

Maine Association of REALTORS®

Residential Property Transaction Booklet An Informational Guide

---Includes ---

Property Transaction Questions & Answers
List of Professional Associations and Government Agencies



PROPERTY TRANSACTION QUESTIONS AND ANSWERS

The purchase of property is a very significant act for many people. You have taken an important step by contacting a REALTOR® to be your licensee in the transaction. The relationship between buyer and real estate licensee is more satisfying if all parties understand the scope of the responsibilities of each in the transaction.

Your REALTOR® will be assisting you in many ways during the course of your real estate transaction. One of the ways your REALTOR® will help you is by directing you to information sources and specialized professionals who are especially equipped to answer certain questions, perform certain tasks or handle certain aspects of the transaction. During your real estate transaction, you should NEVER arrange for a wire transfer, cut a check, or fill out anything requesting your personal information without speaking to the real estate professional personally by TELEPHONE (on a phone number not in the email) or IN PERSON first. Some issues are also the buyer's or seller's responsibility. To avoid misunderstandings, and to make sure you have adequate information so that you know what to expect, the following questions and answers cover some common issues regarding the responsibilities of the seller, the buyer, the real estate professional and other appropriate professionals.

DISCLOSURE RESPONSIBILITIES

First and foremost, buyers, sellers and licensees have an obligation to deal honestly with each other.

Every property has defects; some small and some large, some obvious and some not so obvious. Some sellers have lived with a defect that they view as unimportant but it may be important to the buyer. This section deals with what must be disclosed and the format in which it must be disclosed.

Question 1: What must a seller disclose about the property?

Answer: A seller must disclose known material defects about the property. Typically, a seller would make these disclosures on a Property Disclosure Form. In virtually all cases, a buyer will discover any problems once the buyer occupies the property. By disclosing all problems up front, the seller can avoid the surprise that many times provokes a lawsuit.

Question 2: What is the Property Disclosure Form?

Answer: Among other things, a Property Disclosure Form asks the seller to list whether or not the various features are in operating condition. It allows a seller to state whether the seller is aware of a variety of common issues such as environmental hazards and other matters that might affect the property. Adding "as is" does not exempt a seller from disclosing known material defects about the property.

Question 3: Must the seller correct the defects in the property?

Answer: No, the seller has no obligation to correct defects, known or discovered unless the seller has agreed to do so in writing. Any correction of the defects is a matter of negotiation as part of the Purchase and Sale Agreement.

Question 4: What are the buyer's responsibilities in the transaction?

Answer: A buyer must take an active role in the transaction. Rather than passively waiting for the seller to volunteer information, a buyer has an obligation to inspect the property and ask questions. All real property and improvements contain defects and conditions which are not readily apparent and which may affect the value or desirability of the property. The buyer should review the Property Disclosure Form with a particular eye to questions answered "unknown" or left unanswered. Keep in mind, the buyer should not rely on the licensee to verify any statements by the seller. Because conditions and defects are often difficult to locate and discover, all buyers should obtain independent inspections by appropriate professionals to ascertain facts important to him or her.

Question 5: What obligation does a buyer have to investigate facts regarding the property?

Answer: The buyer should request any information important to the buyer that could affect the property's value or desirability. Since neither the seller nor the licensees are always aware of a buyer's particular needs, the buyer must request information in areas of interest or importance to the buyer. Some information will be disclosed as a matter of course, but the buyer should at least take responsibility to assure that all important issues are verified and addressed. At the very least, if an issue is not addressed in disclosure documents or other reports, the buyer should affirmatively raise it. One way for a buyer who has employed the services of a buyer's agent to inquire about these issues is to write a list of any such concerns and give the list to the buyer's agent. The agent may not have the information, in which case the agent may direct the buyer to a source or the appropriate professional who can provide the information through inspections or other means. If the buyer never raises an issue, the agent will assume that the disclosure documents cover areas of concern to the buyer. If the buyer is working with a transaction broker, the buyer will need to investigate areas of concern on their own.

Question 6: What are the real estate brokerage agency's disclosure responsibilities in the transaction?

Answer: A real estate brokerage agency employed by a seller as their agent shall treat all prospective buyers honestly and may not knowingly give false information and shall disclose in a timely manner to a prospective buyer all material defects pertaining to the physical condition of the property of which the real estate brokerage agency knew or, acting in a reasonable manner, should have known. A real estate brokerage agency is not liable to a buyer for providing false information to the buyer if the false information was provided to the real estate brokerage agency by the seller and the real estate brokerage agency did not know, or acting in a reasonable manner, should not have known that the information was false. A real estate brokerage agency is not obligated to discover latent defects in the property.

Since conditions and defects are often difficult to locate and discover, and since the licensee often relies on the statements of the owner of the property, the licensee does not guarantee, and in no way assumes responsibility for, the condition of the property.

An agent representing a buyer shall disclose to the buyer material facts of which an agency has actual knowledge or, if acting in a reasonable manner, should have known concerning the transaction. However, the buyer is still obligated to conduct his/her own inspection of the physical condition of the property.

Question 7: How does a buyer protect him or herself from defects after closing?

Answer: There are home warranties and other insurance policies available that cover certain types of defects. These are usually purchased separately. Neither the seller nor the licensees involved warrant the condition of the property against defects that occur or are discovered after closing, unless they specifically agree in writing. Though the seller and the licensees must make certain disclosures, this does not mean that the seller or licensees warrant the property to be free from defects or agree to correct defects which occur or are discovered after the closing. Requesting contingencies and inspection rights are critical to a buyer as they enable a buyer to ascertain the condition of the property before closing and negotiate possible solutions to any problems before electing to go forward with the transaction.

INSPECTIONS AND INVESTIGATIONS

Question 8: Since the seller must make disclosures, is it still necessary for the buyer to obtain inspections and investigate the property?

Answer: Yes. Many times the seller does not know about a defect or problem. For example, a seller may not be aware that a repair was done incorrectly and therefore the problem still exists. Alternatively, something that may be unimportant to the seller (i.e., a defect that they have lived with for years) may be an issue for the buyer. The seller's disclosure may also not reveal issues of importance to the buyer. An inspection by an appropriate professional can help the buyer determine the condition of the property and address issues that the buyer deems important.

Question 9: Does a buyer have a responsibility to obtain information about the property?

Answer: Yes. A buyer must inspect the property and ascertain facts through diligent attention and observation. A buyer should make careful observations, examine the property and request or otherwise obtain any records important to the buyer. These requests should be made in writing.

Question 10: Does the licensee have a responsibility to obtain information about the property?

Answer: A licensee listing a property which is either residential, a residential lot, a commercial property with a residential component, or a licensee representing a buyer in such a transaction, when the property is not listed with an agency, shall ask the seller for information about the water supply, heating system, waste disposal system and known hazardous materials.

Question 11: What types of non-physical conditions should the buyer investigate?

Answer: The type and scope of the investigation the buyer makes will depend on the specific needs of the buyer. A buyer may have various plans for the property, such as remodeling, renting or other use. Since neither the seller nor the licensees involved may know of the buyer's intent, the buyer needs to satisfy him or herself as to these matters. The following are just some of the property's non-physical conditions that the buyer may wish to address:

- Governmental requirements and limitations
- Absence of required governmental permits, inspections, certificates, or other determinations affecting the property
- Limitations, restrictions, and requirements affecting the use of the property
- Rent and occupancy restrictions
- Neighborhood or area conditions
- Schools
- Proximity and adequacy of law enforcement, crime statistics, proximity of registered sex offenders and/or other criminals
- Proximity to fire protection and other governmental services
- Proximity to commercial, industrial, or agricultural services
- Existing and proposed transportation, construction, and development which may affect noise, view, or traffic, airport noise, noise or odor from any source (wind power development, natural gas pipelines, etc.)
- Wild and domestic animals; other nuisances, hazards or circumstances
- Possible lack of compliance with any governing documents or homeowners' association requirements
- Adequacy and condition of common areas and facilities of common interest developments (e.g., condominiums)
- Violations of governing documents of homeowners' association requirements of common interest developments
- Information regarding homeowners' associations, including, but not limited to, minutes, financial statements, pending special assessments, claims, and litigation
- Conditions and influences of significance to specific cultures and religions, or to the personal needs, requirements and preferences of the buyer

Since a buyer may have a wide range of concerns, including non-physical aspects of the property, a buyer desiring additional information or investigation of issues should discuss these with the licensee and, if the licensee consents to inquiring further, should get a written agreement to that effect. Many times, the licensee will respond with directing a buyer to the appropriate inspector or consultant.

Question 12: Is the seller required to fix defects that are discovered as a result of any inspection prior to closing?

Answer: Generally the answer is no, but it really depends on the Purchase and Sale Agreement. Unless specifically agreed to in writing, a sale of real estate does not include any warranty as to any system, component, or aspect of the property. Licensees do not warrant the property or its features.

Question 13: Is the seller required to fix defects that are discovered after the transaction closes?

Answer: Generally no. This is why it is so important that buyers follow through with their obligation to investigate the property before completing the transaction. As stated earlier, licensees do not warrant the property or its features and a seller does not warrant any system, component, or aspect of the property unless he or she specifically agrees to do so in writing. Defects or problems that occur after the transaction closes are the responsibility of the new owner. Home warranty or maintenance policies can be purchased to cover some items. Homeowners' insurance may also cover damage caused by certain defects.

Question 14: What aspects of the property should the buyer investigate?

Answer: The buyer should investigate every physical or non-physical aspect of the property and surrounding neighborhood about which he or she is concerned. The following are some, but not all, of the conditions the buyer should investigate or inspect and which professionals are qualified under each category:

Item	What It Covers and Explanation	Appropriate Professional
Size	Square footage, room dimensions	Licensed or Certified Appraiser; Buyer measurement if square footage is of a material consideration in purchase.
Age of Structure and Additions	Age of property improvements	Municipal records
Waste Disposal System	Age, location, type, size, adequacy, capacity and condition of sewer and septic systems and components. Compliance with Local and State codes.	Municipal and State records; Code Enforcement Officer of Town; licensed soils evaluator (scientist); local plumbing inspectors
Water Supply (public & private)	Water quality, quantity, availability and use restrictions. Performance of well systems and components. Roots growing onto pipes in public systems.	General Building Inspectors, Water Quality Testing Labs, Well and Water Consultants, Well and Drilling Contractors, Local Water Utilities
Condition of Structure, Systems and Components	Built-in appliances, foundation, roof, plumbing, heating, air conditioning, electrical systems, mechanical, security, pool/spa, other structural and non-structural systems and components. Personal property if included in the sale. Insulation, energy efficiency of the property	General building inspector, other licensed contractors to answer your specific concerns, Energy Consultant/Inspector.
Chimney	Structure of the interior and the exterior of the chimney.	Chimney sweeps, fire department, Level II inspectors, State Fire Marshal's office, building inspector.
Property Lines and Boundaries; Lot Size	Property lines and boundaries. Fences, hedges, walls, and other natural or constructed barriers or markers should not be relied on to establish property boundaries. Lot size.	Registries of deeds, Municipal records, licensed surveyor to establish boundaries through staked survey

Encroachments, Setbacks, Floodplain, Easements	Boundaries and land issues affecting the property	Mortgage loan inspection, surveyor, Registry of Deeds, Municipal records, title attorney, Federal Emergency Management Agency (FEMA)
Land Use, Zoning & Other Codes	Compliance with existing codes (e.g., building, fire, plumbing & electrical), permitted uses (e.g., subdivisions, expansions), setbacks, restrictions, land use, erosion control, shoreland zoning and resource protection, compliance with Americans with Disabilities Act (ADA), endangered species/natural habitat	Code Enforcement Officers, Local and State Agencies, Surveyors, Appraisers
Current Use Property Tax Programs	Tree Growth, Farmland, Open Space, Working Waterfront	Local assessors, Maine Revenue Services Property Tax Division, Maine Department of Agriculture, Conservation & Forestry
Title Issues	Liens, Easements, Restrictions, Association/Condominium Restrictions, Covenants, Private Road issues (e.g., private road maintenance), Types of Deeds, Types of Ownership	Title Attorneys, title insurance companies, Association/Condominium officers
Environmental Hazards and Issues on the property and Surrounding Areas	Any concerns you may have about environmental issues inside & outside the property and surrounding areas including but not limited to Air Quality (e.g., radon, asbestos, odors), contaminated soil and water (e.g., MBTE, radon, arsenic, uranium, lead), fuel or chemical storage tanks, hazardous waste (e.g., dump site, junk yards, methamphetamine), electromagnetic fields, nuclear sources, neighborhood noise issues	Local, State & Federal Agencies; Environmental Consultants; Water Quality laboratories; general building inspectors.
Lead-Based Paint	Testing for presence of lead in paint, dust, soil, water, and/or any other areas in or around the property	Lead inspector, lead assessor, general building inspector
Mold	Inspecting for presence of moisture problem which may have led to mold or moisture issues	Home inspector, Certified Industrial Hygienist
Property Stigmas	Any influences or occurrences that might be of concern to you, such as death, suicide, supernatural phenomena, fire or crimes.	Local media, law enforcement agencies, fire departments, neighbors, previous owners, local historical societies.
Neighborhood & Community Issues	School, crimes, municipal services, medical services, utility availability, sex offender registration	Municipal officials, school districts, chambers of commerce, law enforcement agencies, hospitals, local utility companies (e.g., telephone companies, cable companies, power companies)

Question 15: How should a buyer select other service professionals such as a building inspector or attorney?

Answer: There are many professionals and service providers (including lending institutions, loan brokers, title insurers, title and closing companies, inspectors, structural pest control companies, contractors and home warranty companies) who assist buyers. Unless otherwise agreed, the person hiring the provider ultimately makes the selection. Service providers should be selected based on their qualifications, the scope of their service, satisfaction of previous clients and the price of their service. Keep in mind that if licensees provide the buyer or seller names of providers or other professional persons, (1) the licensees do not guarantee the performance of any providers, and (2) the buyer and seller are free to select providers other than those referred or recommended by the licensees. Many service providers are members of professional trade associations. A list of such associations and/or governmental agencies overseeing the provider's function is located at the end of this booklet.

Question 16: How do I select a home inspector?

Answer: As with any professional, a buyer will want to check a home inspector's references and ask questions, such as whether the inspector has any licenses, carries professional liability insurance, belongs to a professional trade association and provides written reports. Buyers should find out what items the inspector's report covers to ensure that items important to the buyer will be addressed. The scope of the report and any limitations or disclaimers should also be examined. An appraiser is not a home inspector.

Question 17: What are the different water tests?

Answer: Standard water test kits include several different options for testing a property's water supply. The testing lab can screen the sample for as little or as much as they are directed to do. The cost will vary depending on what tests they are required to perform. Water can be determined to be "drinkable" but still contain elements that cause odors, coloration, staining of fixtures or laundry and taste problems. In addition, governmental authorities are warning about possible health issues resulting from the presence of elements such as radon, lead, arsenic, uranium, and magnesium in the water supply. Buyers should think carefully about the types of tests they want performed on the property's water supply and not simply rely on the standard tests performed at the request of a lender.

Question 18: How much is too much arsenic in water and wood?

Answer: When well water is tested for arsenic, the testing lab will often report how much is present as the number of milligrams of arsenic per liter of water (a liter is about a quart). Shorthand for milligrams per liter is "mg/L." The standard is adopted by the U.S. Environmental Protection Agency to protect the water quality of public water systems. The Maine Center for Disease Control (formerly Bureau of Health) has created brochures explaining arsenic in water and arsenic in wood - *Arsenic in Well Water Brochure and Fact Sheet: Arsenic Treated Wood*. Sellers must provide these brochures to buyers. Those can be found on the Internet at <http://www.maine.gov/dhhs>, then search for "arsenic".

Question 19: What can I do if my water has high arsenic levels?

Answer: If the arsenic level in your water is greater than their standard, the Maine Center for Disease Control recommends that you stop using your well water for drinking and preparing food. Bottled water can be used for these purposes as a quick way to decrease the amount of arsenic getting into your body. Arsenic is rather quickly removed from your body. Most of the arsenic in your body will be gone several days after stopping use of water for drinking and cooking. Do not attempt to remove arsenic from water by boiling.

Which treatment system or combined systems are best for you will depend on several factors, such as: 1) how high your arsenic water levels are and therefore how much needs to be removed; 2) whether you want to treat all water coming into the house or just water at one or two sinks; and 3) the chemistry of your water - some treatment systems do not remove certain forms of arsenic very well. Cost of systems can range from \$500 to \$3000 dollars. A water treatment specialist should always be consulted prior to buying a water treatment system; and always retest your water after installing a new system to make sure the arsenic has been removed.

Question 20: What is radon?

Answer: Radon is an invisible and odorless gaseous radioactive element. Real estate licensees are not generally qualified to advise purchasers on radon or its health or safety risks. Obtain the services of a qualified and experienced professional to conduct inspections and tests regarding radon.

Question 21: What is asbestos?

Answer: Asbestos is a common form of magnesium silicate which was used in various construction products due to its stability and resistance to fire. Asbestos exposure (caused by inhaling loose asbestos fibers) is associated with various forms of lung disease. Real estate licensees are not generally qualified to advise purchasers on asbestos or its health or safety risks. Obtain the services of a qualified and experienced professional to conduct inspections and tests regarding asbestos.

Question 22: What are the lead paint disclosure requirements?

Answer: The Residential Lead-Based Paint Hazard Reduction Act of 1992 requires the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most residential housing built before 1978. The disclosure obligations of this law must be met before ratification of a contract for sale or lease. The requirements can be summarized as follows:

- Sellers and landlords must disclose known lead-based paint and lead-based paint hazards and provide available reports to buyers and tenants.
- Sellers and landlords must give buyers and renters a pamphlet published by HUD/EPA entitled "*Protect Your Family From Lead in Your Home*".
- Homebuyers will get a 10-day period to conduct a lead-based paint inspection or risk assessment at their own expense, if desired. The number of days can be changed by mutual consent.
- Sales contracts and leasing arrangements must include certain federal and state mandatory lead warning statements to ensure that disclosure and notification actually took place.

Failure to comply with these laws can result in fines, penalties and significant civil liability.

Question 23: What is an Energy Audit and Why is it Important?

Answer: An energy audit is an in-depth inspection and assessment, by a trained auditor, of the energy systems and uses within a home. Among the factors considered are heating and cooling, windows, doors, insulation, appliances, and lighting. The resulting report contains a wealth of information about the dwelling's energy use at the time of the audit. However, perhaps even more useful and important is the information in the report that details the improvements that can be made to a residence to increase its energy efficiency. To find a registered energy auditor: www.energymaine.com.

Question 24: What is the difference between a survey and a mortgage loan inspection?

Answer: A mortgage loan inspection is not a survey. It is a land surveyor's professional opinion, based only on limited information, of the location of the property's improvements relative to the apparent boundary lines of the properties. The purpose of the mortgage loan inspection is to determine the absence of any obvious boundary problems so that the title insurer can provide boundary title insurance coverage for the lender. It is prepared for the lender and its title insurer, not the property owner. If the property owner wants to determine the boundaries of the property, a full boundary survey would be needed. With a full boundary survey, a land surveyor is certifying what the actual boundaries are, as opposed to a mortgage loan inspection where the land surveyor is only making a limited certification as to what the boundaries appear to be.

Question 25: Why does the Purchase and Sale Agreement have a blank for the type of Deed?

Answer: In Maine, there are three general forms of deeds that an individual seller can provide: Warranty Deed, Quitclaim Deed with Covenant, and Quitclaim/Release Deed (there are also special deed forms for certain types of sellers such as a Trustee's Deed for Trusts and a Personal Representative's Deed for an estate). Although it is a matter for negotiation, sellers generally only want to give a buyer the same form of deed as they received. Buyers often mistakenly assume that title will only be clear if the seller agrees to give a Warranty Deed (if they demand some other form of deed there must be a title problem) and that without a Warranty Deed they will not be able to get owner's title insurance. Those assumptions are incorrect. Any of these deeds will convey whatever interest the seller owns in the real estate. The only difference is the recourse the buyer will have against the seller if they later discover a title issue for which there was no exception taken in the deed. With a Warranty Deed, the buyer will have full recourse against the seller. With a Quitclaim Deed with Covenant, the buyer will only have recourse against the seller if the issue was created by the seller, and there is no recourse against the seller with a Quitclaim/Release deed. An owner's title insurance policy can be issued regardless of the form of deed, so the deed form has become less significant now that most buyers purchase title insurance and filing a claim under the policy is easier than pursuing remedies against the seller under the deed covenants.

Question 26: What are the protected classes in Maine?

Answer: Federal and State laws require that properties be offered for sale or lease without regard to race, color, religion, sex, handicap/disability, familial status (families with children), ancestry, sexual orientation or national origin. In addition, licensees may not ask or answer questions related to AIDS.

Question 27: What do I need to know about Mold?

Answer: The Centers for Disease Control (CDC) has developed FAQ's about molds available at: <http://www.cdc.gov/mold/stachy.htm> The information below was excerpted from that document.

Q1. I heard about toxic molds that grow in homes and other buildings. Should I be concerned about a serious health risk to me and my family?

The term "toxic mold" is not accurate. While certain molds are toxigenic, meaning they can produce toxins (specifically mycotoxins), the molds themselves are not toxic, or poisonous. Hazards presented by molds that may produce mycotoxins should be considered the same as other common molds which can grow in your house. There is always a little mold everywhere - in the air and on many surfaces. There are very few reports that toxigenic molds found inside homes can cause unique or rare health conditions such as pulmonary hemorrhage or memory loss. These case reports are rare, and a causal link between the presence of the toxigenic mold and these conditions has not been proven. A common-sense approach should be used for any mold contamination existing inside buildings and homes. The common health concerns from molds include hay fever-like allergic symptoms. Certain individuals with chronic respiratory disease (chronic obstructive pulmonary disorder, asthma) may experience difficulty breathing. Individuals with immune suppression may be at increased risk for infection from molds. If you or your family members have these conditions, a qualified medical clinician should be consulted for diagnosis and treatment. For the most part, one should take routine measures to prevent mold growth in the home.

Q2. How do molds get in the indoor environment and how do they grow?

Mold spores occur in the indoor and outdoor environments. Mold spores may enter your house from the outside through open doorways, windows, and heating, ventilation, and air conditioning systems with outdoor air intakes. Spores in the air outside also attach themselves to people and animals, making clothing, shoes, bags, and pets convenient vehicles for carrying mold indoors. When mold spores drop on places where there is excessive moisture, such as where leakage may have occurred in roofs, pipes, walls, plant pots, or where there has been flooding, they will grow. Many building materials provide suitable nutrients that encourage mold to grow. Wet cellulose materials, including paper and paper products, cardboard, ceiling tiles, wood, and wood products, are particularly conducive for the growth of some molds. Other materials such as dust, paints, wallpaper, insulation materials, drywall, carpet, fabric, and upholstery, commonly support mold growth.

Q3. How do you get the molds out of buildings, including homes, schools and places of employment?

In most cases mold can be removed from hard surfaces by a thorough cleaning with commercial products, soap and water, or a bleach solution of no more than 1 cup of bleach in 1 gallon of water. Absorbent or porous materials like ceiling tiles, drywall, and carpet may have to be thrown away if they become moldy. If you have

an extensive amount of mold and you do not think you can manage the cleanup on your own, you may want to contact a professional who has experience in cleaning mold in buildings and homes. It is important to properly clean and dry the area as you can still have an allergic reaction to parts of the dead mold and mold contamination may recur if there is still a source of moisture.

Q4. How do you keep mold out of buildings and homes?

As part of routine building maintenance, buildings should be inspected for evidence of water damage and visible mold. The conditions causing mold (such as water leaks, condensation, infiltration, or flooding) should be corrected to prevent mold from growing.

Specific Recommendations: a) Keep humidity level in house below **50%**; b) Use air conditioning or a dehumidifier during humid months; c) Be sure home has adequate ventilation, including exhaust fans in kitchen and bathrooms; d) Use mold inhibitors which can be added to paints; e) Clean bathroom with mold killing products; f) Do not carpet bathrooms; g) Remove and replace flooded carpets.

Question 28: If I am planning to put in a new driveway or entrance onto a state road what do I need to know?

Answer: There are standards for getting permits for the construction and maintenance of entrances onto any state highway or state aid highway. The Maine Department of Transportation (MDOT) was given authority to limit the number, spacing, design, location and construction of driveways and entrances onto state highways in order to maintain existing posted speeds and ensure safe travel. Given the increased sight distances and driveway separation requirements, lot owners who anticipate accessing onto state highways may have difficulty getting permits even though their parcel satisfies the town's minimum lot size and minimum road frontage requirements. The availability of the access permit should be explored early on in the development process. For further information on these rules, contact DOT at (207) 624-3600 or the MDOT website at www.maine.gov/mdot/traffic/drivewaypermits.

Question 29: How can insurance availability/affordability affect the real estate transaction?

Answer: The affordability and availability of insurance affects both buyers and sellers. Buyers will typically be obtaining mortgage financing to pay the purchase price of the property. The lender will require that there be property insurance to cover their interest in the property. If proof of insurance is not available at closing the lender will likely refuse to release the funds and therefore delay or even derail the transaction, either of which can impose both inconvenience and cost to both the buyer and seller. Even in a "cash" transaction the buyer may be hesitant to complete a transaction where insurance is not available to cover the buyer's equity in the property.

Question 30: At what point in a transaction should I apply for homeowner's insurance?

Answer: You should apply immediately after a contract has been accepted. Due to changes in the insurance industry, you may experience difficulty in securing homeowners insurance. Various issues including multi-family properties, rentals, island/coastal, homes with 60 AMPs, diving boards, vicious dogs (including mixed breeds), trampolines, age of home/roof, and a wide range of systems areas including the roof, wiring and heating systems - and others could be problematic from an insurance standpoint. In addition, the insurance industry has access to a database named CLUE that tracks historical information on claims made by an insured or on specific property. Properties with a claims history will be problematic for future buyers. In addition, some vendors are now using credit scoring, bad pay on prior policies, bankruptcy, and history of filing claims as additional underwriting tools. Starting the insurance process early may ensure ability to provide adequate time for addressing any area of difficulty that may arise with insurers.

Question 31: Is a chimney inspection recommended?

Answer: The National Fire Protection Association, a private association that drafts codes for fire safety, recommends conducting a "Level II" inspection of the chimney. A Level II inspection is a comprehensive inspection including all accessible portions of the chimney, inspection of the chimney, particularly if a chimney fire has occurred or a new heating system/source has been added and an inspection has not been conducted. It includes areas within accessible attics, crawl spaces and basements and accessible portions of appliance and chimney connections which include inspection by video scanning or other means of inspection. Home inspectors, chimney cleaning companies and installers of solid fuel-burning appliances (woodstoves, gas inserts, etc.) may have inspectors available who are familiar with the NFPA Standard for Level II inspections. The State Fire Marshal's Office's web site is www.state.me.us/dps/fmo/ or contact (207) 626-3880.

Question 32: What are the requirements of Maine's Smoke and Carbon Monoxide Detector Law in the purchase of a home?

Answer: Maine law requires that owners of a single-family dwelling built after January 1982, to properly install smoke detectors, if not already present, in areas as designated in the manufacturers requirements. Owners of a single family dwelling in which a restoration or addition was made after September 19, 1985 must install smoke detectors, if they are not already present, even if it was built prior to 1982. Smoke detectors are to be installed in a building converted to a single-family occupancy after September 19, 1985 if they are not already present. The purchaser of a single-family or multi-family dwelling(s) must certify that they shall properly install smoke detectors in the building, if not already present, within 30 days of acquisition or occupancy of the dwelling(s), whichever is later.

At present, unless a single-family dwelling had done an addition or restoration to the dwelling adding one bedroom after September 12, 2009, or had converted another structure over to a single family dwelling after September 12, 2009, they do not have to install a carbon monoxide detector. It is recommended that carbon monoxide detectors be installed in these occupancies. The purchaser of a single-family or multi-family dwelling(s) must certify that they shall properly install carbon monoxide detectors in the building, if not already present, within 30 days of acquisition or occupancy of the dwelling(s), whichever is later. This includes single-family dwellings in which the previous owner did not have to, by law, install a carbon monoxide detector.

Question 33: Smoke Detectors: What kind and how many?

Answer: A smoke detector installed within 20 feet of a bathroom or kitchen must be a photo electric type detector but smoke detectors in bedrooms may be ionization type detectors. Smoke detectors are to be installed in each unit of an apartment building. All rental units are to install smoke detectors. This includes single-family dwellings rented on a seasonal basis for a week, two weeks, a month, etc.

Question 34: Carbon Monoxide Detectors: What kind and how many?

Answer: Carbon monoxide detectors must be powered by the electrical service in the building by plugging them in a wall outlet or by having them hardwired in by an electrician. In either case, the detector must have a battery backup as an alternative source of power in the event the building loses electrical service.

Single-family dwellings along with all rental units, including apartments and seasonally rented single-family dwellings are to install CO detectors in each area within, or giving access to, the bedrooms. This means you can put one in each bedroom or in the hallway or room in which a person travels through to reach a bedroom(s). It is strongly recommended that no CO detector be placed in excess of 15 feet of any bedroom door.

Question 35: Why is mediation referenced in the Purchase and Sale Agreement?

Answer: Mediation is a way to resolve contractual disputes without litigation. It can save the expense and time involved with litigation, and allows the parties to discuss potential ways to resolve a dispute with the assistance of a trained, professional mediator. While the parties do agree to participate in a mediation, they are not bound to agree to a resolution as part of that mediation. Parties may go to court if mediation is not successful. The process for mediation is outlined on the MAR website at <http://www.mainerealtors.com>, under Member Resources and Documents You Ask For.

Question 36: What is a significant wildlife habitat?

Answer: The State of Maine set up protections for valuable waterfowl and wading bird habitat and shorebird feeding and roosting areas under the Natural Resources Protection Act (NRPA). The Maine Department of Inland Fisheries and Wildlife (DIF&W) identified inland waterfowl and wading bird habitats throughout the state as having "high to moderate value." These habitats are comprised of a complex of freshwater wetland and open water areas plus a 250 foot wide area surrounding the complex where the birds nest (Note: on great

ponds, only the upland area that is within the 250 feet of the freshwater wetland is included as part of the habitat). This means there is a 250 foot zone around waterfowl and wading bird habitats (as described above) that require either a Permit By Rule (PBR) through the Maine Department of Environmental Protection (DEP) for activities in existing developed areas, or if not previously developed a landowner must apply for a full individual NRPA permit through DEP. DIF&W has identified essential “staging area” habitats (where the birds feed and rest) where concentrations of shorebirds congregate during migration periods. The shorebird feeding area includes the intertidal area used for feeding and a 100 foot buffer area which is measured from the edge of the coastal wetland, and includes nearby upland areas. The shorebird roosting area includes the intertidal area used for feeding, the roosting area, and a 250 foot buffer area which is measured from the edge of the roosting area, and includes nearby upland areas. Like the inland waterfowl and wading bird habitats, activities in the shorebird feeding (100 foot area) and roosting areas (250 foot area) require either a PBR for activities in an existing developed area, or if not previously developed a landowner must apply for a full individual NRPA permit through DEP. DIF&W has also identified certain intertidal areas along the coast as high or moderate value to waterfowl and wading birds. This tidal habitat is limited to the identified tidal habitat area and is located within the coastal wetland, which was previously regulated as a protected natural resource under NRPA.

Question 37: How do you know if your property contains a significant wildlife habitat?

Answer: DEP and MDIF&W have produced screening maps (available at www.maine.gov/dep under keyword “birds”) for each organized municipal jurisdiction; however, these are not exact maps down to each lot of land within a municipality. For a specific lot to be identified as having or not having a significant wildlife habitat a site-specific assessment by DEP is recommended. Call DEP at (207) 287-3901 to request a site assessment.

Question 38: What kinds of activities are regulated within each habitat?

Answer: The following regulated activities in a Significant Wildlife Habitat require a permit: Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials; Draining or otherwise dewatering the habitat; Filling; or Any construction, repair or alteration of any permanent structure.

Question 39: What about cutting or removing vegetation in a shorebird habitat?

Answer: In a shorebird feeding area cutting or removal of vegetation is prohibited except when it meets the same vegetative screening standards that apply under Shoreland Zoning within 75 feet of a coastal wetland 2 (as detailed in DEP's Shoreland Zoning guidelines, Chapter 1000, which are available at www.maine.gov/dep under keyword “shoreland zoning”). These standards are applied to the entire 100-foot feeding area buffer. And cutting or removal determined necessary by DEP in order to conduct other activities approved by DEP that are done in accordance with NRPA standards such as avoidance, minimization, and no unreasonable impact. In a shorebird roosting area all cutting or removal of vegetation must be done in consultation with DIF&W. The only allowable instances are for the removal of a safety hazard, cutting to allow a meandering footpath no more than 6 feet wide that does not create a cleared line of sight to the water, and cutting or removal determined necessary by DEP in order to conduct other activities approved by DEP that are done in accordance with NRPA standards such as avoidance, minimization, and no unreasonable impact. The DEP may not approve cutting to create a view unless DEP determines that there will be no unreasonable impact on the habitat.

Question 40: What is a vernal pool, why are they important, and what happens if I have one on my property?

Answer: Vernal pools are shallow depressions that usually contain water for only part of the year. Vernal pools serve as essential breeding habitat for certain species of wildlife, including wood frogs, spotted and blue-spotted salamanders and fairy shrimp. Loss of vernal pools and the habitats around them can lead to a decrease in certain species. Vernal pools with high value for wildlife are called "significant vernal pools" and are protected by law under the Natural Resources Protection Act (NRPA). An activity in, on, or over these areas must avoid unreasonable impacts on the significant vernal pool habitat and obtain permission from the DEP, through a Permit by Rule or individual NRPA approval. For more info on NRPA, copy of the rules addressing significant vernal pools, application forms and related materials, go to: <https://www.maine.gov/dep/land/nrpa/vernalpools/> .

Question 41: What are the requirements for a property located in a shoreland zone?

Answer: For many years, sellers of property that have subsurface waste water disposal systems located in a shoreland zone have had to certify whether the system has malfunctioned within 180 days of closing. In addition, since 2007 there have been additional requirements imposed on systems in coastal shoreland zones, and on January 1, 2020, those additional requirements are imposed on all subsurface waste water disposal systems. Thus, the buyer is required to have the system inspected by a certified inspector prior to purchase or, if impossible due to weather conditions, within nine months after transfer unless: a) the system was installed in compliance with current rules and regulations within three years prior to closing; b) the seller has had an inspection done within three years prior to closing; or c) the buyer certifies to the local plumbing inspector that they will be replacing the system within one year of closing. If the seller has had an inspection done within the prior three-year period they are required to provide it to the buyer. If an inspection is required and it finds that the system is malfunctioning, it must be repaired or replaced within one year of closing. Commonly asked: (1) What triggers application of the new requirements? The trigger is the system being located in the shoreland zone, not the property or the residence. (2) What is the shoreland zone? An area within 250 feet of the normal high-water line of any coastal waters, lakes, ponds, rivers, streams and many wetlands. (3) Who is eligible to do the inspection? Inspections have to be done by "certified" inspectors. The Division of Environmental Health within DHHS maintains a "List of Certified Septic System Inspectors" which is available online at www.maine.gov/dhhs/eng/plumb/lists.htm. (4) Is there any reporting requirement? There is no filing or reporting requirement imposed on the buyer or the inspector.

Question 42: What is the "Registration of Farmland Act" and what impact can it have on abutting properties?

Answer: The Registration of Farmland Act is a state law originally passed in 1989 allowing farmers to register their farmland (parcels of 5 or more acres meeting certain minimum annual income thresholds) and provide notice of that registration to owners of abutting land (parcels larger than 1 acre that were located within 100 feet of the registered farmland). Once notified, the owner of the abutting land could not construct a residence or put in a well within 100 feet of the farmland. Very few farms registered during the original 1990/1991 registration period. In 2012, the Legislature amended the Act to re-open the registration process on an on-going basis any time after July 1, 2012. These new registrations will be effective for only 5 years but can be renewed for additional 5-year periods (with new notification to abutters). Original 1990/1991 registrations will expire April 1, 2013 but can be renewed for additional 5-year periods the same as new registrations. For new registrations, notice must be provided to owners of abutting land within 50 feet of the registered farmland and, once notified, the only prohibition for the owner of the abutting land is that no well can be placed within 50 feet of the registered farmland. The registrations will be recorded in the Registry of Deeds and will be binding on subsequent owners of the abutting land.

Question 43: If I am planning landscaping or yard work in a shoreland zone, what do I need to know?

Answer: First, you need to determine if the property is in a shoreland zone (fresh or salt water) by reviewing municipal records. If yes, effective January 1, 2013, any activity that adds or displaces more than one cubic yard of soil in the shoreland zone, must either 1) be done by a certified contractor, or 2) a person trained and certified in erosion control by the Department of Environmental Protection (DEP) must be on-site while the activity is being done. The law does not apply to homeowners doing the work themselves. For a list of erosion control certified contractors: www.maine.gov/dep/land/training/cccec.html

Question 44: What do I need to know about flood insurance?

Your mortgage lender may require you to purchase flood insurance in connection with your purchase of a property. The National Flood Insurance Program provides for the availability of flood insurance and establishes flood insurance policy premiums based on the risk of flooding in the area where properties are located. Recent changes to federal law (The Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014, in particular) will result in changes to flood insurance premiums that are likely to be higher, and in the future may be substantially higher, than premiums paid for flood insurance prior to or at the time of sale of the property. As a result, purchasers of property should not rely on the premiums paid for flood insurance on this property previously as an indication of the premiums that will apply after completion of the purchase. In considering purchase of this property you should consult with one or more carriers of flood insurance for a better understanding of flood insurance coverage, current and anticipated future flood insurance premiums, whether the prior owner's policy may be assumed by a subsequent purchaser of the property, and other matters related to the purchase of flood insurance for the property. You may also wish to contact the Federal Emergency Management Agency (FEMA) at <http://www.fema.gov/national-flood-insurance-program> or the town office where the property is located for more information about flood insurance as it relates to this property. For more information about flood insurance and the National Flood Insurance Program (NFIP): www.floodsmart.gov

Question 45: What are the State of Maine's property tax relief programs?

- 1) Current Land Use Programs: Maine has four "current use" programs which offer the property owner a reduction in their assessed value: Tree Growth, Farm Land, Open Space and Working Waterfront. Criteria must be met for each program in order to be eligible, and any future change in the use of the land which would cause disqualification would result in a penalty. Removal from the program would result in changes to property tax payment liability. Apply at the local town office where the property is located. Additional information: https://www.maine.gov/revenue/propertytax/propertytaxbenefits/current_use.htm
- 2) Property Tax Exemptions: Certain classes of property are tax exempt by law. Fully exempt property tax may include real estate or personal property owned by governmental entities, school systems, and other institutions. Partially exempt property tax relates to the following categories: Homestead Exemption, Veteran Exemption, Paraplegic Veteran, and Blind Exemption. Apply at the local town office where the property is located. For more information: <http://www.maine.gov/revenue/propertytax/sidebar/exemptions.htm>
- 3) Property Tax Fairness Credit: Eligible Maine residents can claim the Property Tax Fairness Credit on the Maine Individual Income Tax Form 1040ME beginning in January, 2014. To learn more: <https://www.maine.gov/revenue/taxrelief/ptfcssummary.htm>
- 4) Business Equipment Tax Exemption Program (BETE) and Business Equipment Tax Reimbursement Program (BETR): These are programs designed for property tax relief for eligible business equipment and qualified business property. Maine Revenue Services has additional information: <http://maine.gov/revenue/propertytax/propertytaxbenefits/bete.htm> .

Question 46: What if the property/land I am purchasing is in Maine's Tree Growth Tax program?

The owner of a parcel of land of at least 10 forested acres used primarily for growth of trees to be harvested for commercial use may elect to participate in the Tree Growth program which results in the land being taxed at a significantly reduced rate. If land currently in Tree Growth is withdrawn from the program, the assessor will impose a penalty on the owner. If a parcel resulting from a sale is less than 10 forested acres in area, that parcel will be considered withdrawn from the program and the penalty will be assessed against the seller. If the parcel exceeds the 10 forested acres and you withdraw it from the program, you will have to pay the penalty.

In order to participate in the program, a forest management and harvest plan must be prepared and updated every 10 years. The plan is a written document that outlines activities to regenerate, improve and harvest a standing crop of timber. It must be prepared by a licensed professional forester or the landowner and then reviewed and certified by a licensed professional forester. The landowner has to file a sworn statement with the municipal assessor that a forest management and harvest plan has been prepared for the parcel, must comply with the plan on an on-going basis, and every 10 years must submit to the municipal assessor a statement from a licensed professional forester that the landowner is managing the parcel according to the plan.

When land in the program is transferred to a new owner, the buyer must file with the municipal assessor, within one year of the date of transfer, either: 1) a sworn statement indicating that a new forest management and harvest plan has been prepared; or b) a statement from a licensed professional forester that the land is being managed in accordance with the plan prepared for the previous landowner.

Question 47: What are some issues I need to be aware of if I purchase an existing condo?

Answer: The Maine Condominium Act requires the seller of an existing condominium unit to provide a buyer with a copy of the current Condominium Declaration, Bylaws and Rules/Regulations and an original Resale Certificate. The Resale Certificate is obtained by the seller directly from the condominium association and will describe the amount of the condo fees and how often they are due, any other fees or anticipated expenditures, the amount of current capital reserves, a copy of the most recent balance sheet and operating budget, whether the association has to sign off on the sale and other general information about the condominium. You will have a minimum of five calendar days (or longer if negotiated with the seller) from receipt to review the information and if any of it is unacceptable you can cancel your purchase contract. Any fees charged by the Association for preparation and delivery of the Resale Certificate have to be paid by the seller. However, if your lender or closing agent requires an updated Resale Certificate later in the process, or any other documentation such as completion of a condominium questionnaire, you will be required to pay any fees associated with obtaining those. It is also a good idea to obtain information from the seller as to what is included in the condo fees and what has to be paid separately (i.e. water, sewer, insurance, etc.). In addition to the above information, you may also want to review minutes of association and/or board of directors meetings going back several months. These can raise questions that might indicate ongoing management issues or matters that could result in condo fee increases or special assessments or otherwise impact the overall financial condition of the condominium.

CONCLUSION

Selling or purchasing a property is an important step in one's life. All parties involved play a role in obtaining the information to make informed decisions regarding the property. It is critical that the buyer and seller actively participate in this process to ensure that their needs are addressed.

Professional Associations and Governmental Agencies

Note: Information about the following organizations was correct at the date of publication, but is subject to change.

- State of Maine website for all departments and licensing divisions - <http://www.maine.gov>
- American Society of Home Inspectors - <https://www.homeinspector.org/>
- Association of Engineering Geologists, New England Chapter - <https://www.aegweb.org/group/NE>
- Fair Housing: Maine Human Rights Commission - (207) 624-6290
- Fair Housing: US Department of Housing and Urban Development - https://www.hud.gov/program_offices/fair_housing_equal_opp
- Floodplain/Flood Zone - FEMA Maps - <http://msc.fema.gov>
- National Flood Insurance Program (NFIP) - <http://www.floodsmart.gov>
- Maine Center for Disease Control, Division of Environmental Health, Childhood Lead Poison Prevention Program, - (207) 287-4311
- Maine Bureau of Health, Indoor Air Quality (Radon, Asbestos) - (207) 287-5676; Drinking Water Program (Arsenic, Uranium) - (207) 287-4311
- Maine DEP (Erosion Control) - <http://www.maine.gov/dep/land/training/cccec.html>
- Maine DEP (vernal pools) - <https://www.maine.gov/dep/land/nrpa/vernalpools/>
- Maine Department of Public Safety, State Bureau of Identification (Sex Offender Register) - (207) 624-7240 - <http://sor.informe.org/sor>
- Maine Indoor Air Quality Council (Mold) - (207) 626-8115 - <http://www.maineindoorair.org>
- Maine Municipal Association - (207) 623-8428 - <http://www.memun.org>
- Maine Revenue Services: Current Use Property Tax Programs (Tree Growth, Farmland, Open Space, Working Waterfront) - https://www.maine.gov/revenue/propertytax/propertytaxbenefits/current_use.htm
- Maine State Board for Licensure of Architects, Landscape Architects and Interior Design - (207) 624-8603
- Maine State Board of Certification for Geologists and Soil Scientists - (207) 624-8603
- Maine State Board of Licensure for Professional Land Surveyors - (207) 624-8603
- Maine State Board of Real Estate Appraisers - (207) 624-8603 - <http://www.state.me.us/pfr/professionallicensing/professions/appraisers>
- Maine State Board of Registration for Professional Engineers - (207) 287-3236 - <http://www.maine.gov/professionalengineers/>
- Maine State Certified Lead Inspectors list - (207) 287-7751 <http://www.maine.gov/dep/waste/lead/documents/leadinspectors.pdf>
- Maine Water Utilities Association - (207) 623-9511 - <http://www.mwua.org/>
- International Association of Certified Home Inspectors - <https://www.nachi.org/>
- National Lead Information Center - (800) 424-5323
- U.S. Department of Housing & Urban Development, Office of Lead Based Paint Abatement & Poisoning Prevention - 451 7th Street, Room B 133, SW, Washington, DC 20410 - (202) 755-1785
- U.S. Environmental Protection Agency New England - General Information Number - (888) 372-7341
- U.S. Environmental Protection Agency - <https://www.epa.gov/me>
- Chimney Sweeps - https://www.maine.gov/dps/fmo/sites/maine.gov.dps.fmo/files/inline-files/chimney_sweeps_5_07_19.pdf
- Chimney Safety Institute of America - <http://www.csia.org/homeowners.htm>
- State Fire Marshal's Office - (207) 626-3880 - <http://www.maine.gov/dps/fmo/>

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CYBER / WIRE FRAUD ADVISORY

Buyers and sellers need to exercise extreme caution when wiring funds in real estate transactions. Criminals/hackers target email accounts of real estate licensees as well as other parties involved in real estate transactions, including mortgage brokers, closing attorneys, and title agents. In many cases, they have been able to intercept emailed wire transfer instructions, obtain account information and, by altering some of the data, use emails to redirect the funds to a different account. These emails are convincing and sophisticated and may look like legitimate emails from parties in the transaction. You should look carefully at the entire email address as it may look legitimate but will contain some small change to fool you for example, joe@acme.com becomes joe@acrne.com a very hard distinction to pick up. If you believe you have received questionable or suspicious wire transfer instructions, immediately contact the title company/closing agent and your real estate professional.

Do NOT Initiate the Electronic Transfer of Funds (Wires) Without Double Checking the Legitimacy of the Destination

In every real estate transaction, Buyer and Seller are advised to:

- **Never wire funds without personally speaking with the intended recipient of the wire to confirm the routing number and account number.**
- **Verify that the contact information for the wire transfer recipient is legitimate. Buyer and seller should each call using a phone number that has been independently obtained, not the phone number contained in the email containing the wiring instructions.**
- **Never share personal information such as social security numbers, bank account numbers and credit card numbers, unless it is through secured/encrypted email or personal delivery (or phone call) to the intended recipient.**
- **Take steps to secure the system you are using with your email account such as using strong passwords and secure WiFi and email using a domain name account (safer than using a public account such as aol or gmail).**

If you suspect that you have been victimized by wire fraud:

- 1) Contact the financial institution immediately and ask them to do a “swift recall”.
- 2) Then call your local law enforcement immediately (town police department or county sheriff's office) to report the incident.
- 3) Then call the FBI immediately (24 hours or less) and let them know you are reporting the incident within 24 hours and file a complaint online at www.ic3.gov. Your chances of recovery are greater with less than 24-hour reporting.

To contact the FBI in Maine:

Augusta: (207) 622-2902 -- Bangor: (207) 947-6670 -- Portland: (207) 774-9322

Even if you cannot undo the damage, file a complaint as specified above as this will help track the criminals.

Again, Do Not Initiate Wires Without Double Checking the Legitimacy of the Destination