims presented to the court, or are awarded as damages, etc.

LAND CONTRACT - A contract ordinarily used in connection with the sale of property in cases where the seller does not wish to convey *title* until all or a certain part of the purchase price is paid by the buyer. See *Contract for Deed*.

LATENT DEFECTS - Defects in the structure which are unknown to the seller and/or which cannot be easily detected by an inspection of the property.

LEASE - A contract between owner and tenant, setting forth conditions upon which tenant may occupy and use the property, and the term of the occupancy.

LICENSEE - An all inclusive term meaning a designated broker, an associate broker or a salesperson as defined under the Nebraska Real Estate License Act. Associate brokers and salespersons must work under the supervision of a designated broker and are considered the designated broker's *affiliated licensees*.

LIEN - A form of *encumbrance* which usually makes property security for the payment of a debt or discharge of an obligation. Example: *judgments, taxes, mortgages, deeds of trust*, etc.

LIMITED AGENCY RELATIONSHIP - See *Brokerage Relationship*.

LISTING AGREEMENT - An employment contract between *principal* and a designated broker to perform services for the *principal*; listing contracts are entered into for the

purpose of securing persons to buy, *lease* or rent property. Can be entered into by *affiliated licensees* when authorized by the designated broker.

MARKETABLE TITLE - Merchantable title; *title* free and clear of objectionable *liens* or *encumbrances*.

MARKET ANALYSIS - The analysis of likely present or future market demand for a particular use on a specific site, and the existing and likely future supply of closely competitive facilities in order to formulate the price at which the property may be sold or rented. Sometimes referred to as a Comparative Market Analysis (CMA). This is not an *appraisal* and need not be performed by a registered, licensed or certified appraiser.

MORTGAGE - An instrument, recognized by law, by which property becomes security to assure the payment of a debt or obligation; procedure for *foreclosure* in event of default is established by statute.

MULTIPLE LISTING SERVICE (MLS) - This is **NOT** a type of *listing agreement* and is oftentimes a misunderstood term. Multiple Listing Service is the name given a service performed by a local board of Realtors which is affiliated with the National Association of Realtors. If a designated broker's company has joined the Multiple Listing Service, the member company submits listings to the Service and agrees that it will allow other *MLS* members to cooperate in the sale of the designated broker's listings and share in the broker's compensation. Also, the *MLS* provides necessary information to aid in the sale of submitted listings. Therefore, it is not a type of formal listing but a marketing tool used by members of the *MLS* to expose properties to a wider market base.

OPEN LISTING - In an open listing, property is listed with a designated broker for a specified price with an agreement to pay a *brokerage fee* or *commission* on that price, or any other price offered which is accepted by the owner. The owner, also, receives the right to list the property with other designated brokers.

Upon the successful completion of the transaction, a *brokerage fee* or *commission* is paid only to the designated broker who found the buyer. If the owner sells the house to a buyer found by the owner, then no *brokerage fee* or *commission* is paid to anyone. This type of listing can cause disputes over who was responsible for finding the buyer and who gets the *brokerage fee* or *commission*, or if a *brokerage fee* or *commission* should be paid to anyone.

OPTION - A right given for a consideration to purchase or *lease* a property upon specified terms within a specified time.

PERSONAL PROPERTY - Any property which is not *real property*, i.e. money, savings accounts, appliances, cars, boats, chandeliers, gas grills, free standing bars, drapes, propane tanks, stoves, refrigerators, fireplace tools and screens, etc.

POINTS - See *Discount Points*.

PREPAYMENT PENALTY - Financial penalty paid to the lender for the payment of a *mortgage* or trust deed note before it actually becomes due, if the note does not allow for prepayment.

PRINCIPAL - A person authorizing another (an agent) to represent him or her.

PROMISSORY NOTE - The document signed by the borrower promising to repay the loan under stipulated terms. The promissory note makes the borrower personally liable for its repayment.

PRORATE - To allocate between seller and buyer their proportionate share of an obligation paid or due: For example, a prorate of *real property taxes, hazard insurance, condominium fee, etc.*

PURCHASE AGREEMENT - An agreement between a buyer and seller for the purchase of real estate.

QUITCLAIM DEED - A *deed* to relinquish any interest in property which the grantor may have.

REAL PROPERTY - Land and whatever, by nature or artificial annexation, is a part of it.

SANITARY IMPROVEMENT DISTRICT (SID) - A legal entity formed by a group of landowners to install and maintain public improvements and utilities.

SECURITY INTEREST - A term designating the interest of the creditor in the property of the debtor in all types of credit transactions. It thus replaces such terms as the following: chattel mortgage; pledge, trust receipt; chattel trust; equipment trust; conditional sale; inventory lien; etc.

SELLER LIMITED AGENT - A single limited agent with duties and obligations to the seller as set out in Neb. Rev. Stat. Sections 76-2401 et. seq. and 301 NAC Chapter 1 and who has entered into a written *brokerage relationship* with, and therefore only represents, the seller in a real estate transaction.

SETTLEMENT STATEMENT - See *Closing Statement*.

SPECIAL ASSESSMENT - Legal charge against real estate by a public authority to pay cost of public improvements such as: street lights; sidewalks; street improvements; etc.

SUBAGENT - A designated broker together with his or her *affiliated licensees*, engaged by another designated broker to act as the single limited agent for a *client*. Owes same duties and obligations as does the primary designated broker.

SUB-DIVISION - A parcel of land that has been divided into smaller parts, i.e. lots, blocks or tracts.

TAX LIEN - A legal right to have property sold for payment of delinquent taxes.

TENANCY IN COMMON - Ownership by two or more persons who hold undivided interest in property. Each person controls who will succeed to their interest on death. The interests of the owners need not be equal.

TERM OF MORTGAGE - The period during which a *mortgage* must be paid.

TITLE - As generally used, a document that indicates rights of ownership and possession of particular property.

TITLE INSURANCE - Insurance written by a title insurance company to protect the property owner against loss if the *title* is imperfect.

TITLE SEARCH OR EXAMINATION - A check of title records, generally, at the local courthouse, to make sure the buyer is purchasing a house from the legal owner and to determine if there are no *liens*, overdue *special assessments*, or other claims against the property.

TRUST ACCOUNT - An account separate and apart and physically segregated from the designated broker's own funds, in which the designated broker is required by law to deposit all funds collected for clients. Trust funds normally do not earn interest.

TRANSFER TAX - State tax imposed when *title* passes from one owner to another.

WARRANTY DEED - A *deed* used to convey *real property* which contains warranties of *title* and quiet possession, and the grantor thus agrees to defend the premises against the lawful claims of third persons.